

**STATE OF NORTH CAROLINA**

File No.

21 CVS 1484

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Plaintiff  
 Shyheim Summers & Tavis Dulin  
 Address  
 140 East Water Street  
 City, State, Zip  
 Statesville NC 28677

**CIVIL SUMMONS**  
 ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

**VERSUS**  
 Name Of Defendant(s)  
 Town of Mooresville & Mooresville Police Department

Date Original Summons Issued  
 05/28/2021  
 Date(s) Subsequent Summons(es) Issued  
 06/08/2021

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1  
 Town Manager, Randy Hemann  
 413 North Main Street  
 Mooresville NC 28115

Name And Address Of Defendant 2  
 Mooresville Town Clerk, Genevieve Glaser  
 413 North Main Street  
 Mooresville NC 28115



**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!**  
**¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!**  
**Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!**

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Date Issued 6-9-21 Time 10:53  AM  PM  
 Signature [Handwritten Signature]  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

**ENDORSEMENT (ASSESS FEE)**

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement \_\_\_\_\_ Time \_\_\_\_\_  AM  PM  
 Signature \_\_\_\_\_  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

STATE OF NORTH CAROLINA

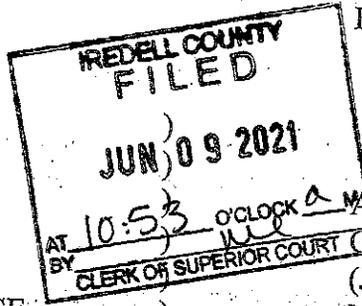
IN THE GENERAL COURT OF JUSTICE

IREDELL COUNTY

SUPERIOR COURT DIVISION

FILE NO.: 21 CVS 1484

SHYHEIM SUMMERS  
and TAVIS DULIN



vs.

MOORESVILLE POLICE )  
DEPARTMENT and )  
TOWN OF MOORESVILLE )

AMENDED  
COMPLAINT  
(Jury Trial Demanded)  
MOTION FOR TRO  
PRELIMINARY INJUNCTION

NOW COMES the Plaintiffs, Shyheim Summers and Tavis Dulin, by and through undersigned counsel, and hereby *AMEND* their Verified Complaint, as a matter of course prior to a responsive pleading being served by the Defendants, pursuant to Rule 15 of the North Carolina Rules of Civil Procedure. Plaintiff alleges the following:

**PARTIES, JURISDICTION & VENUE**

1. Plaintiff, Shyheim Summers (hereinafter referred to as "Plaintiff" or collectively with other Plaintiff as "Plaintiffs"), is a resident and citizen of Iredell County, North Carolina and has been for at least six (6) months prior to this filing.
2. Plaintiff, Tavis Dulin (hereinafter referred to as "Plaintiff" or collectively with other Plaintiff as "Plaintiffs"), is a resident and citizen of Iredell County, North Carolina and has been for at least six (6) months prior to this filing.
3. Defendant, Town of Mooresville (hereinafter referred to as "Defendant" or collectively with other Defendant as "Defendants"), is a municipal corporation as defined by N.C. Gen Stat. § 160A-1, and is located in Iredell County, North Carolina; said city is vested with all of the corporate powers enumerated in N.C. Gen. Stat. § 160A-11, including the right to sue and be sued.
4. As part of its general powers and authorities as a municipal corporation, the town of Mooresville operates and maintains a police department known as the Mooresville Police Department (hereinafter the "MPD").
5. The MPD operates under the supervision of the Town of Mooresville's appointed Town Manager and Chief of Police, and the Town of Mooresville is responsible for the supervision, training and discipline of its sworn officers.
6. Defendants are therefore foreclosed from asserting governmental immunity in bar to Plaintiffs' claims set out herein.

FIRST CAUSE OF ACTION  
(RETURN OF PERSONAL PROPERTY)

7. Plaintiffs realleges and incorporates paragraphs 1 through 6, above.
8. On or about May 27, 2021, Plaintiffs were at a shopping center off River Highway, located in Mooresville, Iredell County, North Carolina, when they were accused of stealing from the sporting goods store.
9. Upon information and belief, MPD did not observe Plaintiffs in the sporting goods store.
10. Plaintiffs were approached by MPD in the parking lot and were subjected to a search, by Mooresville Police Officer Noble and two other officers, of their person and vehicle, both of which no stolen items were found.
11. Upon search, Officer Noble seized approximately \$14,000.00 collectively from the Plaintiffs.
12. Plaintiffs were not cited or charged with any alleged crime.
13. Defendants seized the funds from Plaintiffs and not entitled to the possession of the personal property.
14. Defendants did not seize the funds pursuant to the funds being in connection with any alleged crime. In fact, the Defendant's did not charge either Plaintiff with a crime and allowed the Plaintiffs to leave with a warning to not return to the sporting goods store.
15. Upon information and belief, MPD intends to transfer the money seized to the United States government for purposes of civil assets forfeiture. Such transfer will move the money out of this Court's jurisdiction.
16. Plaintiffs will suffer immediate and irreparable damage if the funds are turned over to the federal government.

FIRST MOTION  
(Motion for Temporary Restraining Order)

17. Plaintiffs alleges and incorporate paragraphs 1 through 16, above.
18. Pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure, respectfully moves the Court to issue a temporary restraining order to enjoin the Defendants from turning the monies to the federal government seized from Plaintiffs May 27, 2021.
19. Plaintiff has filed a Verified Complaint to be treated as an affidavit for any motion in the cause in this matter.

20. The actions of the Defendant have and will continue to cause immediate and irreparable harm, loss, and damage to the Plaintiffs, in that the transfer of the money would remove the money from this Court's jurisdiction and prevent the Plaintiffs from securing the return of their property from MPD.
21. Plaintiffs' attorney certifies that notice should not be required because prior notice to MPD has resulted in MPD transferring funds to the federal government prior to Court's ruling when they knew an action was pending relating to the funds.

SECOND MOTION  
(Motion for Preliminary Injunction)

22. Plaintiffs reallege and incorporate paragraphs 1 through 21, above.
23. Plaintiffs are likely to succeed on the merits of this case because the funds were not in connection with any illegal activity. The Plaintiffs were not charged with a crime.
24. Plaintiffs will likely suffer irreparable loss unless the injunction is issued will prevent the Plaintiffs from securing the return of their property from MPD.
25. The issuance of the preliminary injunction is necessary for the protection of Plaintiffs' rights during the course of litigation.
26. Plaintiffs should not be required to post bond because the Plaintiffs are not asking for the immediate return of their monies but for the monies to be held in Trust until further orders of the Court.

BOND

27. The restraint sought by the instant motion will cause the Defendants no material damage as they are not legally entitled to Plaintiffs' property and have no right to withhold it under these circumstances.
28. An injunction pending resolution of Plaintiffs' claims of relief would ensure the trial court's continued jurisdiction over the subject matter involved pending final resolution of this matter.
29. Plaintiffs' are likely to succeed on the merits of this matter given no authority exists under state law that would allow the Defendants to dispossess them of their personal property without due process of law.

WHEREFORE, Plaintiffs respectfully request the following relief:

1. An Ex-Parte Temporary Restraining Order be immediately issued Restraining the Defendants from turning the money over to the federal government.
2. That a preliminary injunction be entered in the matter to enjoin the Defendants from turning the money over to the federal government seized in violation of their constitutional rights.
3. Plaintiffs' pray the court set no bond in this matter.
4. That Judgment be entered against Defendants, Mooresville Police Department and the Town of Mooresville, in an amount to be proven at trial, in excess of \$25,000.00, including attorney's fees, costs, and expenses incurred in the prosecution of this action, together with the legal interest rate until paid;
5. That punitive damages be awarded pursuant to Chapter 1D of the North Carolina General Statutes;
6. That all costs incurred by Plaintiffs in the prosecution of this action be taxed to the Defendants, including reasonable attorney fee;
7. That this verified Complaint be treated as an affidavit in any motion in the cause;
8. For trial by jury on all issues; and
9. That the Plaintiff be awarded such other and further relief as the court deems just and proper.

This the 9 day of June, 2021.

  
\_\_\_\_\_  
Ashley Cannon  
Cannon & Thompson, Attorneys at Law, PLLC  
140 East Water Street  
Statesville, NC 28677  
(t)(704)872-7438  
(f)(704)872-0108

STATE OF NORTH CAROLINA  
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 21 CVS 1484

SHYHEIM SUMMERS )  
And TAVIS DULIN )  
vs. )  
MOORESVILLE POLICE )  
DEPARTMENT and )  
TOWN OF MOORESVILLE )

AMENDED CERTIFICATE  
OF SERVICE

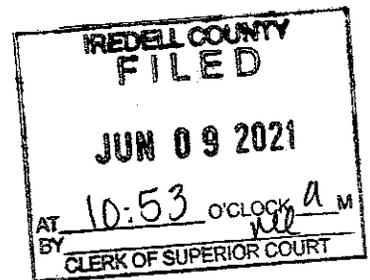
This is to certify that the undersigned has this day served the foregoing Complaint on Defendants to this cause by depositing a copy thereof via the following:

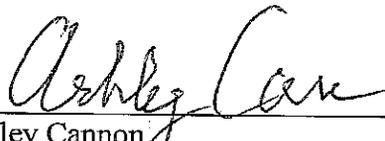
Mooresville Town Manager, Randy Hemann  
413 North Main Street  
Mooresville, NC 28115

Mooresville Town Clerk, Genevieve Glaser  
413 North Main Street  
Mooresville, NC 28115

Hand Delivery to Patrick Flannigan

This the 9 day of June, 2021.



  
Ashley Cannon  
Cannon & Thompson, Attorneys at Law, PLLC  
140 East Water Street  
Statesville, NC 28677  
(t)(704)872-7438  
(f)(704)872-0108

VERIFICATION

I, SHYHEIM SUMMERS, being first duly sworn, depose and say:

That I am the Plaintiff in the foregoing Amended Complaint and the contents set forth therein are true of my own knowledge, except as to those matters set forth therein upon information and belief, and as to those things I believe them to be true.

*Shyheim Summers*  
\_\_\_\_\_  
Shyheim Summers

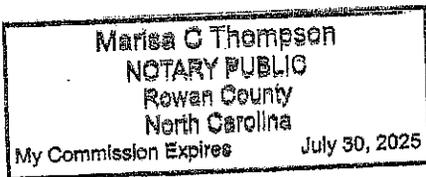
State of North Carolina

County of Rowan

I Marisa C. Thompson, a Notary Public for the County of Rowan hereby certify that the following person personally appeared before me this day acknowledging to me that he signed the foregoing document: Complaint.

This the 6 day of ~~May~~<sup>June</sup>, 2021.

(Official Seal)



*Marisa C. Thompson*  
\_\_\_\_\_  
Notary Public

*Marisa C. Thompson*  
\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: July 30, 2025