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9 Lily Cohen, and Penny Cohen

10 * admitted *pro hac vice*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 v.

17 \$324,979.00 IN U.S. CURRENCY,
18 and
19 \$34,175.14 IN U.S. CURRENCY,
20 \$5,616.38 IN U.S. CURRENCY,
21 \$5,643.73 IN U.S. CURRENCY,
22 \$55,258.60 IN U.S. CURRENCY,

23 Defendants,

24 PACIFIC HEIGHTS PARTNERS, INC.,
25 MED-WEST DISTRIBUTION, LLC,
26 HIGHLAND MEDICAL PACKAGING, LLC,
27 and
28 ANNETTE SLATIC,
LILY COHEN,
PENNY COHEN,
JAMES SLATIC,
respectively.

Claimants.

) CASE NO. 37-2016-00006958-CU-AF-CTL
)
)
) DA Ctrl. No. 16-026

) **SLATICS' NOTICE OF DEMURRER TO**
) **PETITIONER'S FIRST AMENDED**
) **PETITION FOR FORFEITURE IN REM;**
) **SLATICS' DEMURRER TO**
) **PETITIONER'S FIRST AMENDED**
) **PETITION FOR FORFEITURE IN REM;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **DEMURRER**
) **[Health & Safety Code § 11488.4(a), (c);**
) **Code of Civil Procedure § 430.10(e)]**

) Judge: Hon. Tamila E. Ipema
) Department: 64
) Hearing Date: March 27, 2017
) Hearing Time: 2:00 P.M.

1 **SLATICS' NOTICE OF DEMURRER TO PETITIONER'S FIRST AMENDED PETITION FOR**
2 **FORFEITURE IN REM**

3 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE that Claimants Annette Slatc, Lily Cohen, Penny Cohen, and James
5 Slatc ("the Slatics") will and hereby do demur to the FIRST AMENDED PETITION FOR
6 FORFEITURE IN REM ("Amended Petition") filed by Petitioners THE PEOPLE OF THE STATE OF
7 CALIFORNIA ("the People"). A hearing on this demurrer will be held on March 27, 2017, at 2:00
8 P.M., before the Honorable Tamila E. Ipema, in Department 64 of the above-captioned Court.

9 The Slatics' demurrer is based on this notice, the memorandum of points and authorities filed in
10 support, all matters judicially noticed in conjunction with the demurrer, all papers and records filed in
11 this case, and the arguments of counsel at the hearing.

12 Dated: February 28, 2017

Respectfully submitted,

13
14 /s/ Wesley Hottot
15 Wesley Hottot
16 Attorney for the Slatics*

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* admitted *pro hac vice*

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1 same day (for Annette, Lily, and Penny) and on the next morning (for James). Ex. 3, Aff. for Seizure
2 Order No. 52005 at 9:11–13; Ex. 4, Aff. for Seizure Order No. 52007 at 10:4–6.

3 The Slatics received no notice from the People of the seizure of their money. See Ex. 5,
4 Transcript of Proceedings, Vol. I (Nov. 14, 2016) at 151:7–12. Instead, the Slatics discovered that their
5 money had been seized when they tried, unsuccessfully, to access their bank accounts shortly after the
6 raid. As a practical matter, the Slatics had already lost access to their money the day after the raid. On
7 January 29, the detective in charge had delivered an “order of adverse claim” to each of the banks where
8 the Slatics had accounts. See *id.* at 19:6–23; 55:1–11. This prevented James from withdrawing money
9 from his account the same day—that is, five days *before* service of the court’s freezing orders. *Id.* at
10 148:6–17.

11 The San Diego District Attorney has been involved in this process at every stage. A deputy
12 DA reviewed and approved the freezing orders. See Ex. 6, Aff. for Search Warrant No. 51082 at
13 10:11–12; Ex. 7, Aff. for Search Warrant No. 51083 at 10:11–12. Two months later, the same deputy
14 DA filed a civil forfeiture case in this Court against the \$324,979 seized from Med-West. See Petition
15 for Forfeiture In Rem in *People v. \$324,979 in U.S. Currency*, No. 37-2016-00006961-CU-AF-CTL,
16 in San Diego Cty. Sup. Ct. at 1. When this petition was filed on March 30, 2016, it made no
17 allegations of any kind against the Slatics’ personal money. See *id.* However, over the last year, the
18 DA has represented the People’s interest in the Slatics’ personal money, as the Slatics have twice
19 moved for return of their property on constitutional grounds. See Ex. 8, People’s Opp’n to Motion for
20 Return of Property in *In Re: Freeze/Seizure of Assets and Personal Property Pursuant to Search*
21 *Warrant No. 51082 and Search Warrant 51083*, No. 16-061 in Dept. 53 of the San Diego Cty. Sup. Ct.
22 (filed May 23, 2016); Ex. 9, People’s Second Opp’n to Motion for Return of Property in *In re Seizure*
23 *of Wells Fargo Bank Account Nos. 7476329631, et al.*, No. MCR 16-061 in Dept. 11 of the San Diego
24 Cty. Sup. Ct. (filed Nov. 7, 2016). In response to the first motion for return of property, the DA even
25 agreed to return a small amount of money. Therefore, when the Honorable Frederick Maguire denied
26 the Slatics’ motion, he ordered the People to return \$203.02 in Lily’s checking account, \$59.50 in
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1 Penny’s checking account, and coins in a safe deposit box belonging to Miriam Slatic (James’s
2 mother). *See* Ex. 10, Order on Motion for Return of Property (June 3, 2016) at 2.

3 A few days after Judge Maguire’s order denying the first motion for return of property, the
4 detective in charge obtained seizure orders authorizing the People to take formal possession of the
5 money. *See* Ex. 11: Seizure Order No. 52005; Ex. 12: Seizure Order No. 52007. These orders—
6 signed by Judge Bloom on June 7, 2016—noted, “these funds were previously frozen by search
7 warrant # 51083 on February 2, 2016” and “by search warrant # 51082 on February 3, 2016.” *See* Ex.
8 11 at 1; Ex. 12 at 1. The seizure orders thus recognized that the funds in question had been
9 unavailable to the Slatics since *at least* February 3, 2016.

10 Judge Bloom recently denied a second motion for return of property in which the Slatics
11 challenged the finding of probable cause on which his seizure orders were based. *See* Ex. 13, Order
12 Denying Motion for Return of Seized Property and/or Quashing of Seizure Orders (Nov. 16, 2016) at
13 3. At that time, Judge Bloom noted that the People had *one year* in which to seek forfeiture of the
14 money and that *10 months had already elapsed* as of November 2016. *See id.* at 3:21–23 (observing
15 “the court does have some concern with the fact the People have kept money for nearly 10 months
16 without filing a case” and noting “[b]efore the year is up from the date of the seizure, the People will
17 have to file a forfeiture case or a criminal case to keep the funds”).

18 Judge Bloom was correct that the People had until February 2017 to begin a forfeiture case,
19 particularly because the People *conceded* that the one-year deadline was triggered in February 2016:

20 THE COURT: Now, don’t you have — again, we talked about this:
21 Don’t you have to file a forfeiture notice within one year of the forfeiture?

22 [THE PEOPLE]: Yes, Your Honor. And the forfeiture occurred — our
23 start date was sometime in February.

24 Ex. 14, Reporter’s Transcript of Proceedings, Vol. II (Nov. 15, 2016) at 261:17–22.

25 When the one-year deadline passed and no forfeiture petition was filed, the Slatics contacted
26 the District Attorney to seek return of their money. On February 8, 2017, the District Attorney
27 acknowledged no case had been filed but declined to return the money based on the argument that the
28 limitations period was triggered by the June seizure orders—not the February freezing orders.

1 Tellingly, however, the next day the People amended the petition in their petition in *this* case to
2 include the Slatics’ personal money. *See* First Am. Pet. for Forfeiture in Rem in Civil Case Nos. 37-
3 2016-00006958-CU-AF-CTL, 37-2016-00006961-CU-AF-CTL, 37-2016-00006962-CU-AF-CTL.
4 This filing came 12 months and 7 days after the freezing orders were signed on February 2, 2016—
5 making it at least 7 days late—and it came 12 months and 11 days after police served a notice of
6 adverse claim on the Slatics’ banks on January 29, 2016—arguably making the filing 11 days late.

7 The Slatics now demur to the Amended Petition. In order to ensure the prompt return of their
8 money, the Slatics have also filed a Motion for Return of Property with Judge Bloom. This motion is
9 set for hearing on March 22, 2017.

10 LEGAL STANDARD

11 A complaint is subject to general demurrer when it shows on its face that a cause of action is
12 barred by the statute of limitations. *See Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76
13 Cal.App.4th 990, 995. A demurrer “tests the legal sufficiency of the complaint.” *Czajkowski v. Haskell*
14 *& White, LLP* (2012) 208 Cal.App.4th 166, 173. The Court “must accept properly pleaded facts as true,
15 but a demurrer does not admit the [the Petitioner’s] contentions nor conclusions of law or fact.” *Id.* The
16 Court may consider judicially noticed matters in the context of a demurrer. *Id.*; *see also* Code Civ. Proc.
17 § 430.30, subd. (a). Generally speaking, demurrers are legal in character and, on appeal, are reviewed
18 *de novo*. *Czajkowski*, 208 Cal.App.4th at 173.

19 ARGUMENT

20 Under Section 430.10(e) of the Code of Civil Procedure, the Amended Petition must be
21 dismissed because (1) the People’s claims against the Slatics’ money are time-barred by the one-year
22 statute of limitations for civil forfeiture proceedings set out in Health and Safety Code Section
23 11488.4(a)(2); and (2) the Slatics did not receive proper notice of the seizure of their money under
24 Health and Safety Code section 11488.4(c). Finally, the Court should order the return of the Slatics’
25 money.

1 **I. The People’s Amended Claims Are Time-Barred.**

2 The Amended Petition is defective on its face because the claims against the Slatics’ money are
3 time-barred. The People did not file a civil forfeiture petition against the Slatics’ money within the one-
4 year statute of limitations, and the People cannot fix that mistake by tacking the Slatics’ time-barred
5 claims onto another forfeiture petition.

6 **A. The People Did Not File a Civil Forfeiture Petition Against the Slatics’ Money**
7 **Within the One-Year Statute of Limitations.**

8 The Amended Petition should be dismissed because the claims against the Slatics are barred by
9 the statute of limitations. *See People v. Ten \$500 Barclays Bank Visa Traveler’s Checks* (1993) 16
10 Cal.App.4th 475, 478–80 (affirming dismissal of forfeiture action filed beyond the one-year limitations
11 period); *see generally Vaca v. Wachovia Mortg. Corp.* (2011) 198 Cal.App.4th 737, 746 (sustaining
12 defendants’ demurrer when statute of limitations had expired); *Iverson*, 76 Cal.App.4th at 995–96
13 (same).

14 The statute of limitations to seek forfeiture of a person’s property expires one year from the
15 date of seizure “or other process against the property, whichever is earlier.” Health & Safety Code
16 § 11488.4(a)(2). Here, the limitations period was triggered on **February 2, 2016**, when the court
17 issued freezing orders that prevented the Slatics from accessing the money in their bank accounts.
18 These freezing orders were “seizures” within the meaning of Section 11488.4(a)(2) because they
19 deprived the Slatics of control over their money. Even if they were not “seizures” within the meaning
20 of the statute, however, the February 2 freezing orders were “other process against the property” that
21 triggered the limitations period. Because no forfeiture action was filed until **February 9, 2017**—*after*
22 the statute of limitations expired—this Court should grant the demurrer to the Amended Petition.

23 Below, the Slatics first demonstrate that Health and Safety Code section 11488.4(a)(2) is the
24 controlling statute of limitations. Second, they show that the limitations period began to run no later
25 than February 2, 2016, and expired on February 2, 2017.

1 **i. Health and Safety Code Section 11488.4(a)(2) is the applicable statute of**
2 **limitations.**

3 The controlling statute of limitations is Health and Safety Code section 11488.4(a)(2). The
4 People agree that this provision controls because, in their First Amended Petition, they invoked the
5 court’s jurisdiction under this very section. *See* Am. Pet. at 2:9–10 (alleging “[t]his Court has
6 jurisdiction over this action by virtue of Health and Safety Code section 11488.4(a)”). Judge Bloom
7 also specifically recognized that this limitations period controls. *See* Ex. 13 at 3:22–24 (“Before the
8 year is up from the date of the seizure, the People will have to file a forfeiture case or a criminal case to
9 keep the funds.”).¹ And for good reason: Section 11488.4 establishes the procedures governing any
10 effort to seize or forfeit property allegedly connected to a drug crime. *See* Health & Safety Code
11 §§ 11470(f); 11488.4(i)(3). The money in this case was seized based on allegations that it could be
12 forfeited under Section 11470 as proceeds of a drug crime. *See* Ex. 11 at 1:15 (holding that “[t]hese
13 funds are subject to seizure and forfeiture pursuant to Health and Safety Code Section 11470”); Ex. 12 at
14 1:12–13 (same). Moreover, at the hearing on the Slatics’ second motion for return of property, the
15 People conceded that they had one year from February 2016 in which to file a forfeiture action. Ex. 14
16 at 261:17–22. For these reasons, Section 11488.4 controls.

17 **ii. The deadline to file a forfeiture petition under Section 11488.4(a)(2) expired**
18 **one year from the date of the freezing orders.**

19 In this case, the limitations period began to run no later than February 2, 2016—the date on
20 which the court issued freezing orders that prevented the Slatics from accessing their accounts.

21 The statute of limitations provides:

22 A petition of forfeiture under this subdivision shall be filed as soon as practicable,
23 but in any case within one year of the seizure of the property which is subject to
24 forfeiture, or as soon as practicable, but in any case within one year of the filing
25 by the Attorney General or district attorney of a lis pendens or other process
26 against the property, whichever is earlier.

27 ¹ Although Judge Bloom supported this statement with a citation to “Health and Safety Code section
28 11844.5,” *see* Ex. 13 at 3:24, that provision is not a statute of limitations; it merely says that when a drug
or alcohol abuse program registers with a county administrator, registration does not constitute an
endorsement of the program. The Slatics therefore assume that the court was referring to Section
11488.4 because that is the law that sets a one-year deadline for forfeiture actions.

1 Health & Safety Code § 11488.4(a)(2).

2 This language shows the Legislature’s overriding concern for the earliest possible triggering
3 date: The People *shall* file a forfeiture action “as soon as practicable, but *in any case within one year*
4 of [1] the seizure of the property [. . .] *or* [2] other process against the property, *whichever is earlier.*”
5 *Id.* (emphasis added). Indeed, the Court of Appeal has called the language of Section 11488.4(a)
6 “clear and unambiguous” in its “intent to establish a specific and readily ascertainable event as
7 commencing the limitations period—i.e., ‘the seizure of the property which is subject to forfeiture.’”
8 *Ten \$500 Checks*, 16 Cal.App.4th at 479–80. As shown below, the word “seizure” includes the
9 freezing orders in this case; but, in any event, the freezing orders were “other process against the
10 property” that triggered the limitations period.

11 **a. The word “seizure” includes the freezing orders in this case.**

12 As used in Section 11488.4(a)(2), “seizure” includes the freezing orders of February 2, 2016,
13 which prevented the Slatics from removing money from their bank accounts and therefore “seized”
14 their money in every sense of the term.

15 In *Ten \$500 Checks*, the Court of Appeal adopted a virtually identical reading of Section
16 11488.4(a) and rejected an argument that would have given the People additional time to seek
17 forfeiture. In that case, a woman was pulled over for a traffic violation and arrested after police
18 discovered cocaine, crack pipes, and ten \$500 traveler’s checks in her car. 16 Cal.App.4th at 477–78.
19 Initially, police believed that the checks had been stolen, which would have made them subject to a
20 different limitations period. *See id.* at 478. Two years after the stop, however, the district attorney
21 initiated forfeiture procedures against the checks alleging that they were connected to drug sales. *Id.*
22 The trial court dismissed the case because it was filed beyond the one-year limitations period to seek
23 forfeiture of money allegedly connected to drugs, and the Court of Appeal affirmed. *See id.* On
24 appeal, the court easily rejected the People’s argument that Section 11488.4(a) is triggered on the date
25 on which probable cause is established to believe that property is forfeitable. *Id.* at 479–80. The court
26 called this reading of the statute “untenable.” *Id.* at 479. Because the meaning of “seizure” is “clear
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1 and unambiguous,” the court held that the limitations period was triggered when police took the
2 checks from the woman’s car. *Id.* at 479–80.

3 The same is true in this case. For purposes of Section 11488.4(a)(2), “seizure” occurred when
4 the Slatics lost access to their bank accounts, which in turn occurred when the court issued freezing
5 orders on February 2, 2016. However, the People in this case assert that the “seizure” occurred in June
6 2016, when this Court issued formal seizure orders based on a finding of probable cause. But that
7 reading of Section 11488.4(a) was specifically rejected in *Ten \$500 Checks*. In an unpublished case,
8 the Court of Appeal has also rejected the idea that freezing someone’s bank account is not a “seizure”
9 of money within the meaning of Penal Code section 1523. Ex. 15, *United Cmty. Res. Agency, Inc. v.*
10 *Superior Court* (Cal. App. Mar. 20, 2002) No. B155115, 2002 WL 432618, at *4 (unpublished)
11 (holding “the officer’s execution of the [freeze] warrant at the banks effectively operated as the
12 ‘seizure’ of the bank accounts and the assets in the accounts”). These courts have recognized the
13 obvious: When the People prevent someone from accessing their own bank account, the People have
14 “seized” the money in the account.

15 Contrary to the People’s argument here, the courts in *Ten \$500 Checks* and *United Community*
16 *Resource Agency* both applied a real-world meaning to “seizure,” which turns on the denial of a
17 person’s right to access and control over her property. Based on this understanding, the only thing that
18 mattered in *Ten \$500 Checks* was that police prevented the owner from using her checks more than a
19 year before the filing of a forfeiture action against the checks. 16 Cal.App.4th at 480 (rejecting “the
20 imprecise and problematic standard which the People would substitute for certitude”). Similarly, the
21 only thing needed for a “seizure” in *United Community Resource Agency* was for the police to freeze a
22 bank account. 2002 WL 432618, at *4. Just like in *Ten \$500 Checks* and *United Community*
23 *Resource Agency*, the only thing that matters in this case is that the freezing orders prevented the
24 Slatics from using their money and did so more than a year before the filing of a forfeiture action.

25 This is particularly true because forfeiture laws must be construed in favor of property
26 owners—not the government. *Ten \$500 Checks*, 16 Cal.App.4th at 479 (noting that “notwithstanding
27 the strong governmental interest in stemming illegal drug transactions, forfeiture statutes are
28

1 disfavored and must be construed strictly in favor of the owner of the property”); *see also People v.*
2 *One 1937 Lincoln Zephyr Sedan* (1945) 26 Cal.2d 736, 738 (dismissing forfeiture action and noting
3 “the law does not favor forfeitures and the statute should be strictly construed in favor of the owner”);
4 *Baca v. Minier* (1991) 229 Cal.App.3d 1253, 1265 (ruling in favor of forfeiture claimant and noting
5 “[s]tatutes imposing forfeitures are not favored and are to be strictly construed in favor of the persons
6 against whom they are sought to be imposed”). Just as this rule of statutory construction compelled a
7 reading of Section 11488.4(a) favorable to the property owner in *Ten \$500 Checks*, the rule compels a
8 reading favorable to the Slatics in this case.

9 Additionally, the holdings in *Ten \$500 Checks* and *United Community Resource Agency* are
10 consistent with a body of federal law that specifically holds that freezing a person’s bank account
11 constitutes a “seizure” of the person’s money. *See, e.g., United States ex rel. Rahman v. Oncology*
12 *Assocs.* (4th Cir. 1999) 198 F.3d 489, 500 (holding that “when a court directs that assets be frozen
13 pending further order, that form may be categorized a seizure” under Fed. R. Civ. P. 64, and noting
14 that other circuits have adopted the same reasoning); Ex. 16: *Salmo v. United States* (E.D. Mich. Oct.
15 17, 2006) No. 06-12909, 2006 WL 2975503, at *3 (holding that “the freeze order constituted a
16 seizure” for purposes of the Civil Asset Forfeiture Reform Act of 2000 when the government froze a
17 person’s bank account and failed to provide notice within CAFRA’s 90-day deadline); *Al Haramain*
18 *Islamic Found., Inc. v. U.S. Dep’t of Treasury* (D. Or. 2008) 585 F.Supp.2d 1233, 1263 (holding that
19 “[t]he government’s blocking order is a seizure of property” under the Fourth Amendment when
20 government froze the bank assets of a group designated as a terrorist organization), *rev’d in part on*
21 *other grounds*, (9th Cir. 2001) 686 F.3d 695. On the other hand, the Slatics have not found a single
22 case from *any* jurisdiction holding that freezing a person’s bank account is not a “seizure.”

23 This case law makes sense in light of the Supreme Court’s capacious definition of “seizure.”
24 In the context of the Fourth Amendment, a “seizure” of property is merely “some meaningful
25 interference with an individual’s possessory interests in that property.” *United States v. Jacobsen*
26 (1984) 466 U.S. 109, 113. Under this definition (or any definition), the orders to freeze the Slatics’
27 bank accounts in February 2016 were a “meaningful interference” with their “possessory interests” in
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1 their money. The Slatics have now been deprived of access to their money for over a year. Therefore,
2 the plain language of Section 11488.4(a)(2) and case law both show that the February 2 freezing
3 orders triggered the statute of limitations to seek forfeiture.

4 **b. Even if the freezing orders were not a “seizure,” they were “other**
5 **process against the property.”**

6 Even if “seizure” means a formal seizure order (entered in this case on June 7, 2016), still, the
7 February 2, 2016, orders were “other process against the property” that triggered the People’s one-year
8 deadline to seek forfeiture.

9 Even in the absence of a “seizure,” the limitations period in Section 11488.4(a)(2) begins
10 running upon “the filing by the [. . .] district attorney of a lis pendens or other process against the
11 property, whichever is earlier.” Here, the freezing orders were “other process against [the Slatics’]
12 property” for three reasons: (1) The freezing orders were issued by a court; (2) they commanded the
13 People to place a hold on the Slatics’ property pending forfeiture proceedings; and (3) they were
14 served on the Slatics’ banks, which froze the family’s accounts based on the authority of the orders.
15 Indeed, like a lis pendens, the purpose of the freezing orders was to secure the Slatics’ property
16 pending the outcome of forfeiture litigation. *See United Cmty. Res. Agency*, 2002 WL 432618, at *4
17 (noting that “it would be impractical to bring \$2.5 million into court,” and “[c]onsequently, the freeze
18 order allowed the court to maintain control over the seized assets pending the ultimate disposition of
19 the property”); *see also Black’s Law Dictionary* (10th Ed. 2014) at 1073 (defining “lis pendens” as
20 “[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to
21 warn all persons that certain property is the subject matter of litigation”). In this case, the “other
22 process” against the property was issued on February 2, 2016, in the form of freezing orders, which
23 were served on the Slatics’ banks on February 2 and 3, and then filed with the court on February 4,
24 indicating that the freezing orders had been fulfilled and the money secured for later litigation.

25 The words “other process against the property” in Section 11488.4(a)(2) unambiguously
26 include the February 2 freezing orders. However, even if there were some ambiguity about the
27 meaning of “other process,” that ambiguity must be resolved in favor of the Slatics—not the
28

1 government.² See *One 1937 Lincoln Zephyr*, 26 Cal.2d at 738; *Ten \$500 Checks*, 16 Cal.App.4th at
2 479; *Baca*, 229 Cal.App.3d at 1265. For these reasons, the February 2 freezing orders triggered the
3 one-year limitations period, regardless of whether those orders were also “seizures” within the
4 meaning of Section 11488.4(a)(2).

5 **c. The People did not file “as soon as practicable.”**

6 There is an additional reason why the People were required to file a forfeiture action within
7 one year of the freezing orders: Section 11488.4(a)(2) requires filing “as soon as practicable” and,
8 here, the People could have easily filed earlier.

9 Nothing prevented the People from filing sooner. The day following the raid on James’s
10 business, in January 2016, police served a “notice of adverse claim” on the Slatics’ banks. These
11 orders locked the Slatics out of their accounts and secured the family’s money for the purpose of
12 future litigation. By February 2, police had obtained (with the District Attorney’s assistance) court-
13 issued freezing orders for each of the accounts. These orders formally commanded the Slatics’ banks
14 to freeze their accounts until the People could bring a forfeiture action. The People then waited *more*
15 *than four months* before seeking formal seizure of the accounts.³ Clearly, the People knew about the
16 Slatics’ money in January 2016 and already, at that time, believed that the money could be forfeited on
17 the theory that it was connected to James’s business.

18 But the People waited to file a civil forfeiture action against this money until February 2017—
19 *after* the limitations period had expired. Nothing prevented the People from acting sooner. Indeed,
20 they filed a forfeiture case against the business’s \$324,979 on March 30, 2016—just two months after
21

22 ² Under this rule of construction, the “other process” in this case was arguably the “notice of adverse
23 claim” served on the Slatics’ banks by police on January 29, 2016, which locked the family out of their
24 accounts even before the court issued freezing orders. It is also possible that the “other process” was the
25 service of the court’s orders on the Slatics’ bank, which was completed on February 3. Either way,
26 however, the limitations period has expired.

27 ³ There is no deadline for a prosecutor to seek formal seizure of money in a bank account, which is
28 another reason to reject the People’s theory that the statute of limitations is only triggered by a formal
seizure order. Having frozen the Slatics’ accounts in February 2016, the People could have taken *as*
long as they wished before seeking formal seizure. The People’s reading of Section 11488.4(a)(2)
therefore flies in the face of the Legislature’s command that forfeiture actions be filed “as soon as
practicable” but in any event within one year of the seizure or other process against the property.

1 the raid. But instead of filing a forfeiture case against the family’s money at the same time, the People
2 waited *another nine months* to amend the complaint in *that* case to include the family’s money.

3 Under these circumstances, the People’s delay in filing is inconsistent with the Legislature’s
4 plain command that forfeiture actions begin “*as soon as practicable*, but in any case within one year of
5 the seizure [. . .] or other process against the property, whichever is earlier.”

6 **B. The People Cannot Amend a Forfeiture Petition to Add Claims That Are Time-**
7 **Barred.**

8 The People failed to file an action against the Slatics’ money on time, and they cannot fix that
9 mistake by amending their forfeiture petition against the cash seized from James Slatich’s businesses.
10 *See, e.g., Ingram v. Superior Court* (1979) 98 Cal.App.3d 483, 492. Amendment “after the statute of
11 limitations has run will not be permitted when the result is the addition of a party who, up to the time of
12 the proposed amendment, was neither a named nor a fictitiously designated party to the proceedings.”
13 *Id.* This “straightforward,” *id.*, rule has only one exception: when a previously unknown defendant is
14 added to replace a fictitious “Doe” defendant who was part of the original complaint. *See Woo v.*
15 *Superior Court* (1999) 75 Cal.App.4th 169, 176. The People do not seek to substitute a previously
16 unknown, fictitious claimant here; rather, the People have tried to add new claimants and new defendant
17 property to these proceedings.

18 For over a year, the People had every opportunity to file a civil forfeiture petition against the
19 Slatics’ money. But instead of filing a separate petition within the statute of limitations, the People
20 tacked these obviously time-barred claims onto an existing proceeding against different money with
21 different claimants. This is exactly the type of scenario that the rules were designed to prevent. Claims
22 against the Slatics’ personal money do not belong here; indeed, they do not belong in any proceeding,
23 because the People missed their window of opportunity to petition for forfeiture. “[T]he district
24 attorney does not have unlimited time after a seizure of property to file a complaint for forfeiture.” *Ten*
25 *\$500 Checks*, 16 Cal.App.4th at 479.

1 **II. The Slatics Did Not Receive Proper Notice of Seizure Under California Health and Safety**
2 **Code Section 11488.4(c).**

3 The People’s fatal procedural errors began long before they filed the Amended Petition. When
4 law enforcement seized the Slatics’ money on February 2, 2016, it failed to give proper notice of that
5 seizure. Instead, the Slatics discovered that their money had been seized when they tried,
6 unsuccessfully, to access their bank accounts shortly after the raid. Health and Safety Code
7 section 11488.4(c) requires the People to provide multiple forms of notice to property owners at the time
8 of seizure. The People provided no notice here, and improper notice voids a forfeiture proceeding. *See*
9 *People v. One 1941 Chrysler 6 Touring Sedan* (1947) 81 Cal.App.2d 18, 31–32, *disapproved on other*
10 *grounds, People v. One 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283.

11 When property is seized, the People must do two things: (1) give the owner a receipt, and
12 (2) personally serve any person with an interest in the property with notice of the seizure, a claim
13 form, and instructions for filing a claim. *See* Health & Safety Code § 11488.4(c). Contrary to
14 these requirements, which are to be “strictly constru[ed],” Ex. 17, *People v. \$224,060.89 U.S.*
15 *Currency* (Cal. Ct. App. Apr. 4, 2008) No. A115272, 2008 WL 903881, at *9 (unpublished), the
16 Slatics did not receive a receipt, a notice of seizure, *or* a claim form. *See* Ex. 5, Transcript of
17 Proceedings, Vol. I (Nov. 14, 2016) at 151:7–12. They received nothing. Critically, the
18 Amended Petition makes no allegations to the contrary.

19 The Court of Appeal has ruled against the People when notice was merely “ambiguous” because
20 it did not clearly tell the claimant how long he had to file a claim. *See Baca v. Minier* (1991) 229
21 Cal.App.3d 1253, 1255. In *Baca*, the court demanded “supporting evidence” on the record that the
22 claimant had been personally served with notice of seizure, not just a “bare assertion of actual or
23 personal service.” *Id.* at 1265. Here, the People do not even allege in their Amended Petition that they
24 gave the Slatics notice of the seizure, and they certainly provide no evidence that they did. On the
25 contrary, when the Slatics testified under oath at the hearing on their second motion for return of
26 property, James made clear that they did *not* receive notice or a receipt for their property—and the
27 People made no effort to rebut this testimony. *See* Ex. 5, Transcript of Proceedings, Vol. I (Nov. 14,
28

1 2016) at 151:7–12. The People also fail to make any allegations to the contrary in their Amended
2 Petition.

3 The People did not even give the Slatics “ambiguous” notice. The People left it up to the family
4 and their lawyers to figure out how much money was seized and how to get it back. Inadequate notice
5 is, therefore, independent ground for the dismissal of the People’s claims against the Slatics’ money.

6 **III. The Court Should Order the Return of the Slatics’ Money.**

7 Forfeiture of the Slatics’ money is now impossible, both because the statute of limitations has
8 expired and because the Slatics did not receive proper notice of the seizure of their property. *See Ten*
9 *\$500 Checks*, 16 Cal.App.4th at 478–80 (affirming dismissal of forfeiture action filed beyond the one-
10 year limitations period); *Baca v. Minier* (1991) 229 Cal.App.3d 1253, 1265–66 (holding that due process
11 requires strict adherence to the notice provisions of the forfeiture statutes). This Court should therefore
12 order the immediate return of the money. The People have no legal interest in continuing to hold
13 property that they cannot possibly forfeit.

14 **CONCLUSION**

15 For the reasons above, the Slatics demur to the allegations in the Amended Petition and
16 respectfully ask the Court to (1) dismiss the claims pertaining to their money with prejudice and
17 (2) order the People to return \$34,175.14 to Annette Slatic, \$5,616.38 to Lily Cohen, \$5,643.73 to Penny
18 Cohen, and \$55,258.60 to James Slatic within 10 days.

19 Dated: February 28, 2017

Respectfully submitted,

21 /s/ Wesley Hottot
22 Wesley Hottot
23 Attorney for the Slatics*

24 * admitted *pro hac vice*

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO, CENTRAL DIVISION

3
4 THE PEOPLE OF THE STATE OF CALIFORNIA,

5
6 Plaintiff,

7 v.

8 \$324,979.00 IN U.S. CURRENCY,
9 and
10 \$34,175.14 IN U.S. CURRENCY,
11 \$5,616.38 IN U.S. CURRENCY,
12 \$5,643.73 IN U.S. CURRENCY,
13 \$55,258.60 IN U.S. CURRENCY,

14 Defendants,

15 PACIFIC HEIGHTS PARTNERS, INC.,
16 MED-WEST DISTRIBUTION, LLC,
17 HIGHLAND MEDICAL PACKAGING, LLC,
18 and
19 ANNETTE SLATIC,
20 LILY COHEN,
21 PENNY COHEN,
22 JAMES SLATIC,
23 respectively.

24 Claimants.

) CASE NO. 37-2016-00006958-CU-AF-CTL

)
)
) DA Ctrl. No. 16-026

) **[PROPOSED] ORDER GRANTING**
) **SLATICS' DEMURRER TO**
) **PETITIONER'S FIRST AMENDED**
) **PETITION FOR FORFEITURE IN REM**

)
)
)
)
) Judge: Hon. Tamila E. Ipema
) Department: 64
) Hearing Date: March 27, 2017
) Hearing Time: 2:00 P.M.

25 The Slatics' Demurrer to Petitioners' First Amended Petition for Forfeiture in Rem was filed on
26 February 28, 2017, and argued before this Court on March 27, 2017. Based on the Slatics' Notice of
27 Demurrer, the Slatics' Memorandum of Points and Authorities in support of the Demurrer, the
28 Petitioners' response, the Slatics' reply, all matters judicially noticed in conjunction with the demurrer,
all papers and records filed in this case, and the arguments of counsel at the hearing, the Court grants the
Demurrer and ORDERS, ADJUDGES, AND DECREES as follows:

The Petitioners' First Amended Petition for Forfeiture in Rem is DISMISSED WITH
PREJUDICE with regard to Petitioners' claims against the Slatics' money. Petitioners are ordered to

1 return \$34,175.14 to Annette Slatic, \$5,616.38 to Lily Cohen, \$5,643.73 to Penny Cohen, and
2 \$55,258.60 to James Slatic within 10 days.

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IT IS SO ORDERED:

DATED: _____

Hon. Tamila E. Ipema
Judge of the Superior Court

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8 Attorney for Claimants James Slatic, Annette Slatic,
9 Lily Cohen, and Penny Cohen

10 * admitted *pro hac vice*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

13 THE PEOPLE OF THE STATE OF)
14 CALIFORNIA,)

15 Plaintiff,)

16 v.)

17 \$324,979.00 IN U.S. CURRENCY,)
18 and)
19 \$34,175.14 IN U.S. CURRENCY,)
20 \$5,616.38 IN U.S. CURRENCY,)
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22 \$55,258.60 IN U.S. CURRENCY,)

23 Defendants,)

24 PACIFIC HEIGHTS PARTNERS, INC.,)
25 MED-WEST DISTRIBUTION, LLC.,)
26 HIGHLAND MEDICAL PACKAGING, LLC.,)
27 and)
28 ANNETTE SLATIC,)
LILY COHEN,)
PENNY COHEN,)
JAMES SLATIC,)
respectively.)

Claimants.)

CASE NO. 37-2016-00006958-CU-AF-CTL

DA Ctrl. No. 16-026

**DECLARATION OF WESLEY HOTTOT
IN SUPPORT OF SLATICS' DEMURRER
TO PETITIONER'S FIRST AMENDED
PETITION FOR FORFEITURE IN REM**

Judge: Hon. Tamila E. Ipema

Department: 64

Hearing Date: March 27, 2017

Hearing Time: 2:00 P.M.

1 Exhibit 10: A true and correct copy of Order on Motion for Return of Property (June 3,
2 2016);

3 Exhibit 11: A true and correct copy of Seizure Order No. 52005;


4 Exhibit 12: A true and correct copy of Seizure Order No. 52007;

5 Exhibit 13: A true and correct copy of Order Denying Motion for Return of Seized Property
6 and/or Quashing of Seizure Orders (Nov. 16, 2016);

7 Exhibit 14: A true and correct copy of page 261 of the Reporter's Transcript of
8 Proceedings, Vol. II (Nov. 15, 2016), as well as the cover page, appearances page, and
9 reporter's certification.

10 I declare under penalty of perjury and the laws of the State of California that the foregoing
11 statements are true and correct. Executed this 28th day of February, 2017, at Bellevue, Washington.

12
13 By:



Wesley Hottot
Attorney for the Slatics*

15 * admitted *pro hac vice*