

Attachment
D

CIRCUIT COURT

STATE OF WISCONSIN

Branch _____

DANE COUNTY

[Your Full Name(s)
Your Address]

Intentional Tort

Plaintiff(s)

Case No: _____

v.

Code No: 30106

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[Full Names & work Addresses for
Each Person You're suing. E.g.:
Jon E. Litscher, Jim Schwochert,
& ... , all employed at
3099 E. Washington Ave., Madison,
WI 53703, and Gary Boughton,
Carrie Sutters, & ... , all
employed at 1101 Morrison Drive,
Boscobel, WI 53805.]

Defendants

Intentional Tort

NOW COMES, [Your Full Name(s), each followed by your last name in parentheses, e.g.: Nate A. Lindell (Lindell)], the plaintiff(s), appearing [Put "Pro se", if you are without an attorney - if you have an attorney his/her full name goes here], charges the forenamed defendants pursuant to Wis. Stats. §893.35, et seq., with unlawfully depriving the plaintiff(s) of [his/their] monies, conspiracy to do the same and violation of plaintiff(s) rights guaranteed by the U.S. Constitution's Article I §10, c.1. (ex post facto clause), 5th Amendment takings clause and Fourteenth Amendment due process clause (i.e. right to pre-deprivation process & to not have property unlawfully seized).

~~10/20/20~~

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Plaintiff(s) seek return of the illegally taken monies, triple damages, declaratory & injunctive relief, and referral of this matter to the D.A.(s) in the relevant county(ies) under Wis. Stat. §968.26.

In support, the plaintiff(s) represent that:

I. Jurisdiction / Venue

1. This court has jurisdiction pursuant to Wis. Stats. §801.04 (1) & (2) and §801.05 (1) & (3) and Terry v. Kolski, 78 Wis.2d 475, 479 (1977).

2. On [Put the Date Noted on your Certified Mail Stub, which shows the date your N.O.C. was Mailed to the A.G.], the WI Attorney General's office was served by certified mail a Notice of Claim and Injury regarding the claims asserted herein. This Notice was disallowed on [Put Date that was the 121st Day After the N.O.C. was Mailed], pursuant to Stat. §893.82(3m), by lack of response from the A.G.

3. As the claims are against state officers and employees, sued in their individual and/or official capacities, Dane County is the proper venue, pursuant to Wis. Stats. §801.05 (3)

II. Plaintiff(s)

4. Plaintiff [LastName] is and at all relevant times was a WI prisoner confined at [Put the Name & Address for where you lived when money was stolen & now live, or explain where you now live if transferred.]

5. [Repeat #4, above, in separate numbered paragraphs for each person suing.]

III. Defendants

6. Defendant Jon E. Litscher (Litscher) is the Secretary of the Department of Corrections (D.O.C.). He is legally responsible for all of the D.O.C.'s prisons, including [Initials for Prison(s) that took #], and has authority over the Division of Adult Institutions (D.A.I.).

Litscher's office is located at 3099 E. Washington Ave., Madison, WI, 53703.

7. Defendant Jim Schwochert (Schwochert) is the Administrator for the DAI and makes or approves policies and procedures (D.A.I. P+Ps) that affect all occupants of adult institutions run by the D.O.C. His office is in the same building as is Litscher's.

8. [As done for Litscher & Schwochert, Name, Identify and put the street Address for Each Person You're Suing, in Their Own Separat Numbered Paragraphs]

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* CAUTION* You don't need to & probably shouldn't sue ever person who was remotely involved in stealing your \$. It's always best to keep it simple, stupid (k.i.s.s.), with litigation. Judges hate any long, complex case, generally don't like prisoners & the people you're suing are their governmental cousins. Simplicity makes it more difficult for them to mangle your case.

14. Each defendant is sued in their individual and official capacities.

IV. Facts

15. For the last 30-plus years the DOC and D.A.I. have construed the relevant statutes to permit them to only:

a) per Stat. § 301.32(1), only take monies from funds sent to prisoners by non-prisoners (i.e. gift funds) for criminal-court surcharges, at the rate of 25%, no more than 25%, regardless of how many cases a prisoner might owe surcharges for, which complies with WI Admin. Code (W.A.C.) § DOC 309.465, Stats. § 973.045 and § 973.05, inter alia;

b) per Stat. § 301.31, take no more than 25% from prisoners' pay for fees, costs, restitution or other debts reduced to judgement or acknowledged in writing by prisoners, which complies with W.A.C.

309.465, Stats. §973.045, §973.05 and §973.06;

c) apparently based on Stat. §973.08(1), passively process the Judgements of Convictions (JOCs) delivered to prison staff by court officers and only impose debts on prisoners' trust-fund accounts (tfas) for criminal cases based on such J.O.C.s;

d) in accordance with Stats. §301.31 + §301.32(1), as well as §301.32B (requiring prison officials to file for a judgement to permit them to garnish prisoners' monies for litigation loans) and now §973.20(1)(c) (Even when court orders restitution, a prisoner must "authorize" the D.O.C. to collect it), to not deduct monies from prisoners' gift funds or pay against prisoners' wishes, even for possibly valid debts, unless ordered by a court

e) per §301.32(1), only take monies from gift funds sent to prisoners for surcharges regarding criminal-court obligations (Act 355 amended the statute so that restitution may also be taken from gift funds)

16. In 2016, WI's Legislature passed Act 355, which, as concerns this suit, merely amended Stat. §301.32(1) to permit the W.D.O.C. to deduct court-ordered restitution from prisoners' gift funds — the statute did not specify it was to be applied retroactively, which would offend ex post facto law anyway.

17. Schwochert, however, in a 21 June 2016 memo, misrepresented the changes authorized by Act 355, stating in said memo that he revised D.A.I. P+P 309.45.02 so that, "The rate of deduction for restitution will increase to 50%", and so would the rate of deductions for surcharges and court costs, apply Act 355 retroactively. Nothing in Act 355 justified its retroactive application nor justified Schwochert's sudden reconstruction of unmodified statutes.

18. Schwochert also amended DAI P+P 309.45.02 in other ways, such as:

• section I. B. — directing a "Cashier's Unit" to take a 5% surcharge on all payments they process,

• section III. C. — prohibiting DOC staff from refunding improperly taken money

section III. A. - directing DOC staff to take monies from prisoners gift funds and pay for restitution, court costs and other obligations listed in J.O.C. as to be paid during extended supervision, not while in prison,

section VIII. B.1. - directing prison business offices (B.O.s) to consult "CCAP/Assessment Reports and WICS" when determining the amounts prisoners owe.

19. Subsection III. C. of the forenoted P+P reveals that Schwochert knew that monies would be illegally taken from prisoners due to his modifications and intended for those thefts to be unremedied after the deprivations.

20. Subsection I. B. gave prison B.O.s an incentive for imposing illegal debts on prisoners, which, as shown below, has occurred and is occurring to thousands of prisoners. It also violates ex post facto law.

21. Subsection VIA. directs D.O.C. staff to take money contrary to the orders of the court, contrary to law, contrary to Stats § 301.32(1) (only authorizes surcharges and gift funds to be taken from gift funds), and contrary to the ex post facto clause

22. Subsection VIII. B.1. is contrary to Due Process in multiple ways, such as by imposing debts based on unreliable and unauthorized sources of information, per State v. Bonds, 292 Wis.2d 344, 371-74 (2006) (Explaining that CCAP is not a reliable source for details about criminal cases, as CCAP itself proclaims), and Stats. § 301.31 and § 301.32 (a) (Both stating when funds may be deducted for criminal court or other debts, neither authorizing CCAP nor WICS to be relied on for forced payment), and not providing pre-deprivation process before taking monies.

23. Based on Schwochert's D.A.I. P+P 309.45.02 changes, the following debts were illegally imposed on plaintiff(s) + fac(s):

Specify each debt that was illegally imposed on you & any co-plaintiffs, according to any of the legal points noted above in ¶s 15 a) - e), 16, 17, 19-22, &/or: 1) you already paid the debt long ago, 2) the D.O.C. waived collection, per Stats. § 893.40.

24. Also based on Schwochert's changes to D.A.I. P+P 309. 45.02, the forenoted illegal debts were garnished from plaintiff(s) prison pay and gift funds at the unlawful rate of 50%, for each case or separate debt, all at the same time, resulting in plaintiff(s) with two or more cases or separate debts having all of the gift funds and pay he/they received and receive being taken for those illegal debts and for legal debts, with no change in the relevant statutes to justify this affront to over 30 years of the D.O.C. and D.A.I. construing the relevant laws to only permit them to deduct one 25% amount from prisoners' income for all debts owed.

25. Due to the forenoted debts imposed on plaintiff(s) illegally and the illegal collection rate used, the plaintiff(s) was/were harmed in that

Specify how you were harmed, such as by not being able to write or call your family/friends because you couldn't buy stamps or phone credit, couldn't get a photo with them during visits, couldn't buy shower shoes & had to shower in bare feet, no shampoo, no deodorant, no supplement to your starvation rations, no T.V., no books or newspapers, & — very important! — you couldn't order merchandise you intended to order from (specify the merch). D.O.C. contract vendors located out of state (specify the company), which can support a R.I.C.O. violation. Do not list shit that makes you look unworthy of sympathy/respect, like, "I couldn't renew my Bib-Booty Bitches sub."

26. In efforts to obtain relief from the forenoted unlawful taking of plaintiff(s) monies, the plaintiff(s):

a) [State who — e.g. Schwochert, B.O. Mgr. — you wrote, when, what you said, any response.]

b) [State when you filed your I.C.(s), the file # for each one, who recommended each be dismissed and when, why, who dismissed

each & when, state that you appealed, who recommended the appeal be dismissed & why, & who dismissed it & when.]

27. [State any other facts — who, what, when, where — that reveal how any defendants participated in the illegal taking of your money.]

II. Exhaustion of Administrative Remedies

28. As detailed in ¶26 b), above, the plaintiff(s) exhausted all available administrative remedies for the unlawful taking of his/their money.

VI. General Allegations

29. Upon information and belief, the defendants acted with malice and contempt for plaintiff(s) rights, knowingly desired to and did benefit from their illegal takings of plaintiff(s) monies, and acted as a "corrupt organization" as defined by 18 U.S.C. §1961

VIII. Relief Sought

31 Based on the foregoing, the plaintiff(s) seeks:

1) a declaratory judgement that the defendants unlawfully deprived plaintiff(s) of monies, violated plaintiff(s) rights under Article 1 §10, cl. 2 (ex post facto clause), the Takings clause of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, and WI stats. §946.68(1r), §943.20(b), §946.12(a), §946.80-§946.88, 18 U.S.C. §666(a)(1)(i) & (ii), §1956(a)(1)(A)(i) and §1962(a)-(d);

2) an injunction requiring defendants return the illegally taken money and reinstate the prior version of D.A.I. P & P. 309.45.00, disposing of Schwochert's amendments;

3) Triple damages, pursuant to 18 USC §1964

4) All costs incurred by the plaintiffs in bringing this matter to court and litigating it, including attorney fees.

5) Any further relief that the plaintiff(s) is/are entitled to by law and that is fair, just and appropriate, including punitive damages

IX. Verification

The plaintiff(s) have read the foregoing representations and, based on his/their personal knowledge, as to the facts concerning him/them, he/they declare(s) under penalty of perjury that those facts are true, truthful and correct.

Sworn to before me
this ___ day of ___, 20__

(Notary Public, State of Wisconsin)
My commission expires:

[Sign in front of Notary]
[Print Your Name]

[Repeat ↑ for each plaintiff]

Dated: [Print Date Plaintiff(s) Sign]

[Sign Name(s)]
[Print Name(s) #(s)]
[Address(es)]
[Ph. #(s)]

[Note: Oops, forgot to write in the
(Cause(s) of Action, VII, mid-pg. 7
Here ↓ it is.]

↑

VII. Causes of Action

30. By the forenamed defendants, acting as a criminal organization, working together to cause Plaintiff(s) to be unlawfully deprived of monies based on the collection of unlawful debts, contrary to their authority, based on law(s)/policy(es) that were illegally applied retroactively and contrary to principles of statutory construction, preventing Plaintiff(s) from utilizing interstate commerce, said defendants violated Plaintiff(s) rights under the Fifth Amendment's Takings Clause, the Fourteenth Amendment's Due Process Clause, the Ex Post Facto Clause, Stats.

§301.32(1), §943.20(b), §946-12(a), 18 U.S.C. §666(a)(1)(i) & (ii), §1956(a)(1)(A)(i) and §1962(a)-(d), for which they are liable to Plaintiff(s).

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