

State of Minnesota

District Court

Anoka County

Tenth Judicial District

COURT FILE NO. 02-CR-11-6334

PROSECUTOR FILE NO.: 11-595

AMENDED

TAB CHARGE PREVIOUSLY FILED

STATE OF MINNESOTA,

PLAINTIFF,

VS.

SUMMONS

DAVID WAYNE ELVIG, DOB: 11/11/1959  
18026 Ute Street NW  
Ramsey, MN 55303

**SECOND AMENDED COMPLAINT**

(COUNTS 1 THROUGH 54 DELETED AND RECHARGED AS COUNTS 1 AND 2  
PROBABLE CAUSE STATEMENT REMAINS THE SAME)

The Complainant, being first duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offenses:

**COUNT 1**

**THEFT BY SWINDLE OVER \$5,000 (AGGREGATED) (FELONY)**  
**MINN. STAT. § 609.52, SUBD. 2(a)(4), SUBD. 3(2), 3(5)**  
**PENALTY: 0-10 YEARS AND/OR \$20,000**

That on or about February 1, 2009 through July 31, 2009 in Anoka County, Minnesota, **DAVID WAYNE ELVIG** obtained property or services of others, of a value in excess of Five Thousand Dollars (\$5,000.00), by swindling them using artifice, trick, device or other means.

**COUNT 2**

**THEFT BY SWINDLE OVER \$5,000 (AGGREGATED) (FELONY)**  
**MINN. STAT. § 609.52, SUBD. 2(a)(4), SUBD. 3(2), 3(5)**  
**PENALTY: 0-10 YEARS AND/OR \$20,000**

That on or about August 1, 2009 through January 31, 2010, in Anoka County, Minnesota, **DAVID WAYNE ELVIG** obtained property or services of others, of a value in excess of Five Thousand Dollars (\$5,000.00), by swindling them using artifice, trick, device or other means.

Your complainant is Detective Mike Lapham with the Anoka County Sheriff's Department. In that capacity, he has learned of the following facts, which are true and correct to the best of his knowledge and belief:

US Department of Labor Employee Benefits and Security Administration (EBSA) conducted a criminal investigation of **DAVID WAYNE ELVIG**, DOB: 11/11/1959, defendant herein. During the investigation by EBSA, they were able to determine that the defendant, former owner and president of E-Street Makers Inc., located at 731 Lund Boulevard in the County of Anoka, State of Minnesota, had established and sponsored three employee benefit plans. The three plans were E-Street 401(k) Profit Sharing Plan, a Group Health Care plan and a Group Dental Plan. The defendant served as trustee and plan administrator of the E-Street 401(k) Profit Sharing Plan, and the owner and individual responsible for the E-Street Group Health Plan and E-Street Group Dental Plan.

During the investigation, EBSA determined that the defendant embezzled \$19,596.83 of his employees' contributions and loan repayments from the plans. Participants suffered a termination of dental and health coverages and a loss of earnings on their 401(k) accounts. Some participants in the plans defaulted on their 401(k) loans as a result of the defendant's actions. The participants were subjected to costly taxable events of penalties and income tax.

From April 23, 2009 to December 31, 2009, E-Street employees M.H., A.M., and J.J. combined, contributed \$1,668.43 to their 401(k) plans. The defendant kept the employee contributions in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the 401(k) plan for the benefit of the employees.

From April 23, 2009 to October 22, 2009, E-Street employee M.H. made \$4,081.06 in loan repayments to his 401(k) plan. The defendant kept M.H.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the 401(k) plan for the benefit of the employee.

From April 23, 2009 to January 14, 2010, E-Street employee J.S. made \$2,101.20 in loan repayments to his 401(k) plan. The defendant kept J.S.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the 401(k) plan for the benefit of the employee.

From April 23, 2009 to December 31, 2009, E-Street employee J.P. made \$1,434.31 in loan repayments to his 401(k) plan. The defendant kept J.P.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the 401(k) plan for the benefit of the employee.

From April 23, 2009 to December 31, 2009, E-Street employee K.B. made \$2,010.01 in loan repayments to his 401(k) plan. The defendant kept K.B.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the 401(k) plan for the benefit of the employee.

From April 23, 2009 to July 2, 2009, E-Street employee A.H. made \$337.38 in loan repayments to her 401(k) plan. The defendant kept A.H.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the 401(k) plan for the benefit of the employee.

From April 23, 2009 to July 2, 2009, E-Street employee C.L. made \$390.72 in loan repayments to his 401(k) plan. The defendant kept C.L.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the 401(k) plan for the benefit of the employee.

Defendant was named the sole trustee of the 401(k) plan and he signed and administered the plan.

Defendant was the administrator for the ERISA-covered health plan. The health plan was fully insured by Health Partners and was funded by health premiums paid in part by withholdings from employees' pay and employer contributions. However, the defendant did not apply the employees' pay that was withheld nor the matching employer's contributions and as a result the health coverage was formally terminated on July 30, 2009, retroactive effective May 31, 2009.

From March 2009 through August 2009, E-Street employee D.G. made \$1,156.80 in COBRA payments to his health plan. The defendant kept D.G.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From January 2009 through July 2009, E-Street employee M.E. made \$701.94 in COBRA payments to her health plan. The defendant kept M.E.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From March 2009 through July 2009, E-Street employee T.K. made \$771.20 in COBRA payments to his health plan. The defendant kept T.K.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

In July 2009, E-Street employee C.L. made a \$1,150.85 in COBRA and employee contribution payments to his health plan. The defendant kept C.L.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From March 2009 through August 2009, E-Street employee C.D. made \$363.00 in COBRA payments to his health plan. The defendant kept C.D.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From June 4, 2009 to July 16, 2009, E-Street employee J.H. made \$1,039.66 in employee contribution payments to his health plan. The defendant kept J.H.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From June 4, 2009 to July 16, 2009, E-Street employee A.M. made \$855.76 in employee contribution payments to his health plan. The defendant kept A.M.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From June 4, 2009 to June 18, 2009, E-Street employee E.S. made \$339.88 in employee contribution payments to his health plan. The defendant kept E.S.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From June 4, 2009 to July 16, 2009, E-Street employee J.S. made \$149.76 in employee contribution payments to his health plan. The defendant kept J.S.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

From June 4, 2009 to July 16, 2009, E-Street employee J.J. made \$130.16 in employee contribution payments to his health plan. The defendant kept J.J.'s payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the health plan for the benefit of the employee.

The defendant was the administrator for the ERISA-covered dental plan. The dental plan was fully insured by Assurant Employee Benefits through Union Security Insurance Company and was funded by health premiums paid in part by withholdings from employees' withholdings and employer contributions. Like the health plan, the defendant did not apply the withholdings and contributions and the dental plan was terminated retroactively effective to March 1, 2009.

From March 2009 to July 2009, E-Street employees S.G., A.M., J.H., J.J., J.S., D.H., D.A., and E.S. made \$914.71 in combined employee contribution payments to their dental plans. The defendant kept the employees' payments in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the dental plans for the benefit of the employees.

During the investigation by the Department of Labor, they spoke with E-Streets bookkeeper, who was responsible for forwarding the plans' contributions and premiums to the respective custodians and insurance companies. The bookkeeper did not have the signatory authority on the general operating accounts for which the defendant had signatory authority. The bookkeeper reported to EBSA that the defendant was aware of the amounts owed to the plans and participants and instructed the bookkeeper not to pay the amounts to the respective plans because E-Street did not have the money despite the money having been withheld.

The amount of \$19,596.83 was taken by the defendant from March 2009 and continuing through January 2010. The \$19,596.83 in employee contributions and loan repayments remained in E-Street's general operating account where it was used to pay E-Street's business expenses instead of being applied to the plans for the benefit of the employees.

The above incident occurred within the County of Anoka, State of Minnesota.

*THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release be:*  
*(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or*  
*(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.*

**COMPLAINANT'S NAME:**  
Michael Lapham

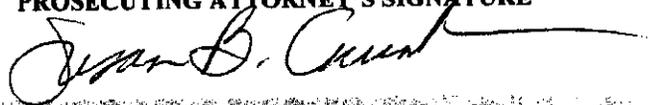
**COMPLAINANT'S SIGNATURE**

*Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.*

**DATE:**

*31 January, 2013*

**PROSECUTING ATTORNEY'S SIGNATURE**



**PROSECUTING ATTORNEY:**  
NAME/TITLE

Susan B. Crumb (Atty ID#148246)  
Acting as Special Assistant Anoka County Attorney  
Attorney Registration #148246

**ADDRESS/TELEPHONE**  
300 South Sixth Street  
Minneapolis, MN 55487

Court Case # \_\_\_\_\_

This COMPLAINT - \_\_\_\_\_ was subscribed and sworn to before the undersigned this \_\_\_\_ day of \_\_\_\_\_, 2013.

NAME:

SIGNATURE

TITLE:

**FINDING OF PROBABLE CAUSE**

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant(s) arrest or other lawful steps be taken to obtain Defendant(s) appearance in court, or his detention, if already in custody, pending further proceedings. The Defendant(s) is/are thereof charged with the above-stated offense.



**SUMMONS**

THEREFORE, YOU, THE ABOVE-NAMED DEFENDANT(S), ARE HEREBY SUMMONED to appear on the \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ before the above-named court at \_\_\_\_\_ to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.



**WARRANT**

EXECUTE IN MINNESOTA ONLY  EXECUTE NATIONWIDE

To the sheriff of the above-named county; or other person authorized to execute this WARRANT; I hereby order, in the name of the State of Minnesota, that the above-named Defendant(s) be apprehended and arrested without delay and brought promptly before the above-named court (if in session, and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.



**ORDER OF DETENTION**

Since the above-named Defendant(s) is already in custody; I hereby order, subject to bail or conditions of release, that the above-named Defendant(s) continue to be detained pending further proceedings.

Bail: \$

Conditions of Release:

This COMPLAINT - \_\_\_\_\_, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this \_\_\_\_ day of \_\_\_\_\_, 2013.

JUDICIAL OFFICER:

NAME:

TITLE:

01/11/2013

SIGNATURE

*[Handwritten Signature]*

Sworn testimony has been given before the Judicial Officer by the following witnesses:

STATE OF MINNESOTA COUNTY OF ANOKA  
STATE OF MINNESOTA

vs.

Plaintiff,

David Wayne Elvig

Defendant(s)

Clerk's Signature or File Stamp:

RETURN OF SERVICE  
I hereby Certify and Return that I have served a copy of this COMPLAINT - Summons for Defendant(s) herein named.

FEB 01 2013

Anoka County, MN  
*[Signature]*  
Deputy