

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHRISTOS SOUROVELIS,
DOILA WELCH, NORYS
HERNANDEZ, and NASSIR GEIGER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

CITY OF PHILADELPHIA;

MICHAEL A. NUTTER, in his official
capacity as Mayor of Philadelphia;

PHILADELPHIA DISTRICT
ATTORNEY'S OFFICE;

R. SETH WILLIAMS, in his official
capacity as District Attorney of
Philadelphia; and

CHARLES H. RAMSEY, in his official
capacity as Commissioner of the
Philadelphia Police Department;

Defendants.

**FIRST AMENDED
COMPLAINT—CLASS ACTION**

Civil Action No. 2:14-cv-04687

Assigned to the
Honorable Judge Robreno

Special Management Track

**FIRST AMENDED CLASS-ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This civil-rights lawsuit challenges six specific policies and practices Defendants use when filing, prosecuting, and ultimately profiting from civil-forfeiture actions. Plaintiffs Christos Sourouvelis, Doila Welch, Norys Hernandez, and Nassir Geiger (“Named Plaintiffs”) are Philadelphia property owners who seek primarily injunctive and declaratory relief against these policies and practices, which violate their due-process rights under the Fourteenth Amendment. Named Plaintiffs bring this lawsuit on behalf of themselves and all others similarly situated under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

2. Under an increasingly controversial legal device known as civil forfeiture, Philadelphia law enforcement has been summarily confiscating property from its residents under the fiction that the property itself is “guilty” of a crime. Even if the owner of the property has no involvement or even knowledge of the alleged crime, the Philadelphia District Attorney’s Office sues the property in civil actions (with unusual names like *Commonwealth v. One 1993 Pontiac Trans Am* and *Commonwealth v. 605 University Drive, State College, Pa.*) and requires property owners to prove their innocence. Should the Philadelphia District Attorney’s Office (“Philadelphia D.A.’s Office”) win the lawsuit against the property, it retains the property or proceeds from its sale for the office’s own use, giving it a direct financial interest in the outcome of the proceedings.

3. While Pennsylvania law authorizes civil forfeiture, the Philadelphia D.A.’s Office has turned this tool into a veritable machine, devouring real and personal property from thousands of residents, many of whom are innocent, and converting that property into a \$5.8 million average annual stream of revenue. Using a rigged system of copied “form” legal documents and endless proceedings in a courtroom run by the prosecutors themselves,

Philadelphia's "robo-forfeiture" program stripped thousands of City residents of over 1,000 residences, 3,200 vehicles, and \$44 million in cash over an eleven-year period, ultimately raking in more than \$64 million in revenue. This is almost 20 percent of the general budget of the Philadelphia D.A.'s Office—funds that are wholly outside the oversight of the City Council.

4. Plaintiffs bring this class action to enjoin and declare unconstitutional the following six policies and practices of Defendants, which deprive people not only of their property, but of their rights to due process of law:

(i) Defendants' policy and practice of applying for and executing *ex parte* seizures of homes and other real properties without providing any evidence of exigent circumstances or necessity to justify proceeding without affording affected owners notice or an opportunity to be heard;

(ii) Defendants' policy and practice of requiring real property owners to waive their statutory and constitutional rights in order to be let back into their property or have the forfeiture petition withdrawn;

(iii) Defendants' policy and practice of failing to provide property owners with a prompt, post-deprivation hearing before a neutral arbiter where those owners may contest the basis for the seizure, restraint, or indefinite retention of their property pending an ultimate hearing on the merits;

(iv) Defendants' policy and practice of repeatedly "relisting" civil-forfeiture proceedings, which forces property owners to appear in person for these proceedings over and over again or else permanently lose their property through a default judgment;

(v) The policy and practice of retaining forfeited property and its proceeds for use by the Philadelphia District Attorney's Office and the Philadelphia Police Department; and

(vi) Defendants' policy and practice of having prosecutors and employees of the Philadelphia District Attorney's Office control "hearings" in Courtroom 478.

JURISDICTION

5. Plaintiffs bring this class-action, civil-rights lawsuit pursuant to 42 U.S.C. § 1983 for violations of their rights under the Due Process Clause of the Fourteenth Amendment; 42 U.S.C. § 1988; and the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202. Plaintiffs seek injunctive and declaratory relief against Defendants' policies and practices in investigating, filing, prosecuting, and ultimately profiting from civil-forfeiture actions.

6. Accordingly, this Court has jurisdiction over this action under 28 U.S.C. §§ 1331 (federal-question jurisdiction) and 1343 (civil-rights jurisdiction).

VENUE

7. Venue is proper in the United States District Court for the Eastern District of Pennsylvania under 28 U.S.C. § 1391(b)(2). A substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Philadelphia, which is located in the Eastern District of Pennsylvania. *See* 28 U.S.C. § 118.

8. Venue is also proper under 28 U.S.C. § 1391(b)(1) because all Defendants are domiciled in the Commonwealth of Pennsylvania, and at least one Defendant is domiciled in Philadelphia.

THE PARTIES

I. THE PLAINTIFFS

9. Plaintiff Christos Sourovelis is an adult lawful permanent resident of the United States. Mr. Sourovelis owns and operates his own business in home construction, a trade his family practiced in Athens, Greece. He has lived in Philadelphia for over 30 years. In December

2006, Mr. Sourovelis purchased a single-family home in the Somerton section of Philadelphia and has been living there with his family since approximately September 2007. Mr. Sourovelis holds title to this property. He has never been charged with any crime.

10. Yet, under Defendants' civil-forfeiture policies and practices, Mr. Sourovelis and his family were evicted from their home for more than a week without any notice or opportunity to be heard. Moreover, in order to be let back into his home, Mr. Sourovelis was forced to agree to a number of unconstitutional conditions, including barring his son from the property. Mr. Sourovelis also stands to permanently lose his family's home through a civil-forfeiture proceeding initiated by District Attorney Williams.

11. Plaintiff Doila Welch is an adult citizen of the United States. Born in Belize, Ms. Welch became a U.S. citizen over 25 years ago. In 1995, her parents bought a three-story, six-bedroom, multi-family row home in South Philadelphia. When they passed away, Ms. Welch along with her two sisters inherited the property, which serves as a haven to her, all of her siblings, and their children. Ms. Welch is the administrator of the estate. Currently, Ms. Welch resides in this home with her children, brother, and sister. Ms. Welch suffers from lupus and severe rheumatoid arthritis, which make it difficult for her to be mobile. Ms. Welch's sister, who lives with her, suffers from a cognitive disability. Neither Ms. Welch nor anyone else with an ownership interest in the property has been charged with any crime.

12. Yet, under Defendants' civil-forfeiture policies and practices, Ms. Welch was threatened with being evicted from her home, without any notice or opportunity to be heard. Additionally, Ms. Welch currently faces eviction if she does not agree to prohibit her son from residing in the home and prohibit her husband from entering the home at all. Ms. Welch also stands to permanently lose her family home through a civil-forfeiture proceeding initiated by

District Attorney Williams.

13. Plaintiff Norys Hernandez was born in Puerto Rico and is an adult citizen of the United States. After working for years in the financial sector at Wells Fargo, Mrs. Hernandez recently finished school to become a medical-office assistant. Mrs. Hernandez and her family have lived in Philadelphia for over 25 years and together with her sister, Sonia Gonzalez, she owns a two-story row house in North Philadelphia. Mrs. Hernandez and her family purchased this property to provide her sister and her sister's children with a home. Although police arrested Mrs. Hernandez's nephew for a drug crime, neither Mrs. Hernandez nor her sister were charged with any crime.

14. Yet, under Defendants' civil-forfeiture policies and practices, Mrs. Hernandez and Ms. Gonzalez were barred from their property for more than four months without any notice or opportunity to be heard. Additionally, due to Defendants' policies and practices, Mrs. Hernandez and Ms. Gonzalez must abide by a number of conditions. Violating any of those conditions would again bar them from their property without notice or a hearing. Mrs. Hernandez and Ms. Gonzalez stand to permanently lose their property through a civil-forfeiture proceeding initiated by District Attorney Williams.

15. Plaintiff Nassir Geiger is an adult natural citizen of the United States. Mr. Geiger has lived in Philadelphia his entire life. He is a full-time sanitation worker for the City of Philadelphia. Under Defendants' civil-forfeiture policies and practices, Mr. Geiger's car, a 2000 Buick LeSabre, and \$580.00 in cash were seized on January 17, 2014. District Attorney Williams initiated civil-forfeiture proceedings against both Mr. Geiger's money and his car. Mr. Geiger has been deprived of both his money and his car since January 17, 2014. According to court records, Mr. Geiger's cash was ordered forfeited as a result of a default judgment. Mr.

Geiger stands to permanently lose his car through civil forfeiture.

16. Plaintiffs Sourovelis, Welch, Hernandez, and Geiger represent a putative class of all individuals who own property that currently is or will be the subject of a civil-forfeiture petition brought by the Philadelphia D.A.'s Office.

II. THE DEFENDANTS

17. Defendant City of Philadelphia is a municipality of the Commonwealth of Pennsylvania. The City of Philadelphia funds both the Philadelphia District Attorney's Office and the Philadelphia Police Department. The City of Philadelphia is Pennsylvania's only consolidated city-county and covers over 140 square miles with over 1.5 million residents.

18. Defendant Michael A. Nutter is the mayor of Philadelphia. As Mayor, he is responsible for supervising Police Commissioner Ramsey. Mayor Nutter is sued in his official capacity.

19. Defendant Philadelphia District Attorney's Office ("Philadelphia D.A.'s Office") is the largest prosecutor's office in Pennsylvania, employing 600 lawyers, detectives, and support staff. According to the website of the Philadelphia D.A.'s Office, the Public Nuisance Task Force—a specialized unit within the Philadelphia D.A.'s Special Operations Division—"handles all forfeiture-related litigation, the maintenance of seized assets and the investigation of potentially forfeitable assets." The Chief of the Public Nuisance Task Force is Assistant District Attorney Beth Grossman. The Philadelphia D.A.'s Office receives forfeited property or its proceeds. Under state law, the forfeited property and its proceeds must be used to enforce provisions of the Controlled Substance, Drug, Device, and Cosmetic Act.

20. Defendant R. Seth Williams is the District Attorney of Philadelphia, the chief law enforcement officer for the City and County of Philadelphia. Under the Commonwealth of

Pennsylvania's Constitution and statutes, D.A. Williams is an independent officer, directly elected by Philadelphia residents. D.A. Williams is responsible for overseeing all aspects of the Philadelphia D.A.'s Office, including the Public Nuisance Task Force. Pennsylvania law authorizes District Attorney Williams to take custody of forfeited property and either sell it or retain it for official use. Upon information and belief, D.A. Williams has signed an agreement to share forfeiture proceeds with the Philadelphia Police Department. D.A. Williams is sued in his official capacity.

21. Defendant Charles H. Ramsey is the Commissioner of the Philadelphia Police Department, which is the City's primary law-enforcement agency. As head of the nation's fourth largest police department, Commissioner Ramsey is responsible for overseeing the 6,600 sworn members and 800 civilian personnel serving the 21 police districts in Philadelphia. Officers of the Philadelphia Police Department enforce civil-forfeiture laws, in part, by drafting arrest reports for predicate offenses, drafting receipts for property that has been seized for civil forfeiture, and enforcing orders to seize and seal real property for forfeiture. The Philadelphia Police Department has received forfeited property or its proceeds for the purpose of enforcing provisions of the Controlled Substance, Drug, Device, and Cosmetic Act. Upon information and belief, Commissioner Ramsey has signed an agreement on behalf of the Philadelphia Police Department to share in forfeiture proceeds with the Philadelphia D.A.'s Office. Police Commissioner Ramsey is sued in his official capacity.

22. The Philadelphia D.A.'s Office, D.A. Williams and Police Commissioner Ramsey are collectively referred to as the Law-Enforcement Defendants.

23. At all relevant times, all Defendants were acting under color of state law.

24.

FACTUAL ALLEGATIONS

I. PENNSYLVANIA'S CONTROLLED SUBSTANCES FORFEITURE ACT

25. Civil forfeiture is a legal mechanism by which law enforcement can permanently deprive individuals of real and personal property that is proven by a preponderance of the evidence to be connected to specified crimes.

26. Civil forfeiture is distinct from criminal forfeiture (or what is sometimes referred to in Pennsylvania as common-law forfeiture). Criminal forfeiture is an *in personam* proceeding brought against the guilty party. By contrast, civil forfeiture is an *in rem* proceeding against the property based on the legal fiction that the property itself is guilty. A civil-forfeiture action in Pennsylvania has the Commonwealth as the plaintiff and the property as the defendant.

27. Additionally, the allocations of burdens of proof differ between civil and criminal forfeiture. While criminal forfeiture requires a conviction after proof beyond a reasonable doubt, under civil forfeiture, the government is only required to prove the property's connection to a crime by a preponderance of the evidence.

28. Although Pennsylvania courts have recognized that civil-forfeiture proceedings are quasi-criminal in nature because they involve constitutional rights normally only implicated in criminal proceedings, property owners defending against civil-forfeiture proceedings are not guaranteed counsel.

29. In Pennsylvania, one of the most common statutory bases for forfeiture is the Controlled Substances Forfeiture Act, 42 Pa. Cons. Stat. §§ 6801 and 6802. Indeed the majority of civil-forfeiture petitions brought by the Philadelphia D.A.'s Office are brought under the Controlled Substances Forfeiture Act.

30. Enacted in 1988, the Controlled Substances Forfeiture Act authorizes forfeiture of

real and personal property connected to a violation of the Controlled Substance, Drug, Device and Cosmetic Act, 35 Pa. Con. Stat. §§ 780-101 to 780-144, (a “controlled-substance violation”).

31. The Controlled Substances Forfeiture Act enumerates the kind of property subject to forfeiture. 42 Pa. Cons. Stat. § 6801(a). The Act specifically subjects the following property to forfeiture:

- all vehicles “which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment” of drugs, drug paraphernalia, or materials used to manufacture drugs;
- “money, negotiable instruments, securities or other things of value” that are:
 1. “furnished or intended to be furnished by any person in exchange for” drugs
 2. traceable as proceeds of such an exchange; or
 3. used or intended to be used to facilitate any controlled-substances violation; and
- “[r]eal property used or intended to be used to facilitate” a controlled-substances violation.

Id. § 6801(a)(4), (6). Additionally, money “found in close proximity” to illegal drugs is “rebuttably presumed to be proceeds derived from the selling of” illegal drugs. *Id.* § 6801(a)(6)(ii).

32. The Act authorizes law enforcement to seize the above-listed types of property without process if there is probable cause to believe that the property has been used or is intended to be used for a controlled-substances violation. *Id.* § 6801(b).

33. The Controlled Substances Forfeiture Act outlines the procedures governing civil forfeiture. *See* 42 Pa. Cons. Stat. § 6802. First, it enumerates the required contents of a petition for civil forfeiture and where it should be filed. *Id.* § 6802(a). Second, it establishes the requirements for providing sufficient notice of the civil-forfeiture petition to the property owner. *Id.* § 6802(b)–(e). Third, the Act implements a burden-shifting framework that puts the onus of

proving innocence on the property owner; if the Commonwealth produces evidence that the property is subject to forfeiture, its owner must prove his or her lack of knowledge or consent of the conduct giving rise to the forfeiture. *Id.* § 6802(j). By judicial interpretation, the Act requires an evidentiary hearing in open court before property can be taken from an individual and forfeited to the Commonwealth. *Commonwealth v. 605 University Drive, State College, Pa.*, 61 A.3d 1048, 1054 (Pa. Commonw. Ct. 2012).

34. The Controlled Substances Forfeiture Act also provides an *ex parte* procedure to obtain “a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of [the] property . . . for forfeiture.” 42 Pa. Con. Stat. § 6802(f). Under § 6802(g), an *ex parte* temporary restraining order may be entered “if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture [] and that provision of notice will jeopardize the availability of the property for forfeiture.”

35. Finally, the Controlled Substances Forfeiture Act governs the use and distribution of forfeited property and its proceeds. Specifically, if the law-enforcement authority seizing the property has county-wide jurisdiction (rather than statewide jurisdiction), the Act requires forfeited property to be transferred to the custody of the district attorney for that county. 42 Pa. Cons. Stat. § 6801(e).

36. The Act also authorizes district attorneys to either sell forfeited property or retain it for official use. *Id.* If sold, proceeds from the sale of forfeited property must “be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs.” 42 Pa. Cons. Stat. § 6801(e).

37. The balance of the forfeiture proceeds goes to the district attorney’s office, or in

cases in which both municipal and state law-enforcement entities were substantially involved, the proceeds are distributed equally between the district attorney and the Attorney General. 42 Pa. Cons. Stat. § 6801(f)-(g).

38. The Act further provides that the “entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.” 42 Pa. Cons. Stat. § 6801(f). Consequently, these forfeiture funds are a “bonus” to law-enforcement agencies and wholly outside oversight by the funding county.

39. The Act requires district attorneys to use forfeited property or derived proceeds to enforce the provisions of the Controlled Substance, Drug, Device and Cosmetic Act. *Id.* § 6801(h). The Act also authorizes district attorneys to designate forfeiture proceeds for community-based drug and crime-fighting programs. *Id.*

40. Based on information from the Attorney General’s Office, D.A.’s offices in Pennsylvania, including Philadelphia, use forfeiture funds to pay salaries and purchase vehicles, equipment, and other items and services of institutional value.

II. PHILADELPHIA’S FORFEITURE PROGRAM IS UNPRECEDENTED IN SCALE.

41. Cashing in on the authority to retain forfeited property and derived proceeds, the Philadelphia District Attorney’s Office has brought in more than \$90 million in forfeiture revenue since 1987. *See* Isaiah Thompson, “The \$10 Million Question,” *Philadelphia City Paper*, Nov. 29, 2012, *available at* http://issuu.com/phillycp/docs/cp_2012-11-29.

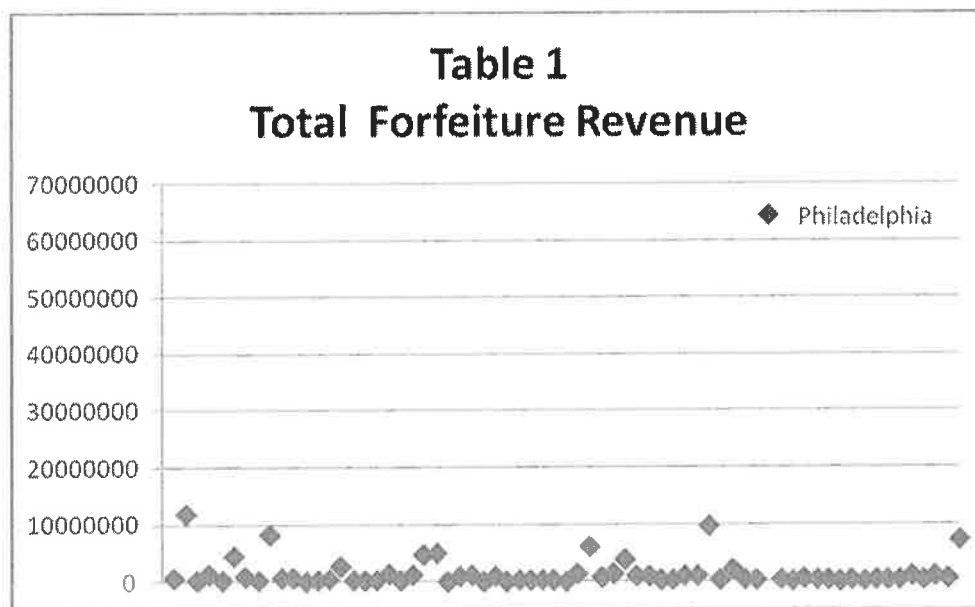
42. Philadelphia has one of the largest municipal forfeiture programs in the country, yielding an average of \$5.8 million in forfeiture revenue each year.

43. By contrast in 2010, Kings County (Brooklyn), with a population 1.5 times that of Philadelphia, and Los Angeles County, with a population more than 6.5 times that of

Philadelphia, each brought in \$1.2 million in annual forfeiture revenue.

44. When measured against other counties in Pennsylvania—in other words, when measured against other jurisdictions operating under the same state forfeiture law—Philadelphia is in a class of its own. Between 2004 and 2009, Philadelphia collected approximately \$36 million through civil forfeiture—an amount twice that of the three next-largest counties in Pennsylvania combined. And since 2009, Philadelphia’s forfeiture pot has kept growing.

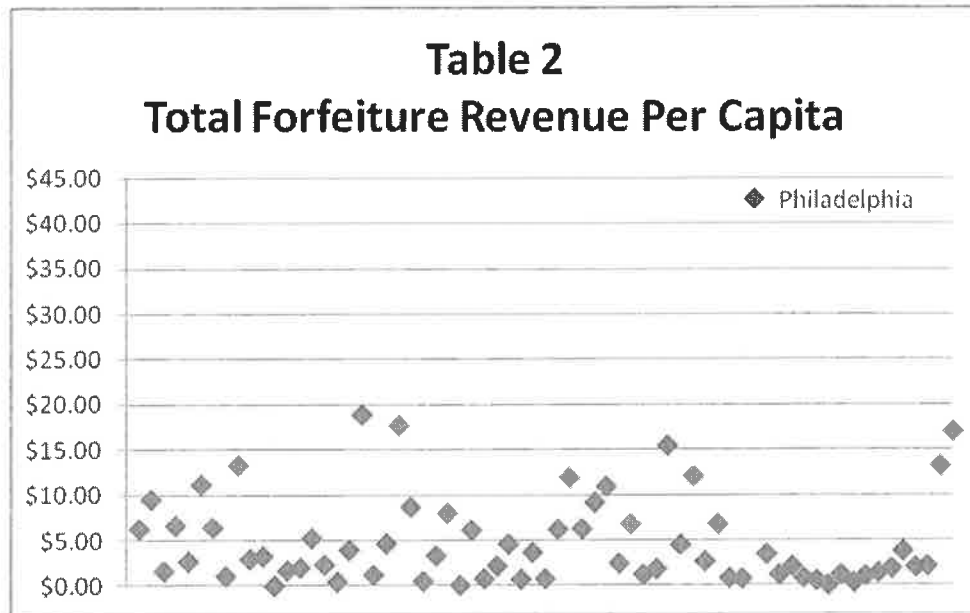
45. Forfeiture data obtained from the Pennsylvania Office of the Attorney General reveal the extent to which Philadelphia’s forfeiture activity far exceeds that of other Pennsylvania counties. From Fiscal Years 2002 through 2012, the Philadelphia D.A.’s Office collected a total of \$64,219,356.00 in forfeiture revenue, while the remaining 66 county D.A.’s Offices collected a combined total of \$84,419,638.50. That means that for this eleven-year period, Philadelphia’s forfeiture revenue amounted to 43 percent of the statewide total. The amount each D.A.’s Office collected in forfeiture revenue is illustrated below in Table 1.



46. In statistical terms, the amount of Philadelphia’s forfeiture revenue is almost 8 standard deviations above the mean. In laymen’s terms, Philadelphia is as aberrant as a 7-foot-

tall woman or an 8-foot-tall man.

47. Even accounting for differences in population size and assuming that more populous counties will take in more in forfeiture revenue, the Philadelphia D.A.'s Office is still an outlier. As illustrated below in Table 2, the Philadelphia D.A.'s Office collected \$42.59 in *per capita* forfeiture revenue, more than twice that of the next most active county.



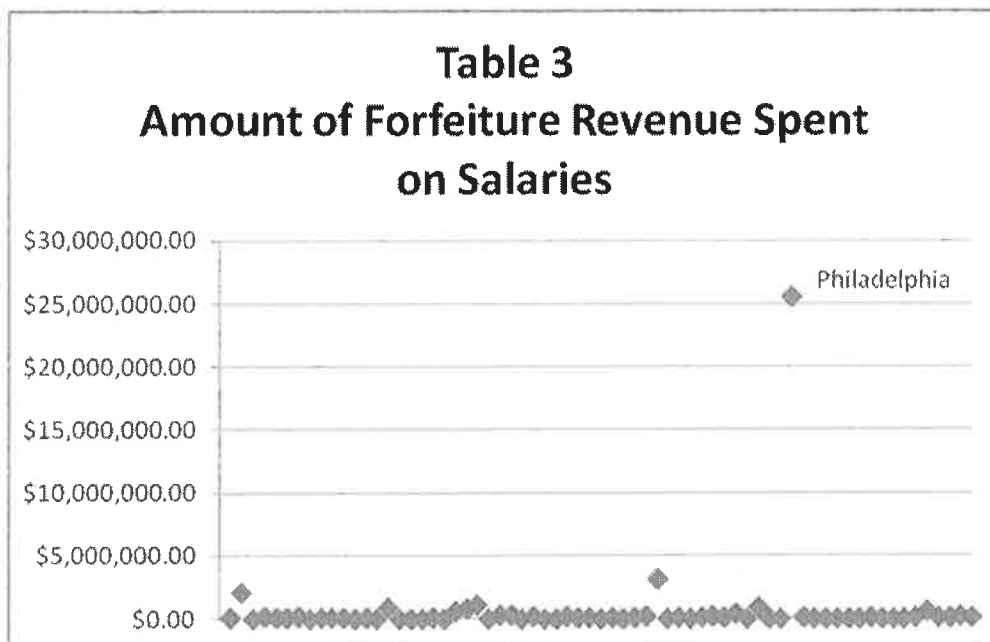
48. From Fiscal Years 2002 through 2012, the amount of civil-forfeiture revenue collected by the Philadelphia D.A.'s Office (prior to any disbursements by the Office) averaged close to one-fifth of the general budget of the D.A.'s Office as appropriated by the City of Philadelphia.

49. By comparison, the civil-forfeiture revenue taken in by the District Attorney's Office for Allegheny County, the second largest county in Pennsylvania, averaged approximately 8.7 percent of that office's appropriated budget.

50. On the expense side of the equation, the Philadelphia D.A.'s Office spends much of its forfeiture revenue to pay salaries, including the salaries of the prosecutors that administer Philadelphia's civil-forfeiture program.

51. Using forfeiture proceeds to pay the salaries of the very individuals responsible for pursuing forfeiture presents a direct conflict of interest.

52. The Philadelphia D.A.'s Office spends twice as much of its forfeiture revenue on salaries as all other county D.A.'s offices combined. From Fiscal Years 2002 through 2012, the Philadelphia D.A.'s Office spent \$25,516,155 of its forfeiture revenue on salaries, compared to \$12,315,340.43 spent on salaries by all other D.A.'s Offices in the Commonwealth. The amount of forfeiture revenue D.A. offices in the Commonwealth spent on salaries during Fiscal Years 2002 through 2012 is illustrated below in Table 3.



53. Again, taking into account population size, the total amount *per capita* that Philadelphia spent on salaries during this time period was \$16.92, while all other counties combined only spent \$1.11 *per capita*.

54. In contrast, from Fiscal Years 2002 through 2012, the Philadelphia D.A.'s Office spent none of its forfeiture revenue on community-based drug and crime-fighting programs under 42 Pa. Cons. Stat. § 6801(h), despite its professed goal of helping communities combat

drugs.

55. By written agreement, the Philadelphia D.A.'s Office has shared forfeiture proceeds with the Philadelphia Police Department. Under the terms of this agreement, the first \$927,500 forfeited each fiscal year was apportioned as follows: \$727,500 to the Philadelphia D.A.'s Office to cover "forfeiture related administrative expenses," including salaries; and \$200,000 to the Philadelphia Police Department. After distributing the initial \$927,500, the agreement calls on the balance of the forfeiture revenue to be divided again, with 40 percent going to the Philadelphia D.A.'s Office and 60 percent going to the Philadelphia Police Department. Upon information and belief, District Attorney Williams and Police Commissioner Ramsey have executed a substantially similar agreement to share forfeiture proceeds that is in effect today.

A. Defendants Seize Large Quantities of Personal Property for Forfeiture.

56. Rather than being the product of a few large forfeitures from drug "kingpins," Philadelphia's forfeiture fund is amassed through seizing an unprecedented amount of personal and real property from thousands of ordinary—and often innocent—property owners.

57. When seizing personal property incident to an arrest or upon execution of a search warrant, it is the policy and practice of the Philadelphia Police Department to issue property receipts documenting the property that is seized.

58. It is the policy and practice of officers of the Philadelphia Police Department to routinely submit property receipts to the Philadelphia D.A.'s Office for the purpose of commencing a civil-forfeiture petition against the seized property.

59. The bulk of Philadelphia's forfeiture revenue comes from confiscating cash.

60. From Fiscal Years 2002 through 2012, Philadelphia seized and forfeited

\$44,291,178.00 in cash.

61. Notably, this amount was accumulated from thousands of cases involving small sums of money, rather than a few large busts.

62. In 2010, Philadelphia filed 8,284 currency forfeiture petitions, with an average of \$550 involved in each case.

63. In a random sample of more than 100 currency-forfeiture cases from 2011 to 2012 that investigative reporter Isaiah Thompson reviewed, the median amount of cash at stake in each forfeiture case was only \$178. *See* Isaiah Thompson, "The Cash Machine," *Philadelphia City Paper*, Nov. 29, 2012, *available at* <http://citypaper.net/article.php?The-Cash-Machine-19189>. In many of these cases, the amount involved was less than \$100.

64. Records from the Court of Common Pleas show sums as little as \$9.00 being ordered forfeited.

65. Defendants' policy and practice of taking such small amounts of money from people who are never convicted of (or even charged with) a crime raises serious concerns about whether the seized money is in fact substantially connected to criminal activity.

66. Defendants also seize a large number of vehicles through their forfeiture power. From Fiscal Years 2002 through 2012, Philadelphia seized and forfeited 3,290 vehicles.

67. It is Defendants' policy and practice to charge vehicle owners storage fees for their seized vehicles. These storage fees continue to accumulate until the owner of the vehicle files a motion for return of property. Defendants routinely fail to advise vehicle owners that storage fees will continue to accumulate until the owner files a motion for return of property.

68. Philadelphia also relies on civil forfeiture to seize other kinds of personal property from individuals, including but not limited to cell phones, clothing, jewelry, prescription

medication, licensed firearms, and in one instance, a woman's jumper cables.

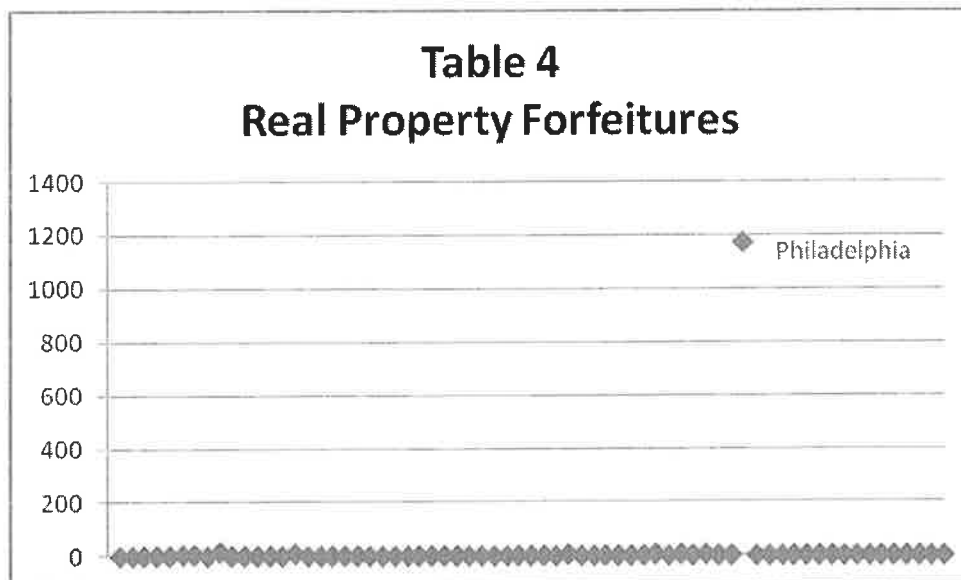
B. Defendants "Seize and Seal" As Well As Restrain Numerous Real Properties for Forfeiture.

69. Philadelphia aggressively uses civil forfeiture to seize and restrain real property on a scale unlike that of any other county in Pennsylvania.

70. The Philadelphia D.A.'s Office files civil forfeiture petitions on 300 to 500 real properties (mostly private residences) annually. Approximately an average of 100 of these properties are forfeited and sold at auction annually with the D.A.'s Office retaining the proceeds. A significant majority of the remaining real property cases "settle" under the threat of civil forfeiture.

71. Meanwhile, from 2008 through 2011, the three next-largest counties in Pennsylvania combined took only a dozen real properties through civil forfeiture.

72. As illustrated in Table 4 below, from Fiscal Years 2002 to 2012, Philadelphia forfeited 1,172 real properties compared to just 56 real properties forfeited by all other counties combined.



III. THIS HIGH VOLUME OF FORFEITURE IS ENABLED BY PHILADELPHIA'S ROBO-FORFEITURE MACHINE.

73. The enormous volume of forfeiture cases—and ultimately the very substantial amount of revenue generated—is all accomplished through a mechanized, assembly-line system operated by a handful of prosecutors within a specialized unit of the Philadelphia D.A.'s Office called the Public Nuisance Task Force.

74. The Public Nuisance Task Force files thousands of forfeiture petitions each year.

75. In 2011 alone, the Public Nuisance Task Force filed 6,560 civil-forfeiture petitions.

76. By contrast, the Allegheny County D.A.'s Office—which serves the second-largest county in Pennsylvania—filed roughly just 200 civil-forfeiture petitions from 2008 to 2011.

77. The Public Nuisance Task Force handles all forfeiture-related litigation, the maintenance of seized property, and the investigation of potentially forfeitable property.

78. The Public Nuisance Task Force consists of approximately nine prosecutors, and 15 prosecution assistants, paralegals, and other support staff.

79. Each assistant district attorney in the Public Nuisance Task Force is assigned to a geographic area of Philadelphia.

80. Each assistant district attorney in the Public Nuisance Task Force is responsible for either civil-forfeiture cases involving personal property or civil-forfeiture cases involving real property.

A. *Philadelphia's Forfeiture Machine Uses an Automated Assembly-Line System to Maximize Petitions for Forfeiture, and Ultimately Revenue.*

81. The Philadelphia D.A.'s Office generates the high volume of civil-forfeiture

petitions by relying on prosecution assistants, paralegals, and support staff to simply copy information from Philadelphia Police Department Arrest Reports and Property Receipts onto form documents that become the Notice of Forfeiture and Petition for Forfeiture.

82. Before filing petitions for forfeiture of real property, it is the policy and practice of the Philadelphia D.A.'s Office to obtain, under 42 Pa. Cons. Stat. § 6802(f) and (g), *ex parte* temporary restraining orders for real property mandating that "no interest in this property (including but not limited to ownership, tenancy, easement, and purchase or rental option) may be sold, assigned, optioned, given, bequeathed or transferred in any manner." The temporary restraining order directs the Prothonotary to file the order without fee and index it as a *lis pendens*.

83. It is the policy and practice of the Philadelphia D.A.'s Office to apply for temporary restraining orders without making any evidentiary showing that providing the property owner with notice will jeopardize the availability of the property for forfeiture.

84. In addition to applying for temporary restraining orders to restrain the transfer of the target property, it is the policy and practice of the Philadelphia D.A.'s Office to apply for an *ex parte* order to seize and seal the premises under 42 Pa. Cons. Stat. § 6802(f) and (g). Applications to seize and seal contain the bald, conclusory allegation that the Commonwealth is moving for forfeiture of the real property under 42 Pa. Cons. Stat. §§ 6801, 6802 "because it was used and/or continues to be used (or intended to be used) to commit, or to facilitate the commission of, violations of the Controlled Substances Act." The application also contains minimal factual allegations copied verbatim from the Philadelphia Police Department Arrest Report, which is incorporated and attached to the application.

85. It is the policy and practice of the Philadelphia D.A.'s Office to apply for an order

to seize and seal real property without providing any particularized evidence that the order is needed to preserve the specific property for civil forfeiture.

86. It is the policy and practice of the Philadelphia D.A.'s Office to apply for an order to seize and seal real property without making any particularized showing of exigent circumstances or that a temporary restraining order restricting transfer of the property will be insufficient to protect Defendants' interests during the pendency of the civil-forfeiture proceedings.

87. It is the policy and practice of the Philadelphia D.A.'s Office to apply for an order to seize and seal real property without giving property owners any notice or opportunity to be heard.

88. Under Defendants' policies and practices, Plaintiffs Sourovelis, Welch, and Hernandez, as well as members of the putative class first learn that their home is threatened with forfeiture when officers of the Philadelphia Police Department appear at their home, and, armed with the order to "seize and seal" the premises, forcibly evict them and all residents without any prior notice or opportunity to be heard.

89. It is the Philadelphia D.A.'s Office's policy and practice to send property owners threatened with civil forfeiture three form documents: (i) a notice of forfeiture; (ii) a verified petition for forfeiture; and (iii) a notice of hearing.

90. The notice of forfeiture is addressed "to the claimant of the within described property," that is, the person claiming any interest in the property threatened with civil forfeiture.

91. The form notice states that "you are required to file an answer to this petition, setting forth your title in, and right to possession of, said property within thirty (30) days from the service hereof, and you are also notified that if you fail to file an answer, a decree of

forfeiture and condemnation will be entered against the property.”

92. The petition for forfeiture contains allegations taken verbatim from the Police Department Arrest Report.

93. The form petition for forfeiture also contains a bare assertion that the property “was used and/or continues to be used (or intended to be used) to commit, or to facilitate the commission of, violations of the Controlled Substance[, Drug, Device and Cosmetic] Act.”

94. The petition also includes a form affirmation that Assistant District Attorney Beth Grossman, the head of the Public Nuisance Task Force, or the assigned assistant district attorney “affirm that the facts set forth in the foregoing petition are true and correct to the best of her/his knowledge, information, and belief.”

95. The notice of hearing states that a hearing on the forfeiture petition (and if applicable, on the entry of a restraining order and application to seize and seal the property) is set for a specified date and time in Courtroom 478, City Hall, Philadelphia, Pennsylvania.

96. Court records demonstrate that it is Defendants’ policy and practice to cause to be listed anywhere from 40 to 80 civil-forfeiture actions to be heard in Courtroom 478 in a single day.

B. Property Owners Must Make Their Way Down the Legal Rabbit Hole of “Courtroom” 478.

97. Property owners who seek to fight the civil forfeiture and reclaim their property must show up in Courtroom 478 in City Hall by 9:00 a.m.

98. In Courtroom 478, property owners are instructed to sign in and indicate with a checkmark on a sign-in sheet the kind of property they are there to save. The sign-in sheet lists the following categories of property: “house,” “car,” “money,” or “gun.”

99. Assistant district attorneys with the Public Nuisance Task Force fully control the

proceedings inside “Courtroom” 478. There is no judge, no jury, and not even a court reporter to transcribe these “hearings.”

100. Employees of the Philadelphia District Attorney’s Office occupy both tables reserved for counsel, with prosecutors handling forfeiture cases for real property at the table on the right, and prosecutors, and frequently paralegals, handling forfeiture cases for personal property at the table on the left.

101. The prosecutors call the civil-forfeiture cases by comparing the sign-in sheet with the docket calendar for Courtroom 478.

102. Upon information and belief, for listed cases in which property owners fail to appear in Courtroom 478, the prosecutors mark the case for default judgment without any determination, judicial or otherwise, as to the reason the property owner did not appear.

103. For listed cases in which the property owner is present, the assigned prosecutor or paralegal discusses the case with the property owner. These conversations frequently take place at the counsel’s table, out in the hall, in the empty jury box, or at a small table in the back of the room.

104. On first listings, these conversations are typically short, lasting no more than several minutes. Invariably, the prosecutors and paralegals demand that the property owners return with documentation supporting proof of legal ownership to the property.

105. Prosecutors and paralegals frequently advise property owners that their civil-forfeiture case is not complicated and they do not need an attorney.

106. Prosecutors and paralegals routinely give property owners a set of more than 50 pattern interrogatories, with multiple discrete subparts, which they characterize as “questionnaires.” These “questionnaires” must be answered under penalty of perjury.

107. In cases in which there is an order to seize and seal, prosecutors compel property owners to execute an agreement to unseal the residence on certain conditions, including but not limited to, barring specified individuals including relatives from entering the residence indefinitely and waiving in any future civil-forfeiture action their statutory innocent-owner defense and their constitutional defense that the forfeiture constitutes an excessive fine.

108. Prosecutors and paralegals routinely continue and relist civil-forfeiture cases and they unilaterally determine whether any documentation provided by the property owner is sufficient.

109. When a case is relisted, the assigned prosecutor or paralegal fills in a form from the Forfeiture Program of the Civil Trial Division of the First Judicial District of Pennsylvania Court of Common Pleas of Philadelphia County, which instructs the property owner to return to Courtroom 478 in City Hall on a specified date (typically a month later) at 9:00 a.m. The form advises the property owner:

PLEASE BE ON TIME.
A FAILURE TO APPEAR MAY RESULT IN YOUR PETITION
BEING DISMISSED OR YOUR PROPERTY BEING FORFEITED.

110. Property owners contesting a forfeiture action may be required to appear as many as a dozen times in Courtroom 478 over the course of months or even years before the case is concluded.

111. In a review of 8,284 civil-forfeiture cases, property owners have been forced to return to Courtroom 478 an average of five times, risking a default judgment if they failed to appear just once. And more than 100 property owners were required to return to Courtroom 478 ten times or more. See Isaiah Thompson, "The Cash Machine," *Philadelphia City Paper*, Nov. 28, 2012, available at <http://citypaper.net/article.php?The-Cash-Machine-19189>.

IV. THE NAMED PLAINTIFFS GET ENSNARED IN PHILADELPHIA'S "ROBO-FORFEITURE" MACHINE.

112. Defendants' policies and practices threaten each of the Named Plaintiffs with the loss of their property and have already violated and continue to violate their constitutional rights to due process of law.

A. Named Plaintiff Christos "Chris" Sourovelis

113. Around noon on March 27, 2014, Christos "Chris" Sourovelis received a phone call from his neighbor, an officer in the Philadelphia Police Department, informing him out of courtesy that police were at his home.

114. Mr. Sourovelis immediately called his wife, Markela, who was home at the time. When she answered, all Mr. Sourovelis could hear was her sounding very upset and some commotion before the phone fell silent.

115. Mr. Sourovelis promptly left work to drive the hour-long ride home, calling his wife multiple times en route with no answer. Mr. Sourovelis learned later from his wife that the police had taken the phone from his wife and refused to let her answer.

116. When Mr. Sourovelis arrived, he learned that four or five armed law-enforcement officers came to his home to execute a search warrant, claiming that there were drugs in the house.

117. When the police arrived, Markela saw them from a window on the second floor of the house. However, at the time, she did not know they were police officers as none of the officers were wearing uniforms. They were outside the front door, which was unlocked. By the time Markela made her way downstairs, the officers had opened the door and their family dog Max was barking at the intruders.

118. One of the officers held a gun to Max's head, threatening to shoot if Markela did

not restrain the dog so they could gain entry. Markela agreed but when she momentarily closed the front door in order to secure Max in an adjoining bedroom, the officers forced their way into the home and upstairs.

119. The officers searched through the house and found Mr. Sourovelis's then 22-year-old son, Y.S., with a small amount of drugs and drug paraphernalia. Y.S. had been observed by a police officer selling \$40 worth of drugs to a confidential informant outside the home on a previous day.

120. Y.S. was an honors student at a community college and at the time of his arrest was in the process of trying to transfer to Temple University. While working at a restaurant-bar as a cook, he had fallen in with the wrong crowd. He has never been in trouble with the law before.

121. After arresting Y.S. and searching other rooms in the home, the officers showed Markela the search warrant. One of the officers said, "This house is gonna be ours. We're gonna break your walls and throw you out. You will be living in the street."

122. Y.S. was charged with seven drug offenses all relating to the same incident. On April 22, 2014, most of these charges were dropped and Y.S. pleaded no contest to possession with intent to distribute and conspiracy. Because Y.S. had no prior record, he was directed, with the agreement of the Philadelphia D.A.'s Office, to the Philadelphia Treatment Court for a diversion program requiring him to attend a drug rehabilitation program.

123. With Y.S. poised to get the help he needed and his criminal case resolved, Mr. and Mrs. Sourovelis thought the worst was behind them.

124. But on the morning of May 8, 2014, while Mr. Sourovelis was driving Y.S. to the drug rehabilitation center to begin treatment, he received a frantic call from his wife. Officers

from the Philadelphia Police Department had come to the home, once again without any notice, to order the family to leave their home.

125. The day before, Assistant District Attorney Daren Waite had applied for and received an *ex parte* order to seize Mr. Sourovelis's home and seal it to prevent entry.

126. This was how Mr. Sourovelis and his family learned that they could permanently lose their entire home through civil forfeiture due to the small amount of drugs Y.S. had possessed and sold.

127. When Markela protested about being kicked out of her home, one of the police officers told her, "We do this four, five times a week. You will see a judge in a week. You can plead your case to him."

128. The officers gave Markela legal documents including a "Notice of Hearing" which stated that a hearing was set for May 14, 2014 at 9:15 a.m. in Courtroom 478 in City Hall.

129. Made homeless, Mr. Sourovelis, along with his wife and two daughters, were forced to stay at his eldest son's home. Y.S. was still at the residential drug rehabilitation center as required by the Philadelphia Treatment Court and agreed to by the Philadelphia D.A.'s Office.

130. On May 13, 2014, Mr. Sourovelis mistakenly went to Courtroom 478 a day earlier than the scheduled hearing. He was informed that he had to return the next day, but that to expedite matters he could send Assistant District Attorney Daren Waite a letter explaining why he and his family needed to be let back into their home. Markela drafted a letter the same day explaining why the family immediately needed to be let back into its home and faxed it to ADA Waite.

131. On May 14, 2014, Mr. Sourovelis and his wife arrived at Courtroom 478 well before 9:15 a.m. There was no judge in the courtroom.

132. Eventually ADA Waite arrived and called Mr. Sourovelis's case. ADA Waite confirmed that they were not represented by counsel and then advised Mr. Sourovelis that he would not need a lawyer for these proceedings as the matter would not "go to court."

133. ADA Waite had in his hand the fax of Markela's letter explaining why the Sourovelises needed to be let back into their home. ADA Waite informed Mr. and Mrs. Sourovelis that in order to have their home "unsealed" and be let back into our house, he needed to put the contents of the letter onto a legal document for the judge to sign. He advised that after Mr. and Mrs. Sourovelis signed the legal document, he would take the letter over to a judge to sign and that after that, the Sourovelises would be let back into their home.

134. Distraught and overwhelmed, Mr. and Mrs. Sourovelis signed the document without reading it but believing, based on ADA Waite's representations, that they were signing a document that substantively explained why they needed to be let back into our home.

135. ADA Waite told Mr. and Mrs. Sourovelis to meet him outside the judge's chambers in a courthouse across the street. They waited outside the room for about 20 minutes before ADA Waite appeared and told them that they would now be allowed back into their home but that they needed to come back to Courtroom 478 on June 13, 2014. ADA Waite never explained the contents of the document signed by Mr. and Mrs. Sourovelis and never explained at that meeting that the document they signed barred their son from entering their home.

136. Mr. and Mrs. Sourovelis learned for the first time that their son was not permitted in their home for any reason while reading through the document on the car ride home after the May 14, 2014 "hearing." At that time, Mr. and Mrs. Sourovelis also learned that the document contained a number of other conditions but without counsel, they were unclear on what the other conditions meant. The other conditions included relinquishing, in any future forfeiture action,

both Mr. Sourovelis's innocent-owner defense under Pennsylvania law as well as his constitutional right to challenge the forfeiture of his home as an excessive fine.

137. Because their son was going to be in the residential drug treatment program for the next month, Mr. and Mrs. Sourovelis decided to wait until the next "hearing" in Courtroom 478 to get clarification in person.

138. In all, the seize-and-seal order caused the Sourovelis family to be forcibly evicted from their home for at least seven days. Because ADA Waite had neglected to include language in the agreement directing utility companies to reinstate service, it took an additional three to four days after Mr. and Mrs. Sourovelis signed the initial agreement to get the electric and gas running again, as well as get the front door lock replaced.

139. The forfeiture case against their home was relisted for June 13, 2014. At that "hearing," Mr. and Mrs. Sourovelis asked about when their son could return home. ADA Waite responded that they would both need to follow the process and procedures and when the process was completed, their son could return home.

140. ADA Waite explained that the first step in the process was to respond to the forfeiture petition. He instructed Mr. and Mrs. Sourovelis to respond in handwriting to each allegation contained in the forfeiture petition, marking each allegation as true or false. ADA Waite then filed this hand-marked document as the answer to the forfeiture petition on behalf of the Sourovelises. The case was then relisted once again for July 10, 2014.

141. On July 7, 2014, around 4:30 PM, Mrs. Sourovelis received an email from ADA Waite instructing Mr. Sourovelis to answer the attached interrogatories within thirty days. The accompanying letter stated that the forfeiture action was next listed for July 10, 2014 and directed Mr. Sourovelis to complete the interrogatories and attach and mail all requested

documents to ADA Waite. These interrogatories contained 50 questions with numerous subparts. The interrogatories contained an affirmation for Mr. Sourovelis to sign that all foregoing answers are true and correct to the best of his knowledge, information and belief, and that he “understands that the facts herein are verified subject to penalties for unsworn falsification to authorities.”

142. At the July 10, 2014 hearing, ADA Waite personally handed Mr. Sourovelis a copy of the interrogatories and relisted the case until August 12, 2014.

143. On or about August 11, 2014, ADA Waite received communication from the public defender representing Y.S. in his criminal matter. The public defender advised ADA Waite, that Y.S. had successfully completed an inpatient rehabilitation program and was attending an outpatient program. The public defender requested that Y.S. be permitted to return to the property to reside with his family. ADA Waite agreed to draft an agreement to permit Y.S. to return home.

144. However, at the August 12, 2014 hearing, ADA Waite offered Mr. Sourovelis a settlement agreement in which the Philadelphia D.A.’s Office would withdraw the forfeiture petition if Mr. Sourovelis would agree to:

- ***Waive his right to a trial*** on the merits of the forfeiture petition against his home, including his right to present evidence and cross-examine witnesses presented by the Commonwealth;
- Admit that his ***home was being used to commit and/or facilitate a controlled-substance violation***;
- ***Waive his innocent-owner defense*** under 42 Pa. Cons. Stat. § 6802(j);
- Agree that any future controlled-substances violation with a “nexus” to his home would result in the Commonwealth’s ability to forfeit the property;
- Subject “any prospective lessee, tenant, buyer or transferee of the property” to prior review by the Commonwealth;

- Give the Commonwealth ***power to reject any prospective lessee, tenant, buyer, or transferee;***
- ***Screen prospective lessees, tenants, buyers, residents, or transferees of the property, including credit history and reference checks;***
- Agree that the District Attorney's Office can re-file the forfeiture petition if it determines the agreement is violated; and
- ***Waive any affirmative defense based on res judicata, laches, innocent owner, or the Excessive Fine Clause,*** if the Commonwealth refiles the forfeiture petition in the future.

145. Due to these conditions, Mr. Sourovelis refused to sign the agreement.

146. Y.S., completed his residential drug rehabilitation program on or about June 10, 2014 and since that time has been living with his older brother, sleeping on the couch for the past five months. Y.S. is anxious to start his life over and feels he cannot really move past his mistakes while he is still living in limbo at his brother's place. He wants the security of being back at home with his parents. Additionally, Y.S. finds it difficult to apply for a job or apply to go back to school because he does not have reliable means of transportation at his brother's home.

147. Both Mr. and Mrs. Sourovelis want their youngest son to be back in their home so they can keep an eye on him and make sure that he complies with the requirements of the diversion program and keeps out of additional trouble.

148. Mr. Sourovelis and his family have suffered irreparable injuries from being evicted from their home without notice or an opportunity to be heard before a neutral arbiter. While evicted, they were forced to stay with their eldest son. Mr. Sourovelis and his wife had to sleep on one sofa while his two daughters, the older of whom was pregnant, slept on another sofa. The entire family had to go without many of their personal effects, including sufficient

changes of clothes. Their daily family routine was interrupted. To take just one example, their youngest daughter was unable to attend school for six days because her brother's home was not on the bus route and Mr. and Mrs. Sourovelis's work schedules did not permit them to drive her to and from school.

149. Mr. Sourovelis continues to suffer hardship due to his son being barred from living in, or even entering, his home.

150. Mr. Sourovelis has suffered and continues to suffer hardship by being required to take off from work and drive 30-40 minutes fighting traffic to attend "hearings" in Courtroom 478.

151. Mr. Sourovelis is also threatened with irreparable injury of losing his home of almost eight years, where his wife, two daughters, and until recently his youngest son, live with Max the dog. Mr. Sourovelis has spent significant time, labor, and money in furnishing and renovating his home, including a garden in the backyard that contains custom masonry work built by Mr. Sourovelis himself.

B. Named Plaintiff Doila Welch

152. On Saturday, February 1, 2014, while still in bed in the front bedroom on the second floor, Plaintiff Doila Welch was startled by police officers running upstairs to her bedroom with guns drawn.

153. When the police arrived, Ms. Welch's daughter (who recently turned 12) was showering in the second-floor bathroom while her son (who was 23 at the time) was in his bedroom on the third floor.

154. Police ordered all occupants downstairs, barely allowing Ms. Welch's daughter to get dressed. Due to her physical disability, Ms. Welch required assistance in getting dressed and

descending the stairs. A female officer was called to assist.

155. The police officers conducted a full search of the house, kicking in Ms. Welch's son's bedroom door, breaking his gaming system, and taking \$40 in cash that was on his bedside table, money Ms. Welch had given him as an allowance for assisting her with errands due to her disability.

156. The officers did not find any drugs or drug paraphernalia in Ms. Welch's son's room.

157. The officers also seized \$30 from Ms. Welch's bedroom, money she had set aside to give her daughter to buy a school jacket with the school logo.

158. Unbeknownst to Ms. Welch, however, her husband had been selling marijuana out of her home. Ms. Welch and her husband had been alienated for some time due to marital problems. And because Ms. Welch is frequently bed-ridden on the second floor, while her husband stayed on the main floor, they do not interact often.

159. At the time of the police entry, Ms. Welch's husband, Ronald "Renal" Requena, Sr., was in the kitchen on the main floor. Police arrested Mr. Requena, Sr. for selling drugs.

160. Police also arrested Ms. Welch's son on conspiracy charges.

161. The police officers handed Ms. Welch a search warrant after taking her husband and son away.

162. Ms. Welch thought the nightmare was over. Putting aside her anger at her husband for placing her family in this situation, she focused on getting her son, who was innocent of any wrongdoing, out of jail.

163. On February 21, 2014, police officers again showed up to Ms. Welch's home, without any notice. This time, the police informed Ms. Welch and the remaining occupants that

everybody living in the house had to gather their belongings and leave because the City was seizing the house. Ms. Welch was handed a set of legal documents.

164. After Ms. Welch's protests and pleading based on her and her sister's medical conditions, police told her that they could remain in the house but that both Mr. Requena and Ms. Welch's son would not be permitted in the house.

165. On February 19, 2014, Assistant District Attorney James Dellafiora had filed a forfeiture petition against Ms. Welch's home. On February 19, 2014, ADA Dellafiora also submitted an *ex parte* application to seize Ms. Welch's home and seal it to prevent entry, which was granted the same day.

166. On February 19, 2014, a "hearing" on the civil-forfeiture petition was set for March 3, 2014 in Courtroom 478. Due to a snowstorm, this "hearing" was postponed until March 27, 2014 at 9:00 a.m.

167. To attend the hearing on March 27, Ms. Welch had to cancel a doctor's appointment. With the assistance of her son, Ms. Welch arrived around 9:00 a.m. in Courtroom 478.

168. At around 9:35 a.m., ADA Dellafiora called out her case.

169. ADA Dellafiora advised Ms. Welch that she did not need an attorney, but if she wanted one, she could call organizations that provide *pro bono* legal aid.

170. Ms. Welch did not call legal aid in reliance on ADA Dellafiora's advice that she did not need an attorney.

171. ADA Dellafiora asked Ms. Welch whether she knew her husband was selling marijuana. Ms. Welch replied, no, explaining her marital situation. ADA Dellafiora informed Ms. Welch that he would mail her a set of questions and that she should answer the questions to

the best of her ability and should send them back to him.

172. Ms. Welch asked ADA Dellafiora whether her son could return home, explaining how her son assisted her with daily tasks. ADA Dellafiora responded that her son could enter the home to assist her but that he would not be permitted to live there. ADA Dellafiora told Ms. Welch that he would send her documentation to that effect.

173. He also provided Ms. Welch with a notice to return to Courtroom 478 on May 29, 2014.

174. Because there was no judge in the courtroom and there did not appear to be any kind of hearing, Ms. Welch understood ADA Dellafiora to be saying that her hearing before the court was cancelled and rescheduled for May 29, 2014.

175. Upon information and belief, after this “hearing” concluded, an assistant district attorney went to Courtroom 504 in the Criminal Justice Center and presented a proposed order temporarily restraining the property from being “sold, assigned, optioned, given, bequeathed, or transferred in any manner” for the pendency of the litigation. The proposed order was signed the same day.

176. More than a week passed without Ms. Welch receiving any documentation on the status of her son or hearing anything from ADA Dellafiora. Ms. Welch left several messages for ADA Dellafiora that were not returned.

177. On May 29, 2014, Ms. Welch, with the assistance of her son, again made her way to Courtroom 478. She brought with her a copy of the probate papers showing that she was one of the rightful heirs to her parents’ estate.

178. At this “hearing,” ADA Dellafiora advised Ms. Welch that most likely the forfeiture action could be resolved without any complications if she would pay a fine.

179. ADA Dellafiora also advised Ms. Welch that he would send her an email containing a “questionnaire” for her to complete.

180. Upon information and belief, the “questionnaire” ADA Dellafiora was referencing is the same pattern form interrogatories received by Plaintiff Sourovelis.

181. At the May 29, 2014 hearing, Ms. Welch informed ADA Dellafiora that all charges against her son were dismissed for lack of evidence and asked whether her son would be able to reside with her. ADA Dellafiora responded in the affirmative but indicated that her husband would still not be permitted to enter the property. He promised to send Ms. Welch paperwork documenting this arrangement.

182. No court has entered any order prohibiting Ms. Welch’s son or husband from entering the property.

183. Because Ms. Welch was previously scheduled to be out of the country from mid-June through August 8, her forfeiture case was relisted for August 12, 2014. The Institute for Justice secured *pro bono* counsel for Ms. Welch in her state forfeiture proceeding.

184. On August 12, 2014, ADA Dellafiora provided Ms. Welch’s counsel in the state forfeiture proceeding and her counsel in the instant federal lawsuit with a copy of a proposed order permitting Ms. Welch to “unseal and re-enter” her home under the following conditions:

- Mr. Renal Requena is “not permitted to enter the property until the resolution of litigation on this matter”;
- Ronald L. Requena, Jr. “is permitted to enter the property to assist in the daily care of Doila Welch” but “is not to reside at the property until this matter is settled”;
- “Failure to abide by the above-listed conditions or [future] violations of the Controlled Substances Act with a nexus to the Property shall result in this unsealing order becoming NULL and VOID, and the property shall be immediately resealed”; and

- Ms. Welch “shall lose the right to assert an innocent owner defense in this forfeiture matter.”

185. Based on the clear language of this proposed order, Ms. Welch reasonably believes that she and her family will be evicted from their home if she fails to sign the order. Ms. Welch does not want to sign the proposed order because she believes her son should be allowed to reside in the home right now.

186. Ms. Welch has sustained irreparable injuries due to Defendants’ civil-forfeiture policies and practices.

187. Ms. Welch has sustained irreparable injuries due to her son being temporarily barred from living in her home. Her son helps her with various tasks like cooking her breakfast, and taking her to her doctor’s appointments. For almost two months, Ms. Welch was deprived of her son’s assistance. During that time, Ms. Welch would have to take a taxi to any appointments because she cannot use public transportation without assistance.

188. Ms. Welch continues to sustain irreparable injuries due to the threat of being evicted from her home without any notice or an opportunity to be heard.

189. Ms. Welch suffers anxiety from the uncertainty as to whether her son is allowed to live with her or whether Defendants will permanently bar her son from her home.

190. Ms. Welch has also suffered hardship by being required to endure physical exertion to attend “hearings” in Courtroom 478 again and again at which she does not get an opportunity to be heard by a fair and neutral arbiter.

191. Ms. Welch is also threatened with irreparable injury of losing her home which has been in her family for almost 20 years.

C. Named Plaintiff Norys Hernandez

192. Plaintiff Norys Hernandez and her sister, Sonia Gonzalez, together own a rowhouse located at 3415 North Marshall Street, in which Sonia resided with her children.

193. On April 17, 2014, Mrs. Hernandez's nephew, who is the son of Sonia, was arrested outside 3415 North Marshall Street for selling and possessing a small amount of drugs.

194. On or about June 2, 2014, Assistant District Attorney Steven Agami filed an *ex parte* application to seize and seal 3415 North Marshall Street.

195. On June 2, 2014, the Court of Common Pleas entered an order authorizing Defendants to seize and seal the property.

196. At the same time, ADA Agami filed an *ex parte* application for a restraining order restraining the sale, encumbrance, assignment, gifting, or transfer of the property.

197. On or about June 3, 2014, Mrs. Hernandez was informed that Defendants were pursuing civil forfeiture against the property and that, pursuant to the seize-and-seal order, no one could enter the property.

198. At the time, Ms. Gonzalez was in Puerto Rico. Accordingly, Ms. Gonzalez was unable to retrieve any of her clothing, personal belongings, or even medication for the entire duration the "seize and seal" order was in effect.

199. A "hearing" on the order to seize and seal the property, the restraining order, and the petition for forfeiture was set for June 12, 2014.

200. At the "hearing" ADA Agami instructed Mrs. Hernandez to return to Courtroom 478 at the next listing with a copy of the deed and documentation of why Ms. Gonzalez needed to be let back into the house. ADA Agami did not propose any agreement to unseal the property.

201. The forfeiture case was relisted for August 12, 2014 for a "hearing" in Courtroom

478.

202. At the August 12, 2014 “hearing,” ADA Agami indicated Mrs. Hernandez and Ms. Gonzales could return to their property if they would sign a proposed unsealing order containing conditions and provided their counsel in the state court forfeiture proceeding with a copy of the proposed unsealing order.

203. Mrs. Hernandez and Ms. Gonzalez signed the agreement on October 6, 2014 and were let back into their home. Under the terms of the agreement, Mrs. Hernandez’s nephew, Ms. Gonzalez’s son, is prohibited from entering the property.

204. Mrs. Hernandez suffered from irreparable injury from having her property seized and sealed without any notice or opportunity to be heard.

205. Mrs. Hernandez is also threatened with irreparable injury of having her property seized and sealed again.

D. Named Plaintiff Nassir Geiger

206. On January 17, 2014, around 9:00 p.m., Mr. Geiger was driving his 2000 Buick LeSabre through a McDonald’s parking lot on the 2800 block of Cottman Avenue, Philadelphia, Pennsylvania. When he recognized an acquaintance of his, Mr. Geiger stopped to say hello. After a few minutes of small talk about the weekend, Mr. Geiger drove away.

207. Unbeknownst to Mr. Geiger, his acquaintance had been arrested shortly before for possession of 0.4 grams of powder cocaine.

208. Shortly thereafter, Mr. Geiger was stopped by police officers near the 3200 block of Cottman Avenue. The officers searched the car but did not find any drugs or drug residue. Nevertheless, the officers seized Mr. Geiger’s car and \$580 he was carrying because the police found empty ziplock bags in the car.

209. Police arrested Mr. Geiger and only gave him a property receipt for \$465.00 despite seizing \$580.00. The police did not give Mr. Geiger a property receipt for his car.

210. On the advice of a court-appointed defense attorney, Mr. Geiger accepted a plea agreement whereby he pled guilty to one count of possession of drug paraphernalia—the empty ziplock bags. In exchange for paying a \$200 fine and performing 20 hours of community service, Mr. Geiger's record would be expunged. The plea deal did not include forfeiture of his car or his money. To the contrary, Mr. Geiger's defense attorney advised him that accepting the plea agreement was the easiest way to get his car and money back.

211. Mr. Geiger believed that his car and money were simply seized as evidence and that they would be returned to him upon complying with the terms of the plea agreement. He learned only later that the Philadelphia D.A.'s Office was attempting to permanently keep his property through civil forfeiture.

212. The Philadelphia D.A.'s Office never informed Mr. Geiger that he would need to file a motion for return of property in order to stop storage fees from accruing on his vehicle.

213. Sometime after May 23, 2014, Mr. Geiger received a notice of forfeiture for his car. The notice stated that he must appear in Courtroom 478 in City Hall at 9:00 a.m. on June 25, 2014.

214. When Mr. Geiger appeared in Courtroom 478, there was no judge. Instead he spoke with a female employee of the Philadelphia D.A.'s Office. Upon information and belief, this female employee is not a prosecutor, but rather, a paralegal or other support personnel.

215. Mr. Geiger was told that, instead of completing a request for interrogatories, he could choose to forfeit his car. Mr. Geiger declined to consent to the forfeiture of his car and completed the interrogatories to the best of his ability without the assistance of counsel, as he

was unrepresented at the time.

216. The cover letter to the interrogatories referenced “Request for Interrogatories, Innocent Owner-Vehicle.” The letter was unsigned and incorrectly dated January 14, 2010.

217. Mr. Geiger inquired about his money that was seized. The Philadelphia D.A.’s Office employee replied she would look into it. She also instructed Mr. Geiger to return to Courtroom 478 on August 13, 2014 for another “hearing”.

218. At the August 13, 2014 “hearing,” Assistant District Attorney Jennifer Krall informed Mr. Geiger and his counsel that Mr. Geiger owed more than \$1,800 in storage fees accrued since his car had been seized. She further informed him that he would need to pay those fees to get his car returned.

219. Based on a review of records of the Court of Common Pleas, the Philadelphia D.A.’s Office separately filed a forfeiture petition against \$465.00 owned by Mr. Geiger. The “hearing” on that forfeiture petition was listed for March 11, 2014, and again on June 16, 2014. Mr. Geiger never received a copy of the hearing notice or forfeiture petition for his money. Because Mr. Geiger failed to appear at these “hearings,” his money was forfeited through a default judgment.

220. Due to Defendants’ policies and practices, Mr. Geiger was forced to go without any car for more than two months. During this period, instead of the 10-minute drive to work, he was forced to take public transportation, switching buses, thereby increasing his commuting time to 45 minutes to an hour. On other occasions, he was forced to borrow his mother’s car.

221. Mr. Geiger found that being deprived of his car was unsustainable. Toward the end of March, he purchased a used 2006 Cadillac for \$17,800. Mr. Geiger financed this purchased with a five-year bank loan in which he makes monthly payments of \$340.00.

222. Additionally, due to state law, Mr. Geiger is forced to pay more than twice as much for car insurance because his 2006 Cadillac is financed whereas he owned his 2000 Buick LeSabre outright.

E. Plaintiff Members of the Putative Class

223. These factual allegations pertaining to Plaintiffs Sourovelis, Welch, Hernandez, and Geiger are similar to the experiences of other property owners in Philadelphia threatened with civil forfeiture.

224. Defendants' policies and practices have caused members of the class extreme hardship such as being left homeless or being left without needed medication after either it or the property housing the medication has been seized.

225. Defendants' policies and practices have resulted in the entry of default judgments, entered without notice or due process of law, which cause the permanent loss of property.

226. Defendants' policies and practices have forced property owners to evict friends and family members from living with them in order to have their properties unsealed and returned to them.

227. Defendants' policies and practices have forced property owners to agree to waive statutory and constitutional defenses to potential forfeiture proceedings in the future in order to have their properties unsealed and returned to them or to have the forfeiture petitions withdrawn.

228. Defendants' policies and practices have forced property owners to repeatedly return to Courtroom 478 for "hearings" run by Defendants or else risk losing their property by a default judgment.

229. Defendants' policies and practices have forced property owners to appear in Courtroom 478 for "hearings" that are run by Philadelphia prosecutors who have a direct

financial interest in the outcome of the proceedings.

CLASS ACTION ALLEGATIONS

230. Named Plaintiffs Sourovelis, Welch, Hernandez, and Geiger seek to maintain this action on behalf of themselves and all others similarly situated under Rule 23(b)(2) of the Federal Rules of Civil Procedure. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

231. The Named Plaintiffs propose the following class definition: “all persons who own property that currently is or will be the subject of a civil-forfeiture petition brought by the Philadelphia D.A.’s Office.”

232. This action meets all the Rule 23(a) prerequisites of maintaining a class action.

233. ***Numerosity under Rule 23(a)(1):*** The putative class is so numerous that joinder of all members is impracticable.

a. In 2011 alone, the Philadelphia D.A.’s Office filed 6,560 civil-forfeiture cases.

b. Between June 1, 2014, and July 31, 2014, the Philadelphia D.A.’s Office listed 2,220 forfeiture cases for “hearings” in Courtroom 478 of City Hall.

234. ***Commonality under Rule 23(a)(2):*** This action presents questions of law and fact common to the putative class, resolution of which will not require individualized determinations of the circumstances of any particular plaintiff. Common questions of fact include, but are not limited to:

a. Do Defendants have a policy and practice of seizing real property without providing property owners notice or an opportunity to be heard?

b. Do Defendants have a policy and practice of compelling property owners

to sign agreements in which the owners waive statutory and constitutional defenses to unknown future forfeiture proceedings in order to have Defendants unseal their homes and other real property or to withdraw forfeiture petitions against homes and other real property?

c. Do Defendants have a policy and practice of failing to provide prompt post-seizure hearings to individuals whose property has been seized?

d. Do Defendants have a policy and practice of repeatedly “relisting” forfeiture actions and requiring property owners to make monthly court appearances, each of which increase the risk of a default judgment?

e. Do the Law-Enforcement Defendants have a policy and practice of retaining all forfeited property and its proceeds?

f. Do Defendants have a policy and practice of having assistant district attorneys control forfeiture proceedings in Courtroom 478?

Common questions of law include, but are not limited to, whether the above-described policies and practices violate the Due Process Clause of the Fourteenth Amendment.

235. ***Typicality under Rule 23(a)(3)***: The Named Plaintiffs’ claims are typical of the claims of the putative class.

a. The Named Plaintiffs’ claims as well as those of the putative class members arise out of the same course of conduct by Defendants, are based on the same legal theories, and involve the same harms.

b. Additionally, the Named Plaintiffs are seeking the same relief for themselves and members of the putative class.

236. ***Adequacy of Representation under Rule 23(a)(4)***: The interests of the putative

class are fairly and adequately protected by the Named Plaintiffs and their attorneys.

a. The Named Plaintiffs adequately represent the putative class because their interests are aligned and there are no conflicts of interest between the Named Plaintiffs and members of the putative class.

b. The Named Plaintiffs and putative class members are ably represented *pro bono* by the Institute for Justice and local counsel David Rudovsky. Founded in 1991, the Institute for Justice is a nonprofit, public-interest law firm that litigates constitutional issues nationwide. The Institute for Justice has particular expertise in protecting property rights, including challenging civil-forfeiture programs on constitutional grounds. In bringing this action, the Institute for Justice has done extensive work to identify and investigate Plaintiffs' claims. David Rudovsky, a founding partner of Kairys, Rudovsky, Messing & Feinberg, LLP, has practiced for over forty years and has considerable experience in bringing class actions.

237. This action also meets the requirements of, and is brought in accordance with, Rules 23(b)(2) of the Federal Rules of Civil Procedure. Defendants have acted, or refused to act, on grounds generally applicable to the class. Final injunctive and declaratory relief is appropriate with respect to all of the members of the class.

CONSTITUTIONAL VIOLATIONS

FIRST CLAIM FOR RELIEF:

FAILURE TO PROVIDE NOTICE OR A HEARING BEFORE SEIZING REAL PROPERTY VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

238. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 236 above.

239. Under Defendants' policies and practices, Plaintiffs Sourovelis, Hernandez, and Welch, as well as members of the putative class, first learn that their home is threatened with forfeiture when officers of the Philadelphia Police Department appear at their home, and armed with the order to "seize and seal" the premises, forcibly evict them and all residents without any prior notice or opportunity to be heard.

240. Defendants and their agents have seized and sealed the homes of Named Plaintiff Sourovelis and members of the putative class like Ms. Gonzales without first providing them with notice and a meaningful opportunity to be heard.

241. Defendants and their agents have seized and sealed real property owned by Named Plaintiff Hernandez and members of the putative class without first providing them with notice and a meaningful opportunity to be heard.

242. Defendants and their agents have applied for and received orders to seize and seal the home of Named Plaintiff Welch and members of the putative class, like Ms. Gonzales, without first providing them with notice and a meaningful opportunity to be heard.

243. Defendants have a policy and practice of relying on 42 Pa. Cons. Stat. § 6802(f) and (g) to seize real property without first providing owners or residents of the property with notice and a meaningful opportunity to be heard.

244. It is the policy and practice of the Philadelphia D.A.'s Office to apply for *ex parte* orders to seize and seal real property without providing any particularized evidence that the order is needed to preserve the specific property for civil forfeiture or that providing notice will jeopardize the availability of the property for forfeiture.

245. It is the policy and practice of the Philadelphia D.A.'s Office to apply for *ex parte* orders to seize and seal real property without proffering any particularized evidence of exigent

circumstances as defined by *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993) and its progeny.

246. It is the policy and practice of the Philadelphia D.A.'s Office to treat mere possession or the single sale of controlled substances in a particular real property as exigent circumstances warranting *ex parte* seizure. However, the Supreme Court has recognized that the presence of controlled substances in real property does not by itself constitute exigent circumstances sufficient to justify *ex parte* seizure of real property.

247. It is the policy and practice of the Philadelphia D.A.'s Office to apply for an *ex parte* order to seize and seal real property without proffering any evidence that a temporary restraining order restricting transfer of the property or other less restrictive means will be insufficient to protect Defendants' interests during the pendency of the civil-forfeiture proceedings.

248. Defendants' policy and practice of seizing real property without first providing notice and a meaningful opportunity to be heard violates the Due Process Clause of the Fourteenth Amendment.

249. Defendants' policy and practice of applying for and executing *ex parte* seizures of real property without any evidence of exigent circumstances or necessity violates the Due Process Clause of the Fourteenth Amendment.

250. As a direct and proximate result of Defendants' actions, Plaintiffs Sourovelis, Hernandez, Welch, and the members of the putative class have suffered irreparable injury to their constitutional rights, including but not limited to being forcibly evicted from their homes and having their real property seized.

251. As a direct and proximate result of Defendants' policies and practices of seizing

real property including homes without providing owners or residents notice or an opportunity to be heard, members of the putative class will suffer irreparable injury to their constitutional rights, including but not limited to being forcibly evicted from their homes or having their real property seized.

252. Declaratory and injunctive relief is necessary to remedy Defendants' unconstitutional conduct of seizing real property without notice or a hearing. Without appropriate declaratory and injunctive relief, Defendants' unconstitutional policies and practices will continue.

SECOND CLAIM FOR RELIEF:

**COMPELLING REAL PROPERTY OWNERS TO GIVE UP CONSTITUTIONAL AND
STATUTORY RIGHTS VIOLATES THE DUE PROCESS CLAUSE
OF THE FOURTEENTH AMENDMENT**

253. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 251 above.

254. After applying for and obtaining orders to seize and seal the homes of Plaintiffs Sourovelis, Hernandez, Welch, and members of the putative class on the basis of *ex parte* applications that deprive them of notice or an opportunity to be heard, Defendants and their agents require property owners to agree to certain conditions in order to re-enter their properties.

255. Defendants propose similar conditions as part of settlement deals.

256. Defendants have a policy and practice of compelling property owners to agree that if Defendants attempt to forfeit the property in the future, the property owner waives his or her rights to assert an innocent-owner defense under 42 Pa. Const. § 6802(j) or to assert a constitutional defense that forfeiture of the property would constitute an excessive fine.

257. Defendants also have a policy and practice of compelling property owners to

agree to bar specific individuals from their property as a condition of being let back into their property after it has been seized *ex parte* or as a condition of withdrawing the forfeiture petition.

258. Defendants' policy and practice of compelling property owners to give up constitutional and statutory rights in order to have their homes and other real property unsealed violates the Due Process Clause of the Fourteenth Amendment because it seeks to impair the property owners' access to the courts to assert their constitutional rights.

259. Defendants' policy and practice of compelling property owners to give up constitutional and statutory rights in order to have their homes and other real property unsealed violates the Due Process Clause of the Fourteenth Amendment because it unacceptably raises the risk of an erroneous deprivation, in that it would allow Defendants to forfeit the property no matter how innocent the property owner is or how disproportionate the forfeiture would be in light of the gravity of the offense.

260. Defendants' policy and practice of requiring property owners to give up constitutional and statutory rights in order to have their homes and other real property unsealed violates the Due Process Clause of the Fourteenth Amendment because this kind of waiver does not further any compelling, substantial, or even legitimate interest of Defendants.

261. Defendants' policy and practice of compelling property owners to give up constitutional and statutory rights in order to settle the forfeiture action violates the Due Process Clause of the Fourteenth Amendment because it seeks to impair the property owners' access to the courts to assert their constitutional rights.

262. Defendants' policy and practice of compelling property owners to give up constitutional and statutory rights in order to settle the forfeiture action violates the Due Process Clause of the Fourteenth Amendment because it unacceptably raises the risk of an erroneous

deprivation.

263. Defendants' policy and practice of requiring property owners to give up constitutional and statutory rights in order to settle the forfeiture action violates the Due Process Clause of the Fourteenth Amendment because this kind of waiver does not further any compelling, substantial, or even legitimate interest of Defendants.

264. As a direct and proximate result of Defendants' actions, policies, and practices, Plaintiffs Sourovelis, Hernandez, Welch, and members of the putative class have suffered injury to their constitutional rights, including but not limited to their rights to free association and their right to contest future forfeiture proceedings Defendants pursue against their real properties.

265. Declaratory and injunctive relief is necessary to remedy Defendants' unconstitutional practice of forcing property owners to forego constitutional and statutory rights. Without appropriate declaratory and injunctive relief, Defendants' unconstitutional policies and practices will continue.

THIRD CLAIM FOR RELIEF:

FAILURE TO PROVIDE A PROMPT, POST-DEPRIVATION HEARING VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

266. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 264 above.

267. After seizing or restraining property for civil-forfeiture determinations, Defendants and their agents failed to provide the Named Plaintiffs and members of the putative class with prompt hearings at which they would have been able to challenge, before a neutral arbiter, the basis for the seizure, restraint, and/or indefinite retention of their property pending the civil-forfeiture determination.

268. Defendants have a policy and practice of seizing, restraining, or indefinitely

retaining property for civil forfeiture without providing property owners a prompt hearing at which they can challenge, before a neutral arbiter, the basis for the seizure, restraint, and/or indefinite retention of their property pending the civil-forfeiture determination.

269. Defendants' policy and practice of failing to provide prompt post-deprivation hearings violates the Due Process Clause of the Fourteenth Amendment because it fails to give property owners a chance to contest the basis for the deprivation at a meaningful time and in a meaningful manner.

270. As a direct and proximate result of Defendants' actions, policies, and practices, the Named Plaintiffs and members of the putative class have suffered irreparable injury to their constitutional rights, including but not limited to being deprived of their property without a meaningful opportunity to be heard.

271. Declaratory and injunctive relief is necessary to remedy Defendants' unconstitutional conduct of seizing, restraining, and/or retaining property without a hearing. Without appropriate declaratory and injunctive relief, Defendants' unconstitutional policies and practices will continue.

FOURTH CLAIM FOR RELIEF:

REPEATEDLY "RELISTING" FORFEITURE PROCEEDINGS VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

272. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 270 above.

273. Defendants have relisted forfeiture actions against property owned by the Named Plaintiffs multiple times, requiring the Named Plaintiffs to return to Courtroom 478 for each listing in order to preserve their interest in the property, or else risk losing their property forever through default judgment.

274. Defendants have a policy and practice of relisting forfeiture actions, typically on a monthly basis, forcing members of the putative class to return to Courtroom 478 for each listing in order to preserve their interest in the property, or else lose their property forever through a default judgment.

275. Upon information and belief, Defendants have a policy and practice of relisting forfeiture actions repeatedly until any underlying criminal case against anyone—including people other than the property's owners—is resolved rather than staying the forfeiture proceeding for the pendency of the criminal action.

276. Defendants' policy and practice of relisting forfeiture actions violates the Due Process Clause of the Fourteenth Amendment because it imposes a high risk of erroneous deprivation of property. The private interests affected by the "relisting" procedure outweigh Defendants' interests in maintaining the policy.

277. As a direct and proximate result of Defendants' actions, policies, and practices, the Named Plaintiffs and members of the putative class have suffered irreparable injury by the violation of their constitutional rights.

278. Declaratory and injunctive relief is necessary to remedy Defendants' unconstitutional conduct of repeatedly requiring Plaintiffs to appear for proceedings or else risk losing their property forever. Without appropriate declaratory and injunctive relief, Defendants' unconstitutional policies and practices will continue.

FIFTH CLAIM FOR RELIEF:

**THE RETENTION OF FORFEITED PROPERTY AND ITS PROCEEDS BY
LAW-ENFORCEMENT DEFENDANTS VIOLATES THE
DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**

279. Plaintiffs re-allege and incorporate by reference each and every allegation set

forth in ¶¶ 1 through 277 above.

280. The Law-Enforcement Defendants' policy and practice of retaining forfeited property and its proceeds injects a personal and institutional interest, financial and otherwise, into enforcing civil forfeiture that brings irrelevant and impermissible factors into the investigative and prosecutorial decision-making process and thereby creates actual bias, the potential for bias, and/or the appearance of bias.

281. The Philadelphia D.A.'s Office—the very agency charged with prosecuting civil-forfeiture actions—has a direct financial incentive in the outcome of forfeiture proceedings because of the prospect of both economic profit through salaries as well as institutional gain through more and better law-enforcement equipment.

282. D.A. Seth Williams—the very official charged with prosecuting civil-forfeiture actions—has a direct financial incentive in the outcome of forfeiture proceedings because of the prospect of both economic profit through salaries as well as institutional gain through more and better law-enforcement equipment.

283. The Philadelphia D.A.'s Office has shared its forfeiture revenue with the Philadelphia Police Department. Upon information and belief, this practice continues.

284. Police Commissioner Ramsey—the very official charged with enforcing civil-forfeiture laws on behalf of the Philadelphia Police Department—has a direct financial incentive in seizing property for civil forfeiture due to, upon information and belief, the prospect of both economic profit through salaries as well as institutional gain through more and better law-enforcement equipment.

285. The direct financial stake that these Law-Enforcement Defendants have in the seizure and retention of property for forfeiture poses a conflict of interest, the potential for bias,

and the appearance of bias that violate Plaintiffs' rights to the fair and impartial administration of justice guaranteed by the Due Process Clause of the Fourteenth Amendment.

286. As a direct and proximate cause of the Law-Enforcement Defendants' actions, policies, and practices, Plaintiffs have suffered irreparable injury to their constitutional rights, including but not limited to the unjust taking of their property.

287. Declaratory and injunctive relief is necessary to remedy the Law-Enforcement Defendants' conflict of interest. Without appropriate declaratory and injunctive relief, the Law-Enforcement Defendants' unconstitutional policies and practices will continue.

SIXTH CLAIM FOR RELIEF:

**DEFENDANTS' POLICY AND PRACTICE OF PROSECUTORS CONTROLLING
COURTROOM 478 "HEARINGS" VIOLATES THE DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT**

288. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 286 above.

289. Defendants have a policy and practice of having prosecutors run the forfeiture proceedings in Courtroom 478, including but not limited to calling the cases, determining whether property owners are in default, and assessing whether any evidence produced by property owners is sufficient.

290. These prosecutors, who are assistant district attorneys in the Public Nuisance Task Force of the Philadelphia D.A.'s Office, have a direct and institutional financial interest in the outcome of the forfeiture proceedings.

291. Defendants' policy and practice of having prosecutors, with a direct and institutional financial interest in the outcome of the forfeiture proceedings, run those very same forfeiture proceedings, violates the Due Process Clause of the Fourteenth Amendment.

292. As a direct and proximate result of Defendants' actions, policies, and practices, the Named Plaintiffs and members of the putative class have suffered irreparable injury to their constitutional rights.

293. Declaratory and injunctive relief is necessary to correct Defendants' unconstitutional conduct of having those with a financial interest in the outcome of the proceedings run those proceedings. Without appropriate declaratory and injunctive relief, Defendants' unconstitutional policies and practices will continue for the foreseeable future.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request, on behalf of themselves and all others similarly situated, this Court:

1. For an order certifying this action as a class action under Federal Rule of Civil Procedure 23(b)(2);
2. For entry of judgment declaring as unconstitutional under the Due Process Clause of the Fourteenth Amendment:
 - a. Defendants' policy and practice of applying for and executing ex parte orders to seize real property without any evidence of exigent circumstances or necessity;
 - b. Defendants' policy and practice of treating the presence of drugs in real property alone as exigent circumstances;
 - c. Defendants' policy and practice of requiring real property owners to waive their future statutory and constitutional defenses as a condition of having their properties unsealed or having the forfeiture petition withdrawn;
 - d. Defendants' policy and practice of failing to provide prompt, post-

deprivation hearings to individuals whose property has been seized, restrained and/or indefinitely retained;

e. Defendants' policy and practice of "relisting" forfeiture actions and requiring property owners to make monthly court appearances, or else risk losing their property forever through default judgments;

f. Law-Enforcement Defendants' policy and practice of retaining all forfeited property and its proceeds; and

g. Defendants' policy and practice of having prosecutors, with a direct financial interest in the outcome of civil-forfeiture proceedings, control the civil-forfeiture "hearings" in Courtroom 478;

3. For an entry of judgment declaring that the City of Philadelphia and the Philadelphia District Attorney's Office is liable for the above-described unconstitutional policies and practices.

4. For entry of preliminary and permanent injunctions against Defendants prohibiting them from engaging in the above-described policies and practices.

5. For an entry of judgment declaring the following statutory provisions unconstitutional:

a. 42 Pa. Const. Stat. § 6802(f) and (g) are unconstitutional as applied to real property to the extent these provisions authorize *ex parte* seizure of real property, without notice or a pre-deprivation opportunity to contest the seizure;

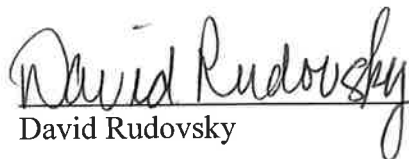
b. 42 Pa. Const. Stat. § 6801(b) is unconstitutional as applied to the extent it allows the seizure of real property without fair judicial process;

- c. 42 Pa. Const. Stat. §§ 6801 and 6802 are unconstitutional as applied to the extent these provisions fail to provide for a prompt post-deprivation hearing for any property;
 - d. 42 Pa. Const. Stat. § 6801(e)–(h) are unconstitutional as applied to the extent they create a conflict of interest that denies individuals the fair and impartial administration of justice.
6. For an entry of judgment requiring Defendants to:
- a. dismiss all civil-forfeiture proceedings against property owned by the Named Plaintiffs and class members;
 - b. return all property seized from the Named Plaintiffs and class members;
 - c. remove all restraints imposed against the Named Plaintiffs' and class members' real property as a consequence of the forfeiture petition, including but not limited to any *lis pendens* notices;
7. For an award of \$1.00 in nominal damages for each of the six claims for relief. Plaintiffs seek this award for the class as a whole and do not request nominal damages for each class member;
8. For an award of attorney's fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988(b); and
9. For further legal and equitable relief as this Court may deem just and proper.

Dated: November 17, 2014

Respectfully submitted,

By:


David Rudovsky

INSTITUTE FOR JUSTICE

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*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of this FIRST AMENDED COMPLAINT was served upon the following counsel of record by

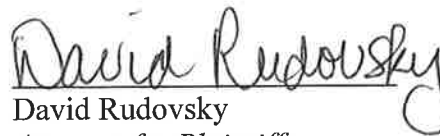
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