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March 26, 2015

Via U.S. Mail

Clerk of Circuit Courts
Jefferson County Courthouse
311 S. Center Ave - Room 115
Jefferson, WI 53549

Re: *Kittle, Matthew v. Jefferson County*
Jefferson County Case No.: 15CV77
Our File No.: 0100-1500457

RECEIVED
3/27/15

Dear Clerk:

Enclosed for filing please find the originals of Jefferson County Sheriff's Department's Notice of Appearance and Answer and Affirmative Defenses to the Plaintiff's Complaint.

I respectfully request that these documents be filed and that the enclosed copy of this cover letter be filed-stamped and returned to me in the enclosed envelope as proof of filing.

Very truly yours,

REMZY D. BITAR
RDB/sas

Enclosures

Cc: Attorney Thomas Kamenick

Excellence, Consistency, Integrity

MATTHEW KITTLE,

Plaintiff,

v.

Case No. 15CV77
Petition for Writ of Mandamus
Case Code: 30952

JEFFERSON COUNTY SHERIFF'S DEPARTMENT

Defendant.

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Crivello Carlson, S.C., by Attorneys Remzy D. Bitar and Timothy M. Johnson, appear in the above-captioned action on behalf of defendant, Jefferson County Sheriff's Department, and demand that all pleadings and notice of all proceedings subsequent to the service of the Summons and Complaint be served upon us at our offices Crivello Carlson, S.C., 710 N. Plankinton Avenue, Milwaukee WI 53203.

Dated this 26th day of March, 2015.

CRIVELLO CARLSON, S.C.
Attorneys for Jefferson County Sheriff's Department

BY: 

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MATTHEW KITTLE,

Plaintiff,

v.

Case No. 15CV77
Petition for Writ of Mandamus
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JEFFERSON COUNTY SHERIFF'S DEPARTMENT

Defendant.

**JEFFERSON COUNTY SHERIFF'S DEPARTMENT'S ANSWER AND AFFIRMATIVE
DEFENSES TO THE PLAINTIFF'S COMPLAINT**

Jefferson County Sheriff's Department, by its attorneys, Crivello Carlson, S.C., submits the following answer to the Plaintiff's Complaint:

FACTUAL ALLEGATIONS

1. Answering ¶ 1, denies that the Defendant unlawfully redacted information from records requested by the Plaintiff and affirmatively alleges that the Defendant's redaction of information in this matter was required under the federal Driver's Privacy Protection Act and U.S. Supreme Court and Seventh Circuit case law interpreting the Act; as further answer, lacks knowledge or information sufficient to form a belief as to the remaining allegations, therefore denies the same and puts the plaintiff to his proof.

2. Answering ¶ 2, lacks knowledge or information sufficient to form a belief as to the allegations therein, therefore denies the same and puts the plaintiff to his proof.

3. Answering ¶ 3, admits.

4. Answering ¶ 4, admits.

5. Answering ¶ 5, admits that the Court has jurisdiction over a petition for a writ of mandamus under Wis. Stat. § 19.37(1)(a); as further answer, affirmatively alleges that the Jefferson County Sheriff's Department is not a suable entity.

6. Answering ¶ 6, admits that the Court has jurisdiction over a declaratory judgment under Wis. Stat. § 806.04; as further answer, denies that the form is unlawful or that the claim is ripe for determination; as further answer, lacks knowledge or information sufficient to form a belief as to the remaining allegations, therefore denies the same and puts the plaintiff to his proof.

7. Answering ¶ 7, admits.

8. Answering ¶ 8, lacks knowledge or information sufficient to form a belief as to the remaining allegations, therefore denies the same and puts the plaintiff to his proof.

9. Answering ¶ 9, admits.

10. Answering ¶ 10, denies that this description is complete.

11. Answering ¶ 11, denies that this description is complete.

12. Answering ¶ 12, admits.

13. Answering ¶ 13, admits.

14. Answering ¶ 14, denies that this description is complete.

15. Answering ¶ 15, admits.

16. Answering ¶ 16, denies that this description is accurate or complete; as further answer, affirmatively allege that such redactions were made pursuant to the Driver's Privacy Protection Act and U.S. Supreme Court and Seventh Circuit case law interpreting the Act.

17. Answering ¶ 17, admits.

FIRST CLAIM – Writ of Mandamus to Produce Records Without Unlawful Redaction

18. Answering ¶ 18, incorporates the answers, denials, and affirmative defenses set forth in responses to paragraphs 1 through 17 above.

19. Answering ¶ 19, denies that this description is complete.

20. Answering ¶ 20, denies that this description is accurate or complete; as further answer, affirmatively allege that Wis. Stat. § 19.35(1)(a) states in pertinent part that “[e]xcept as otherwise provided by law, any requester has a right to inspect any record,” and that Wis. Stat. § 19.35(1)(b) states in pertinent part that “[e]xcept as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record.”

21. Answering ¶ 21, denies that this description is accurate or complete.

22. Answering ¶ 22, admits.

23. Answering ¶ 23, denies.

24. Answering ¶ 24, denies that this description is accurate or complete; as further answer, affirmatively allege that the DPPA is a federal law that prohibits the disclosure of personal information and highly restricted personal information obtained by a state department of motor vehicle in connection with a motor vehicle record, as defined within the DPPA, unless the disclosure or redisclosure of such information satisfies one of 14 exceptions provided for by the DPPA.

25. Answering ¶ 25, denies that this description is accurate or complete.

26. Answering ¶ 26, lacks knowledge or information sufficient to form a belief as to the remaining allegations, therefore denies the same and puts the plaintiff to his proof.

27. Answering ¶ 27, lacks knowledge or information sufficient to form a belief as to the remaining allegations, therefore denies the same and puts the plaintiff to his proof.

28. Answering ¶ 28, denies that the Sheriff's Department's response to the plaintiff's public records request was an "overreaction" not justified by *Senne*; as further answer, denies that this description is accurate or complete.

29. Answering ¶ 29, denies that this description is accurate or complete.

30. Answering ¶ 30, denies that this description is accurate or complete.

31. Answering ¶ 31, denies.

32. Answering ¶ 32, denies that this description is accurate or complete.

33. Answering ¶ 33, admits that responding to public records requests is regulated by Wisconsin law; as further response, denies the remaining allegations.

34. Answering ¶ 34, lacks knowledge or information sufficient to form a belief as to the remaining allegations, therefore denies the same and puts the plaintiff to his proof.

35. Answering ¶ 35, denies that this description is accurate or complete.

36. Answering ¶ 36, lacks knowledge or information sufficient to form a belief as to the remaining allegations, therefore denies the same and puts the plaintiff to his proof.

37. Answering ¶ 37, denies that the plaintiff's rights were violated or infringed upon by the Sheriff's Department.

38. Answering ¶ 38, denies.

39. Answering ¶ 39, denies.

SECOND CLAIM – Declaratory Judgment that the Sheriff's Department's Form is Unlawful

40. Answering ¶ 40, incorporates the answers, denials, and affirmative defenses set forth in responses to paragraphs 1 through 39 above.

41. Answering ¶ 41, denies.

42. Answering ¶ 42, denies that this description is accurate or complete.

43. Answering ¶ 43, denies; as further answer, affirmatively alleges that disclosure and redisclosure of personal information and highly restricted personal information is regulated by the DPPA.

44. Answering ¶ 44, denies that this description is accurate or complete.

45. Answering ¶ 45, denies; as further answer, affirmatively alleges that disclosure and redisclosure of personal information and highly restricted personal information is regulated by the DPPA.

46. Answering ¶ 46, denies that this description is accurate or complete.

47. Answering ¶ 47, denies; as further answer, affirmatively alleges that disclosure and redisclosure of personal information and highly restricted personal information is regulated by the DPPA.

48. Answering ¶ 48, denies that this description is accurate or complete.

49. Answering ¶ 49, denies; as further answer, affirmatively alleges that disclosure and redisclosure of personal information and highly restricted personal information is regulated by the DPPA.

50. Answering ¶ 50, denies.

51. Answering ¶ 51, denies.

AFFIRMATIVE DEFENSES

Jefferson County Sheriff's Department submits the following affirmative defenses:

A. The injuries and damages sustained by the plaintiff, if any, were caused by his own acts or omissions or his failure to mitigate.

B. The complaint contains claims which fail to state a claim upon which relief may be granted.

C. The plaintiff's claims are subject to the limitations, prerequisites and all other provisions and terms contained within Wis. Stat. § 19.31 et seq., including Wis. Stat. § 19.36, and common law governing the claims and defenses associated with public records requests.

D. The Jefferson County Sheriff's Department is an improper party to this suit as it is not a suable entity under the state public records law.

E. The plaintiff has failed to effectuate proper service under Chapter 801 of the Wisconsin Statutes, and therefore, the Court lacks personal jurisdiction over the Sheriff's Department.

F. The Sheriff's Department's response to the plaintiff's public records request was governed by and appropriate under the DPPA.

G. The plaintiff's complaint may be barred to the extent the plaintiff has failed to join necessary and indispensable parties to this suit.

H. The plaintiff's claims are barred by the Supremacy Clause of the U.S. Constitution, Article VI, clause 2, and the law of the United States because the Sheriff Department's conduct is controlled by the DPPA.

I. The plaintiff's complaint may be barred by estoppel or waiver.

J. This matter should be stayed pending the outcome of *New Richmond News v. City of New Richmond*, 14-AP-1938, Wisconsin Court of Appeals, District III.

WHEREFORE, Jefferson County Sheriff's Department respectfully requests judgment as follows:

- a. for a dismissal of the plaintiff's complaint upon its merits;
- b. for the costs and disbursements of this action;
- c. for such other relief as the Court deems just and equitable.

Dated this 26th day of March, 2015.

CRIVELLO CARLSON, S.C.
Attorneys for Jefferson County Sheriff's Department

BY:  

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