

STATE OF WISCONSIN
IN SUPREME COURT

Case No. _____

JOSH KAUL, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL, WISCONSIN
DEPARTMENT OF JUSTICE, TONY EVERS,
IN HIS OFFICIAL CAPACITY AS
GOVERNOR, AND JOEL BRENNAN, IN HIS
OFFICIAL CAPACITY AS SECRETARY
OF THE DEPARTMENT OF ADMINISTRATION,

Petitioners,

v.

WISCONSIN STATE LEGISLATURE,
WISCONSIN STATE LEGISLATURE JOINT
COMMITTEE ON FINANCE, ROGER ROTH,
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE WISCONSIN SENATE,
SCOTT FITZGERALD, IN HIS OFFICIAL
CAPACITY AS THE MAJORITY LEADER OF
THE WISCONSIN SENATE, ROBIN VOS IN
HIS OFFICIAL CAPACITY AS THE
SPEAKER OF THE WISCONSIN ASSEMBLY,
JIM STEINEKE, IN HIS OFFICIAL
CAPACITY AS THE MAJORITY LEADER OF
THE WISCONSIN ASSEMBLY, SENATOR
ALBERTA DARLING, IN HER OFFICIAL
CAPACITY AS A CO-CHAIR OF THE JOINT
COMMITTEE ON FINANCE,
REPRESENTATIVE JOHN NYGREN, IN HIS
OFFICIAL CAPACITY AS A CO-CHAIR OF
THE JOINT COMMITTEE ON FINANCE,
SENATOR LUTHER OLSEN, IN HIS
OFFICIAL CAPACITY AS A VICE CHAIR OF
THE JOINT COMMITTEE ON FINANCE,
AND AMY LOUDENBECK, IN HER

OFFICIAL CAPACITY AS A VICE CHAIR OF
THE JOINT COMMITTEE ON FINANCE,

Respondents.

**PETITION FOR AN ORIGINAL ACTION AND
REQUEST FOR TEMPORARY INJUNCTIVE RELIEF**

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INTRODUCTION

1. Through 2017 Wis. Act 369 (“Act 369”), the Wisconsin Legislature granted to the legislative branch a fundamentally unconstitutional role in the executive function of resolving plaintiff-side civil litigation involving the State. Under Wisconsin’s separation of powers doctrine, the legislative branch makes the laws and the executive branch executes them. One way the executive branch does so is by prosecuting civil litigation on behalf of the State, much like how criminal prosecutors pursue violations of Wisconsin’s criminal laws. In both plaintiff-side civil litigation and criminal prosecutions, the decision to initiate cases and end them through negotiated resolutions—whether plea bargains or settlements—are quintessential executive functions.

2. Act 369 transferred a key piece of that executive function to the legislative branch, after the election of the new Attorney General and Governor but before they took office. It did so by amending Wis. Stat. § 165.08 to provide that the Wisconsin Department of Justice (the

“Department”)—led by the Attorney General, an elected constitutional executive officer—cannot settle most plaintiff-side civil actions it prosecutes without first obtaining consent from the Legislature’s Joint Committee on Finance (JCF).

3. This case challenges the constitutionality of that transfer of executive power to the legislative branch as applied to two categories of plaintiff-side civil actions. Specifically, Act 369’s amendment to Wis. Stat. § 165.08 categorically violates the constitutional separation of powers as applied to: (1) civil enforcement actions brought under statutes that the Attorney General is charged with enforcing, such as environmental or consumer protection laws; and (2) civil actions the Department prosecutes on behalf of executive-branch agencies relating to the administration of the statutory programs they execute, such as common law tort and breach of contract actions.

4. Because settling these plaintiff-side civil cases represents a quintessential executive function in which the legislative branch has no legitimate institutional interest,

transferring this executive authority to JCF violates the constitutional separation of powers—the “central bulwark of our liberty.” *Serv. Emps. Int’l Union, Local 1 v. Vos*, 2020 WI 67, ¶ 30, 393 Wis. 2d 38, 946 N.W.2d 35 (“*SEIU*”).

5. The targeted, as-applied nature of this challenge means that this Court’s recent decision in *SEIU* does not resolve the issues presented here. There, the court declined to grant facial relief invalidating *all* the litigation settlement restrictions imposed by Act 369. It reasoned that the legislative branch could have a legitimate institutional interest in some cases—specifically, where the Department represents a legislative entity in litigation, the Legislature is the principal authorizing the Department’s representation, or defense-side cases “involv[ing] requests for the state to pay money to another party.” *Id.* ¶¶ 69, 71–72. The court implied that Act 369 may violate the separation of powers as applied to categories of cases where these interests do not exist or are insignificant. *Id.* ¶ 73.

6. Plaintiff-side civil actions prosecuted by the Department in the two categories at issue here do not implicate those legislative interests.

7. Because settling the plaintiff-side civil actions at issue here is an executive power, transferring that power from the executive branch to JCF violates the constitutional separation of powers. Petitioners ask this Court to declare that this revision to Wis. Stat. § 165.08 by Act 369 is unconstitutional as applied to the two categories of civil actions described more below.

ISSUES PRESENTED

8. Whether Wisconsin Stat. § 165.08's JCF consent provision violates the Wisconsin constitution's separation of powers as applied to the compromise or discontinuance of civil enforcement actions that the Department prosecutes.

9. Whether Wisconsin Stat. § 165.08's JCF consent provision violates the Wisconsin constitution's separation of powers as applied to the compromise or discontinuance of civil actions the Department prosecutes on behalf of executive-branch agencies relating to the administration of

the statutory programs they execute, such as common law tort and breach of contract actions.

PARTIES

10. Petitioner Josh Kaul is the Wisconsin Attorney General, the elected constitutional officer under Wis. Const. art. VI, § 1, who directs the activities of the Wisconsin Department of Justice. *See* Wis. Stat. § 15.25. The Act 369 provisions at issue here restrict the Attorney General’s ability to resolve plaintiff-side civil actions prosecuted by the Department on behalf of the State or state entities. He sues in his official capacity as the Attorney General and director and supervisor of the Department.

11. Petitioner Wisconsin Department of Justice¹ is the executive agency charged with prosecuting civil enforcement actions on behalf of the State and plaintiff-side civil actions upon the request of the heads of executive branch state agencies. The Act 369 provision at issue here

¹ All subsequent references to the “Department” in this Petition refer to both the Department and the Attorney General, in his official capacity as an elected constitutional officer and director and supervisor of the Department.

restricts the Department's ability to resolve litigation in such cases. The Department is located at 17 West Main St., Madison, WI 53703.

12. Petitioner Tony Evers is the Governor of Wisconsin, the elected constitutional officer under Wis. Const. art. V, § 1. The Act 369 provision at issue here altered the Governor's executive authority regarding the settlement of cases prosecuted by the Department.

13. Petitioner Joel Brennan is the Secretary of the Department of Administration (DOA) and directs its activities. *See, e.g.*, Wis. Stat. § 16.004. The Act 369 provisions at issue here restrict Secretary Brennan's ability to bring and resolve plaintiff-side civil actions prosecuted by the Department on behalf of DOA. He sues in his official capacity.

14. Respondent Wisconsin State Legislature is vested with the legislative power of the state by Wis. Const. art. IV, § 1. The Legislature assembles at the Wisconsin State Capitol, 2 East Main St., Madison, WI 53703.

15. Respondent Wisconsin State Legislature Joint Committee on Finance is a standing committee of the Wisconsin Legislature. *See* Wis. Stat. § 13.09. Act 369 empowers JCF to approve or reject certain case resolutions proposed by the Department.

16. Respondent Roger Roth is the President of the Wisconsin Senate. He is sued in his official capacity.

17. Respondent Scott Fitzgerald is the Majority Leader of the Wisconsin Senate. He is sued in his official capacity.

18. Respondent Robin Vos is the Speaker of the Wisconsin Assembly. He is sued in his official capacity.

19. Respondent Jim Steineke is the Majority Leader of the Wisconsin Assembly. He is sued in his official capacity.

20. Respondent Senator Alberta Darling is a Co-Chair of JCF. She is sued in her official capacity.

21. Respondent Representative John Nygren is a Co-Chair of JCF. He is sued in his official capacity.

22. Respondent Senator Luther Olsen is a Vice-Chair of JCF. He is sued in his official capacity.

23. Respondent Representative Amy Loudbeck is a Vice-Chair of JCF. She is sued in her official capacity.

24. Compliance with Wis. Stat. § 893.825 will occur with service of the petition on the above defendants.

FACTUAL ALLEGATIONS

I. The Department prosecutes various civil actions on the State's behalf.

25. This matter concerns two categories of civil actions that the Department prosecutes on behalf of the State and state executive agencies.

26. First, the Department prosecutes civil enforcement actions in which Wisconsin statutes authorize the Department to exercise its own initiative and discretion in deciding whether to file the action. These cases involve enforcement of consumer protection statutes, environmental protection statutes, and the like.

27. Second, the Department prosecutes civil actions on behalf of executive-branch agencies relating to the

administration of the statutory programs they execute, such as common law tort and breach of contract actions.

28. Act 369’s amendment to Wis. Stat. § 165.08 gives the legislative branch—acting through JCF—power over whether and how civil actions prosecuted by the Department in these two categories may be resolved through a negotiated settlement.²

A. The Department prosecutes civil enforcement cases on behalf of the State.

29. The Department is charged with enforcing state statutes in areas including consumer protection, environmental protection, and other areas of public interest. To enforce these civil regulatory statutes, the Department has statutory authority to initiate civil enforcement actions at its discretion.

² For the sake of brevity, this Petition will refer to the “compromise[] or discontinu[ance]” of a “civil action” under Wis. Stat. § 165.08 as “settling” or a “settlement.” The terms “settling” and “settlement” as used here do not refer to any other kind of negotiated resolution of contemplated or pending litigation.

1. Civil regulatory statutes that the Attorney General or Department is charged with enforcing.

30. The Department prosecutes violations of Wisconsin's environmental laws. *See* Wis. Stat. §§ 30.03, 299.95. These statutes designate the Department as the executive agency responsible for enforcing Wisconsin's environmental protection laws through civil litigation.

31. The Department prosecutes environmental protection actions against people or businesses who violate chapters 30–31 of the Wisconsin Statutes (which regulate Wisconsin's navigable waters), chapter 281 (which sets water quality and sewage disposal standards), chapter 283 (which regulates pollution discharge into the State's water supply), chapter 285 (which regulates air pollution and air quality), chapter 289 (which regulates solid waste facilities), chapter 291 (which regulates hazardous waste management), chapter 293 (which regulates nonferrous metallic mining), chapter 295 (which regulates nonmetallic mining, oil and gas, and ferrous metallic mining), and

chapter 299 (which contains other miscellaneous environmental regulations).

32. These environmental statutes give the Department various remedial tools, including injunctive-type relief (for example, orders to cease discharging pollutants or to engage in affirmative remediation or restoration efforts), monetary forfeitures, cost recovery for investigating and prosecuting agencies, and court-imposed surcharges.

33. The Department also prosecutes violations of Wisconsin's consumer protection laws. *See* Wis. Stat. § 165.25(4)(ar). This statute designates the Department as the executive agency responsible for enforcing Wisconsin's consumer protection laws through civil litigation.

34. Consumer protection actions prosecuted by the Department cover areas such as fraudulent representations (Wis. Stat. § 100.18), fraudulent drug advertising (Wis. Stat. § 100.182), unfair method of business competition and trade practices (Wis. Stat. § 100.20), false statements related to telecommunications services (Wis. Stat. § 100.207), selling

goods at excessive prices during a declared economic emergency (Wis. Stat. § 100.305), and many others.³

35. These consumer protection statutes provide the Department with several remedial tools, including injunctive relief (for instance, orders directing the cessation of unlawful marketing or sales practices), monetary forfeitures, restitution to injured parties, and cost recovery for investigating and prosecuting agencies.

36. The Department similarly represents the State as a plaintiff to prosecute violations of Wisconsin's financial regulatory laws. *See* Wis. Stat. §§ 202.18(1), 220.04(10), 220.12, 221.1005, 224.06(7), 426.104(1)(a), 426.301(1). These statutes designate the Department as the executive agency responsible for enforcing Wisconsin's financial regulatory laws through civil litigation.

37. These financial regulatory laws, enforceable by the Department, regulate licensed lenders under Wis. Stat.

³ *See also* Wis. Stat. §§ 91.68, 93.73, 100.171, 100.173, 100.174, 100.175, 100.177, 100.178, 100.185, 100.195, 100.205,

§ 138.09; insurance premium finance companies under Wis. Stat. § 138.12; payday loans under Wis. Stat. § 138.14; charitable solicitations under chapter 202 of the Wisconsin Statutes; check sales under chapter 217; consumer sales financing under chapter 218; banking regulations under chapters 220 through 224; and consumer transaction regulations under chapters 421 through 427 and 429.

38. These financial regulatory statutes provide for various remedies, including injunctive-type relief, monetary forfeitures (sometimes called “fines” or “penalties”), rescission of unlawful acts, appointment of receivers, bank dissolutions, and cost recovery for investigating and prosecuting agencies.

39. The Department represents the State as a plaintiff to prosecute civil Medicaid fraud cases under Wis. Stat. §§ 49.485, 49.49, and 20.931. These statutes designate the Department as the executive agency

100.209, 100.21, 100.28, 100.37, 100.42, 100.50, 100.51, 100.55, 846.45; Wis. Stat. chs. 126, 136, 704, 707, and 779.

responsible for enforcing prohibitions on false claims for medical assistance and other medical assistance offenses.

40. Through these civil Medicaid fraud actions, the Department may obtain monetary forfeitures, damages for injured parties (including the Wisconsin Department of Health Services), and cost recovery for investigating and prosecuting agencies.

41. Other civil enforcement actions the Department may prosecute include alcoholic beverages law violations (Wis. Stat. § 125.145), beverage, cigarette, and tobacco tax law violations (Wis. Stat. §§ 139.26, 139.45, 139.86, 995.10, 995.12), burial site preservation actions (Wis. Stat. § 157.70(7)), enforcement of charitable and curative institution regulations (Wis. Stat. § 46.16(7)), regulation of condemnation authorities (Wis. Stat. § 32.26), the dissolution and liquidation of cooperatives (Wis. Stat. §§ 185.72–73), credit union charter revocations (Wis. Stat. § 186.235), endurance contest restrictions (Wis. Stat. § 175.15), restraints on foreign limited partnerships (Wis. Stat. § 179.89), franchise investment law violations

(Wis. Stat. § 553.54), hospital regulation violations
(Wis. Stat. § 50.39), enforcement of insurance laws
(Wis. Stat. § 601.12(2)), insurance license fee or tax actions
(Wis. Stat. § 76.68), enforcement of insurance policyholder
rights (Wis. Stat. § 601.71), unlawful prize forfeitures
(Wis. Stat. § 945.10), violation of medical practice
regulations (Wis. Stat. § 448.11), migrant labor camp
regulations (Wis. Stat. § 103.92), mining reclamation act
violations (Wis. Stat. 293.87), motion picture exhibition
regulations (Wis. Stat. § 134.45), motor vehicle fuel tax
violations (Wis. Stat. § 78.81), motor vehicle rustproofing
warranty regulations (Wis. Stat. § 100.205), motor vehicle
dealer, salesperson, and sales finance company regulations
(Wis. Stat. § 218.0162), natural area heritage regulations
(Wis. Stat. § 23.29), genetically engineered organism release
notice requirements (Wis. Stat. § 146.60), public nuisance
violations (Wis. Stat. § 823.02), actions on official bonds
(Wis. Stat. § 19.015), oil inspection regulations (Wis. Stat.
§ 168.17), open meetings law violations (Wis. Stat. § 19.97),
public records law violations (Wis. Stat. § 19.37), public

utility and telecommunication provider regulations (Wis. Stat. § 196.44), quo warranto actions (Wis. Stat. § 784.04), racing and on-track pari-mutuel wagering regulations (Wis. Stat. § 562.125), railroad and water carrier regulations (Wis. Stat. § 195.07), savings institution incorporation or license revocations (Wis. Stat. §§ 215.02–03), secret rebate violations (Wis. Stat. § 133.05), recruitment of strikebreaker violations (Wis. Stat. § 103.545), teacher discrimination violations (Wis. Stat. § 118.20), unarmed combat sports regulations (Wis. Stat. § 444.16), unclaimed property regulations (Wis. Stat. § 177.32), and utility tax nonpayment (Wis. Stat. § 76.14).

42. These statutes provide for remedies available to the Department on the State’s behalf, including injunctive-type relief and forfeitures.

43. Current examples of civil enforcement matters being prosecuted by the Department include *State of Wisconsin v. Engine & Transmission World, LLC*, No. 17-CX-4 (Wis Cir. Ct. Milwaukee Cty.), a consumer protection case asserting claims for fraudulent

misrepresentations and unfair billing practices under Wis. Stat. §§ 100.18(1), 100.18(10r), and 100.195(2)(a) (*see* Ex. A), and *State of Wisconsin v. Williams*, No. 20-CX-3 (Wis. Cir. Ct. Chippewa Cty.), an environmental protection case asserting claims related to an unlawful dam under Wis. Stat. § 31.25 (*see* Ex. B). The *Williams* matter is set for trial on December 20, 2020, and the *Engine & Transmission World* matter is set for trial on May 3–14, 2021.

2. How civil enforcement cases originate and how the Department resolves them.

44. Civil enforcement cases prosecuted by the Department typically originate in referrals from state agencies, including the Department of Natural Resources, the Department of Agriculture, Trade, and Consumer Protection, and the Department of Financial Institutions. Some enforcement matters originate in the Department and involve no agency referral.

45. In all such cases, the Department must decide whether to initiate an enforcement action. Just like criminal prosecutors who evaluate a potential criminal prosecution,

the Department performs the executive task of considering the strength of the potential civil prosecution, the gravity of the alleged harms, the Department's available resources, and the overall public interest that prosecution would serve.

46. If the Department decides to pursue litigation and file a civil enforcement action, it also exercises its executive judgment and discretion in deciding when and how to resolve the case. The Department must consider on an ongoing basis whether the public interest favors litigation through final judgment or a settlement. Litigation may reveal weaknesses in an enforcement action that increase the risk of an adverse final judgment; the Department may decide that those risks should be avoided through a settlement. Or the defendant may decide that more litigation is not in its best interest and offer to settle the matter on terms favorable to the State.

47. As part of this calculus, the Department must also exercise executive judgment and discretion in considering the impact of pursuing a case to a litigated judgment on the resources of the Department and referring

agencies. The Department has limited resources to prosecute violations of, for instance, the state's consumer and environmental protection laws. Each enforcement action entails a cost in terms of the resources required to investigate and, if necessary, litigate the action. Continuing to litigate against one defendant may mean that another potential defendant cannot be pursued.

48. When the Department decides that a pending civil enforcement case should be resolved through settlement, determining the timing of the settlement—for example, whether quick action is needed—is an important component of the Department's executive discretion.

49. Litigation often reaches a critical moment best suited for consensual decision-making, a window of opportunity that may remain open only for a short time. The Department has recently litigated enforcement matters where a settlement window was open only for a day or less. And delayed settlements necessarily defer monetary (and other) relief that Wisconsin citizens would otherwise receive earlier.

50. The Department performs a quintessentially executive function when it promptly and efficiently resolves cases in the public interest, ends ongoing violations of the law, and obtains relief for injured individuals and entities.

51. The Department also must exercise its executive judgment and discretion when selecting the remedies in any settlement.

52. Wisconsin law provides for many possible remedies in civil enforcement actions, including injunctive-type relief, forfeitures, rescission of unlawful acts, and cost recovery for investigating and prosecuting agencies.

53. The Department must choose the measures that best address the violations at issue, accounting for the defendant's particular situation, the need for quick action, the time needed to effectuate a particular remedy, and the trade-offs of different solutions.

54. Prior to Act 369, the Department used its executive discretion, in consultation with referring agencies, to bring and resolve civil enforcement claims in the State's

best interests through either settlements or litigated judgments.

B. The Department prosecutes civil actions on behalf of state executive agencies related to their statutory programs.

55. The Department also prosecutes civil actions on behalf of executive-branch agencies relating to the administration of the statutory programs they execute. *See* Wis. Stat. § 165.25(2) (heads of executive agencies may ask the Department to prosecute civil action on their behalf in “any matter connected with . . . their departments”).⁴

56. These matters involve disputes between state agencies and individuals or entities with which the agencies interact, such as contractual disputes with vendors of goods and services or tort claims against individuals who have damaged state property managed by the agency.

57. Current matters where the Department is representing agency clients include referrals of tort claims

⁴ This Petition does not address cases where a legislative- or judicial-branch entity asks the Department to represent it in prosecuting a civil action on the entity’s behalf.

by the Department of Transportation against drivers who have damaged state highway bridges managed by DOT and contractual disputes between the Department of Administration and other state agencies and vendors with whom the agencies have contracted.

58. The Department and client agency exercise executive functions when deciding whether to bring and settle matters on behalf of the agency in this category.

59. The Department and client agency must decide whether the public interest favors litigation and, if so and in consultation with the agency client, whether and when a settlement is appropriate and what remedies should be obtained. In so doing, the Department and client agency consider how a particular resolution could affect agency operations that are connected with the specific dispute.

60. An example of a pending case prosecuted by the Department in this category is *In re Matured, Unredeemed, and Abandoned United States Savings Bonds With Owners With Last Known Addresses in the State of Wisconsin*, No. 20-CV-1835 (Wis. Cir. Ct. Dane Cty.), a case filed on the

Department of Revenue's behalf under Wis. Stat. § 177.225 regarding the escheatment of certain U.S. savings bonds (Ex. C).

61. The Department is currently considering referrals from other agencies of potential cases in this category, but the Department must preserve the confidentiality of those matters to maintain the attorney-client privilege and attorney work-product protections.

62. A past example of a case in this category is *Board of Regents v. Adidas America*, No. 12-CV-2775 (Wis. Cir. Ct. Dane Cty.), a declaratory judgment claim on behalf of the Board of Regents regarding Adidas America's contractual obligations to provide benefits to workers producing goods for the University of Wisconsin (Ex. D).

63. Prior to Act 369, the Department and client agencies exercised executive discretion to bring and resolve such civil claims on the agencies' behalf in the State's best interest.

II. Act 369 transfers the executive function of resolving plaintiff-side civil actions to the legislative branch.

64. Prior to Act 369, Wis. Stat. § 165.08 authorized the Department, in all plaintiff-side civil actions it prosecuted, to compromise or discontinue the action at the direction of the state official or entity that authorized the Department to initiate the case. *See* Wis. Stat. § 165.08 (2015–16). The legislative branch had no power over that decision in any particular case. *See id.*

65. Now, after Act 369, the Department cannot settle many of these plaintiff-side cases without first obtaining consent from the legislative branch. Specifically, section 26 of Act 369 amended Wis. Stat. § 165.08 to provide that the Department now cannot “compromise or discontinu[e]” plaintiff-side “civil actions” without approval from JCF:

Any civil action prosecuted by the department by direction of any officer, department, board, or commission, or any civil action prosecuted by the department on the initiative of the attorney general, or at the request of any individual may be compromised or discontinued . . . by submission of a proposed plan to the joint committee on finance for the approval of the committee. ***The compromise or discontinuance may occur only if the joint***

committee on finance approves the proposed plan.

Wis. Stat. § 165.08.

66. This new veto power gives the legislative branch control not just over whether the Department can enter into settlements covered by Wis. Stat. § 165.08, but also over the timing and terms of any such settlement.

67. Since this JCF consent provision took effect, the Department has sought JCF approval for settlements in several cases, primarily in consumer and environmental protection actions that would obtain monetary and remedial relief on the State's behalf. JCF never convened to consider some of these cases; for others, it scheduled a hearing, but only weeks after the Department's request.

68. JCF handles review of proposed settlements under Wis. Stat. § 165.08 using the procedural requirements of Wis. Stat. § 13.10. Those procedures include noticed public hearings (Wis. Stat. § 13.10(3)), roll call votes (Wis. Stat. § 13.10(4)), scheduling if and when the JCF's cochairs decide to meet (Wis. Stat. § 13.10(1)), and waiting periods after any vote (Wis. Stat. § 13.10(4)).

69. The Department is currently handling dozens of matters in the two categories at issue here, where, depending on the course of the litigation, the settlement restrictions in Wis. Stat. § 165.08 will apply.

CLAIMS FOR AS-APPLIED RELIEF

COUNT I

Wisconsin Stat. § 165.08's JCF consent provision violates the Wisconsin Constitution's separation of powers as applied to the compromise or discontinuance of civil enforcement cases the Department can prosecute on its own initiative.

(Declaratory and Injunctive Relief Sought)

70. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Petition as if set forth here in full.

71. Any court of record in this State is authorized to enter a declaratory judgment declaring that a statutory provision, or an application of a statutory provision, is unconstitutional. *See* Wis. Stat. § 806.04(1). Further relief based on a declaratory judgment, including injunctive relief, may also be granted whenever necessary or proper. *See* Wis. Stat. § 806.04(8).

A. Wisconsin separation of powers principles divide the areas of executive and legislative power.

72. The Wisconsin Constitution separates the powers of state government into three branches: “The legislative power shall be vested in a senate and assembly,” “[t]he executive power shall be vested in a governor,” and “[t]he judicial power of this state shall be vested in a unified court system.” Wis. Const. art. IV, § 1, art. V, § 1, art. VII, § 2.

73. Each branch of government has exclusive core constitutional powers that reflect zones of authority upon which no other branch may intrude. *State v. Horn*, 226 Wis. 2d 637, 643, 594 N.W.2d 772 (1999); *League of Women Voters of Wis. v. Evers*, 2019 WI 75, ¶ 34, 387 Wis. 2d 511, 929 N.W.2d 209. When dealing with core powers, “any exercise of authority by another branch of government is unconstitutional.” *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶ 48, 382 Wis. 2d 496, 914 N.W.2d 21 (citation omitted).

74. Relatedly, the constitutional separation of powers bars any part of the government from exercising

authority that would create an improper concentration of power in a single branch. *Panzer v. Doyle*, 2004 WI 52, ¶ 52, 271 Wis. 2d 295, 680 N.W.2d 666; *see also Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, ¶¶ 4–5, 376 Wis. 2d 147, 897 N.W.2d 384 (doctrine prevents the concentration of power in the same hands). This anti-aggrandizement principle guards against the “danger[] of congressional usurpation of Executive Branch functions.” *Bowsher v. Synar*, 478 U.S. 714, 727 (1986); *see also Mistretta v. United States*, 488 U.S. 361, 382 (1989) (noting instances when the court “invalidated attempts by Congress to exercise the responsibilities of other Branches”). The legislative branch therefore “cannot interfere with, or exercise any powers properly belonging to the executive department.” *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 448, 208 N.W.2d 780 (1973).

75. “Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them.’ Powers constitutionally vested in the legislature include the powers: ‘to declare whether or not

there shall be a law; to determine the general purpose or policy to be achieved by the law; [and] to fix the limits within which the law shall operate.” *Koschkee v. Taylor*, 2019 WI 76, ¶ 11, 387 Wis. 2d 552, 929 N.W.2d 600 (alteration in original) (citations omitted). “Following enactment of laws, the legislature’s constitutional role as originally designed is generally complete.” *Wisconsin Legislature v. Palm*, 2020 WI 42, ¶ 182, 391 Wis. 2d 497, 942 N.W.2d 900 (Hagedorn, J., dissenting); *see also Bowsher*, 478 U.S. at 733–34 (“[O]nce Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation.” (citation omitted)).

76. Executive power, by comparison, is “the power to execute the laws.” *Myers v. United States*, 272 U.S. 52, 117 (1926); *see also Palm*, 391 Wis. 2d 497, ¶ 175 (“The power to enforce and execute the law already enacted is given to the executive branch.”) (Hagedorn, J., dissenting). The essence of execution of the law is to implement the legislative mandate, which includes interpreting the law and

“us[ing] judgment and discretion” in the course of execution. *See Palm*, 391 Wis. 2d 497, ¶ 183 (Hagedorn, J., dissenting); *see also Bowsher*, 478 U.S. at 733; *Tetra Tech*, 382 Wis. 2d 496, ¶ 53.

77. In contrast to making general laws of prospective application—the core legislative duty—the day-to-day application and enforcement of the law is squarely an executive function. “Our constitution’s commitment to the separation of powers means the legislature should not, as a general matter, have a say in the executive branch’s day-to-day application and execution of the laws. The legislature gets to make the laws, not second guess the executive branch’s judgment in the execution of those laws.” *Palm*, 391 Wis. 2d 497, ¶ 218 (Hagedorn, J., dissenting). Allowing the legislative branch to “subject[] executive branch enforcement of enacted laws to a legislative veto . . . turns our constitutional structure on its very head.” *Id.*; *see also SEIU*, 393 Wis. 2d 38, ¶ 107 (permitting the legislative branch to “control the execution of the law itself” would

“demote the executive branch to a wholly-owned subsidiary of the legislature”).

78. Civil enforcement actions represent one type of state litigation that involves core executive functions in which the legislative branch has no constitutional role.

B. Wisconsin Stat. § 165.08’s JCF consent provision unconstitutionally transfers an executive power to the legislative branch when applied to this category of cases.

79. Wis. Stat. § 165.08’s JCF consent provision, as applied to the civil enforcement claims that the Department can commence on its own initiative described above in paragraphs 29 through 54, represents an unconstitutional legislative usurpation of executive power. That provision transfers the authority to resolve specific civil enforcement cases from the executive branch to the legislative branch.

80. Specifically, Wis. Stat. § 165.08’s JCF consent provision transfers from the executive to the legislative branch the executive powers, among others, of deciding (1) whether to resolve a particular civil enforcement action through a settlement rather than a litigated final judgment;

- (2) the proper timing of civil enforcement settlements; and
- (3) the remedies contained in civil enforcement settlements.

81. The Legislature has no institutional interest in the compromise or discontinuance of specific civil enforcement claims in the categories described in paragraphs 29 through 54 above.

82. Those statutes charge the Attorney General and Department with enforcing the underlying laws through civil enforcement claims, and the Legislature is not the principal that authorizes the Department to represent the State. The State, not the Legislature, is the plaintiff. And because the State is the plaintiff in these civil enforcement cases, it obtains relief on behalf of the State.

83. The Department's authority to decide whether, when, and how to resolve civil enforcement actions is quintessentially executive in nature. Applying Wis. Stat. § 165.08's JCF consent provision to this category of actions

allows a legislative committee to unconstitutionally usurp that executive power.⁵

COUNT II

Wisconsin Stat. § 165.08's JCF consent provision violates the Wisconsin Constitution's separation of powers as applied to the compromise or discontinuance of civil actions the Department prosecutes on behalf of executive-branch agencies relating to the administration of the statutory programs they execute.

(Declaratory and Injunctive Relief Sought)

84. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Petition as if set forth here in full.

85. Wisconsin Stat. § 165.08's JCF consent provision, as applied to civil actions described above in paragraphs 55 through 63 in which the Department

⁵ Apart from the JCF consent provision in Wis. Stat. § 165.08, different provisions in Act 369 require the approval of the Joint Committee on Legislative Organization (JCLO) if the Department seeks to enter into a settlement that concedes the unconstitutionality or other invalidity of a state statute. *See* Wis. Stat. §§ 165.08, 165.25(6). Petitioners do not believe that the Department could ever effectively concede the invalidity of state law as a plaintiff in these two categories of cases. But to the extent that could ever happen, the petition does not challenge the application of Wis. Stat. § 165.08 to any settlements that would seek to do so.

prosecutes civil actions on behalf of executive-branch agencies relating to the administration of the statutory programs they execute represents an unconstitutional legislative usurpation of executive power. That provision transfers the executive power to resolve civil actions filed on behalf of executive state agencies from the executive branch to the legislative branch.

86. Specifically, Wis. Stat. § 165.08's JCF consent provision transfers from the executive to the legislative branch the executive powers, among others, of deciding (1) whether to resolve a particular civil action brought on a client agency's behalf through a settlement rather than a litigated final judgment; (2) the proper timing of those settlements; and (3) the remedies contained in those settlements. It can also compromise the client agency's ability to engage in the executive function of litigation by denying it confidentiality in its communications with its Department attorneys about potential case resolutions.

87. The Legislature has no institutional interest in the compromise or discontinuance of common law claims

described above in paragraphs 55 through 63 that the Department prosecutes on behalf of injured state executive agencies.

88. A client agency, not the Legislature, is both the entity authorizing the Department to prosecute these cases and the plaintiff. And because client agencies are the plaintiffs bringing these claims, settlements in these cases obtain relief for those agencies.

89. Therefore, when the Department prosecutes claims in this category on an agency's behalf, applying Wis. Stat. § 165.08's JCF consent provision allows a legislative committee to unconstitutionally usurp executive power.⁶

STATEMENT OF RELIEF SOUGHT

90. Petitioners respectfully ask this Court to enter a judgment in their favor and against Respondents, consisting of:

⁶ Again, while Petitioners do not believe that settlements of these civil actions on behalf of state agencies could concede the invalidity of state law, this lawsuit does not challenge the application of Wis. Stat. § 165.08 to such settlements, assuming they could ever exist.

- (a) A temporary injunction preventing enforcement of Wis. Stat. § 165.08's JCF consent provision as applied to settlements of the cases described in Counts I and II; and
- (b) A declaratory judgment pursuant to Wis. Stat. § 806.04, declaring that Wis. Stat. § 165.08's JCF consent provision is unconstitutional as applied to settlements of the cases described in Counts I and II; and
- (c) Any such other relief as this Court may deem just and proper.

**REASONS WHY THIS COURT SHOULD TAKE
ORIGINAL JURISDICTION**

91. This case presents a significant constitutional question: May the legislative branch grant itself authority over the executive function of resolving plaintiff-side civil litigation involving state entities? This question implicates the separation of powers, a constitutional doctrine which provides the “central bulwark of our liberty.” *SEIU*, 393 Wis. 2d 38, ¶ 30. The nature of this question satisfies the Court’s

criteria for the exercise of original jurisdiction under article VII, section 3 of the Wisconsin Constitution, in that it renders this an “exceptional case[] in which a judgment by the court [would] significantly affect[] the community at large.” *Wisconsin Prof'l Police Ass'n v. Lightbourn*, 2001 WI 59, ¶ 4, 243 Wis. 2d 512, 627 N.W.2d 807.

92. The separation of powers issues presented here are of substantial statewide interest. This Court already recognized as much when it *sua sponte* assumed jurisdiction from the court of appeals over *SEIU*, which involved a facial challenge to the same provision in Wis. Stat. § 165.08 at issue here. And this Court has underscored the statewide significance of separation of powers issues by assuming original jurisdiction over multiple recent cases presenting those issues. *See, e.g., Bartlett v. Evers*, 2020 WI 68, 393 Wis. 2d 172, 945 N.W.2d 685, *Wisconsin Small Businesses United, Inc., v. Brennan*, 2020 WI 69, 393 Wis. 2d 308, 946 N.W.2d 101, *Wisconsin Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900.

93. Not only is it critically important to restore the proper separation of powers in state government, but also Wis. Stat. § 165.08 concretely harms the State, state agencies, and Wisconsin citizens by impairing the executive branch's ability to secure timely and optimal settlements on behalf of the state, its agencies, and its citizens.

94. These ongoing and tangible constitutional harms underscore the need for “prompt and authoritative” resolution through an original action. *Citizens Utility Bd. v. Klauser*, 194 Wis. 2d 484, 488 n.1, 534 N.W.2d 608 (1995); *see also Petition of Heil*, 230 Wis. 428, 284 N.W. 42, 50 (1938) (original jurisdiction appropriate where “the questions presented are of such importance as under the circumstances to call for [a] speedy and authoritative determination by this court in the first instance”). Moreover, litigating this case through the ordinary trial and appellate process could result in multiple reversals, causing significant confusion and uncertainty over the status of state litigation while this case proceeds. Resolution by this Court as an original action will provide finality regarding the

critical constitutional issues presented and avoid injecting further uncertainty into litigation.

95. Lastly, this case presents legal questions, not factual ones. Again, Petitioners assert that Wis. Stat. § 165.08, as applied to two categories of cases, violates the separation of powers by transferring the executive power over settlements to the legislative branch. These categorical as-applied challenges present no factual disputes. And although Respondents may dispute the legal significance of certain facts offered to establish the irreparable harm needed for a temporary injunction, they cannot reasonably dispute the concrete ways in which Wis. Stat. § 165.08 transfers key executive functions to the legislative branch.

CONCLUSION

96. For the reasons set forth above and in the accompanying memorandum, Petitioners respectfully request that this Court assume original jurisdiction over this action, issue a temporary injunction, and grant a declaratory judgment in Petitioners' favor.

Dated this 23rd day of November 2020.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Colin Roth

COLIN T. ROTH
Assistant Attorney General
State Bar #1103985

THOMAS C. BELLAVIA
Assistant Attorney General
State Bar #1030182

CHARLOTTE GIBSON
Assistant Attorney General
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(608) 266-7656 (CG)
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rothct@doj.state.wi.us
bellaviatc@doj.state.wi.us
gibsoncj@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 41

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No. 17-CX-04

ENGINE & TRANSMISSION WORLD, LLC
2100A E. College Ave.
Cudahy, WI 53110,

Complex Forfeiture: 30109

BELDEN MFG, LLC
2100A E. College Ave.
Cudahy, WI 53110,

MIDWEST AUTO RECYCLING, LLC
2100A E. College Ave.
Cudahy, WI 53110,

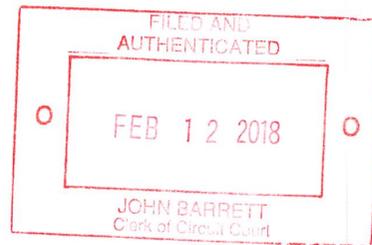
ENGINE SHOPPER, LLC
2100A E. College Ave.
Cudahy, WI 53110,

ENGINE SHOPPER MANAGER, LLC
2100A E. College Ave.
Cudahy, WI 53110,

SW TRANSMISSIONS, LLC
2100A E. College Ave.
Cudahy, WI 53110,

SW TRANSMISSIONS MANAGER, LLC
2100A E. College Ave.
Cudahy, WI 53110,

SW ENGINES, LLC
2100A E. College Ave.
Cudahy, WI 53110,



IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (414) 278-4120
(TTY -- (414) 276-1096) AND ASK FOR THE MILWAUKEE COUNTY CIRCUIT COURT ADA COORDINATOR.

Pet. Ex. A

SW ENGINES MANAGER, LLC
2100A E. College Ave.
Cudahy, WI 53110,

QUALITY USED TRANSMISSIONS, LLC
2100A E. College Ave.
Cudahy, WI 53110,

QUALITY USED TRANSMISSIONS MANAGER, LLC
2100A E. College Ave.
Cudahy, WI 53110,

QUALITY USED ENGINES, LLC
2100A E. College Ave.
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QUALITY USED ENGINES MANAGER, LLC
2100A E. College Ave.
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REMANNS, LLC
2100A E. College Ave.
Cudahy, WI 53110,

REMANNS MANAGER, LLC
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Cudahy, WI 53110,

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ENGINE RECYCLER, LLC
2100A E. College Ave.
Cudahy, WI 53110,

ENGINE RECYCLER MANAGER, LLC
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Cudahy, WI 53110,

U NEED ENGINES, LLC
2100A E. College Ave.
Cudahy, WI 53110,

U NEED ENGINES MANAGER, LLC
2100A E. College Ave.
Cudahy, WI 53110, and

ALFRED TALYANSKY
4327 W. Madero Dr.
Mequon, WI 53092,

Defendants.

AMENDED SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Milwaukee County Circuit Court, 901 North 9th Street, Milwaukee, WI 53233, and to plaintiff's attorney, Laura E. McFarlane, Assistant Attorney General, whose address is Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 8th day of February, 2018.

BRAD D. SCHIMEL
Wisconsin Attorney General



LAURA E. McFARLANE
Assistant Attorney General
State Bar #1089358

Attorneys for State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-8911
(608) 267-2778 (Fax)
mcfarlanele@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 41

MILWAUKEE COUNTY

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Plaintiff,

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U NEED ENGINES, LLC
2100A E. College Ave.
Cudahy, WI 53110,

U NEED ENGINES MANAGER, LLC
2100A E. College Ave.
Cudahy, WI 53110, and

ALFRED TALYANSKY
4327 W. Madero Dr.
Mequon, WI 53092,

Defendants.

AMENDED COMPLAINT

The State of Wisconsin, by its attorneys, Attorney General Brad D. Schimel, and Assistant Attorney General Laura E. McFarlane, on behalf of the Wisconsin Department of Agriculture, Trade and Consumer Protection, brings this action against the Defendants named above and alleges as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to Wis. Stat. §§100.18(11)(d) and 100.195(5m)(c) to enforce and restrain violations of Wis. Stats. §§ 100.18 and 100.195, and to recover pecuniary losses suffered by consumers.

2. Venue is proper in Milwaukee County because the defendants are located in Milwaukee County and engage in solicitation and sales activities in Milwaukee County.

PARTIES

3. Plaintiff, State of Wisconsin, is a sovereign state of the United States of America, with its principal offices located at the State Capitol in Madison, Wisconsin.

4. Defendant, Midwest Auto Recycling, LLC, is a Wisconsin limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. Midwest Auto Recycling, LLC's registered agent is C T Corporation System located at 8020 Excelsior Dr., Ste. 200, Madison, WI 53717.

5. Midwest Auto Recycling, LLC's members and owners are Edward Talyansky and Alfred Talyansky.

6. Midwest Auto Recycling, LLC is the sole member of Defendants Belden Mfg., LLC, Engine Shopper Manager, LLC, SW Transmissions Manager, LLC, SW Engines Manager, LLC, Quality Used Transmissions Manager, LLC, Quality Used Engines Manager, LLC, Remanns Manager, LLC, APLS Acquisition, LLC, Engine Recycler Manager, LLC, and U Need Engines Manager, LLC.

7. Defendant, Engine & Transmission World, LLC, is a Wisconsin limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. Engine & Transmission World, LLC's registered agent is C T Corporation System located at 8020 Excelsior Dr., Ste. 200, Madison, WI 53717.

8. Defendant, Belden Mfg., LLC, is a Wisconsin limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of defendant Engine & Transmission World, LLC. Belden Mfg., LLC's registered agent is C T Corporation System located at 8020 Excelsior Dr., Ste. 200, Madison, WI 53717.

9. Defendant, Engine Shopper, LLC, is a Wisconsin limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. Engine Shopper, LLC's registered agent is C T Corporation System located at 8020 Excelsior Dr., Ste. 200, Madison, WI 53717.

10. Defendant, Engine Shopper Manager, LLC, is a Wisconsin limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of defendant Engine Shopper, LLC. Engine Shopper Manager, LLC's registered agent is C T Corporation System located at 8020 Excelsior Dr., Ste. 200, Madison, WI 53717.

11. Defendant, SW Transmissions, LLC, is a Missouri limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. SW Transmission, LLC's registered agent is C T Corporation System located at 120 S. Central Ave., Clayton, MO 63105.

12. Defendant, SW Transmissions Manager, LLC, is a Missouri limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of SW Transmissions, LLC. SW Transmission Manager, LLC's registered agent is C T Corporation System located at 120 S. Central Ave., Clayton, MO 63105.

13. Defendant, SW Engines, LLC, is a Oklahoma limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. SW Engines, LLC's registered agent is CT Corporation located at 1833 S. Morgan Rd., Oklahoma City, OK 73128.

14. Defendant, SW Engines Manager, LLC, is a Oklahoma limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of SW Engines, LLC. SW Engines Manager, LLC's registered agent is CT Corporation located at 1833 S. Morgan Rd., Oklahoma City, OK 73128.

15. Defendant, Quality Used Transmissions, LLC, is a Michigan limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. Quality Used Transmissions, LLC's registered agent is The Corporation Company located at 40600 Ann Arbor Rd. E, Ste. 201, Plymouth, MI 48170.

16. Defendant, Quality Used Transmissions Manager, LLC, is a Michigan limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of Quality Used Transmissions, LLC. Quality Used

Transmissions Manager, LLC's registered agent is The Corporation Company located at 40600 Ann Arbor Rd. E, Ste. 201, Plymouth, MI 48170.

17. Defendant, Quality Used Engines, LLC, is a Kansas limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. Quality Used Engine, LLC's registered agent is C T Corporation System located at 4745 W. 136 St., Leawood, KS 66224.

18. Defendant, Quality Used Engines Manager, LLC, is a Kansas limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of Quality Used Engines, LLC. Quality Used Engines Manager, LLC's registered agent is C T Corporation system located at 4745 W. 136 St., Leawood, KS 66224.

19. Defendant, Remanns, LLC, is a South Dakota limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. Remanns, LLC's registered agent is C T Corporation System located at 319 S. Coteau St., Pierre, SD 57501.

20. Defendant, Remanns Manager, LLC, is a South Dakota limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of Remanns, LLC. Remanns Manager, LLC's registered agent is C T Corporation System located at 319 S. Coteau St., Pierre, SD 57501.

21. Defendant, APLS Acquisition, LLC, is a Wisconsin limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. APLS Acquisition, LLC's registered agent is C T Corporation System located at 301 S. Bedford St., Ste. 1, Madison, WI 53703.

22. Defendant, Engine Recycler, LLC, is a Montana limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. Engine Recycler LLC's registered agent is C T Corporation System located at 3011 American Way, Missoula, MT 59808.

23. Defendant, Engine Recycler Manager, LLC, is a Montana limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of Engine Recycler, LLC. Engine Recycler Manager, LLC's registered agent is C T Corporation System located at 3011 American Way, Missoula, MT 59808.

24. Defendant, U Need Engines, LLC, is a Nevada limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717. U Need Engines, LLC's registered agent is The Corporation Trust Company of Nevada located at 701 S. Caron St., Ste. 200, Carson City, NV 89701.

25. Defendant, U Need Engines Manager, LLC, is a Nevada limited liability company with its principal place of business at 2100A E. College Ave., Cudahy, WI 53717, and is the sole member of U Need Engines, LLC. U Need Engines Manager, LLC's registered agent is The Corporation Trust Company of Nevada located at 701 S. Caron St., Ste. 200, Carson City, NV 89701.

26. Defendant, Alfred Talyansky, is a Wisconsin resident who resides at 4327 West Madero Drive in Mequon, Wisconsin.

27. Alfred Talyansky oversees, actively participates in, and manages the defendants' operations, including, but not limited to, the management of the Midwest Auto Recycling, LLC's employees, the creation and management of the defendants' warranty program, and the oversight and management of the defendants' advertising and marketing campaigns.

28. Midwest Auto Recycling, LLC conducts all business operations for the defendants including, but not limited to, maintaining the lease for the defendants' place of business at 2100A E. College Avenue in Cudahy, WI, hiring and managing employees, hiring and overseeing independent contractors such as accountants and advertising and marketing firms, and conducting advertising and marketing campaigns, such that its subsidiary LLCs have no separate existence from Midwest Auto Recycling, LLC.

29. Midwest Auto Recycling, LLC's subsidiaries and corresponding trade names were created in order to mislead consumers about its business operations. For example, when one of defendants' trade names would begin to receive bad reviews, the defendants would create another subsidiary, trade name, and website so that consumers would believe they were unrelated companies.

30. When reference is made in this Complaint to any statement, representation, act, or practice of the defendants, such allegation shall be assumed to mean the defendants or their principals, officers, employees, agents, representatives, or other persons acting under their supervision, direction or control, whether acting as one of the defendants or under any of their subsidiaries.

FACTUAL ALLEGATIONS

I. Overview

31. The defendants advertise and sell used auto parts, such as engines, transmissions, and transfer cases.

32. The defendants advertise the used auto parts through online ads and their websites.

33. The defendants operate various websites, under various trade names, including, but not limited to, the following:

- a. Engine and Transmission World,
<http://www.engineandtransmissionworld.com>
- b. SW Engines, <http://www.swengines.com>
- c. Engine Shopper, <http://www.engineshopper.com>
- d. Got Engines, <http://www.gotengines.com>
- e. Got Transmissions, <http://www.gottransmissions.com>

- f. Quality Used Engines, <http://www.qualityusedengines.com>
- g. Quality Used Transmissions, <http://www.qualityusedtransmissions.com>
- h. South West Transmissions, <http://www.swtransmissions.com>
- i. Transfer Case Shopper, <http://www.transfercaseshopper.com/>
- j. Used Engines & Transmissions, <http://www.engine-transmission.com>
- k. Axle Shopper, <http://www.axleshopper.com>
- l. Remanns, <http://www.remanns.com>
- m. Used Remanns, <http://www.used.remanns.com>
- n. Engines for Sale, <http://www.enginesforsale.org>

34. The defendants' website domains are owned by Alfred Talyansky and by the defendant LLCs.

35. Consumers can request a quote for a used part by telephone or through an online search tool on the defendants' websites.

36. If requesting a quote online, consumers receive a quote online and in an email.

37. If requesting a quote by telephone, the defendants' sales person verbally relays the terms of the purchase to the consumer.

38. The defendants have limited stock of used auto parts on-hand. Instead of carrying inventory, the defendants act primarily as the "middleman" for the sale of the used auto part. Therefore, when they receive an order from a consumer, it is only then that they search for the used auto part from one of their suppliers. The suppliers will typically blind ship the used part to the consumer, making the consumer believe the part was provided by the defendants.

39. The defendants do not know the mileage, or even an approximation of the mileage, of the used auto part they sell when they provide the consumer with a quoted mileage for the used part.

40. The vast majority of the used auto parts sold by the defendants do not have low mileage.

41. The defendants do not test the used auto parts they sell.

42. The defendants do not “certify” the used auto parts they sell.

43. The defendants do not honor their guarantee claims.

44. The defendants do not have ASE certified mechanics on staff.

45. The defendants do not provide unconditional free shipping in the continental U.S. as they charge \$75 for residential delivery and for delivery to New York City boroughs.

46. The defendants’ warranties are misleading. They are also hard to activate because the instructions are confusing and require onerous and sometimes impossible prerequisites to activation. For example, one requirement of the defendants’ warranties has been that the used auto part be used for 14 days and at least 501 miles, a requirement that is impossible to meet when the used auto part would not work.

47. The defendants often refuse to honor the represented guarantees and warranties used to induce consumer sales.

48. Consumers have been misled by the defendants’ marketing and sales representations. They have suffered pecuniary loss as a result of the misrepresentations.

II. Online Advertising

49. The defendants advertise online through search engines, including, but not limited to Google, Ask.com, Yahoo, and Bing.

50. The online advertisements make misrepresentations about the used parts, warranties and guarantees, and defendants’ business practices and operations.

51. Examples of the misrepresentations made through online advertising include, but are not limited to, the following:

52. An ad for Used Engines & Transmissions on Google.com misrepresents:

Cheap Used Engines and Motors - Free Shipping Continental USA
Ad www.engine-transmission.com/3_Year_Warranty/Used_Engines ▾
Used Engines For Sale. Free 3 Year Parts/Labor Warranty. Instant Online Quotes.
Vast Engine Inventory · Free Online Quotes · Free 3 Year Warranty
FAQs for Used Engines · Free Shipping

- a. “Free 3 Year Parts/Labor Warranty”
- b. “Vast Engine Inventory”
- c. “Free Shipping Continental USA”

53. An ad for Got Engines on Bing.com misrepresents:

Dirt Cheap Used Engines. | gotengines.com
Ad · www.gotengines.com
Highest Quality Used Engines at Insanely Low Prices!
Certified used engines are used engines that have been inspected. The entire engine...
High Quality · Knowledgeable Staff · Attentive Service · Reliable Shipping

- a. “Certified used engines are used engines that have been inspected”

54. An ad for Quality Used Engines on Ask.com misrepresents:

Used Engines Top Quality - Free Shipping on All Used Engines
www.qualityusedengines.com/ ▾ (866) 319-1643
3 Year Warranty & Online Ordering.
Free Shipping in US · Free 3 Year Warranty · Low Mileage Used Engines
Easy to order delivered right on time running great - Reputation.com
Get Engine Quotes Used Engine Shipping Free
3 Year Warranty Contact QUE Engines

- a. “Free Shipping on All Used Engines”
- b. “Free 3 Year Warranty”
- c. “Low Mileage Used Engines”

55. An ad for SW Engines on Google.com misrepresents:

Swengines.com - Used Engines - Low Prices
Ad www.swengines.com/UsedEngines ▾
Need a Used Engine For Your Car, Truck, Van? Visit SW Engines Today!
Free Instant Quote Tool · Free 5 Year Warranty · Huge Used Engine Stock · Free Shipping To USA
Highlights: On Call Support Available, Multiple Payment Options Available...

- a. "Free 5 Year Warranty"
- b. "Huge Used Engine Stock"
- c. "Free Shipping to USA"

56. An ad for Engine and Transmission World on Yahoo.com misrepresents:

Cheap Used Engines Sales - All Makes and Models in Stock

[www.engineandtransmissionworld.com/Free Shipping/5 Year Warranty](http://www.engineandtransmissionworld.com/Free%20Shipping/5%20Year%20Warranty)
Used Engines For Sale. Parts & Labor 5 Year Warranty. Free Shipping in USA!

Instant Used Engine Quote Used Engines Online Tool
 Free Shipping Used Engine

- a. "All Makes and Models in Stock"
- b. "Free Shipping in USA"
- c. "Parts & Labor 5 Year Warranty"

57. An ad for Transfer Case Shopper on Bing.com misrepresents:

Transfer Cases For Sale - Used transfer case

ad · transercaseshopper.com/Trans_Case ▾
Used Transfer Cases. 1yr Warranty. Low Price, In Stock, Free Shipping!

- a. "1yr Warranty"
- b. "In Stock"
- c. "Free Shipping"

III. Websites

58. Through their websites, the defendants make misrepresentations about the used parts, warranties and guarantees, and defendants' business practices and operations.

59. The misrepresentations are made both in images on the webpages and in text on the pages.

60. Examples of misrepresentations made by the defendants through their websites' banners include, but are not limited to, the following:

61. The banner that runs across the top of one of Engine & Transmission World misrepresents:



- a. "Under New Management"
- b. "100% Guaranteed"
- c. "3 Year Parts & Labor Warranty available on Most Engines"
- d. "Free Shipping in the 48 Continental United States"

62. The Engine and Transmission World website began to represent they were "Under New Management" at the beginning of 2013. The defendants, however, did not change their management at that time, nor have they since. Instead, the defendants made the misrepresentation as a response to the countless bad reviews they had received online.

63. The banner for Quality Used Engines misrepresents:



- a. "FREE SHIPPING IN THE CONTINENTAL USA"
- b. "Largest Nationwide Used Inventory"

64. The defendants' websites also make misrepresentations including, but not limited to, the following examples:

- a. Engine and Transmission World states, "The best part of used engines or car transmissions is that they're... 100% guaranteed."
- b. Quality Used Engines states, "[W]e offer you a chance to save money along with the safety of purchasing used car engines that have been certified."
- c. Quality Used Transmissions states, "100% Guaranteed."
- d. Engine Shopper states, "ASE certified."
- e. SW Engines states, "Used engines are not always the easiest to come by in good shape, yet here at SWEngines we are stocked with them right now. Even more "harder to come by" engines are available right now through our massive online engine inventory."
- f. SW Transmissions states, "Free Shipping in the Continental US."
- g. Got Engines states, "We carry used and remanufactured engines, for any make and model, foreign, domestic and the hard-to-find."
- h. Got Transmissions states, "Up-to-the minute pricing on our rotating inventory."
- i. Transfer Case Shopper states, "Our free shipping on used transfer cases are backed with a 1 year parts and labor warranty."
- j. Axle Shopper states, "Axleshopper.com ships for free across the continental US."
- k. Remanns states, "Our vast inventory of Remanufactured Engines at Remanns is one of, if not the largest inventories of remanufactured engines in the country!"

- l. Used Remanns states, "Our vast inventory of most makes and models at used.remanns.com make us one of the most ideal, nationwide shop for a used engine or transmission online."
- m. Used Engines & Transmissions states, "At Used Engines and Transmissions, not only do you save money, but you also get a great warranty, free shipping anywhere in the continental US and have the knowledge that the engine has been checked by our knowledgeable staff."
- n. Engines For Sale states, "We have one of the largest inventories of engines available online."

65. The defendants have utilized press releases to advertise their used auto parts, and those press releases include misrepresentations. For example, in press releases SW Engines has stated, "SWEngines Boasts of the Most Comprehensive Inventory of Used Engines in the US," "The company has a bunch of ASE certified mechanics," and "offers free delivery services across 48 continental states," among other misrepresentations.

66. Some of the defendants' websites state that their business operates out of locations other than Cudahy, Wisconsin, including, but not limited to, the following examples:

- a. SW Engines lists its "Home Office address" on its website as 406 S. Boulder Ave. Suite 400, Tulsa, OK 74103."
- b. SW Engines claims in press releases to be "based in Tulsa, OK."
- c. Quality Used Engines lists its address on its website as 4745 W. 136th St., Leawood, KS 66224.
- d. Quality Used Transmissions lists its address on its website as 2525 E. Paris S.E. Suite 100, Grand Rapids, MI 49546.

- e. Engine and Transmission World has claimed in a press release to be “based in Tulsa, OK.”

67. The defendants’ businesses are not located in Oklahoma, Kansas, or Michigan. They exclusively operate out of Cudahy, Wisconsin.

IV. Online and Email Quotes

68. The quotes issued by the defendants contain misrepresentations about the used auto part being sold to the consumer, such as the mileage of the used auto part.

69. Further examples of misrepresentations made through the quotes include, but are not limited to, the following:

- o. “Free Shipping in all U.S. states except HI & AK (*There is a \$75 charge for all residential deliveries)”
- p. “We Deliver Low Mileage Used Transmissions Nationwide Daily”
- q. “All transmissions are tested, visually inspected and cleaned.”
- r. “This engine will arrive COMPLETE, minus Power Steering Pump, alternator, Starter, and AC Compressor.”

V. Consumer Experiences

70. Examples of consumer experiences include, but are not limited to, the following:

A. Consumer One

71. Consumer One’s engine failed and his mechanic was not able to find a low mileage used engine. Consumer One found the Got Engines website and was told through the online quote system that it had an engine available with 40,485 miles. Consumer One purchased the engine for \$2,385.

72. Consumer One's mechanic told him the VIN for the new engine. Upon running a vehicle history report, Consumer One discovered the engine did not have 40,485 miles, but had 163,558 miles.

73. The invoice from the supplier of the engine states the engine had 163,523 miles at the time it was sold to the defendants.

74. Upon discovery of the substantial difference in the mileage stated in the quote he received for the engine and in the engine itself, Consumer One tried to contact Got Engines.

75. He called Got Engines and left multiple messages without getting return calls. When he was able to connect with a customer representative, the representative hung up on him.

76. Consumer One sent emails and tried to contact Got Engines on social media to no avail.

77. When he eventually did hear from Got Engines, he was told that the supplier was to blame for the difference in mileage.

B. Consumer Two

78. Consumer Two needed an engine and found one on the Quality Used Engines website. He ordered from Quality Used Engines because of the good reviews they posted on their site, they offered a three year warranty on parts and labor, and because they represented that the engine was tested and steam cleaned. Consumer Two purchased the engine from Quality Used Engines.

79. After installing the used engine, Consumer Two's mechanic tested the engine and found that two of the three cylinders had no compression.

80. Consumer Two called Quality Used Engines to inform them of the defective engine. Quality Used Engines sent a replacement engine in response.

81. When Consumer Two requested payment for the labor cost incurred in installing the replacement engine, Quality Used Engines told him that labor wasn't covered under his warranty and refused to pay for the labor cost.

82. Consumer Two, however, could not have activated the warranty as it requires the consumer to drive with the used engine for 501 miles and 14 days. Because the engine was inoperable, it was impossible to activate the warranty.

C. Consumer Three

83. Consumer Three purchased a used engine from SW Engines expecting, as the email quote represented, a "complete engine less alternator, starter, power steering pump, ac compressor, and turbo."

84. Upon receipt of the engine, Consumer Three discovered there were two holes in the valve cover.

85. Consumer Three called SW Engines to report the damage. The SW Engines representative told Consumer Three to file a damage claim with the shipping company.

86. The damage to the valve, however, was not caused by the shipping as the shrink wrap had not been damaged. In addition, there was paint/grease crayon circling the holes in the valve cover, which is a common practice in junk yards to denote damage to a part.

87. In addition to the damages to the valve cover, the crank sensor and water ports were missing and there was an issue with the intake.

88. Consumer Three's mechanic took parts from the old engine to try and make the used engine operate. After installing the used engine, the engine had a miss. Upon

diagnosis, the scanner revealed a stuck lifter and bent push rod. The used engine was completely unusable.

89. Consumer Three spent over \$4,000 for the engine and labor costs for an unusable engine.

VIOLATIONS

CLAIM ONE Fraudulent Misrepresentations Wis. Stat. § 100.18(1)

90. The State re-alleges all preceding paragraphs, and incorporates them herein.

91. Wis. Stat. § 100.18(1) prohibits the use of false, deceptive, or misleading representations when marketing and selling used auto parts.

92. Defendants have made misrepresentations online and verbally to consumers in the course of selling used auto parts regarding the used parts, warranties and guarantees, and defendants' business practices and operations. These misrepresentations include, but are not limited to, those stated in this Complaint.

93. Alfred Talyansky is liable for the foregoing violations inasmuch as he had actual or constructive knowledge of, participated in, approved, ratified, endorsed, directed, or controlled or otherwise had the ability to control the acts and practices that form the basis for the violations.

94. Each time a misrepresentation was made constitutes a separate violation.

CLAIM TWO Fraudulent Misrepresentations Wis. Stat. § 100.18(10r)

95. The State re-alleges all preceding paragraphs, and incorporates them herein.

96. Wis. Stat. § 100.18(10r) prohibits businesses from misrepresenting where the business is located.

97. Defendants have and continue to misrepresent the location of their businesses online anytime they list their address as being anywhere other than in Cudahy, Wisconsin.

98. Alfred Talyansky is liable for the foregoing violations inasmuch as he had actual or constructive knowledge of, participated in, approved, ratified, endorsed, directed, or controlled or otherwise had the ability to control the acts and practices that form the basis for the violations.

99. Each time a misrepresentation was made constitutes a separate violation.

CLAIM THREE
Unfair Billing Practices
Wis. Stat. § 100.195(2)(a)

100. The State re-alleges all preceding paragraphs, and incorporates them herein.

101. Wis. Stat. § 100.195(2)(a) prohibits billing a consumer for goods that the consumer has not agreed to purchase.

102. Defendants have billed consumers for used auto parts that are not the parts the consumer agreed to purchase.

103. Alfred Talyansky is liable for the foregoing violations inasmuch as he had actual or constructive knowledge of, participated in, approved, ratified, endorsed, directed, or controlled or otherwise had the ability to control the acts and practices that form the basis for the violations.

104. Each time a consumer was billed for a used auto part that they did not agree to purchase constitutes a separate violation.

RELIEF REQUESTED

WHEREFORE, Plaintiff, State of Wisconsin, requests this Court enter judgment against Defendants, as follows:

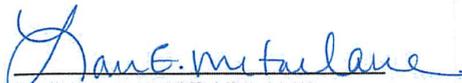
A. Finding that Defendants violated Wis. Stats. §§ 100.18 and 100.195.

- B. Finding that each violation of Wis. Stats. §§ 100.18 and 100.195, is a separate offense.
- C. Enjoining Defendants, their successors, assigns, officers, directors, agents, dealers, servants, employees, representatives, solicitors, and all persons acting or claiming to be acting on their behalf, pursuant to Wis. Stats. §§ 100.18(11)(d) and 100.195, from making further misrepresentations.
- D. Ordering Defendants to restore any pecuniary losses suffered by any person because of Defendants' acts or practices in violation of Wis. Stats. §§ 100.18 or 100.195.
- E. Imposing civil forfeitures against Defendants in the amount of not less than \$50 nor more than \$200 for each violation of Wis. Stat. § 100.18(1) pursuant to Wis. Stat. § 100.26(4), not less than \$100 nor more than \$10,000 for each violation of Wis. Stat. § 100.18(10r) pursuant to Wis. Stat. § 100.26(4m), and not less than \$100 nor more than \$10,000 for each violation of Wis. Stat. § 100.195(2)(a) pursuant to Wis. Stat. § 100.195(5m)(d), consumer protection surcharges pursuant to Wis. Stat. § 100.261, supplemental forfeitures for violations against elderly or disabled persons pursuant to Wis. Stat. § 100.264, plus all applicable assessments and costs.
- F. Pursuant to Wis. Stat. § 813.02, the Court should temporarily enjoin the defendants, ordering that the defendants cease billing consumers for auto parts that are not the parts represented during the sale. For example, the defendants should cease to quote mileage of the used part to consumers unless that amount can be verified to a reasonable degree of certainty.
- G. Awarding the State the reasonable costs of investigation and prosecution of this action, including attorneys' fees, pursuant to Wis. Stat. § 100.263.
- H. Awarding the Wisconsin Department of Agriculture, Trade and Consumer Protection for the reasonable costs it has incurred to prepare and prosecute this action, pursuant to Wis. Stats. §§ 93.20(2) and 814.04.

I. Providing such other and further equitable relief as justice and equity may require.

Dated this 8th day of February, 2018.

BRAD D. SCHIMEL
Wisconsin Attorney General



LAURA E. MCFARLANE
Assistant Attorney General
State Bar #1089358
Attorneys for the State of Wisconsin

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FILED
04-14-2020
Clerk of Circuit Court
Chippewa County, WI
2020CX000003

STATE OF WISCONSIN CIRCUIT COURT CHIPPEWA COUNTY
BRANCH ____

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 20-CX-_____
Complex Forfeiture: 30109

STEPHEN E. WILLIAMS, SR.,
12528 102nd Avenue
Chippewa Falls, Wisconsin 54729,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE AMOUNT
CLAIMED UNDER WIS. STAT.
§ 799.01(1)(d).

CIVIL COMPLAINT

The State of Wisconsin by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorney General Bradley J. Motl, brings this complaint against the Defendant, Stephen E. Williams, Sr., at the request of the Wisconsin Department of Natural Resources (DNR), pursuant to Wis. Stat. ch. 31, and alleges as follows:

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin.

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (715) 726-7758 AND ASK FOR THE CHIPPEWA COUNTY CIRCUIT COURT ADA COORDINATOR.

Pet. Ex. B

2. Defendant Stephen E. Williams, Sr. (Williams) is an adult resident of Chippewa County who resides at 12528 102nd Avenue, Chippewa Falls, Wisconsin 54729.

3. Williams was born on July 7, 1939.

4. Wisconsin Stat. §§ 23.55(1)(a) and 23.54(3)(a) require inclusion of Williams' social security number in this Complaint. Pursuant to Wis. Stat. § 801.19, Williams' social security number is submitted on confidential form GF-241.

5. Williams is the owner and operator of a dam on Duncan Creek, a navigable watercourse, located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 24, Township 29 North, Range 9 West, Town of Tilden, Chippewa County, Wisconsin (Tilden Millpond Dam).

6. The current version of the Tilden Millpond Dam was constructed around 1934.

7. The Tilden Millpond Dam consists of a powerhouse; an approximately 13.2-foot long spillway section, containing a 9.2-foot fixed crest spillway and a 4-foot wide stop log gate; and a 61-foot long fixed crest overflow spillway (referenced from left to right while standing on the dam looking downstream).

8. For purposes of this Complaint, the left abutment of the Tilden Millpond Dam is the abutment closest to the powerhouse.

9. The powerhouse section of the Tilden Millpond Dam consists of a penstock, which conveys water to and through the turbine for hydroelectric generation.

10. The stop logs and penstock are used to control the height of the water upstream of the Tilden Millpond Dam.

11. The Tilden Millpond Dam has a structural height of approximately 16 feet.

12. The Tilden Millpond Dam creates an approximately 61-acre impoundment called the Tilden Millpond.

13. The Tilden Millpond Dam is used for hydroelectric generation.

14. On April 29, 2015 and May 19, 2015, DNR Water Management Engineer Michael R. Rogney conducted visual inspections of the Tilden Millpond Dam after receiving a complaint that water was piping through a hole in the dam.

15. On April 29, 2015 and May 19, 2015, approximately two to three feet below the crest of the overflow spillway section, water was piping underneath a concrete section that was previously added to the top of the overflow spillway section.

16. Based on its April 29, 2015 and May 19, 2015 visual inspections, DNR determined that the Tilden Millpond Dam was unsafe and dangerous to life, health, and property.

17. On June 3, 2015, DNR issued an Administrative Order to Williams (2015 Order).

18. The 2015 Order required Williams to conduct a partial drawdown of the Tilden Millpond and notify DNR when the partial drawdown was completed so that DNR could inspect the Tilden Millpond Dam.

19. The 2015 Order also directed Williams to either reconstruct the Tilden Millpond Dam, which required Williams to submit plans and specifications to DNR by June 3, 2017 and complete reconstruction within a year of the plans and specifications being approved by DNR, or abandon and remove the structure within nine months of the DNR inspection.

20. On September 1, 2015, Williams sent a letter to Roney stating that he had not completed the partial drawdown of the Tilden Millpond and requesting a 90-day extension to complete this partial drawdown. The letter also indicated Williams' intent to reconstruct the Tilden Millpond Dam.

21. On September 17, 2015, DNR granted Williams a 30-day extension to complete the partial drawdown of the Tilden Millpond Dam.

22. On July 7, 2017, Roney sent Williams a letter requesting an update regarding the status of the partial drawdown of the Tilden Millpond.

23. DNR has never, subsequent to the 2015 Order, received notification from Williams that he completed the partial drawdown of the Tilden Millpond.

**VIOLATION: FAILURE TO COMPLY WITH
ADMINISTRATIVE ORDER**

24. Wisconsin Stat. § 31.19(5) states:

If [DNR] finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it shall determine what alterations, additions or repairs are necessary and shall order the owner or person having control of the dam or reservoir to cause those alterations, additions or repairs to be made within a time specified in the order. If [DNR] finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it may cause to be drawn off, in whole or in part, the water in the reservoir or impounded by the dam if it determines that this action is necessary to prevent impending danger to persons or property.

25. On or around April 17, 2019, a significant rain event occurred and caused a partial failure of the Tilden Millpond Dam.

26. On or around April 17, 2019, a two to three-foot concrete section of the Tilden Millpond Dam separated from the top of the fixed crest overflow spillway and washed downstream.

27. The partial failure of the Tilden Millpond Dam on or around April 17, 2019 caused flooding and contributed to campers being damaged in the downstream campground.

28. On April 18, 2019, Roney conducted a visual inspection of the Tilden Millpond Dam.

29. On April 18, 2019, water was flowing over the Tilden Millpond Dam.

30. On April 18, 2019, the two to three-foot concrete section that was previously constructed on top of the fixed crest overflow spillway was no longer attached to the Tilden Millpond Dam and was located downstream of the dam in Duncan Creek.

31. On April 18, 2019, the right abutment of the Tilden Millpond Dam was damaged.

32. On April 18, 2019, the land around the right abutment of the Tilden Millpond Dam was eroded and water was flowing around the right abutment.

33. On April 18, 2019, concrete at the left abutment of the Tilden Millpond was damaged and deteriorating.

34. On April 18, 2019, the Tilden Millpond Dam was not structurally sound and was unsafe and dangerous to life and property.

35. On April 18, 2019, DNR staff issued a verbal order to Williams to drawdown the impoundment held by the Tilden Millpond Dam to its fullest extent possible.

36. On April 23, 2019, DNR issued Williams an administrative order titled "IN THE MATTER of the unsafe condition of the Tilden Millpond Dam, located on Duncan Creek, a navigable watercourse in the Town of Tilden, Chippewa County, Wisconsin, Field File #9.05, KSN 332" (2019 Order). A true and correct copy of the 2019 Order is attached as Exhibit 1.

37. The 2019 Order stated that “[DNR] has determined that the dam in its present condition is not sufficiently strong and is an impending danger to life, health, and property.”

38. Condition 1 of the 2019 Order states that “[a] complete drawdown of the impoundment held by the Tilden Millpond Dam shall commence by **April 26, 2019**. The drawdown shall be completed in a controlled manner at a rate of 6 inches per 24 hours.” (emphasis in original).

39. Based on the dimensions of the Tilden Millpond Dam, a drawdown rate of 6 inches per 24 hours, and precipitation records from April, May, and June of 2019, the complete drawdown should have been completed by June 2, 2019.

40. Condition 2 of the 2019 Order states that “Williams shall notify [DNR] of his desire to either reconstruct or abandon and remove the Tilden Millpond [D]am by **May 23, 2019**.” (emphasis in original).

41. Condition 3 of the 2019 Order states that “[i]f the decision is made to reconstruct the dam, [Williams] must retain the services of an engineering consultant . . . to develop reconstruction plans and specifications and submit these to [DNR] for review and approval by **October 23, 2019**.” (emphasis in original).

42. Condition 4 of the 2019 Order states that the reconstruction of the Tilden Millpond Dam shall be completed within one year of the plans and specifications being approved by DNR.

43. Condition 6 of the 2019 Order states that “[t]he Tilden Millpond Dam shall remain completely drawn down until reconstruction is complete and the work has been certified by [Williams’] consultant and [DNR].”

44. In lieu of reconstruction, Condition 7 of the 2019 Order directed Williams to, by August 19, 2019, either submit an application for approval to abandon and remove the Tilden Millpond Dam or submit an application for approval to transfer ownership of the dam to another party.

45. On May 21, 2019, Williams sent Rogney a letter stating that Williams intended to repair the Tilden Millpond Dam.

46. The May 21, 2019 letter stated that Williams had not removed the stop logs from the Tilden Millpond Dam.

47. The May 21, 2019 letter indicated that Williams had not started the drawdown of the Tilden Millpond.

48. On July 5, 2019, Williams’ consultant, Oakwood Engineering, sent DNR a feasibility study for the Tilden Millpond Dam (Feasibility Study). The Feasibility Study estimated the cost of the removal of the dam to be approximately \$214,000 and the cost of repairing the dam to be approximately \$385,000.

49. The Feasibility Study did not contain plans and specification for the reconstruction of the Tilden Millpond Dam.

50. On October 30, 2019, Roney sent a letter to Williams stating that DNR had not received plans and specifications for the reconstruction of the Tilden Millpond Dam.

51. The October 30, 2019 letter stated that it was DNR's understanding that a complete drawdown of the Tilden Millpond had not occurred.

52. On April 1, 2020, Roney visually inspected the Tilden Millpond Dam.

53. On April 1, 2020, the stop logs had not been removed from the Tilden Millpond Dam.

54. On April 1, 2020, the Tilden Millpond was not completely drawn down.

55. On April 1, 2020, the concrete at the left abutment of the Tilden Millpond Dam was significantly damaged and deteriorating.

56. On April 1, 2020, the concrete on the downstream face of the fixed crest overflow spillway was damaged.

57. On April 1, 2020, the concrete section of the Tilden Millpond Dam that broke off the dam on or around April 17, 2019 was in Duncan Creek downstream of the dam.

58. On April 1, 2020, the concrete at the right abutment of the Tilden Millpond Dam was significantly damaged and deteriorating.

59. On April 1, 2020, the Tilden Millpond Dam continued to be not structurally sound and continued to be unsafe and dangerous to life and property.

60. Williams has never notified DNR, subsequent to the issuance of the 2019 Order, that he commenced or completed a complete drawdown of the Tilden Millpond.

61. DNR has never, subsequent to the issuance of the 2019 Order, received plans and specifications for the reconstruction of the Tilden Millpond Dam.

62. DNR has never, subsequent to the issuance of the 2019 Order, received either an application to abandon and remove the Tilden Millpond Dam or an application to transfer ownership of the dam.

63. Williams did not challenge the 2019 Order by either requesting judicial review pursuant to Wis. Stat. §§ 227.52 and 227.53 or requesting a contested case hearing pursuant to Wis. Stat. § 227.42 within the prescribed time period for challenging the 2019 Order.

64. Williams has not complied with the 2019 Order.

65. Williams has continuously violated Condition 1 of the 2019 Order since April 27, 2019 for failing to commence and complete a complete drawdown of the impoundment held by the Tilden Millpond Dam.

66. Williams has continuously violated Condition 6 of the 2019 Order since April 27, 2019 for failing to keep the Tilden Millpond completely drawn down until the Tilden Millpond Dam is reconstructed and the work has been certified by DNR.

67. Williams has continuously violated Condition 3 of the 2019 Order since October 24, 2019 for failing to submit plans and specifications for the reconstruction of the Tilden Millpond Dam.

PENALTY PROVISIONS

68. Wisconsin Stat. § 30.03(2) states that “[t]he district attorney of the appropriate county or, at the request of [DNR], the attorney general shall institute proceedings to recover any forfeiture imposed or to abate any nuisance committed under this chapter or ch. 31.”

69. Wisconsin Stat. § 31.23(2) states that “[e]very person . . . violating any order made by [DNR] pursuant to this chapter, shall forfeit for each such violation not more than \$1,000.”

70. Wisconsin Stat. § 31.25 states that “[e]very dam . . . constructed or maintained in or over any navigable waters of this state in violation of this chapter . . . is hereby declared to be a public nuisance, and the construction

thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the state or any citizen thereof.”

71. Wisconsin Stat. § 23.50(1) states that “[t]he procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of . . . chs. 26 to 31 . . .”

72. Wisconsin Stat. § 23.50(2) states:

All actions to recover these forfeitures and costs, fees, and surcharges imposed under ch. 814 are civil actions in the name of the state of Wisconsin, shall be heard in the circuit court for the county where the offense occurred, and shall be recovered under the procedure set forth in ss. 23.50 to 23.85.

73. Wisconsin Stat. § 23.79(3) states:

In addition to any monetary penalties, the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest. The court may order abatement of a nuisance, restoration of a natural resource, . . . or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

RELIEF REQUESTED

WHEREFORE, the State asks for judgment as follows:

1. A temporary injunction requiring Williams to immediately commence the complete drawdown of the Tilden Millpond and to keep it drawn down during the pendency of this litigation;
2. An injunction requiring Williams to comply with the 2019 Order in its entirety;

3. Forfeitures as provided for in Wis. Stat. § 31.23(2);

4. The 26 percent penalty surcharge provided for in Wis. Stat. § 814.77(11); the 20 percent environmental surcharge provided for in Wis. Stat. § 814.77(5); the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1); the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.77(2); the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.77(1m); the 1 percent jail surcharge pursuant to Wis. Stat. § 814.77(7); and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.77(8); and

5. Such other relief as the Court may find just and appropriate.

Dated this 14th day of April, 2020.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Bradley J. Motl

BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Attorneys for Plaintiff State of Wisconsin

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State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
West Central Region
1300 W. Clairemont Ave
Eau Claire, WI 54701

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



April 23, 2019

Field File #9.08

Stephen Williams
12528 102nd Ave
Chippewa Falls, WI 54729

Subject: Order to Drawdown and Reconstruct or Abandon the Tilden Millpond Dam, Field File #9.08, KSN 332, Town of Tilden, Chippewa County, Wisconsin

Dear Mr. Williams,

Enclosed with this letter please find an Administrative Order (Order) requiring you to take action to remedy the unsafe condition of your dam. If you are unable to comply with the deadlines in this order, please note that you must contact the Department of Natural Resources (Department) in advance of the required dates. Please be advised that the Department does not intend to grant any extensions in complying with this agreement, unless there are compelling circumstances.

As a result of a significant rain event that occurred on or around April 17, 2019, a concrete section of the Tilden Millpond Dam separated from the fixed crest overflow spillway and washed downstream. The right abutment, referenced from right to left looking downstream, also sustained heavy erosion. Department Staff provided assistance on April 18, 2019, including a site visit to the dam. Site inspection revealed that the concrete section, which was constructed on top of the fixed crest overflow spillway, had in fact failed and was located downstream of the dam in Duncan Creek. There was also noticeable water flowing around/near the right abutment.

A verbal order was issued by Department staff on April 18, 2019, stating that the Tilden Millpond dam is to be drawn down to its fullest extent while plans either to reconstruct or abandon/remove the dam are completed and submitted to the Department for review and approval.

If you have any questions regarding this Order, please contact me at Michael.Rogney@wisconsin.gov or 715-210-2609.

Exhibit 1
Pet. Ex. B

Sincerely,

A handwritten signature in black ink that reads "Michael Rogney". The signature is written in a cursive, flowing style.

Michael Rogney, P.E.
Water Management Engineer
Wisconsin Department of Natural Resources
Eau Claire Service Center

Cc: Meg Galloway, P.E., WDNR, Dam Safety & Floodplain Section Chief
Tanya Lourigan, P.E., WDNR, State Dam Safety Engineer
Joe Winandy, P.E., WDNR, Attorney
Emily Pedersen, WDNR, Compliance Team Coordinator
Jill Schoen, CHMM, WDNR, Waterway/Wetland Field Supervisor
Dan Baumann, WDNR, Regional Secretary's Director
Joseph Gerbyshak, WDNR, Fisheries Biologist
David Hon, WDNR, Water Management Specialist
Bill Hogseth, WDNR, Wildlife Biologist
Bob Kneeland, WDNR, Conservation Warden

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER of the unsafe condition of the Tilden Millpond Dam, located on Duncan Creek, a navigable watercourse in the Town of Tilden, Chippewa County, Wisconsin, Field File #9.05, KSN 332

Order to drawdown, and repair or abandon/remove the Tilden Millpond Dam.

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources finds that:

1. The Tilden Mill Pond Dam is located on Duncan Creek, a navigable watercourse located in the NE ¼ of the NW ¼, Section 24, Township 29 North, Range 9 West, Town of Tilden, Chippewa County, Wisconsin. The dam maintains water levels on the Tilden Mill Pond, an approximately 61- acre impoundment.
2. The Tilden Millpond Dam is owned and operated by Mr. Stephen Williams, 12528 102nd Ave, Chippewa Falls, Wisconsin 54729
3. The Tilden Millpond Dam is a large dam, in accordance with NR 333 Wisconsin Administrative Code, with a structural height of approximately 16 ft. and maximum storage of 250 acre-ft.
4. The Tilden Millpond Dam features a 61 ft. long fixed crest overflow spillway, a 13.2 ft. long stop log bay, located on the right side of the powerhouse (referenced from right and left while standing on the dam looking downstream), and a powerhouse at the left abutment.
5. The Department issued an Order on June 3, 2015 to Mr. Stephen Williams to partially draw down the impoundment held by the Tilden Millpond Dam due to the deteriorated conditions of the concrete addition to the crest of the fixed crest overflow spillway. The Administrative Order also required that the dam owner either repair/reconstruct or abandon/remove the dam. Mr. Stephen Williams has not complied with all conditions of the 2015 Order.
6. Department staff were notified on April 18, 2019, that the Tilden Millpond Dam had sustained extensive damage.
7. Department staff conducted a visual inspection of the dam on April 18, 2019. The inspection revealed that the concrete section which was constructed on top of the fixed crest overflow spillway had failed and was located downstream of the dam in Duncan Creek. There was also noticeable water flowing around the right abutment with signs of erosion.
8. The Department issued a verbal order to Mr. Stephen Williams on April 18, 2019 to drawdown the impoundment held by the Tilden Millpond Dam to its fullest extent possible

9. As of the date of this Order, a Dam Failure Analysis (DFA), Emergency Action Plan (EAP), or Inspection, Operation & Maintenance Plan (IOM) have not been completed or submitted to the Department for review and approval for the Tilden Millpond Dam.
10. The Tilden Millpond Dam is used for hydroelectric generation.
11. The Department has determined that the dam in its present condition is not sufficiently strong and is an impending danger to life, health, and property.

CONCLUSIONS OF LAW

The Department concludes that:

1. The Department of Natural Resources has authority pursuant to 31.02 and 31.19 Wisconsin Statutes, to inspect or cause and inspection to be made of any dam or reservoir.
2. The Department of Natural Resources has authority pursuant 31.02 and 31.19 Wisconsin Statutes, to order alterations and repairs to any dam that is not sufficiently strong or is unsafe, and that is dangerous to life, health, and property.
3. The Department of Natural Resources has authority pursuant to 31.02 and 31.19 Wisconsin Statutes, to order the drawdown, in whole or in part, of the impoundment above a dam that is not sufficiently strong or is an impending danger to life, health, and property.

ORDER

It is therefore ordered that:

1. A complete drawdown of the impoundment held by the Tilden Millpond Dam shall commence by **April 26, 2019**. The drawdown shall be completed in a controlled manner at a rate of 6 inches per 24 hours.
2. Mr. Stephen Williams shall notify the Department of his desire to either reconstruct or abandon and remove the Tilden Millpond dam by **May 23, 2019**.
3. If the decision is made to reconstruct the dam, the owner of the dam must retain the services of an engineering consultant registered in the State of Wisconsin to develop reconstruction plans and specifications and submit these to the Department for review and approval by **October 23, 2019**.
4. Upon approval of the plans and specifications by the Department, the owner shall select a competent contractor for the reconstruction and shall reconstruct the dam in accordance with the approved plans and specifications within one year after the plans and specifications receive Department approval.

5. Plans and specifications, a Dam Failure Analysis (DFA), Emergency Action Plan (EAP), and Inspection, Operation & Maintenance Plan (IOM), must be approved prior to any work being performed on the dam.
6. The Tilden Millpond Dam shall remain completely drawn down until reconstruction is complete and the work has been certified by your consultant and the Department of Natural Resources. The owner shall continue to inspect the dam to ensure that no additional materials to obstruct flow are placed in the structure and shall promptly remove any such obstructions found. Obstructions could include debris, or unauthorized activities to re-impound water.
7. In lieu of reconstruction, the owner of the Tilden Millpond Dam shall either:
 - a. Submit an application for approval to abandon/remove the dam pursuant 31.185 Wisconsin Statutes by **August 19, 2019**. Plans to abandon/remove the dam must be completed by a professional engineer licensed in the State of Wisconsin.
 - b. Submit an application for approval to transfer the ownership of the dam to an interested, responsible party pursuant to 31.21, Wisconsin Statutes by **August 19, 2019**.

If an application is submitted, the owner of the dam shall remain responsible for the dam until approval to abandon/remove or transfer the dam is issued and all the conditions of that approval have been met.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.

This decision was mailed on April 23, 2019

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

For the Secretary

A handwritten signature in black ink that reads "Michael Rogne". The signature is written in a cursive style with a large initial "M".

Michael Rogne, P.E.
Water Management Engineer
Wisconsin Department of Natural Resources
Eau Claire Service Center

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

IN RE: MATURED,
UNREDEEMED, AND
ABANDONED UNITED
STATES SAVINGS BONDS
WITH OWNERS WITH
LAST KNOWN ADDRESSES
IN THE STATE OF
WISCONSIN

20CV1835

Declaratory Judgment: 30701

PETITION FOR ESCHEATMENT OF U.S. SAVINGS BONDS

The State of Wisconsin, Department of Revenue (State), through its attorneys, Assistant Attorneys General Michael D. Morris and Karla Z. Keckhaver, pursuant to the authority granted by Wis. Stat. § 177.225, petitions the Court for a judgment of escheatment of certain matured, unredeemed, and abandoned United States savings bonds. For its petition, the State avers as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to Wis. Stat. §§ 177.225 and 753.03.
2. Venue is proper in this Court pursuant to Wis. Stat. § 177.225(2).

Wisconsin's Uniform Unclaimed Property Act

3. Wisconsin's Uniform Unclaimed Property Act, Wis. Stat. Ch. 177, requires Wisconsin businesses to report and deliver unclaimed property—including money, stocks, bonds, and safe deposit box contents—to the Wisconsin Department of Revenue (DOR). DOR acts as custodian of the property on behalf of the owner. This process relieves businesses of the expense and liability associated with carrying unclaimed property on their financial records and benefits Wisconsin residents because DOR tries to reunite all rightful owners with their unclaimed property. The property may be used for the public good, until it is returned to the owner.

4. In 2015, Wisconsin amended its unclaimed property law in response to the United States Treasury Department's position that it would not recognize a state's claim to redeem unclaimed U.S. savings bonds of which they have *custody*; it would only honor state claims of escheat to unclaimed U.S. savings bonds where the state obtained *title* to the bonds under state law.

5. The amended unclaimed property law provides a procedure through which the State obtains legal title to unclaimed U.S. savings bonds.

6. Pursuant to Wis. Stat. § 177.135, "a U.S. savings bond that remains unredeemed by the owner for more than 5 years after the date of final maturity is presumed abandoned."

7. Pursuant to Wis. Stat. § 177.225, the DOR administrator “may bring an action for a judgment that a U.S. savings bond, including a U.S. savings bond in the possession of the administrator or a U.S. savings bond that has been lost, stolen, or destroyed, is abandoned and for an order transferring ownership of the abandoned U.S. savings bond to this state” if:

- (a) The U.S. savings bond has been presumed abandoned under Wis. Stat. § 177.135 for at least a year;
- (b) The U.S. savings bond is subject to the custody of this state as unclaimed property under Wis. Stat. § 177.03; and
- (c) At least one year has elapsed since the administrator published the notice required under Wis. Stat. § 177.18(1g).

8. If the DOR administrator has “substantially complied” with the provisions of the statute and no other person proves ownership of the U.S. savings bond, legal title of the bond is transferred to the State. Wis. Stat. § 177.225(4). The State can then file an application with the U.S. Treasury Department to redeem the U.S. savings bond. Wis. Stat. § 177.225(5).

Matured, Unredeemed U.S. Savings Bonds

9. This petition involves all United States savings bonds that are in DOR’s possession, have reached their maturity date, have not been redeemed, have owners with last known addresses in the State of Wisconsin, and were issued during the following timeframes:

- a. Series E (40-year) bonds issued between 1941 and December 31, 1972;
- b. Series E (30-year) bonds issued between 1965 and December 31, 1980;
- c. Series EE (30-year) bonds issued between January 1, 1980 and December 31, 1982;
- d. Series A, B, C, D, F, G, J, and K bonds issued on or before January 1, 1958;
- e. Series H (30-year) bonds issued on or before December 31, 1979; and,
- f. Series HH (20-year) bonds issued on or before December 31, 1992.

10. These United States savings bonds have been presumed abandoned under Wis. Stat. § 177.135 for at least one year.

11. These United States savings bonds are subject to the custody of the state as unclaimed property under Wis. Stat. § 177.03.

12. At least one year has elapsed since the State has published the notice required by Wis. Stat. § 177.18(1g).

Publication of Notice

13. The State seeks to effect service of this petition upon all interested parties by publication as allowed by Wis. Stat. § 177.225(2). As required by

Wis. Stat. § 177.225(3), attached to this petition is the affidavit of Anne Eudaly, the DOR Unclaimed Property Unit Revenue Program Supervisor, setting forth DOR's efforts to locate the owners of each U.S. savings bond subject to this action.

14. Based on prior efforts of DOR to locate or contact the owners of the U.S. savings bonds, DOR believes that it cannot, with reasonable diligence, serve the owners with notice of this action by personal or substituted service.

Request for Relief

WHEREFORE, the State asks that this Court:

- (a) Find that the DOR administrator has substantially complied with the provisions of Wis. Stat. § 177.225 and that no other person has proven ownership of the U.S. savings bonds described herein; and
- (b) Enter judgment that the State has all legal title and interest, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary, of the U.S. savings bonds described herein, and a further declaration that the State owns such savings bonds free of all claims of the owner or previous holder and of all persons claiming through or under them.

Dated this 2nd day of September 2020.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/ Michael D. Morris
MICHAEL D. MORRIS
Assistant Attorney General
State Bar #1112934

KARLA Z. KECKHAVER
Assistant Attorney General
State Bar #1028242

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JOHN C. ALBERT
CIRCUIT COURT BR 3

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN
SYSTEM,
1860 Van Hise Hall
1220 Linden Drive
Madison, WI 53706,

2012 JUL 13 AM 10:48

CIRCUIT COURT
DANE COUNTY, WI

Plaintiff,

v.

Case No. **12CV2775**

ADIDAS AMERICA, INC.,
5055 North Greeley Avenue
Portland, OR 97217,

Declaratory Judgment: 30701

Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802 to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County Courthouse, 215 South Hamilton Street, Madison, Wisconsin 53703, and to plaintiff's attorney, Charlotte Gibson, Assistant Attorney General, whose address is Wisconsin Department of Justice, 17 West Main Street, Madison,

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (608) 266-4678 (TTY -- (608) 266-4625) AND ASK FOR THE DANE COUNTY CIRCUIT COURT ADA COORDINATOR.

Pet. Ex. D

Wisconsin 53703 or Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

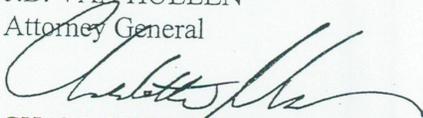
If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien

against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 13th day of July, 2012.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



CHARLOTTE GIBSON
Assistant Attorney General
State Bar #1038845

F. MARK BROMLEY
Assistant Attorney General
State Bar #1018353

DANIEL P. LENNINGTON
Assistant Attorney General
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STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN
SYSTEM
1860 Van Hise Hall
1220 Linden Drive
Madison, WI 53706,

2012 JUL 13 AM 10:48

CIRCUIT COURT
DANE COUNTY, WI

Plaintiff,

v.

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Declaratory Judgment: 30701

ADIDAS AMERICA, INC.
5055 North Greeley Avenue
Portland, OR 97217,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES the plaintiff, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorneys General Charlotte Gibson, F. Mark Bromley, and Daniel P. Lennington, and alleges:

1. This is a declaratory judgment action seeking to establish Adidas America, Inc.'s ("Adidas") obligation under its sponsorship and licensing agreements with the Board of Regents of the University of Wisconsin System ("Board of Regents"), including Adidas's obligation to guarantee legally mandated benefits to the workers who manufacture the goods that bear the mark of the University.
2. Plaintiff Board of Regents is a government agency of the State of Wisconsin under Wis. Stat. ch. 36.

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3. Defendant Adidas is a Delaware corporation with its principal place of business shown beneath its name in the caption.
4. This Court has jurisdiction pursuant to Wis. Stat. § 806.04.
5. Under Wis. Stat. § 801.50, venue is proper because the claims asserted arose in Dane County and because Adidas does substantial business in Dane County, as described in paragraph 6.
6. Adidas has substantial, ongoing contacts with the State of Wisconsin, including, without limitation:
 - a. the presence of fulltime representatives of Adidas on the campus of the University of Wisconsin-Madison;
 - b. frequent and sustained visits by Adidas employees and representatives at the University of Wisconsin-Madison;
 - c. provision and delivery of goods by Adidas to the University of Wisconsin-Madison having a wholesale value in excess of \$1.3 million per year through 2016; and
 - d. sideline apparel agreements with University coaches and staff.
7. On November 22, 2010, the Board of Regents and Adidas executed a contract called the Athletic Apparel, Equipment and Sponsorship Agreement (“the Contract”).
8. The Contract requires that Adidas enter into and operate according to a Standard Retail Product Licensing Agreement.
9. The Contract also incorporates Labor Codes of Conduct (“the Codes”) as material terms. The purpose of the Codes is to ensure the socially responsible manufacture of goods

subject to the Contract. The Contract requires Adidas to comply with the requirements of the Codes.

10. The Contract, with its referenced and incorporated exhibits, has been in force since its execution and remains in effect.
11. A dispute has arisen between the parties with respect to the interpretation and application of the Contract.
12. The Contract mandates that Adidas “comply with all applicable legal requirements of the country(ies) of manufacture” and “shall provide legally mandated benefits” to workers where Adidas’s apparel is produced.
13. Under the Contract, Adidas may subcontract with a manufacturer for the production of Licensed Articles, but it remains “fully responsible for ensuring that the Licensed Articles are manufactured in accordance with the License Agreement, including the codes.” Adidas must “ensure that all Manufacturers comply” with the Codes.
14. As part of monitoring compliance with the Contract, the Board of Regents requires that Adidas periodically provide lists of factories producing Adidas goods.
15. Through and including its April 2011 disclosure, Adidas identified PT Kizone, located in Tangerang, Indonesia, as a producer of its collegiate apparel. Adidas also reported PT Kizone as an active supplier factory on Adidas’s website.
16. PT Kizone was a contractor, subcontractor, or manufacturer producing, assembling, or packaging finished licensed articles for the consumer on behalf of Adidas.
17. The Board of Regents has authorized the Worker’s Rights Consortium (“WRC”), a monitoring agency, to monitor compliance with the workers’ rights provisions in the

Contract. Under the Contract, the WRC's determination that a Licensee is in violation of the Codes is an event of default.

18. The WRC investigated conditions at PT Kizone, which assembled apparel for several brands, including Adidas, Nike, and the Dallas Cowboys. The WRC reported its findings in a report dated January 18, 2012.
19. PT Kizone failed to pay workers' severance wages beginning in September 2010 and stopped paying wages altogether on January 5, 2011. PT Kizone also failed to pay death benefits to the families of several workers who died during the time that PT Kizone manufactured products on behalf of Adidas.
20. Indonesia's Act Concerning Manpower of 2003 provides that wages, severance, and death benefits are legally mandated benefits. The Act also requires that employees receive standard terminal compensation if the employee is laid off for economic reasons or if the employer is bankrupt.
21. The Indonesian regional government calculated the amounts owed to 2,686 PT Kizone workers and determined that they were owed \$3.4 million in total compensation.
22. Other apparel manufacturers have contributed toward payment of the compensation that is owed, reducing the balance of the unpaid compensation to \$1.8 million. Adidas has not.
23. Adidas has not disputed that the amounts owed to the PT Kizone workers are legally mandated benefits under Indonesian law and were properly calculated.
24. The Board of Regents asserts that the Contract obligates Adidas to pay the legally mandated benefits owed the PT Kizone workers.

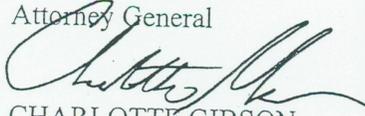
25. Adidas has asserted that the Contract does not require it to guarantee the unpaid benefits.
26. As required by the Contract, the parties attempted to mediate the issue that gives rise to this proceeding, but mediation failed to resolve the matter.
27. A judgment or decree in this action will remove the uncertainty as to the Contract that gives rise to this proceeding, and will facilitate the preservation of the parties' contractual relationship.

WHEREFORE, the Board of Regents asks this Court to declare that the Contract obligates Adidas to guarantee the legally mandated benefits owed to the PT Kizone workers.

Dated this ~~31st~~ day of July, 2012.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



CHARLOTTE GIBSON
Assistant Attorney General
State Bar #1038845

F. MARK BROMLEY
Assistant Attorney General
State Bar #1018353

DANIEL P. LENNINGTON
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