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8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

9 JEFFREY RANDALL ERVIN and TRACI
10 ANN SAMMETH, a married couple,

11 Plaintiffs,

12 vs.

13 CITY OF SEATTLE, Washington municipal
14 corporation; and SEATTLE ANIMAL
15 SHELTER a/k/a SEATTLE ANIMAL
16 CONTROL, a department of the CITY OF
SEATTLE;

Defendants.

Case No.: 07-2-32889-1SEA (MacInnes)

AMENDED COMPLAINT

17 COME NOW Plaintiffs JEFFREY RANDALL ERVIN and TRACI ANN SAMMETH, by and
18 through their attorney of record ADAM P. KARP, who hereby allege:

19 **JURISDICTION, PARTIES, AND VENUE**

- 20 1. This court has subject-matter jurisdiction over this action.
- 21 2. Between May 20, 2007 and October 26, 2007, inclusive, the sentient personalty at issue
22 was kept at Seattle Animal Shelter, in Seattle, King County, Washington.
- 23 3. Plaintiff JEFFREY RANDALL ERVIN ("Ervin") is, and at all times herein was, married

24 AMENDED COMPLAINT - 1

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1 to Plaintiff TRACI ANN SAMMETH (“Sammeth”). Ervin and Sammeth, at all times pertinent
2 to this action, resided and currently reside in King County, State of Washington, and are the
3 owners-guardians of SASHA (“Sasha”), the animal at issue here. Plaintiffs have been taxpayer-
4 owners and residents of the City of Seattle for over the past ten years. They continue to pay
5 local sales tax to the City of Seattle.

6 4. Defendant CITY OF SEATTLE (“Seattle”) is a municipal corporation located within
7 King County, Washington.

8 5. Defendant SEATTLE ANIMAL SHELTER (“Shelter”), a/k/a SEATTLE ANIMAL
9 CONTROL is an official department of Seattle city government, working together in enforcing
10 animal control regulations and impounding animals at its facility located at 2061 15th Ave. W.,
11 Seattle, Washington.

12 6. Sasha is a 10-year-old female, honey-fawn-colored Akita who was detained at the Shelter
13 between May 20, 2007 and October 26, 2007, inclusive. On May 20, 2007, Sasha was licensed
14 with Seattle Animal Control.

15 7. The Plaintiffs reserve the right to amend the complaint to include other Defendants (“Does
16 1-10”) who may, through discovery, be identified as also subject to the relief sought herein.

17 8. This matter is properly venued in King County.

18 9. This court has personal jurisdiction over the Defendants.

19 **GENERAL ALLEGATIONS**

20 1. Plaintiffs are the rightful owners of Sasha. Sasha was purchased by Ervin on or about
21 December 17, 1997 for \$850. He has owned and cared for her continuously and without
22 interruption since. On and after May 20, 2007, Sasha had and currently has no fair market value.
23 Instead, she possessed and currently possesses enormous intrinsic value to the Plaintiffs’ family.

1 2. On May 20, 2007, SAC Officer Susan Adams removed Sasha from her fenced yard at
2 6111 Greenwood Ave. N. ("Plaintiffs' Seattle Home") without a warrant. Defendants did not
3 attempt to contact or locate the Plaintiffs before seizing Sasha from Plaintiffs' Seattle Home.

4 3. On May 21, 2007, Sammeth visited the Shelter and asked to redeem Sasha after paying
5 any applicable fees. SAC Supervisor Don Baxter refused. Sammeth objected to microchipping
6 Sasha.

7 4. On May 21, 2007, Ervin also visited the Shelter and asked to redeem Sasha after paying
8 any applicable fees. His request was denied, and he was told that SAC was going to ask the
9 prosecutor to file charges and hold Sasha during the investigation. However, he was advised
10 that Sasha would be returned within the next two weeks or so.

11 5. On May 22, 2007, Ervin provided written authorization to the Shelter to release Sasha to
12 Dan MacDonald with Fantastic Dog & Cat Sitting Services in his family's absence. In his letter,
13 he specifically objected to microchipping Sasha.

14 6. Despite additional requests, the Shelter persisted in its refusal to release Sasha.

15 7. On June 27, 2007, misdemeanor criminal charges were filed in Seattle Municipal Court
16 against Sammeth and Ervin for violation of SMC 9.25.081(G) and SMC 9.25.081(K).

17 8. The Shelter continued to detain Sasha, racking up daily charges, and causing physical and
18 psychological harm to Sasha through October 26, 2007.

19 9. The Plaintiffs presently reside at 3841 156th Ave. SE, in Bellevue, Washington, which is
20 situated in unincorporated King County, and where Sasha is currently licensed.

21 10. No written notice specifically indicating that Sasha was impounded at the Shelter was
22 ever provided to the Plaintiffs.

23 11. No written notice specifically informing the Plaintiffs of their rights, if any, to petition
24 for Sasha's return or otherwise challenge the impound was ever provided to the Plaintiffs.

25 AMENDED COMPLAINT - 3

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1 12. No oral notice specifically informing the Plaintiffs of their rights to petition, if any, for
2 Sasha's return or otherwise challenge the impound was ever provided to the Plaintiffs.

3 13. No post-seizure or pre-conviction forfeiture hearing has ever been offered to the
4 Plaintiffs or held to date with respect to Sasha.

5 14. On October 26, 2007, pursuant to a settlement agreement reached among the parties,
6 Sasha was released to the Plaintiffs. However, she was microchipped by the Defendants without
7 consent of the Plaintiffs.

8 **FIRST CLAIM FOR RELIEF – REPLEVIN (Chapter 7.64 RCW)**

9 15. In the original complaint, the Plaintiffs sued the Defendants for replevin, contending that
10 the Defendants unlawfully seized and withheld possession of Plaintiffs' sentient personalty, to
11 wit, Sasha, as described. Defendants persisted in their wrongful and illegal refusal to relinquish
12 possession of Sasha.

13 16. Pursuant to a settlement agreement, the Defendants released Sasha to the Plaintiffs on
14 October 26, 2007. The catalyst for this settlement was the filing and serving of the original
15 complaint on October 12, 2007, obtaining an order to show cause on replevin on October 12,
16 2007, and presenting oral argument at a show cause hearing to replevy Sasha on October 23,
17 2007.

18 17. Pursuant to said agreement, the Plaintiffs have withdrawn this claim for relief without
19 impairing any rights they have to otherwise seek fees, costs, and/or damages incurred in this
20 matter, including any sums paid under protest to, and through, the date the agreement was
21 executed by all parties on October 26, 2007.

22 18. Further pursuant to said agreement, the Plaintiffs have withdrawn this claim for relief
23 without it constituting an admission, waiver, or having any estoppel effect on any claims or
24 remedies in this action.

25 AMENDED COMPLAINT - 4

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1 process has been afforded and exhausted (i.e., including appeals), or clearly defined grounds
2 exist requiring humane euthanasia as a matter of medical necessity, after consultation with a
3 licensed veterinarian. Also pending such process, Defendants should be further enjoined to
4 comply with all local and state anti-cruelty laws when detaining such animals, including to
5 provide necessary veterinary care.

6 21. Plaintiffs are entitled to an Order enjoining the Defendants from mandatorily
7 microchipping animals per SMC 9.25.030(A)(14) incidental to impound, particularly where the
8 impound and detention has been questioned, as in this case, and requiring owners to pay for said
9 microchipping before they can obtain the return of their companion animal.

10 **THIRD CLAIM FOR RELIEF –DECLARATORY RELIEF**

11 22. This court has the authority to render a declaratory judgment pertaining to Plaintiffs’
12 rights, statuses and other legal relations, and those similarly-situated, pursuant to Ch. 7.24
13 RCW.

14 23. Plaintiffs are entitled to declaratory relief that the Defendants did not have the authority
15 to deprive Plaintiffs of their due process and search and seizure rights as they had with respect to
16 Sasha in violation of the Fourth, Fifth and Fourteenth Amendments to the United States
17 Constitution, and Article 1, Sections 3 and 7 of the Washington State Constitution.

18 24. Plaintiffs are also entitled to declaratory relief that Ch. 9.25 SMC, as presently enacted,
19 unconstitutionally deprives citizens of due process (as stated in the Second Claim of Relief
20 above) under the federal and state constitutions with respect to impounding animals absent any
21 post-seizure or pre-conviction forfeiture hearing.

22 25. Plaintiffs are entitled to declaratory relief that SMC 9.25.030(A)(14), as presently
23 enacted, unconstitutionally deprives citizens of due process and amounts to a seizure in
24 violation of the state and federal constitutions.

1 26. Plaintiffs are further entitled to declaratory relief that any fees or costs incurred by the
2 Defendants while detaining Sasha are not recoverable against the Plaintiffs.

3 **FOURTH CLAIM FOR RELIEF – VIOLATION OF FEDERAL RIGHTS**
4 **(42 U.S.C. § 1983)**

5 27. Defendants implicitly or explicitly adopted and implemented a policy, custom, or practice
6 permitting and/or instructing its employees to do the following, *inter alia*:

7 a. To indefinitely or permanently detain animals seized for an alleged violation of SMC
8 9.25.081 without making any defined showing subject to any ascertainable standards, before any
9 criminal charges are filed against the animal's owner-guardian;

10 b. To indefinitely or permanently detain animals seized for an alleged violation of SMC
11 9.25.081 without providing notice of a right and opportunity to be heard at a post-seizure hearing
12 to petition for the return of the seized animal post-seizure hearing, before any criminal charges
13 are filed against the animal's owner-guardian;

14 c. To indefinitely or permanently detain animals seized for an alleged violation of SMC
15 9.25.081 without providing notice of a right and opportunity to be heard at a post-seizure or pre-
16 conviction forfeiture hearing to petition for the return of the seized animal, after any criminal
17 charges are filed against the animal's owner-guardian;

18 d. To fail to provide such a hearing described above before that includes, at a minimum,
19 disclosure of the evidence against the owner-guardian; the opportunity to be heard in person and
20 to present witnesses and documentary evidence; the right to confront and cross-examine adverse
21 witnesses; a neutral and detached hearing body; a written statement by the factfinders as to the
22 evidence relied upon and reasons for concluding that the animal should or should not be
23 returned; a right to subpoena witnesses and documents; a right to appeal the decision of the
24 hearing body; prior to the hearing, imposition of the preliminary burden on the government to

1 make a *prima facie* showing (i.e., at least probable cause) justifying seizure and detention prior;
2 and at the hearing, imposition of the burden of production and persuasion on the government to
3 prove by at least evidentiary preponderance its justification to continued detention of the
4 animal;

5 e. To fail to provide constitutionally-sufficient due process to those whose animals are
6 seized and detained as described above; and

7 f. To microchip all impounded animals as a precondition of release, pursuant to SMC
8 9.25.030(A)(14), regardless of consent and even in the presence of an objection from the owner-
9 guardian.

10 These policies, customs, or practices implicitly or explicitly allow, condone, ratify, and
11 afford the reckless, careless, and/or erroneous field decisions by its personnel so as to make
12 mistakes or act illegally, willfully, wantonly, negligently and/or recklessly.

13 28. Defendants and Don Jordan, Don Baxter, Virginia Dalton, and Susan Adams, acting in
14 their official capacities as agents and employees of Defendants, are “persons” within the
15 meaning of 42 U.S.C. § 1983. All actions taken by Defendants and their employees in relation to
16 the Plaintiffs were under the color of law.

17 29. In violation of the Fourth, Fifth, and Fourteenth Amendments to the United States
18 Constitution, Defendants’ illegal actions have deprived Plaintiffs of their Constitutionally-
19 protected rights against:

- 20 a. Unreasonable seizure;
- 21 b. Procedural due process violation (deprivation of property);
- 22 c. Procedural due process violation (deprivation of liberty);
- 23 d. Substantive due process violation; and
- 24 e. Taking without just compensation.

1 30. By their conduct as described herein, Defendants proximately caused the constitutional
2 violations described above.

3 31. By this conduct, Defendants violated Plaintiffs' federal constitutional and statutory rights
4 under 42 U.S.C. § 1983, as well as corollary Washington State constitutional rights against
5 unreasonable seizures (Art. 1, Wash. Const. §§ 3 and 7), deprivations of liberty and property
6 without due process (substantive and procedural), and taking property for a public purpose
7 without just compensation.

8 32. In addition to constitutional injury, the above-described conduct entitles the Plaintiffs
9 to other compensatory damages, including but not limited to loss of use/companionship,
10 damages for physical and psychological injury to Sasha, sums paid to the Defendants under
11 protest (e.g., boarding, impound, redemption fees), interference with enjoyment of life,
12 emotional distress, and other general and special damages in amounts to be proven at trial.

12 **FIFTH CLAIM FOR RELIEF – TAXPAYER DERIVATIVE SUIT**

13 33. Plaintiffs incorporate by reference each and every allegation contained in the General
14 Allegations section and Claims for Relief paragraphs 1- 32, inclusive, as set forth above.

15 34. Plaintiffs bring this suit as a taxpayer derivative action and seek the relief contained in
16 the preceding claims for relief.

17 **DEMAND**

18 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- 19 1. For declaratory relief as stated above;
- 20 2. For injunctive relief as stated above;
- 21 3. For compensatory damages as stated above;
- 22 4. For costs of suit;
- 23 5. Reasonable attorney's fees and costs as provided by 42 U.S.C. § 1988 or as

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- otherwise allowed by law, or, in the alternative, statutory attorney's fees in the amount of \$200;
6. For postjudgment interest at 12% per annum or the highest rate permitted by law, pursuant to RCW 4.56.110; and,
 7. For such other and further relief as the Court may deem just and proper.
 8. **NOTICE: Plaintiffs plead money damages in excess of \$10,000.**

Dated this December 3, 2007.

ANIMAL LAW OFFICES


s/ Adam P. Karp

Adam P. Karp, WSBA No. 28622
Attorney for Plaintiffs