

SUMMONS IN ACTION IN
REPLEVIN

CASE NO. 2011 CVH 2060

TO THE BAILIFF- GREETING:

You are commanded to notify **City of Lakewood, Division of Police, 12650 Detroit Avenue, Lakewood, OH 44107** and **Timothy J Malley, Chief of Police, 12650 Detroit Avenue, Lakewood, OH 44107** that they have been sued by Francesca Rice in the Lakewood Municipal Court, and that unless they appear in the Lakewood Municipal Court, 12650 Detroit Avenue on the **18th of August, 2011 at 9:00 a.m.**, Lakewood official time, to answer the action of Francesca Rice and for wrongfully detaining the following described property, goods and chattels, to-wit:

- SKS M-21 SNIPER RIFLE – SN.V695054
- RUGER BLACKHAWK .357 – 36 – 18945
- SENTINEL ARMS 12 GAUGE – 003550
- GEMTECH .22LR – S06 – 16395
- RUGER MARK II .22LR – 222-32094
- Antique double barrel percussion shotgun
- SPRINGFIELD ARMS .45ACP WW92140
- THOMPSON M1928 .45ACP semi-auto
- MOSSBERG 500A 12GA shotgun
- VALKYRIE ARMS M3 .45ACP semi-auto
- S&W M-686 .357
- MAKAROV 9mm
- Colt Model M1851 .44cal revolver

the petition of the said plaintiff against City of Lakewood, Division of Police and Timothy J Malley, Chief of Police, filed in the Clerk's office of said Court will be taken as true, and judgment rendered accordingly. And you are further commanded immediately to seize and take into custody wherever they may be found in our bailiwick, the said goods and chattels above mentioned, and deliver the same at the above mentioned time to said Plaintiff, unless said Defendant shall give bond as required by law, when you shall return the same to said Defendants, City of Lakewood, Division of Police and Timothy J Malley, Chief of Police.

WITNESS, Terri A. O'Neill, Clerk of said Lakewood
Municipal Court, and the seal thereof, at Lakewood, this
15th day of August, A.D. 2011.

Terri A. O'Neill, Clerk of Court

BY , Deputy Clerk

NOTICE OF PROCEEDING

FRANCESCA RICE

CASE NO. 2011 CVH 2060

PLAINTIFF

VS.

CITY OF LAKEWOOD, DIVISION OF POLICE
TIMOTHY J MALLEY, CHIEF OF POLICE

DEFENDANT

NOTICE

You are hereby notified that this Court has issued an order in the above case in favor of plaintiff, the movant in this proceeding, directing that,

- SKS M-21 Sniper Rifle – SN.V695054
- Ruger Blackhawk .357 – 36- 18945
- Sentinel Arms 12 gauge – 003550
- Gemtech .22LR – S06 – 16395
- Ruger Mark II .22LR – 222 – 32094
- Springfield Arms .45ACP – WW92140
- Makarov 9mm
- Thompson M1928 .45ACP semi-auto
- Mossberg 500A 12GA shotgun
- Valkyrie Arms M3 .45ACP semi-auto
- S&W M-686 .357
- Antique double barrel percussion shotgun
- Colt Model M1851 .44cal revolver

now in your possession, be taken from you. This order was issued on the basis of the movant's claim against you as indicated in the documents that are enclosed with this notice.

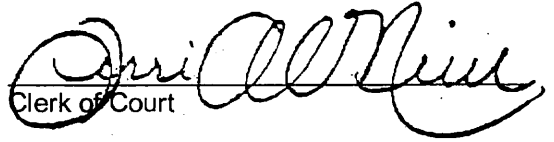
If you dispute the movant's claim and believe that you are entitled to possession of the property, you may request a hearing before this Court by disputing the claim in the request for hearing form, appearing below, or in a substantially similar form, and delivering, by mail or otherwise, the request for hearing to:

**Clerk of Court
Lakewood Municipal Court
12650 Detroit Avenue
Lakewood, OH 44107**

No later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the claim in the space provided on the form, however, you are not required to do so. If you do state your reasons for disputing the claim, you are not prohibited from stating any other reasons at the hearing, and if you do not state your reasons, it will not be held against you by the Court and you can state your reasons at the hearing. If you request a hearing, it will be held within three (3) business days after delivery of your request for hearing and notice of the date, time, and place of the hearing will be sent to you.

You may avoid a hearing but recover and retain possession of the property until the entry of final judgment in the action by filing with the Court, at the office of the Clerk, not later than the end of the fifth business day after you receive this notice a bond executed by an acceptable surety in the amount of \$30,000.00.

If you do not request a hearing or file a bond before the end of the fifth business day after you receive this notice, possession of the property will be withheld from you during the pendency of the action. Notice of the dates, times, places and purposes of any subsequent hearings and of the date, time, and place of the trial of the action will be sent to you.


Clerk of Court

August 15, 2011
Date

FILED
IN THE LAKEWOOD MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

Francesca Rice
 11720 Edgewater Drive #709
 Lakewood, Ohio 44107

TERRI A. O'NEILL
 CLERK OF COURT

CASE NO. 2011 CVH 2060

JUDGE: CARROLL

Plaintiff,

-v-

COMPLAINT IN REPLEVIN

City of Lakewood, Division of Police
 12650 Detroit Avenue
 Lakewood, Ohio 44107

and

Timothy J. Malley, Chief of Police
 12650 Detroit Avenue
 Lakewood, Ohio 44107

Defendants.

NOW COMES the Plaintiff, Francesca Rice ("Plaintiff"), by and through undersigned counsel, J.M. Smith Co., LPA, and brings forth this Complaint in Replevin against the Defendants, which states as follows:

PARTIES

1. At all times relevant, Plaintiff, Francesca Rice, resided at 11720 Edgewater Drive, Apartment #709 in the City of Lakewood, Ohio .

2. At all times relevant hereto, the Defendant City of Lakewood, Division of Police was and is a law enforcement agency with jurisdiction in the City of Lakewood, County of Cuyahoga, State of Ohio.

3. At all times relevant hereto, the Defendant, Timothy J. Malley, served as Chief of Police for the Lakewood Division of Police, and directed any and all agents of the Lakewood Division of Police.

JURISDICTION

4. Plaintiff incorporates and restates as if fully re-written and re-alleged herein paragraphs 1 through 3.

5. All matters alleged to have occurred and which are the subject of the instant Complaint transpired within the City of Lakewood, County of Cuyahoga, State of Ohio making jurisdiction in this Court proper.

COUNT I

(REPLEVIN)

6. Plaintiff incorporates and restates as if fully re-written and re-alleged herein paragraphs 1 through 5.

7. Plaintiff is a disabled military veteran and she legally acquired several firearms during and following her military service. Plaintiff is the legal owner of all of the property described below and currently being held in evidence by the Lakewood Division of Police:

SKS M-21 Sniper Rifle - SN.V695054

Ruger Blackhawk .357 - 36-18945

Sentinel Arms 12 gauge - 003550

Gemtech .22LR - S06-16395

Ruger Mark II .22LR - 222-32094
Springfield Arms .45ACP - WW92140
Makarov 9mm
Thompson M1928 .45ACP semi-auto
Mossberg 500A 12GA shotgun
Valkyrie Arms M3 .45ACP semi-auto
S&W M-686 .357
Antique double barrel percussion shotgun
Colt Model M1851 .44cal revolver

8. That, on or about September 25, 2011, the said items were confiscated from Plaintiff's apartment in Lakewood, Ohio by the City of Lakewood Division of Police, in her absence, and without a warrant or just cause. Upon information and belief, in order to facilitate the seizure, the Defendants caused an employee of the Plaintiff's apartment building to open Plaintiff's apartment without Plaintiff's knowledge or consent.

9. Plaintiff, through her Counsel, has made both telephone and written demand for return of the property. A copy of the written demand is attached hereto as Exhibit A.

10. The Division of Police has represented to Plaintiff's Counsel, in a telephone conversation on or about July 27, 2011, that they did not believe any of the said weapons were prohibited by law, but that they would not be returned without order of the Court.

11. Plaintiff's firearms were taken without reason and Plaintiff is not under any disability and has not been convicted of any offense that would prevent her from lawfully owning and possessing the subject firearms and is not aware of any reason she would not

be permitted to lawfully own and possess her firearms and Plaintiff has been unduly deprived of her property and wishes to have her property returned.

12. The subject firearms have sentimental value and an estimated financial value of approximately Fifteen Thousand (\$15,000.00) and the actions of the Lakewood Division of Police have deprived Plaintiff of her property without just cause, notice or hearing all in violation of Plaintiff's rights under both the Constitution of the United States and the Constitution of the State of Ohio.

13. Upon information and belief, the firearms in question have been inventoried and/or are being held in evidence storage by officers of the Lakewood Division of Police and said firearms are in the possession and control of the Lakewood Division of Police, as verified in the telephone conversation between Counsel and the Division of Police on or about July 27, 2011.

14. Said property currently remains under the dominion, control and possession of the Defendants and should be returned to Plaintiff as its rightful owner.

15. Said property serves no evidentiary value and bears no relevance to any police business and should be returned to Plaintiff.

16. As stated above, Demand has been made by the Plaintiff for return of said property, but the Defendants have failed and refused, and continue to fail and refuse, to return said property.

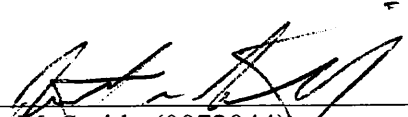
17. No charges have ever been filed in connection with this property or the above-referenced investigation and the seizure took place in Plaintiff's absence and without a warrant or just cause.

18. As a result of Defendants' wrongful and sustained confiscation of said property, Plaintiff has been damaged in an amount which will be presented at hearing.

WHEREFORE, Plaintiff prays for judgment in her favor and that upon this motion or a hearing this Honorable Court order that Defendants immediately return Plaintiff's property and pay the Plaintiff for any loss or damage to said property occasioned by the wrongful seizure and detention.

Respectfully submitted,

J.M. SMITH CO., LPA



Justin M. Smith (0072044)
24400 Highpoint Road, Suite 7
Beachwood, Ohio 44122
Tel. (216) 574-6284 Fax (216) 916-4297
jmsmith@jmsmithlpa.com

Counsel for Plaintiff



July 25, 2011

Via Regular and Certified Mail

Lakewood Division of Police
Attn: Detective Bureau
Lakewood City Hall
12650 Detroit Avenue
Lakewood, Ohio 44107

**RE: Francesca Rice
Seizure of Property at 11720 Edgewater Drive, #709, Lakewood, Ohio**

Dear Detectives:

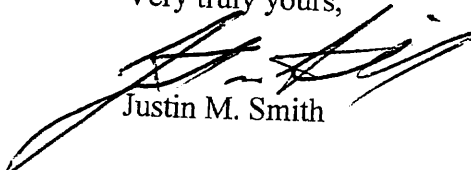
Our firm represents Francesca Rice with regard to several firearms that were seized from her residence located at 11720 Edgewater Drive, Apartment No. 709 in Lakewood, Ohio. We are writing to follow-up previous messages left with the Detective Bureau and which have gone unreturned.

Our Client is seeking return of the firearms seized from her residence which include, but may not be limited to, the following:

1. Smith & Wesson Model 686 .357;
2. Thompson SA 1928 .45;j
3. Valkyrie Arms M3A2 SA .45;
4. M21 SKS Rifle;
5. Sentinel Arms Striker 12 Gauge Shotgun;
6. Mossberg 500A Shotgun;
7. Ruger/Gentech Arms .22;
8. Ruger Blackhawk .357;
9. Springfield Arms U.S. Government .45;
10. Cimmaron Arms 1851 U.S. Navy Revolver

It is our understanding that these items were seized while our Client was away from her apartment and without a warrant or explanation. To avoid the filing of a Complaint in *Replevin*, would you please contact the undersigned within five (5) days to discuss this matter. If you contend that there is a legal basis for the seizure of the property, please provide your written response to the address or fax number below. Thank you in advance for your cooperation in this matter.

Very truly yours,



Justin M. Smith

EXHIBIT A