



I. PARTIES

2. Plaintiff Smith is a citizen and resident of Georgia. Plaintiff brings this action in an individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff avails himself of the jurisdiction of this Court.

3. Plaintiff Barr is a citizen and resident of Georgia. Plaintiff brings this action in an individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff avails herself of the jurisdiction of this Court.

4. Defendant Empire Parking Services (“EPS”) is a domestic corporation providing vehicle immobilization services throughout Atlanta. EPS maintains a registered agent in Georgia located in Fulton County, Georgia. EPS may be served through its registered agent, William H. Schmeelk, who is located at 1039 Grant St., Fulton, Atlanta, GA, 30315. Jurisdiction and venue are proper as to Defendant because it is a Georgia corporation and maintains its registered agent in Fulton County.

5. Venue is not proper originally or by removal in federal court because complete diversity does not exist between Plaintiffs and Defendant and no federal cause of action is alleged herein.

II. STATEMENT OF FACTS

6. There is no provision in the Official Code of Georgia Annotated (“O.C.G.A.”) which expressly authorizes vehicle immobilization on private property.

7. The City of Atlanta authorizes certain types of vehicle immobilization, including booting, by licensed vehicle immobilization services.

8. Booting is a method of using a mechanical device that is designed or adopted to be attached to a wheel, tire, or part of a parked motor vehicle so as to prohibit the motor vehicle's usual manner of movement or operation:



9. Once licensed, a vehicle immobilization service may only boot vehicles under the terms proscribed by City of Atlanta Code of Ordinances, Art. 5 § 162-251 – 162-268.

10. One of the conditions precedent to legally booting a vehicle within the City of Atlanta is to comply with certain signage requirements as detailed in Atlanta Code of Ordinances, Art. 5 § 162-261. This ordinance is provided in full here:

It shall be unlawful for any person hired by an owner of any private property, or his agent or employee, located within the territorial limits of the city to install or attach to any vehicle a vehicle immobilization device(s), boot(s), or other instrument(s) that is/are designed to, or have the effect of, restricting the normal movement

of such vehicle or by any other means whatsoever to restrict the normal movement of such vehicle, unless the owner of the property, or his agent or employee, has complied with all applicable city zoning ordinances regarding the posting of signs and the following requirements:

- (1) Signs shall be located at each designated entrance to a parking lot or parking area where parking prohibitions are to be effective. Where there is no designated entrance, such signs shall be erected so as to be clearly visible from each and every parking space.
- (2) Such signs shall be a minimum of seven and one-half square feet in area (two and one-half feet by three feet).
- (3) Such signs located at a designated entrance to a parking lot shall be at least four feet above the site grade. Where there is no designated entrance, such signs shall be six feet above site grade.
- (4) Such signs shall state in letters at least three inches high that "Unauthorized vehicles may be impounded (towed or booted) at owner's risk and expense." Such signs shall also include the following language in letters at least two and one-half inches high:
  - a. Cost of impound \$50.00 per day;<sup>1</sup>
  - b. Fee payable by cash, check, and credit or debit card.
  - c. Boot Removal—Call 000-000-0000.
  - d. Tow information—Call 000-000-0000.
  - e. Vehicle may not be impounded if owner/operator returns before boot or tow is attached.
  - f. Booted vehicles may be towed after 24 hours.
  - g. By order of City Code.
  - h. Complaints may be made to: Parking Company 000-000-0000 Atlanta Police Department 404-853-4470
  - i. This lot is owned and operated by (Name of legal entity owning parking lot/area) and can be reached at 000-000-0000 for resolution of any disputes.

No abbreviations shall be used in the language contained in the sign. Where this Code section leaves a blank, the signs shall include the appropriate phone numbers. The lettering on such signs shall be

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<sup>1</sup> This number was updated to \$75 per day pursuant to Ord. No. 2009-63(09-O-1069), § 1, 10-27-09

black on a white, reflective background, and shall be illuminated if out of headlight range.

11. Defendant EPS is a licensed vehicle immobilization service operating within the City of Atlanta.

12. Defendant EPS offers booting services to parking lots within the city of Atlanta.

13. As described more fully below, the signs erected at every parking lot wherein EPS operates do not comply with Atlanta Code of Ordinances, Art. 5 § 162-261.

### III. NAMED PLAINTIFF EXPERIENCES

#### A. **Smith**

14. On or about October 24, 2016, Plaintiff Smith parked in a private parking lot located at the corner of Cypress St., NE, and 7<sup>h</sup> St., NE., (parcel number 14 004900010326), which is within the territorial limits of the City of Atlanta.

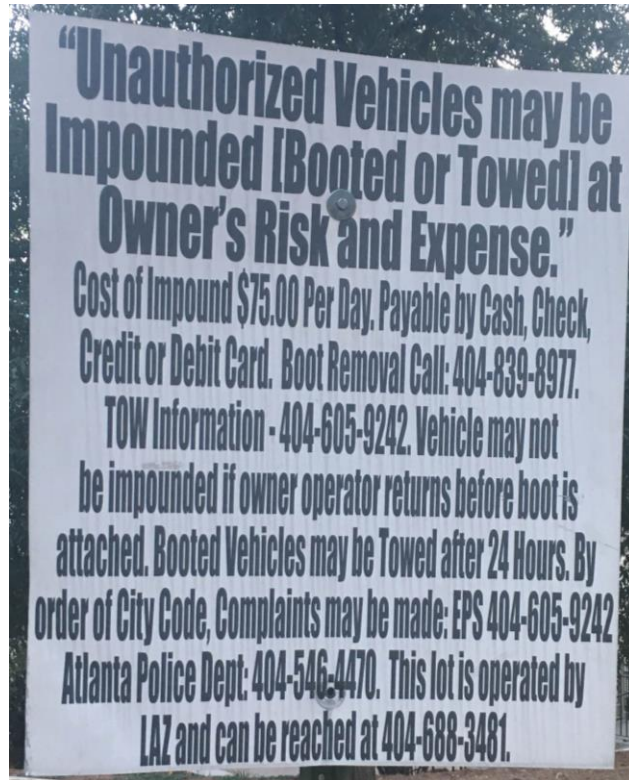
15. Plaintiff Smith parked in a parking lot owned by Cypress Academy, LLC.

16. Defendant EPS was hired by the owner of the private property located at the corner of Cypress St., NE, and 7<sup>h</sup> St., NE., to install or attach vehicle immobilization devices or boots.

17. Defendant EPS placed a boot on Smith's vehicle and refused to remove it unless Smith paid a \$75 fine.

18. Plaintiff Smith paid Defendant EPS \$75.

19. An exemplar of the signs erected at the parking lot located at the corner of Cypress St., NE, and 7<sup>h</sup> St., NE., is depicted below:



20. The signs do not comply with Atlanta Code of Ordinances, Art. 5 § 162-261, including the following:

- a. The sign uses an unauthorized abbreviation of “EPS” instead of Empire Parking Services, Inc.;
- b. The sign fails to state the name of the entity that owns the parking lot as required by Atlanta Code of Ordinances Art. 5 § 162-261(4)(i); and
- c. Even if not required to state the name of the legal entity that owns the parking lot, the sign fails to state the full legal entity that manages the parking lot.

21. Defendant EPS booted Plaintiff Smith’s vehicle without legal authority and caused damages to Plaintiff Smith.

**B. Barr**

22. On February 27, 2015, Plaintiff Barr parked in a private parking lot at or near the corner of North Ave. and Willow St., NE (parcel no. 14 005000021469), which is within the territorial limits of the City of Atlanta.

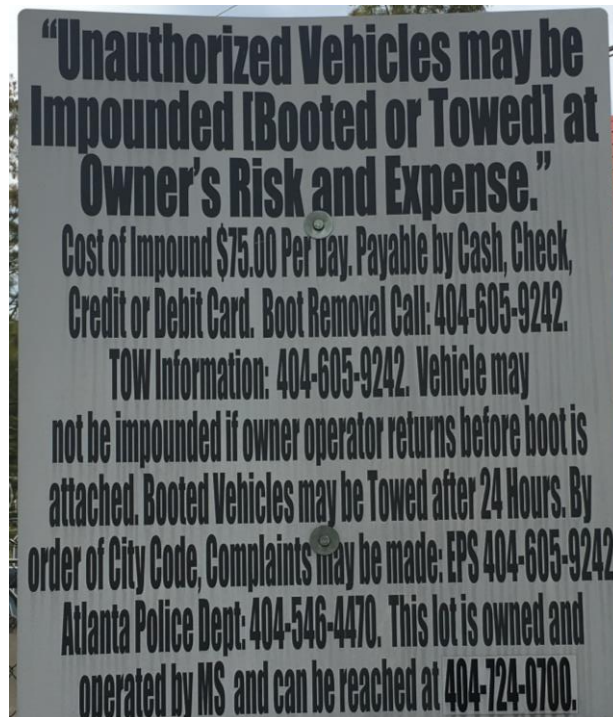
23. Plaintiff Barr parked in a parking lot owned by Majors Scientific Books, Inc.

24. Defendant EPS was hired by the owner of the private property located at or near the corner of North Ave. and Willow St., NE, to install or attach vehicle immobilization devices or boots.

25. Defendant EPS placed a boot on Barr's vehicle and refused to remove it unless Barr paid a \$75 fine.

26. Plaintiff Barr paid Defendant EPS \$75.

27. An exemplar of the signs erected at the parking lot located at or near the corner of North Ave. and Willow St., NE, is depicted below:



28. The signs do not comply with Atlanta Code of Ordinances, Art. 5 § 162-261, including the following:

- a. The sign uses an unauthorized abbreviation of “EPS” instead of Empire Parking Services, Inc.;
- b. The sign fails to state the name of the entity that owns the parking lot as required by Atlanta Code of Ordinances Art. 5 § 162-261(4)(i); and
- c. Even if not required to state the name of the legal entity that owns the parking lot, the sign fails to state the full legal entity that manages the parking lot.

29. Defendant EPS booted Plaintiff Barr’s vehicle without legal authority and caused damages to Plaintiff Barr.

#### IV. CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action as a class action pursuant to O.C.G.A. § 9-11-23, on behalf of themselves and the Following Class:

- a. All persons who have been booted by Defendant EPS and paid fines for removal of said device within the City of Atlanta from November 14, 2014, through present;
- b. All persons who have been booted by Defendant EPS at the corner of Cypress St., NE, and 7<sup>h</sup> St., NE., and have paid a fine for removal of said device (the Smith subclass); and
- c. All persons who have been booted by Defendant EPS at the corner of Cypress St., NE, and 7<sup>h</sup> St., NE., and have paid fined for removal of said device (the Barr subclass).



31. Excluded from the Classes are Defendants, as well as Defendants' employees, affiliates, officers, and directors, including any individuals who incurred property damage as a result of Defendant's Actions, and the Judge presiding over this case. Plaintiffs reserve the right to amend the definition of the Class if discovery and/or further investigation reveal that the Class definitions should be expanded or otherwise modified.

32. **Numerosity / Luminosity / Impracticality of Joinder:** The members of the Classes are so numerous that joinder of all members would be impractical. Plaintiffs reasonably estimate that there are thousands of Class members. The members of the Classes are easily and readily identifiable from information and records in Defendant's possession, control, or custody.

33. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the Classes. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendant failed to comply with the signage requirements of Atlanta Code of Ordinances, Art. 5 § 162-261 prior to engaging in booting activities at locations throughout Atlanta;
- b. Whether Defendant engaged in fraudulent business practices with respect to booting vehicles without complying with Atlanta Code of Ordinances, Art. 5 § 162-261;
- c. Whether Defendant has been unjustly enriched;
- d. Whether Defendant has engaged in criminal trespass;

- e. Whether Defendant has engaged in false imprisonment;
- f. Whether Defendant has engaged in fraud;
- g. Whether Defendant converted Plaintiffs' and other Class Member's property for its own use;
- h. Whether Defendant unlawfully disabled Plaintiffs' and other Class Member's property and refused to return the property;
- i. Whether Plaintiffs and the Classes are entitled to damages; and,
- j. Whether Plaintiffs and the Classes are entitled to equitable relief or other relief, and the nature of such relief.

34. **Typicality:** The Plaintiffs' claims are typical of Classes in that Plaintiffs and the Classes all have been booted as a result of Defendant's unlawful activities and sustained damages as a direct proximate result of the same wrongful practices that the Defendants engaged in. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the members of the Classes' claims. Plaintiffs' claims are based upon the same legal theories as the members of the Classes' claims.

35. **Adequacy:** Plaintiffs will fully and adequately protect the interests of the members of the Classes and have retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiffs nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

36. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically impracticable for members of the Classes to prosecute individual actions; prosecution as a

class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

**COUNT 1: UNJUST ENRICHMENT**

37. At all times relevant to this Complaint, Defendant owed duties to Plaintiffs and the other Class Members to not interfere with Plaintiffs' and the other Class Member's legally protected interest in use of their vehicles.

38. No contract exists between Defendant, Plaintiffs, or any other Class Members which authorize Defendant to boot their vehicle.

39. No legal authority exists for Defendant to boot Plaintiffs' and other Class Member's vehicles without first complying with Atlanta Code of Ordinances, Art. 5 § 162-261.

40. Despite the lack of a contract or other legal authority, Defendant has booted Plaintiffs' and other Class Member's vehicles.

41. Plaintiffs and the other Class Members have paid "unlocking" fees to Defendant which were unlawfully obtained.

42. Plaintiffs and the other Class Members have conferred a benefit on Defendant, which Defendant has retained and otherwise benefited from.

43. Defendant has been unjustly enriched by its unlawful booting of Plaintiffs' and the Class Member's vehicles.

44. Plaintiffs and other Class Members have incurred damages as a result of Defendant's criminal conduct.

45. Defendant should be required to return the benefit bestowed upon it by Plaintiffs and the other Class Members.

46. Plaintiffs and the other Class Members are also entitled to attorney's fees and expenses of litigation.

### **COUNT 2: CRIMINAL TRESPASS**

47. At all times relevant to this Complaint, Defendant owed duties to Plaintiffs and the other Class Members to not interfere with the possession or use of Plaintiffs' and other Class Member's vehicles.

48. In violation of O.C.G.A. § 16-7-21, Defendant EPS knowingly and maliciously interfered with the possession or use of Plaintiffs' and other Class Member's vehicles without consent.

49. Without authority, Defendant EPS interfered with vehicles owned by Plaintiffs and the other Class Members for an unlawful purpose (to install a boot).

50. Plaintiffs and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendant's criminal conduct.

### **COUNT 3: FALSE IMPRISONMENT**

51. At all times relevant to this Complaint, Defendant owed duties to Plaintiffs and the other Class Members to not interfere with the free movement of Plaintiffs and the other Class Members.

52. In violation of O.C.G.A. § 51-7-20, Defendant EPS knowingly and unlawfully restrained the movements of Plaintiffs and the other class members for varying periods of time.

53. Defendant acting without legal authority.

54. Plaintiffs and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendant's criminal conduct.

#### **COUNT 4: FRAUDULENT CONCEALMENT**

55. Defendant EPS concealed from Plaintiffs and all Class Members that Defendant lacked legal authority to a) immobilize their vehicles with a boot and b) collect a fee for removal of the boot.

56. Defendant has a duty to disclose the facts to the Plaintiffs and all Class Members, but failed to do so.

57. The facts that were not disclosed were and are material.

58. Defendant knew that Plaintiffs and the other Class Members were ignorant of the material facts and did not have an equal opportunity to discover the facts.

59. By failing to disclose the facts, Defendant intended to induce Plaintiffs and the other Class Members into paying a fee for removal of the boot.

60. Plaintiffs and the other Class Members reasonably relied on Defendant's nondisclosure.

61. Plaintiffs and the other Class Members were injured as a result.

#### **COUNT 5: CONVERSION**

62. Plaintiffs and the other Class Members had title (interest in) to their vehicles.

63. Defendant took possession of the property by attaching a vehicle immobilization device.

64. Plaintiffs and other class members demanded possession of their property.

65. Defendant refused to surrender and/or return the property.

66. As a result, Plaintiffs and other Class Members have sustained damages.

**COUNT 6: TROVER, REPLEVIN, AND DETINUE**

67. Plaintiffs and other Class Members have title in the disputed property, or alternatively Plaintiffs and other Class Members had a right to immediate possession of the property.

68. Actual possession of the property rests with Defendant.

69. Plaintiffs and other Class Members made a demand to Defendant for the return of the property.

70. Defendant refused to return the property.

71. As a result of Defendant's actions, Plaintiffs and other Class Members have sustained damages.

72. Plaintiff is entitled to elect (1) a verdict for the property itself, (2) the value of the property at the time of conversion with interest, (3) the highest proven value of the property from the date of the conversion.

**COUNT 7: NEGLIGENCE *PER SE***

73. Defendant violated Atlanta Code of Ordinances, Art. 5 § 162-261.

74. Plaintiffs and other Class Members fall within the class of persons intended to be protected by the statute.

75. Atlanta Code of Ordinances, Art. 5 § 162-261 was intended to guard against the unlawful booting of vehicles.

76. Plaintiffs and the other Class Members suffered damages as a result of Defendant's negligence.

**COUNT 8: MONEY HAD AND RECEIVED**

77. Defendant has received money from Plaintiffs and other Class Members that in equity and good conscious Defendant should not be permitted to keep.

78. Plaintiffs and other Class Members have made a demand for repayment.

79. Defendant refused the demand.

80. As a result of Defendant's actions, Plaintiffs and the other class members have suffered damages.

**COUNT 9: PUNITIVE DAMAGES**

81. Defendant's conduct was willful, wanton, and reckless and evidences an entire want of care, which raised the presumption of a conscious indifference to the consequences of its actions.

82. As a result of Defendant's willful, wanton, and reckless conduct, Plaintiffs and other Class Members are entitled to an award of punitive damages under O.C.G.A. § 51-12-5.1.

**V. JURY DEMAND**

83. Plaintiffs demand a trial by jury for all of their claims and determination of all damages.

**VI. DAMAGES AND PRAYER FOR RELIEF**

84. Plaintiffs pray for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiffs as class representatives and appointing Plaintiffs' counsel as lead Class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial, and, as allowed by law, for such damages to be trebled or

multiplied upon proof of claims under laws allowing for trebling or multiplying of compensatory damages based upon Defendant's violations of law;

- c. An order directing disgorgement and restitution of all improperly retained monies by Defendant;
- d. An order permanently enjoining Defendant from engaging in the unlawful practices, as alleged herein;
- e. For an injunction to prohibit Defendant from engaging in the unconscionable commercial practices complained of herein, and for an injunction requiring to give notice to persons to whom restitution is owing of the means by which to file for restitution;
- f. Punitive damages in an amount to be determined at trial;
- g. Attorney fees for stubborn litigiousness pursuant to O.C.G.A. § 13-6-11; and,
- h. All other and further relief, including equitable and injunctive relief, that the Court deems appropriate and just under the circumstances.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]



This 14<sup>th</sup> day of November 2016.

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**THE WERNER LAW FIRM**

*/s/ Matt Wetherington*

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