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DIANE SANCHEZ
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Counsel for Claimant Phillip Parhamovich III

**IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF LARAMIE**

IN THE REGARD TO U.S. CURRENCY)
TOTALING \$91,800.00)
)
)

Docket No. 187-824

**CLAIMANT PHILLIP PARHAMOVICH'S ANSWER TO PETITION FOR ORDER
TO SHOW CAUSE AND MOTION FOR RETURN OF PROPERTY**

COMES NOW Claimant Phillip Parhamovich III, by and through his counsel of record. Mr. Parhamovich is a party in interest and a lawful owner of \$91,800 in U.S. Currency ("seized cash"), which is the seized property at issue in this case. This property was taken from Mr. Parhamovich on March 13, 2017 during a traffic stop of his vehicle on Interstate 80 in Laramie County, Wyoming conducted by the Wyoming Highway Patrol and the Wyoming Division of Criminal Investigations ("DCI"). During the traffic stop, while on the side of the highway and without access to an attorney, Mr. Parhamovich was pressured to sign, and involuntarily signed, a waiver form (the "roadside waiver") that purportedly released his interest in the seized cash by "giv[ing]" it to the DCI "to be used for narcotics law enforcement purposes" and that also

purportedly waived all of his rights to formal forfeiture proceedings under Wyoming's forfeiture statute, Wyo. Stat. § 35-7-1049.

On May 4, 2017, the DCI filed a Petition for Order to Show Cause (the "Petition") regarding the seized cash.¹ Mr. Parhamovich hereby files his Answer to the Petition and moves for return of his seized cash, with interest, under Wyoming Rule of Criminal Procedure 41(g).

**CLAIMANT PHILLIP PARHAMOVICH'S ANSWER TO THE STATE'S
ALLEGATIONS IN THE PETITION FOR ORDER TO SHOW CAUSE**

1. Admitted that the DCI came into possession of the \$91,800 in seized cash by taking it from his vehicle on March 13, 2017.
2. Claimant has knowledge neither of whether the seized cash has been classified as abandoned by the DCI nor whether it is currently held by DCI. Claimant has repeatedly claimed ownership of the seized cash in two letters sent on March 17, 2017 to the DCI, the Wyoming Attorney General's Office ("AG's Office"), and the Wyoming Highway Patrol, and in two follow-up letters to the AG's Office on April 10, 2017 and April 28, 2017.
3. Admitted that Mr. Parhamovich was stopped by Trooper Pittsley on March 13, 2017 in his vehicle, a 2011 Honda Odyssey minivan, on I-80 in Laramie County, Wyoming, but denied that the stop was conducted lawfully, for the reasons stated herein in Mr. Parhamovich's Defenses. In summary: First, the traffic stop was unnecessarily extended without reasonable suspicion; Mr. Parhamovich was unlawfully detained without reasonable suspicion and interrogated for a prolonged period of time regarding a wide variety of matters unrelated to the ostensible traffic-safety reason(s) for the stop, and he did not reasonably feel free to leave in such a situation. Second, Mr. Parhamovich was entrapped by officers asking him misleading and compound questions that wrongly suggested it was illegal for him to be traveling with cash, and which were designed to elicit false denials regarding his possession and/or ownership of the seized cash in order to justify the seizure. Third, there was no probable cause for the warrantless search of Mr. Parhamovich's vehicle. Fourth, there was no probable cause for the warrantless seizure of the seized cash, particularly given that neither drugs nor contraband, nor any other

¹ Despite repeatedly requesting notice regarding any court proceedings related to his seized cash in three letters sent to the Wyoming Attorney General's Office ("AG's Office") in March and April 2017, Mr. Parhamovich was not provided notice of the Petition, nor was he notified of the Show Cause Hearing (the "Hearing") until July 24, 2017, when he received a letter dated July 13, 2017 from the AG's Office notifying him that the Hearing had already occurred on July 5, 2017. These notice problems are explained in more detail in his separately filed Motion to Set Aside Entry of Default and the accompanying declaration by Mr. Parhamovich (Declaration #1).

evidence of illegal activity, were found in the vehicle, and given that Mr. Parhamovich has no criminal record. Further admitted that Trooper Pittsley spoke to Mr. Parhamovich and that Mr. Parhamovich was the driver and sole occupant of his vehicle.

4. Claimant has no knowledge regarding the timing or substance of Trooper Pittsley's suspicions. Admitted that Mr. Parhamovich was immediately asked to get in to Trooper Pittsley's car, was detained and questioned for a prolonged period of time in Trooper Pittsley's car, and was asked numerous questions about the details of his trip that had nothing to do with the alleged traffic-safety purpose(s) for the traffic stop: not wearing a seatbelt and/or a lane-use violation. Denied that Mr. Parhamovich consented to this detention or interrogation.

5. Admitted that Mr. Parhamovich did not consent to further conversation or questioning by Trooper Pittsley. Claimant does not have knowledge about whether he was placed in investigative detention and cannot recall whether he was told that he was being placed in investigative detention. Denied that Mr. Parhamovich was advised of his Miranda rights. Denied that Mr. Parhamovich consented to further conversation or questioning. Admitted that Mr. Parhamovich truthfully denied having any controlled substances in his vehicle in responding to a compound question about same. Denied that Mr. Parhamovich was asked directly and independently whether there were large sums of currency located in the vehicle, but admits that he was asked a compound question about same. Admitted that Mr. Parhamovich responded in the negative when asked a compound question about whether there were any drugs, guns, large sums of cash, and several specific controlled substances in his vehicle; it was clear from this questioning that any affirmative answer would have (wrongly) been treated as the admission of illegal activity, likely leading to his continued detention, possible arrest, and the search of his vehicle.

6. Claimant does not recall whether Trooper Pittsley asked for his consent to deploy a narcotics-detection dog. Denied that Mr. Parhamovich consented to the deployment of the narcotics-detection dog. Denied that the narcotics-detection dog alerted on Mr. Parhamovich's vehicle without being cued or coached to alert by its handler, Trooper Pittsley. Denied that the narcotics-detection dog alerted to the odor of controlled substances inside Mr. Parhamovich's vehicle; there were no narcotics in his vehicle, nor had there been any narcotics in his vehicle since Mr. Parhamovich took ownership of it in January, 2016. Denied that Mr. Parhamovich was asked directly and independently whether there were large sums of currency located in the

vehicle, but admits that he was asked a compound question about same. Admitted that Mr. Parhamovich responded in the negative when asked a compound question about whether there were any drugs, guns, large sums of cash, and several specific controlled substances in his vehicle; it was clear from this questioning that any affirmative answer would have (wrongly) been treated as the admission of illegal activity, likely leading to his continued detention, possible arrest, and the search of his vehicle.

7. Denied that Mr. Parhamovich consented to Trooper Pittsley's warrantless search of his vehicle. Admitted that Mr. Parhamovich's minivan contained a bed and four large speaker cabinets in the rear. Admitted that one of the speaker cabinets contained Mr. Parhamovich's life savings: the \$91,800 in seized cash. Claimant does not have detailed knowledge about Trooper Pittsley's warrantless search of his vehicle and speakers. Admitted that Mr. Parhamovich put his \$91,800 in life savings (the seized cash) in one of his speaker cabinets for safe keeping while traveling. Admitted that the seized cash was in a cardboard box. Claimant does not remember the exact number of paper bags in which some of the seized cash was kept. Claimant does not have knowledge about when Trooper Pittsley contacted the DCI.

8. Claimant does not have knowledge about when Trooper Pittsley contacted the DCI. Even if Mr. Parhamovich incorrectly denied that he owned the speakers or the money in the speaker (the seized cash), Mr. Parhamovich did so only because Trooper Pittsley wrongly implied that it was a crime to travel with large amounts of cash and Mr. Parhamovich did not have an attorney on hand to advise him that traveling with large amounts of cash is not a crime.

9. Denied that the continued detention and questioning of Mr. Parhamovich by DCI Agent Tafoya was consensual. Even if Mr. Parhamovich incorrectly stated that the speaker or money in the speaker (the seized cash) belonged to a friend, Mr. Parhamovich did so only because Agent Tafoya wrongly implied that it was a crime to travel with large amounts of cash and Mr. Parhamovich did not have an attorney on hand to advise him that traveling with large amounts of cash is not a crime. Admitted that Mr. Parhamovich did not provide the name or contact information for his "friend" or any other owner of the speakers and the seized cash because Mr. Parhamovich is the only owner of the seized cash and thus there was no name or contact information to provide.

10. Admitted that Agent Tafoya made statements encouraging and pressuring Mr. Parhamovich to sign the roadside waiver that purportedly released his interest in the seized cash

and “g[ave]” it to the DCI “to be used for narcotics law enforcement purposes” and that also purportedly waived all rights to formal forfeiture proceedings under Wyoming’s forfeiture statute. Denied that Mr. Parhamovich signed the roadside waiver knowingly, intelligently, and voluntarily. Mr. Parhamovich signed the roadside waiver only out of ignorance, due to coercion, and under duress. Mr. Parhamovich did not understand the legal consequences of signing the roadside waiver and did not have an attorney on hand to advise him while he was stopped on the side of the highway about the legal consequences of signing or declining to sign the roadside waiver. Mr. Parhamovich reasonably did not feel free to leave the scene of the traffic stop without signing the roadside waiver. Mr. Parhamovich signed the roadside waiver under duress; he reasonably believed that if he did not sign the roadside waiver, he would be detained further and possibly arrested and put in jail while traveling by himself in a state nearly a thousand miles from his home in Wisconsin.

11. Denied that efforts to identify the potential owner of the seized cash have been unsuccessful; denied that DCI has exhausted all reasonable efforts to try to ascertain the identity of the legal owner of the seized cash; and denied that the owner is unknown. Mr. Parhamovich has been in regular correspondence with the AG’s Office regarding the seizure and return of his seized cash since a few days after it was seized in March 2017. Mr. Parhamovich has repeatedly made it clear that he is the lawful owner of the seized cash and asked for it to be returned. Moreover, as was requested of him by the AG’s Office—and prior to the filing of the Petition for Order to Show Cause on May 4, 2017—Mr. Parhamovich provided financial documents and other documents demonstrating: (1) he had lawful earnings sufficient to generate \$91,800 in seized cash; and (2) the lawful purpose for approximately \$80,000 of the seized cash was a down payment to purchase a recording studio in Madison, Wisconsin.

12. Admitted that no unnamed party has made any claims for the seized cash because there is no unnamed party. Admitted that Mr. Parhamovich claims that he is the lawful owner of the seized cash. Admitted that Mr. Parhamovich claims that the roadside waiver releasing his rights in the seized cash and waiving his right to formal forfeiture proceedings under Wyoming’s forfeiture statute was unlawful, as its signing was not knowing, intelligent, or voluntary, and hence was the product of duress and coercion.

**CLAIMANT PARHAMOVICH'S DEFENSES
TO FORFEITURE OF HIS SEIZED CASH**

I. Forfeiture of the seized cash is not authorized by Wyo. Stat. § 7-2-105 (Disposition and appraisal of property seized or held; notice and order to show cause; judgment), nor by Wyo. Stat. § 35-7-1049 (Forfeitures and seizures generally; property subject to forfeiture).

II. Mr. Parhamovich is the lawful owner of the seized cash, a fact which can reasonably be ascertained (and could have reasonably been ascertained) based on the evidence already provided to the State of the Wyoming through its AG's Office prior to the filing of the Petition. Accordingly, the seized cash should have been delivered to Mr. Parhamovich without judicial action under Wyo. Stat. § 7-2-105(c).

III. Mr. Parhamovich is the lawful owner and has the only legally recognizable interest in the seized cash under Wyo. Stat. § 7-2-105(f), and he can satisfy the burden of demonstrating same by a preponderance of the evidence. In addition, Mr. Parhamovich is the only claimant to the seized cash and there are no other claimants to the seized cash.

IV. There was no relationship, real or implied, between the seized cash and any controlled substance or any other criminal activity, and no evidence supports such allegations. In fact, the seized cash was all derived from lawful earnings and was the product of Mr. Parhamovich's legitimate commercial activities, including buying, remodeling, and selling historic homes; buying, refurbishing, and selling guitars and other musical equipment; buying and selling used vehicles; performing as a musician and selling merchandise; and other legal money-making ventures.

V. The following actions by the Wyoming Highway Patrol and the Wyoming DCI were done without authority of law and were in violation of Mr. Parhamovich's state and federal constitutional rights against unreasonable searches and seizures under Section 4 of Article I of the Wyoming Constitution and the Fourth Amendment to the United States Constitution:

1. The unnecessary extension of the traffic stop without reasonable suspicion;
2. The questioning of Mr. Parhamovich for a prolonged period of time regarding a wide variety of matters unrelated to the ostensible traffic-safety reason(s) for the traffic stop;
3. The detention of Mr. Parhamovich during the traffic stop without reasonable suspicion;

4. The entrapment of Mr. Parhamovich using misleading and compound questions designed to (wrongly) suggest that it was illegal for him to travel with cash, all done in order to elicit false denials regarding his possession and/or ownership of the seized cash and justify the seizure,
5. The warrantless search of Mr. Parhamovich's vehicle;
6. The warrantless seizure of the seized cash; and
7. The coercive pressuring of Mr. Parhamovich to sign the roadside waiver under duress.

Seizures of lawful, non-contraband property, such as the seized cash, which arise from these unconstitutional search-and-seizure practices, cannot be sustained. Lawful, non-contraband property seized under such circumstances must be returned to its owner.

VI. The roadside waiver is invalid and unenforceable because Mr. Parhamovich did not knowingly, intelligently, or voluntarily sign the roadside waiver. The waiver was signed under duress and due to coercion during a traffic stop on the side of a highway without an attorney present. Mr. Parhamovich reasonably did not feel free to leave the scene of the traffic stop without signing the roadside waiver. Mr. Parhamovich only signed the roadside waiver because he was led to believe that if he did not sign the roadside waiver, he would be detained further and possibly arrested and put in jail while traveling by himself in a state nearly a thousand miles from his home in Wisconsin. Accordingly, Mr. Parhamovich did not knowingly, intelligently, or voluntarily consent to the terms of the roadside waiver. The roadside waiver is therefore invalid, null, and void, and the seized cash should be returned to Mr. Parhamovich.

VII. By attempting to use the invalid and unenforceable roadside waiver to circumvent the procedural requirements of Wyoming's forfeiture statute, Wyo. Stat. § 35-7-1049, the State of Wyoming failed to accord Mr. Parhamovich many of his statutory rights and protections, including the requirements that a probable-cause hearing be held within 30 days of seizure under Wyo. Stat. § 35-7-1049(c), that a notice of seizure and intended forfeiture be served by the State upon any third party, ascertained after reasonably diligent inquiry, known to have an interest in the property, in accordance with the Wyoming Rules of Civil Procedure under Wyo. Stat. § 35-7-1049(f), and that the burden of proof is on the State to establish by clear and convincing evidence that the seized property is subject to forfeiture under Wyo. Stat. § 35-7-1049(k).

VIII. Pressuring Mr. Parhamovich to involuntarily sign the roadside waiver under duress, and thereby purportedly circumventing the statutory forfeiture procedures outlined in Wyo. Stat. § 35-7-1049, also violated Mr. Parhamovich's state and federal constitutional rights under Section 6 of Article I of the Constitution of the State of Wyoming (Due Process) and the Fourteenth Amendment to the United States Constitution (Due Process).

IX. In violation of its statutory notice obligations under Wyoming law, the State of Wyoming failed to provide notice to Mr. Parhamovich of its Petition for Order to Show Cause, the subsequent Order to Show Cause, and the July 5, 2017 hearing (the "Hearing") on the Order to Show Cause, despite the fact that the AG's Office knew his mailing address, knew he claimed the seized cash, and knew that he had repeatedly requested notice of any court proceedings regarding the seized cash. Instead of providing Mr. Parhamovich notice of these proceedings at his known mailing address, the State of Wyoming filed an Affidavit for Service by Publication and published notice in a local Wyoming newspaper. Notice by publication when the Claimant's address is known or can be ascertained fails to satisfy Wyo. Stat. § 7-2-105(d), which provides that "[n]otice and proceedings on the order to show cause shall be according to the Wyoming Rules of Civil Procedure." Under Wyo. R. Civ. P. 4(k), notice by publication is only permitted in specific circumstances that are not satisfied here. *See, e.g.*, Wyo. R. Civ. P. 4(k)(4)(F) (providing for notice by publication when "the defendant's place of residence cannot be ascertained").

X. In violation of due process, the State of Wyoming failed to provide notice to Mr. Parhamovich of its Petition for Order to Show Cause, the subsequent Order to Show Cause, and the Hearing, despite the fact that the AG's Office knew his mailing address, knew he claimed the seized cash, and knew that he had repeatedly requested notice of any court proceedings regarding the seized cash. Instead of providing Mr. Parhamovich notice of these proceedings at his known mailing address, the State of Wyoming filed an Affidavit for Service by Publication and published notice in a local Wyoming newspaper. Failing to provide Mr. Parhamovich with notice of these proceedings—including the filing of the Petition, the Order, and the Hearing—in a manner reasonably calculated to be an effective notice to Mr. Parhamovich, violated his due-process and other rights under the Fourteenth Amendment to the U.S. Constitution and Sections 2 and 6 of Article I of the Wyoming Constitution.

XI. By attempting to conduct this forfeiture as one for "property [that] has been classified as abandoned or unclaimed property," Petition at ¶ 2, under Wyo. Stat. § 7-2-105(c)

(which applies when “property is lost, mislaid, abandoned or unclaimed”) rather than as a normal forfeiture of property seized from its owner under Wyo. Stat. § 35-7-1049, the State of Wyoming is improperly attempting to circumvent (and thus is violating) the statutory protections of Wyo. Stat. § 35-7-1049(k), which place the burden on the State to establish by clear and convincing evidence that seized property is subject to forfeiture. Instead, the State of Wyoming is unlawfully trying to place the burden of proof on Mr. Parhamovich to effectively demonstrate that the property should not be forfeited under these circumstances. Although Mr. Parhamovich can satisfy the statutory burden “to show that [he is] the lawful owner[.]” under Wyo. Stat. § 7-2-105(f) (outlining procedure in disputed-ownership cases), Mr. Parhamovich is not the party who should have to meet the burden of proof, and the seized cash should not be treated as abandoned or unclaimed, particularly since there is no other claimant to the seized cash, the seized cash was found in Mr. Parhamovich’s vehicle, and Mr. Parhamovich claims sole ownership of the seized cash.

XII. Although civil forfeiture is a civil proceeding, Wyoming’s civil-forfeiture statutes are designed, at least in part, to punish the owner of property used for criminal purposes. Ordinarily, when a state wishes to punish a citizen, it must proceed against a defendant in criminal court and afford that defendant the full set of criminal-procedural protections, including bearing the burden of proving beyond a reasonable doubt that the person it wishes to punish actually committed a crime. By failing to offer this full set of criminal-procedural protections—including the requirement that the government proves beyond a reasonable doubt that the property owner committed a crime related to the seized property—to property owners in civil-forfeiture proceedings, including Mr. Parhamovich in this case, Wyoming’s civil-forfeiture statutes fail to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the Wyoming Constitution.

XIII. The seizure and intended forfeiture of the seized cash violates Mr. Parhamovich’s constitutional due-process rights because the Wyoming Highway Patrol, the DCI, and the AG’s Office have a direct financial stake in seizing and forfeiting the seized cash. *See* Wyo. Stat. § 7-2-105(n) (“The balance of the proceeds, if any, shall be deposited in the general operating account of the state, county, or municipal entity that has fiscal authority over the law enforcement agency confiscating the property.”). Putting the proceeds from seized and forfeited property under the direct control of the very agencies that have fiscal control of the law-

enforcement officers who conduct seizures and pursue forfeitures creates a perverse incentive for these agencies and their officers to conduct seizures and pursue forfeitures in order to financially profit for the agency. This profit incentive interferes with the fair and impartial administration of justice guaranteed by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 6 of the Constitution of the State of Wyoming and thus violates Mr. Parhamovich's due-process rights under these same provisions.

XIV. The exercise of the spending power over the proceeds from forfeited property—including the seized cash that the Wyoming DCI seeks to forfeit in this case—by executive entities that have fiscal control over the DCI is an unconstitutional delegation of legislative authority that violates the separation of powers under the Constitution of the State of Wyoming. In particular, such exercise improperly allows executive-branch officials to engage in appropriations to self-finance their own activities, in violation of the separation and distribution of powers under Article II, Section 1 of the Wyoming Constitution and the delegation of the power to make appropriations to the Wyoming Legislature in Sections 34 and 36 of Article III of the Wyoming Constitution. This failure to respect the constitutional separation and distribution of powers violates Mr. Parhamovich's rights under Sections 2, 6, and 32 of Article I of the Wyoming Constitution.

XV. If successful, the intended forfeiture of the seized cash would be an excessive fine in violation of Mr. Parhamovich's constitutional rights under the Eighth Amendment to the United States Constitution and Section 14 of Article I of the Wyoming Constitution.

For all of the above reasons and legal defenses, the forfeiture of the seized cash should be denied and an order should be entered requiring the State to return the seized cash to Mr. Parhamovich, with interest.

**MOTION FOR RETURN OF PROPERTY
UNDER WYOMING RULE OF CRIMINAL PROCEDURE 41(g)**

COMES NOW Claimant Phil Parhamovich III, by and through his counsel of record, and moves for the return of his property under Rule 41(g) of the Wyoming Rules of Criminal Procedure. As set forth below, and in the Answer incorporated above, Mr. Parhamovich is a "person aggrieved by an unlawful search and seizure," and "by the deprivation of property," and is "entitled to lawful possession of the property." Wyo. R. Crim. P. 41(g). Specifically, Mr. Parhamovich's life savings of \$91,800 (the "seized cash") were seized from him by State of Wyoming law-enforcement officers on March 13, 2017 after an unlawful search and seizure of

Mr. Parhamovich and his vehicle during a traffic stop on I-80 in Laramie County, Wyoming. The seized cash was lawfully earned by Mr. Parhamovich and he intended to use the funds for lawful purposes—the vast majority of the funds was to be the down payment for a recording studio in Madison, Wisconsin.

To supplement the summaries of his legal arguments below, Mr. Parhamovich requests an opportunity to fully brief these matters after discovery has been conducted, and present a full memorandum of legal points and authorities in support of his request for return of property once more facts and evidence are known.

Mr. Parhamovich hereby seeks the return of his seized cash, with interest. In support, Mr. Parhamovich offers the following:

Statement of Facts

1. The facts set forth above in the Answer are fully incorporated herein.
2. Mr. Parhamovich is an individual U.S. citizen and a resident of the State of Wisconsin. (*See Declaration of Phillip Parhamovich III in Support of Motion for Return of Property (Parhamovich Decl. #2*) ¶ 2.)
3. Mr. Parhamovich is the sole lawful owner of, and the only party with a legally recognizable interest in, the \$91,800 in seized cash that was taken from him during a traffic stop by Trooper Pittsley of the Wyoming Highway Patrol on March 13, 2017 on I-80 in Laramie, County, Wyoming. (Parhamovich Decl. #2 ¶ 3.)
4. The seized cash is Mr. Parhamovich's life savings, which he acquired lawfully by restoring and selling houses as well as by refurbishing and selling musical instruments, musical equipment, and other property, including vehicles. (Parhamovich Decl. #2 ¶¶ 4-16, Exs. 1-5.)
5. In the 2-3 years prior to March 13, 2017, Mr. Parhamovich generated lawful earnings substantially exceeding the \$91,800 in seized cash, including from the sale of two historic farmhouses he personally remodeled. (Parhamovich Decl. #2 ¶¶ 8-13, Exs. 1-2,4-5.)
6. Mr. Parhamovich's most recent home sale, in April 2015, was a historic house he had lived in and remodeled in Lummi Island, Washington. Mr. Parhamovich sold the house for \$347,500 and received approximately \$125,000 from the settlement. (Parhamovich Decl. #2 ¶¶ 9, 13 Exs. 2, 5.)

7. In March of 2015, Mr. Parhamovich also finalized the contract sale of a Victorian house in Dubuque, Iowa that he had previously lived in and remodeled; Mr. Parhamovich received approximately \$57,000 from that closing. (Parhamovich Decl. #2 ¶¶ 10, 12, Exs. 1, 4.)

8. Mr. Parhamovich has prepared booklets for each house he has remodeled with color photographs and descriptions of the remodeling process. (Parhamovich Decl. #2 ¶¶ 11-13, Exs. 4-5.)

9. Mr. Parhamovich also had many other sources of lawful earnings that have generated cash in the years prior to March 13, 2017, which has enabled him to gradually save some of the \$91,800 that was seized. (Parhamovich Decl. #2 ¶¶ 4, 15-16.) For example, Mr. Parhamovich frequently bought and sold musical instruments (especially collectible guitars), musical equipment (including studio-recording equipment like sound boards and tape machines), and used vehicles (including cars, trucks, motorcycles, campers, and boats). Parhamovich Decl. #2 ¶¶ 4, 16.) He would often refurbish these items after purchasing them in order to sell them for a higher price. He sold some of these items in person, for cash, and he also sold some of them online on Ebay and Reverb.com, for which he has receipts totaling over \$19,000 from March 2014 to March 2017. (*See, e.g.*, Parhamovich Decl. #2 ¶¶ 7, 16, Ex. 3.)

10. Mr. Parhamovich preferred to keep the bulk of his life savings in cash for liquidity, so that he could have it on hand for making quick cash purchases of vehicles, guitars, and musical equipment, as such opportunities presented themselves. (Parhamovich Decl. #2 ¶ 17.)

11. At the time Mr. Parhamovich was stopped on I-80 in Wyoming, he was traveling with his life savings—\$91,800 in cash. (Parhamovich Decl. #2 ¶ 18.)

12. Mr. Parhamovich intended to use most of this cash for a down payment of approximately \$80,000 on a recording studio in Madison, Wisconsin, for which he had just signed a purchase agreement four days earlier on March 9, 2017, and for which he had already made a \$4,000 earnest-money deposit on March 11, 2017, and which was received and deposited by the Listing Agent on March 13, 2017, the same day as the Wyoming traffic stop when Mr. Parhamovich's cash was seized. (Parhamovich Decl. #2 ¶¶ 19-20, Ex. 6.)

13. Mr. Parhamovich previously provided the documents in Exhibits 1-6 to the AG's Office as attachments to a letter he sent to the AG's Office by overnight mail on April 28, 2017 explaining and documenting the lawful sources of his income. Parhamovich Decl. #2 ¶¶ 5-7, 14,

20. (See Declaration of Phillip Parhamovich III in Support of Motion to Set Aside Entry of Default (“Parhamovich Decl. #1”), Ex. N.)

14. Mr. Parhamovich brought the \$91,800 in cash with him on his trip because he was concerned about leaving it for a prolonged period in the apartment he was then renting, which was frequently entered by building maintenance workers in order to service the furnace for the whole building. (Parhamovich Decl. #2 ¶ 21.) Mr. Parhamovich was traveling on a concert tour with his own musical equipment and speakers, so he put his \$91,800 in life savings (the seized cash) in one of his speaker cabinets for safe keeping while traveling. (Parhamovich Decl. #2 ¶ 22.)

15. Mr. Parhamovich chose the speaker cabinet to temporarily store his life savings while he was on tour because it was a large box that could hold the cash, it would not be obvious to any thieves that there was cash inside the speaker, it was too large for a thief to easily carry it away (and it would take some time for a thief to unscrew and disassemble the speaker), and he would always have the speaker in his sight or nearby while performing. (Parhamovich Decl. #2 ¶ 23.)

16. Mr. Parhamovich also planned to sleep in the back of his vehicle during the tour (which is why a bed was in the back of his minivan), and thus the speaker would be nearby even when he was asleep. (Parhamovich Decl. #2 ¶ 24.)

17. During the traffic stop on March 13, 2017, Mr. Parhamovich was immediately asked to get into Trooper Pittsley’s car, was detained and questioned for a prolonged period of time in Trooper Pittsley’s car, and was asked numerous questions about the details of his trip that had nothing to do with the alleged traffic-safety purpose(s) for the traffic stop: not wearing a seatbelt and/or a “lane use” violation. (Parhamovich Decl. #2 ¶ 25.) Mr. Parhamovich did not consent to this interrogation, but did not feel free to leave. (Parhamovich Decl. #2 ¶ 26.)

18. When Trooper Pittsley used the narcotics-detection dog to begin sniffing Mr. Parhamovich’s vehicle, Mr. Parhamovich witnessed Trooper Pittsley appear to cue or coach the narcotics-detection dog to alert on his vehicle using a tennis ball or a similar size ball. (Parhamovich Decl. #2 ¶ 27.)

19. Both Trooper Pittsley and DCI Agent Tafoya wrongly implied that it was a crime to travel with large amounts of cash. Mr. Parhamovich believed them because he was not familiar with Wyoming law, did not have an attorney on hand to advise him that traveling with

large amounts of cash is not a crime, and because they were law-enforcement officers.

(Parhamovich Decl. #2 ¶ 28.)

20. During the traffic stop, Trooper Pittsley and/or DCI Agent Tafoya asked Mr. Parhamovich one or more compound questions about whether there were any drugs, guns, large sums of cash, and several specific controlled substances in his vehicle; it was clear from the tone and substance of these questions that any affirmative answer would have (wrongly) been treated as the admission of illegal activity and triggered a search of his vehicle. (Parhamovich Decl. #2 ¶29.)

21. There were no illegal drugs or contraband in Mr. Parhamovich's vehicle; accordingly, none were found in the search of his vehicle. (Parhamovich Decl. #2 ¶ 30.)

22. Mr. Parhamovich felt pressured and coerced to sign the roadside waiver by DCI Agent Tafoya. (Parhamovich Decl. #2 ¶ 31.) Mr. Parhamovich did not want to release his interest in the seized cash or "desire to give" it to the DCI. (Parhamovich Decl. #2 ¶ 32.) Mr. Parhamovich also did not want to waive his legal rights to get his money back, including through formal forfeiture proceedings under Wyoming's forfeiture statute. (Parhamovich Decl. #2 ¶ 33.)

23. Mr. Parhamovich is not an attorney and is not familiar with Wyoming law. He did not understand the legal consequences of signing the roadside waiver and did not have an attorney on hand to advise him while he was stopped on the side of the highway about the legal consequences of signing or declining to sign the roadside waiver. (Parhamovich Decl. #2 ¶ 34.)

24. Mr. Parhamovich did not feel free to leave the scene of the traffic stop without signing the roadside waiver. (Parhamovich Decl. #2 ¶ 35.) Mr. Parhamovich only signed the roadside waiver under duress; he reasonably believed that if he did not sign the roadside waiver, he would be detained further and possibly put in jail while traveling by himself in a state nearly a thousand miles from his home in Wisconsin. (Parhamovich Decl. #2 ¶ 36.)

25. Mr. Parhamovich was not given a copy of the roadside waiver that he had signed, and could not remember exactly what it said. (Parhamovich Decl. #2 ¶ 37.) He requested a copy of his signed roadside waiver from the Wyoming Highway Patrol, the Wyoming DCI, and the AG's Office a few days later in March 2017, but his request was denied in a letter from the AG's Office dated March 24, 2017. (Parhamovich Decl. #1, ¶ 5, Exs. B, E-F.)

26. On March 17, 2017, just four days after the seizure, Mr. Parhamovich sent a letter to the Wyoming Highway Patrol and the AG's Office, and a separate letter to the Wyoming DCI.

In both letters, Mr. Parhamovich claimed the seized cash, asked for it to be promptly returned, disputed and revoked the roadside waiver, and asked to be provided notice regarding any court proceedings regarding the seized property. (Parhamovich Decl. #2 ¶ 38; *see* Parhamovich Decl. #1, Exs. C-D.) This was the first of three letters that Mr. Parhamovich sent to the AG's Office in March and April 2017 in which he claimed the seized cash, asked for it to be promptly returned, and asked for notice of any court proceedings regarding the seized property. (*See* Parhamovich Decl. #1, Exs. C, D, L, N.)

27. Mr. Parhamovich can testify under oath as to the sources of his lawful earnings and the seized cash, and related documentation, as well as his intended purpose for approximately \$80,000 of the seized cash, and related documentation. In addition, as set forth in the accompanying motion for rehearing and to set a discovery schedule, Mr. Parhamovich seeks to take discovery from the State of Wyoming and then present testimony and evidence at the Rehearing in this matter to supplement this motion.

Legal Bases for Return of Property

1. The legal arguments and Defenses set forth in the Answer are incorporated herein.
2. The entire traffic stop was a pretext to conduct a warrantless narcotics interrogation as evidenced by the series of questions unrelated to traffic-safety purposes asked by Trooper Pittsley, the repeated efforts by Trooper Pittsley to continue questioning Mr. Parhamovich and to obtain permission to search his vehicle, the presence of a narcotics-detection dog in Trooper Pittsley's vehicle while he was ostensibly conducting traffic enforcement, and the fact that officers on the scene had a pre-printed "Release of Interest in Property or Currency" form (the roadside waiver). Just as in *O'Boyle v. State*, 117 P.3d 401, 410 (Wyo. 2005), Trooper Pittsley "unreasonably expanded the scope of the stop far beyond the [traffic] offense into a full-blown drug investigation." The Wyoming Supreme Court in *O'Boyle* explained that, "[a]cquiescence and nonresistance have not been deemed sufficient under Wyoming law to establish consent." *Id.* at 412. Moreover, the *O'Boyle* Court emphasized that, "if a search or seizure is based upon the proposition that consent was given, there should be no question from the evidence that consent was 'really voluntary and with a desire to invite search [or seizure] and not done merely to avoid resistance.'" *Id.* The Court explained that such principles are "even more applicable in the context of roadside vehicle seizures—where the traveler has been stopped for a traffic offense and is not free to leave." *Id.* As in *O'Boyle*, Mr. Parhamovich did not

reasonably feel free to leave and his continued detention and interrogation were not voluntary. *See id.* at 413 (“We agree with the district court’s finding that no reasonable person under those circumstances would feel free to go. We believe the vast majority of citizens facing similar circumstances would simply submit to the officer’s requests believing they had no other option.”).

3. As in *O’Boyle*, the initial unconstitutional detention and interrogation of Mr. Parhamovich tainted the remainder of the traffic stop and rendered any evidence obtained subsequently inadmissible. *Id.* at 420. Moreover, unlike the criminal defendant in *O’Boyle*, who had approximately five pounds of marijuana in his vehicle, *id.* at 405, Mr. Parhamovich is *not* a criminal defendant, he did *not* have any controlled substances or other contraband in his vehicle, and he is not a criminal at all. Nonetheless, Mr. Parhamovich’s life savings were seized and now the State of Wyoming is attempting to forfeit those life savings without any claims or evidence of wrongdoing by Mr. Parhamovich. For the same reasons that the evidence was suppressed in *O’Boyle*, Mr. Parhamovich’s seized cash should be returned to him due to the unconstitutional nature of the stop that resulted in the seizure.

4. Mr. Parhamovich did not sign the roadside waiver knowingly, intelligently, and voluntarily. Mr. Parhamovich signed the roadside waiver out of lack of knowledge, due to coercion, and under duress. The waiver is unenforceable because Mr. Parhamovich could not knowingly or intelligently sign the waiver on the side of the highway without having any time to consult an attorney or anyone else who could advise him about the legal consequences of signing the waiver, or to perform his own research about the legal consequences. The waiver is unenforceable as inherently coercive because Mr. Parhamovich did not feel free to leave until and unless he signed the waiver. In the absence of duress or coercion, no reasonable person would spontaneously sign a waiver “voluntarily” giving their life savings to the Wyoming DCI during a traffic stop. In other words, the waiver was not the product of free and deliberate choice and was thus not voluntary. *See, e.g., Jean-Louis v. Forfeiture of \$203,595*, 767 So.2d 595, 598 (Fla. Dist. Ct. App. 2000) (reasoning that a waiver is valid only if it is voluntary and “executed with a full awareness of the nature of the rights being abandoned and the consequences of their abandonment”). The roadside waiver is therefore null, void, and unenforceable, and thus does not impede Mr. Parhamovich’s status as the sole lawful owner of the seized cash.

5. To supplement these summaries of his legal arguments, Mr. Parhamovich requests an opportunity to fully brief these matters after discovery has been conducted, and present a full memorandum of legal points and authorities in support of his request for return of property once more facts and evidence are known.

6. Because Mr. Parhamovich is the lawful owner of the seized cash and because the roadside waiver is unenforceable, Mr. Parhamovich respectfully asks for this Court to order the return of his property.

PRAYER FOR RELIEF

Claimant Phillip Parhamovich respectfully asks the Court to grant the following relief:

- (A) Enter judgment in favor of Mr. Parhamovich;
- (B) Declare that Mr. Parhamovich is the legitimate, lawful owner of the seized cash;
- (C) Order this forfeiture matter to be dismissed with prejudice;
- (D) Order that the seized cash be immediately returned to Mr. Parhamovich;
- (E) Award attorney's fees and costs related to defending this matter;
- (F) Award pre-judgment and post-judgment interest as determined by statute; and
- (G) Order any and all such further relief the Court deems appropriate.

Dated this 16 th day of November, 2017

Respectfully submitted,

By:



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*Pending admission *pro hac vice*

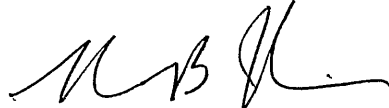
Counsel for Claimant Phillip Parhamovich III

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2017, a true and correct copy of the forgoing Answer to Petition for Order to Show Cause and Motion for Return of Property was sent via United States Mail, postage prepaid, addressed to:

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