

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION

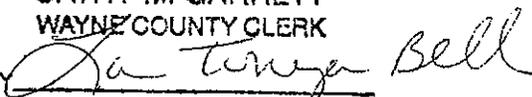
PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff

-v-

KWAME MALIK KILPATRICK,
Defendant

Honorable David A. Groner
WCCC No: 08-010496-01

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

BY 
DEPUTY CLERK

ORDER AND NOTICE OF HEARING

The Court having received the People's Petition to Forfeit Profits, request for Ex Parte TRO, and/or Show Cause, hereby sets a hearing to be held pursuant to MCL 780.768(2) in the above referenced matter on June 15, 2011 at 1:30 pm before the Honorable David A. Groner in Courtroom 303, Frank Murphy Hall of Justice.

The People shall serve all parties listed below forthwith as well as subpoena any and all relevant admissible evidence/records regarding MCL 780.768(2)(a).

Kwame M. Kilpatrick
James Thomas
Michael Alan Schwartz
Daniel Hajji
Creative Publishing Consultants Inc.
Khary Turner
Michigan Parole Board
Michigan Department of Corrections

It is hereby ORDERED



Honorable David A. Groner

June 7, 2011

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

Hon. David Groner
Case No. 08-010469-01
Hearing Date:

KWAME MALIK KILPATRICK,

Defendant.

_____/
KYM L. WORTHY(P38875)
Wayne County Prosecutor
ATHINA SIRINGAS (P35761)
ROBERT SPADA (P46295)
Assistant Prosecuting Attorneys
1441 St. Antoine
Detroit, MI 48226
_____ /

**Verified Petition To Forfeit Profits Derived In Violation of MCL
780.768 ,and Request for Ex Parte Temporary Restraining
Order(TRO) and/or for Order to Show Cause why Preliminary
Injunction should not issue.**

NOW COME the People of the State of Michigan through Wayne County Prosecuting Attorney Kym Worthy and her Assistant Prosecuting Attorneys Athina Siringas and Robert Spada and in support of their Verified Petition to Forfeit Proceeds and for TRO and/or for Order to Show Cause state the following:

1. That the Defendant, Kwame Malik Kilpatrick, pleaded guilty to two counts of Obstruction of Justice pursuant to a plea agreement.
2. One of the conditions of the plea agreement was that Defendant Kilpatrick was to pay restitution to the City of Detroit in the amount of one million dollars (\$1,000,000.00)

3. This Honorable Court found that Defendant violated the conditions of his probation by hiding assets and failing to pay his restitution to the City of Detroit as ordered by the Court.
4. The Defendant is currently incarcerated pursuant to a Judgment of Sentence entered by this court on May 25, 2010 because he hid assets from the court, refused to make full and complete financial disclosures of all assets and refused to pay restitution as ordered by the court.
5. The Defendant has an outstanding restitution order in the amount of \$861,399.50 still owing to the City of Detroit.
6. Upon information and belief the Defendant along with Khary Kimani Turner has authored a book entitled SURRENDERED, The Rise, Fall & Revelation of Kwame Kilpatrick. The book is offered for sale to the public on the website KwameKilpatrickbook.com for \$26.95.(See Exhibit 1)
7. According to information from the website, the book SURRENDERED, the Rise, Fall, & Revelation of Kwame Kilpatrick is being published by Creative Publishing Consulting, INC. (See Exhibit 2)
8. The promotional information intended to solicit purchasers of his book claims that the Kilpatrick's will share their side of the story relating to his conviction for lying under oath about an affair with his long-time friend and chief of staff. (See Exhibit 1 and 2)
9. MCL 780.768(1) provides that " A person convicted of a crime shall not derive any profit from the sale of any of the following until the victim receives any restitution or compensation ordered for him or her against the defendant, expenses of

incarceration are paid under subsection (3), and any balance in the escrow account created under subsection (2) is paid under subsection (4):

(a) The person's recollections of or thoughts or feelings about the offense committed by the person.

(b) Memorabilia related to the offense committed by the person

(c) The person's property if its value has been enhanced or increased by the person's notoriety.

10. MCL 780. 768 (2) allows the Prosecuting Attorney to seek an order forfeiting all or any part of the proceeds received or to be received by the defendant or the defendant's representative or assignee from several sources including "contracts relating to the depiction of the crime or the defendant's thoughts or feelings about the crime, in books, magazines, media entertainment or live entertainment. This section requires notice be given to all interested parties.

11. Pursuant to the statute, if the court orders any proceeds forfeited, then the court shall create an escrow account to hold the funds and to distribute the funds according to the priority set forth in the statute with restitution holding the highest priority level.

12. The People are before the court seeking to establish an escrow account to hold any funds to be paid the defendant from any source or project relating to the "depiction of the crime, or the defendant's thoughts or feelings about the crime, in books, magazines, media entertainment or live entertainment. The people are further seeking an injunctive order to prevent defendant from dissipating assets

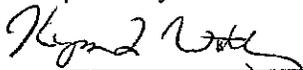
and transferring or assigning any proceeds due to defendant from any such projects to any third party or to any purpose other than restitution.

13. The Defendant has a demonstrated history of hiding assets and fraudulently conveying assets to others to avoid paying restitution.

14. The People are fearful based on the Defendant's prior conduct that unless this court immediately enjoins defendant and his agents, representative or assignees and/or Creative Publishing Consultants, Inc. from using, transferring, assigning or alienating in any manner proceeds from the publication, sale and distribution of his book, SURRENDERED, The Rise, Fall & Revelation of Kwame Kilpatrick, that they will be forever lost and the City of Detroit will suffer irreparable injury.

WHEREFORE the People request that this Honorable Court determine that any proceeds received or to be received by Kwame Kilpatrick, his representatives or assignees as it relates to this book or any other projects or profits that fall within the statutory language be forfeited towards restitution and that an escrow account be established to hold such funds in the future and to be distributed in accordance with the MCL 780.768(4), and the court immediately enter a Temporary Restraining Order and/or an Order to Show Cause.

Respectfully submitted,



KYM L. WORTHY(P38875)
Wayne County Prosecuting Attorney
ATHINA SIRINGAS (P35761)
ROBERT SPADA (P46295)
Assistant Prosecuting Attorneys
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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

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Hon. David Groner
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**Brief In Support of Verified Petition To Forfeit Profits Derived
In Violation of MCL 780.768 ,and Request for Ex Parte
Temporary Restraining Order(TRO) and/or for Order to Show
Cause why Preliminary Injunction should not issue.**

While he was the Mayor of the City of Detroit, the Defendant was convicted of two counts of Obstructing Justice for his role in unlawful firing of two veteran police officers. In addition to other conditions his plea agreement required that he pay the City of Detroit one million dollars in restitution. The restitution amount was incorporated into the Court's Judgment of Sentence. When the Court violated Defendant's probation and sentenced defendant to prison, the court ordered that the defendant pay the remaining

restitution of \$860,000. As of June 2, 2011 the defendant has an outstanding balance of \$861,399.50.

The People have learned that Defendant has co-authored a book that is anticipated to be released on or about July 25 2011. The website Kwamekilpatrickbook.com allows the book to be pre-ordered for payment of \$26.95. The People are before the court pursuant to the Crime Victim's Rights Act to request that the Court order that no profits from the sale or contract of the publication of the book; SURRENDERED The Rise, Fall & Revelation of Kwame Kilpatrick, go to Kwame Kilpatrick, Kwame Kilpatrick's representatives or assignees until all of the restitution he owes has been paid to the City of Detroit.

MCL 780.768(1) provides that "A person convicted of a crime shall not derive any profit from the sale of any of the following until the victim receives any restitution or compensation ordered for him or her against the defendant, expenses of incarceration are paid under subsection (3), and any balance in the escrow account created under subsection (2) is paid under subsection (4):

- (a) The person's recollections of or thoughts or feelings about the offense committed by the person.
- (b) Memorabilia related to the offense committed by the person
- (c) The person's property if its value has been enhanced or increased by the person's notoriety.

The defendant's book appears on its face to meet the requirements of the statute. The promotional material on the KwameKilpatrickbook.com website makes it clear that the book discusses the Defendant's thoughts and feeling about what

happened to him as a result of being charged and convicted of obstruction of justice. Additionally, the value of the book or any contract related thereto has been enhanced or increased because of the notoriety that resulted from the Defendant's conviction. The "Son of Sam" type legislation enacted throughout the country, including the Michigan's Crime Victim Rights statute, is intended to prevent Defendants from benefiting financially from criminal activity and the notoriety that sometimes follows. The laws attempt to prevent convicted felons from profiting from their crimes at the expense of the victims. In an interview with the Associated Press the Defendant himself recognizes that he should not benefit from this book. The Defendant is quoted as saying "Any money that I make—any dime. Any penny I make – will go to pay restitution." See Exhibit 3 Attached hereto.

MCL 780.768 (2) allows the Prosecuting Attorney to seek an order forfeiting all or any part of the proceeds received or to be received by the defendant or the defendant's representative or assignee from several sources including "contracts relating to the depiction of the crime of the defendant's thoughts or feelings about the crime, in books, magazines, media entertainment or live entertainment." Based on the Defendant's interview with the Associated Press, and if quoted correctly, the Defendant may be willing to stipulate to the forfeiture order and allow the funds collected from this book to be placed in the Escrow Account. See MCL 780.768(3). However, if past behavior is any indication of future action, it is highly unlikely that the defendant can be trusted to voluntarily surrender money toward restitution.

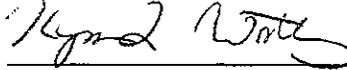
Therefore, the People request that this court enter an order that ensures that any money derived from "contracts relating to the depiction of the crime of the defendant's thoughts or feelings about the crime, in books, magazines, media entertainment or live entertainment" and payable to the defendant, his representatives or his assignees be placed in escrow to be applied toward his outstanding restitution obligation.

In addition pursuant to MCR 3.310(b)(1), the court may issue a Temporary Restraining Order without prior notice given to the defendant if it is clear that an irreparable injury will occur. During the defendant's restitution and violation of probation hearings, this court ruled that the defendant had willfully hidden and transferred assets to avoid paying restitution. This court found that the defendant actually committed fraud by transferring assets to another. Based on this prior history, the People are fearful if the defendant is given notice, prior to the issuance of an injunctive order, the defendant may use, transfer, assign or hide assets. Unless this court immediately enjoins the defendant from using, transferring, assigning, hiding or alienating in any manner any proceeds from the publication, sale, and distribution of his book the City of Detroit will suffer irreparable injury and the permanent loss of restitution funds.

WHEREFORE, for the reasons stated above, the People request that this Honorable Court determine that any proceeds received or to be received by Kwame Kilpatrick, his representatives or assignees as it relates to this book or any other project or profits that fit within the statutory language be forfeited towards restitution and that an escrow account be established to hold such funds in the future and to be distributed in

accordance with the MCL 780.768(4), and the court immediately enter a Temporary Restraining Order and/or an Order to Show Cause.

Respectfully submitted,



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Dated: June 6, 2011