

**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;

JAMES F. KENNEY, in his official capacity as  
Mayor of Philadelphia;

RICHARD ROSS JR., in his official capacity as  
Commissioner of the Philadelphia Police  
Department;

PHILADELPHIA DISTRICT ATTORNEY'S  
OFFICE;

LAWRENCE S. KRASNER, in his official  
capacity as District Attorney of Philadelphia;

SHEILA A. WOODS-SKIPPER, in her official  
capacity as Chair of the Administrative  
Governing Board of the First Judicial District of  
Pennsylvania;

JACQUELINE F. ALLEN, in her official  
capacity as a member of the Administrative  
Governing Board of the First Judicial District of  
Pennsylvania;

JOSEPH H. EVERS, in his official capacity as  
Court Administrator of the First Judicial District  
of Pennsylvania; and

CHARLES A. MAPP, in his official capacity as  
Chief Deputy Court Administrator of the First  
Judicial District of Pennsylvania;

Defendants.

Civil Action No. 2:14-cv-04687

Assigned to the  
Honorable Judge Robreno

**Special Management Track**

**THIRD AMENDED  
CLASS-ACTION COMPLAINT**

**COMPLAINT—CLASS ACTION**

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## INTRODUCTION

1. This civil-rights lawsuit challenges the constitutionality of Philadelphia's forfeiture program, one of the largest municipal forfeiture programs in the country. Named Plaintiffs Christos Sourovelis, Doila Welch, Norys Hernandez, and Nassir Geiger are Philadelphia property owners who seek injunctive, declaratory, and monetary relief on behalf of themselves and all others similarly situated for violations of their due-process rights under the Fourteenth Amendment.

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. 12011 Ferndale Street* and *Commonwealth v. 2000 Buick and Contents*) and requires property owners to affirmatively prove their innocence. Should the Philadelphia District Attorney'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, Philadelphia 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 \$5.6 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 1,200 residences, 3,500 vehicles, and \$50 million in cash over a thirteen-year period, ultimately raking in more than \$72 million in revenue. This is more

than 18 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 declare unconstitutional and enjoin the following seven policies and practices, which deprive people not only of their property, but of their rights to due process of law:

(i) The policy and practice of the City and District Attorney's Office 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) The policy and practice of the City and District Attorney's Office 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 case dismissed;<sup>1</sup>

(iii) The policy and practice of the City, the District Attorney's Office, and the First Judicial District 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) The policy and practice of the City, the District Attorney's Office, and the First Judicial District 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 the City and District Attorney's Office of retaining forfeited property and its proceeds for use by the Philadelphia District Attorney's

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<sup>1</sup> On November 4, 2015, the Court approved a class-wide settlement agreement that stopped these first two policies and practices. (Order, ECF No. 104.)

Office and the Philadelphia Police Department;

(vi) The policy and practice of the City, the District Attorney's Office, and the First Judicial District of having prosecutors and employees of the Philadelphia District Attorney's Office control "hearings" in Courtroom 478; and

(vii) The policy and practice of the City, the District Attorney's Office, and the First Judicial District of denying property owners of due process in how forfeiture and related proceedings are conducted.

### **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, declaratory, and monetary relief arising from Defendants' unconstitutional policies and practices concerning civil forfeiture.

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.

11. At the time of the filing of the First Amended Complaint, Mr. Sourovelis stood to permanently lose his family's home through a civil-forfeiture proceeding initiated by the Philadelphia D.A.'s Office.

12. 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.

13. 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 faced eviction if she did not agree to prohibit her son from residing in the home and prohibit her husband from entering the home at all.

14. At the time of the filing of the First Amended Complaint, Ms. Welch stood to permanently lose her home through a civil-forfeiture proceeding initiated by the Philadelphia D.A.'s Office.

15. 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.

16. 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.

17. At the time of the filing of the First Amended Complaint, Ms. Hernandez stood to permanently lose her property through a civil-forfeiture proceeding initiated by the Philadelphia D.A.'s Office.

18. 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. The Philadelphia D.A.'s Office initiated civil-forfeiture proceedings against both Mr. Geiger's money and his car.

19. On June 16, 2014, Mr. Geiger's cash was ordered forfeited as a result of a default judgment.

20. At the time of the filing of the First Amended Complaint, Mr. Geiger also stood to permanently lose his car through a civil-forfeiture proceeding initiated by the Philadelphia D.A.'s Office.

21. On May 3, 2015, Mr. Geiger settled the forfeiture action and received his car back after paying \$500 in storage fees. Mr. Geiger was deprived of his car for 15 months.

22. 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**

23. 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.

24. Defendant James F. Kenney is the Mayor of Philadelphia. As Mayor, he is responsible for supervising Police Commissioner Ross. Mayor Kenney is sued in his official capacity.

25. Defendant Richard Ross, Jr. is the Commissioner of the Philadelphia Police

Department, which is the City's primary law-enforcement agency. (At the time the First Amended Complaint was filed, Charles H. Ramsey was the Police Commissioner.) As head of the nation's fourth-largest police department, Commissioner Ross 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. Former Police Commissioner Ramsey had an agreement on behalf of the Philadelphia Police Department to share in forfeiture proceeds with the Philadelphia D.A.'s Office. Police Commissioner Ross has continued this practice of sharing in forfeiture proceeds. Police Commissioner Ross is sued in his official capacity.

26. Defendants City of Philadelphia, Police Commissioner Ross, and Mayor Kenney are referred to collectively as the "City Defendants."

27. Defendant Philadelphia District Attorney'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." At the time the First Amended Complaint was filed, the Chief of the Public Nuisance Task Force was Assistant District Attorney Beth Grossman. The current Chief of the Public Nuisance Task Force is Assistant District Attorney Andrew Jenemann. The Philadelphia D.A.'s Office receives

forfeited property and 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.

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

29. Defendants Philadelphia D.A.'s Office and Lawrence S. Krasner are referred to collectively as the "District Attorney Defendants."

30. Defendant Sheila A. Woods-Skipper is President Judge of the Court of Common Pleas of Philadelphia, and in that capacity, serves as chair of the Administrative Governing Board of the First Judicial District of Pennsylvania. The Administrative Governing Board has authority over all operations of the courts and departments in the First Judicial District, including the monitoring of overall performance, as well as annual reporting of that performance to the Pennsylvania Supreme Court. According to the First Judicial District's website, Judge Woods-Skipper "[i]s responsible for the implementation of local rules as adopted by the Board of Judges, and for the initiation of administrative orders, directives, or general court regulations as may be mandated or authorized by various court rules and directives, as well as legislative

enactments.” President Judge Woods-Skipper is sued in her official capacity as chair of the Administrative Governing Board.

31. Defendant Jacqueline F. Allen is Administrative Judge for the Trial Division of the Court of Common Pleas of Philadelphia, and in that capacity serves on the Administrative Governing Board. The Pennsylvania Supreme Court appointed Judge Allen to “approv[e] authority for all administrative matters associated with the Trial Division.” According to the First Judicial District’s website, Judge Allen is responsible for the “[a]ssignment of judges within the Trial Division, along with designation and use of all rooms assigned to the Division for judicial use, excepting chambers for each judge.” Defendant Jacqueline F. Allen is sued in her official capacity as a member of the Administrative Governing Board.

32. Defendant Joseph H. Evers is the Court Administrator of the First Judicial District of Pennsylvania, and in that capacity serves on the Administrative Governing Board. The Court Administrator is the highest non-judicial leadership position in the First Judicial District of Pennsylvania. According to the First Judicial District’s website, “The Office of the Court Administrator was instituted to complement the [Administrative Governing] Board and carry out their directives, to propose solutions to problems and innovative ideas for improvements, and to oversee the day-to-day management of the District.” “The Office provides centralized management for major service centers that affect the work of the courts throughout the District, and coordinates the ministerial activities of Deputy Court Administrators located in specific courts and divisions of the [First Judicial District].” Defendant Joseph H. Evers is sued in his official capacity.

33. Defendant Charles A. Mapp is the Chief Deputy Court Administrator of the First Judicial District of Pennsylvania. According to the First Judicial District’s website, “[t]he Chief

Deputy Court Administrator is responsible for carrying out high level initiatives as identified by the Court Administrator, and these include caseflow management, technology acquisition and implementation, facility design and management, system restructuring, labor relations, and records management.” Defendant Charles A. Mapp has been involved in deciding how forfeiture proceedings are conducted. Defendant Charles A. Mapp is sued in his official capacity.

34. President Judge Woods-Skipper, Administrative Judge Allen, Mr. Evers, and Mr. Mapp are collectively referred to as the “State Court Administrators.”

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

### **FACTUAL ALLEGATIONS**

#### **I. PENNSYLVANIA’S FORFEITURE LAW**

36. 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.

37. Civil forfeiture is distinct from criminal 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 or petitioner and the property as the defendant or the respondent, with parties who have an interest in the property subject to forfeiture as the claimant.

38. 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 previously was only required to prove the property’s connection to a crime by a preponderance of the evidence. This slightly improved in 2017, when

a state statute raised the government's burden to clear and convincing evidence. *See* 42 Pa. Cons. Stat. § 5805(j)(3).

39. 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.

40. In Pennsylvania, district attorney's offices, including the Philadelphia D.A.'s Office, also bring forfeiture actions that are not authorized by statute—so-called “common law forfeitures.” To the extent “common law forfeitures” are authorized under Pennsylvania law, they can only be pursued for derivative contraband where there is evidence of a conviction. *See Commonwealth v. 2010 Buick Enclave*, 99 A.3d 163 (Pa. Commw. Ct. 2014). It is the policy and practice of the Philadelphia D.A.'s Office to file petitions for “common law forfeiture” before obtaining a conviction.

41. In Pennsylvania, one of the most common statutory bases for forfeiture had been 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 had been brought under this statute. In 2017, this statute was amended, retitled as “Forfeiture of Assets,” and codified at 42 Pa. Cons. Stat. §§ 5801 *et seq.*

42. Enacted in 2017, the Forfeiture of Assets Act (formerly 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. Cons. Stat. §§ 780-101 to 780-144 (a “controlled-substance violation”).

43. The Forfeiture of Assets Act (formerly the Controlled Substances Forfeiture Act)

enumerates the kind of property subject to forfeiture. 42 Pa. Cons. Stat. § 5802 (formerly § 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.* § 5802(4), (6)(i)(A)–(C) (formerly § 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.* § 5802(6)(ii) (formerly § 6801(a)(6)(ii)).

44. 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.* § 5803(b)(4) (formerly § 6801(b)).

45. The Forfeiture of Assets Act outlines the procedures governing civil forfeiture. *See* 42 Pa. Cons. Stat. § 5805 (formerly § 6802). First, it enumerates the required contents of a petition for civil forfeiture and where it should be filed. *Id.* § 5805(a) (formerly § 6802(a)). Second, it establishes the requirements for providing sufficient notice of the civil-forfeiture petition to the property owner. *Id.* § 5805(b)–(e) (formerly § 6802(b)–(e)). Third, the Act implements a burden-shifting framework. If the Commonwealth produces evidence that the property is subject to forfeiture, and its owner claims that he or she did not know or consent to the illegal activity, the government must prove that the owner either was the one to unlawfully

use the property or that the illegal use was done with his or her knowledge and consent. *Id.* § 5805(j) (formerly § 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. Commw. Ct. 2012).

46. The Controlled Substances Forfeiture Act provided officials with 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. Cons. Stat. § 6802(f) (repealed 2017). Under former § 6802(g), an *ex parte* temporary restraining order could be entered “if the Commonwealth demonstrate[d] 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.” The Forfeiture of Assets Act revised the requirements for obtaining process to seize real property and requires that, before real property is seized based upon an *ex parte* order, officials demonstrate both that exigent circumstances exist and that less restrictive measures than seizure of the property would not mitigate those circumstances. 42 Pa. Cons. Stat. § 5803(b.1).

47. Finally, the Forfeiture of Assets 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. § 5803(f) (formerly § 6801(e)).

48. 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. § 5803(f)(2) (formerly § 6801(e)).

49. 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. § 5803(g)–(h) (formerly § 6801(f)–(g)).

50. The Act further provides that the entity having budgetary control shall not anticipate future forfeitures or proceeds from future forfeitures in adoption and approval of the budget for the district attorney. 42 Pa. Cons. Stat. § 5803(g) (formerly § 6801(f)). Consequently, these forfeiture funds are a “bonus” to law-enforcement agencies that exist wholly outside oversight by the funding county.

51. 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. 42 Pa. Cons. Stat. § 5803(i) (formerly § 6801(h)). The Act also authorizes district attorneys to designate forfeiture proceeds for community-based drug and crime-fighting programs. *Id.*

52. 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.**

53. 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.

54. Philadelphia has one of the largest municipal forfeiture programs in the country, yielding an average of \$5.6 million in forfeiture revenue each year.

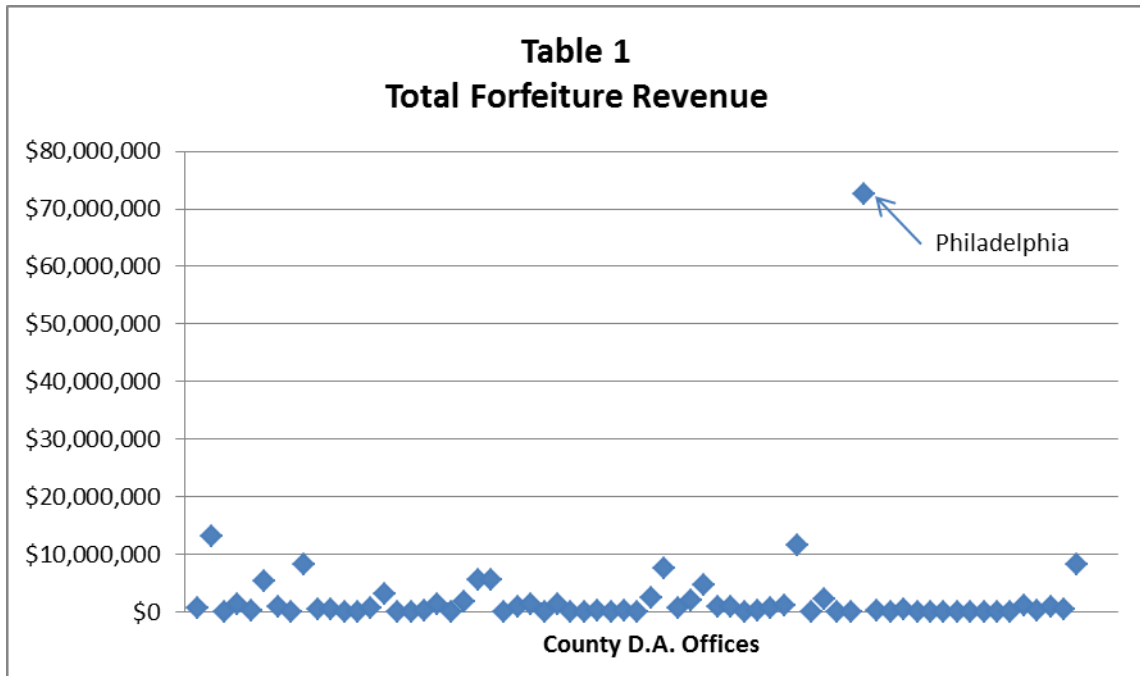
55. By contrast in 2010, Kings County (Brooklyn), with a population 1.5 times that of Philadelphia, and Los Angeles County, with a population over 6.5 times that of Philadelphia, each brought in \$1.2 million in annual forfeiture revenue.

56. 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.

57. 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 2014,<sup>2</sup> the Philadelphia D.A.’s Office collected a total of \$72,627,100.00 in forfeiture revenue, while the remaining 66 county D.A.’s Offices collected a combined total of \$102,253,009.65. That means that for this thirteen-year period, Philadelphia’s forfeiture revenue amounted to 42 percent of the statewide total. The amount each D.A.’s Office collected in forfeiture revenue is illustrated below in Table 1.

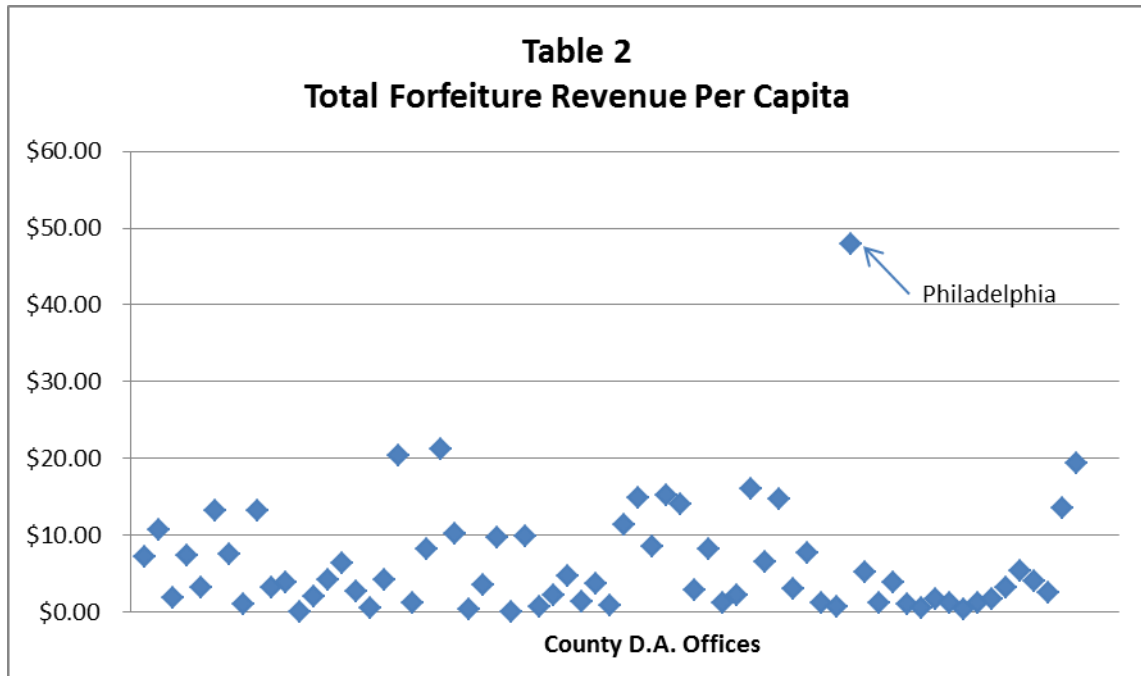
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<sup>2</sup> Data for Fiscal Year 2015 and 2016 have not been released to Plaintiffs yet.



58. 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.

59. 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 \$47.91 in *per capita* forfeiture revenue, more than twice that of the next most active county.



60. From Fiscal Years 2002 through 2014, 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.

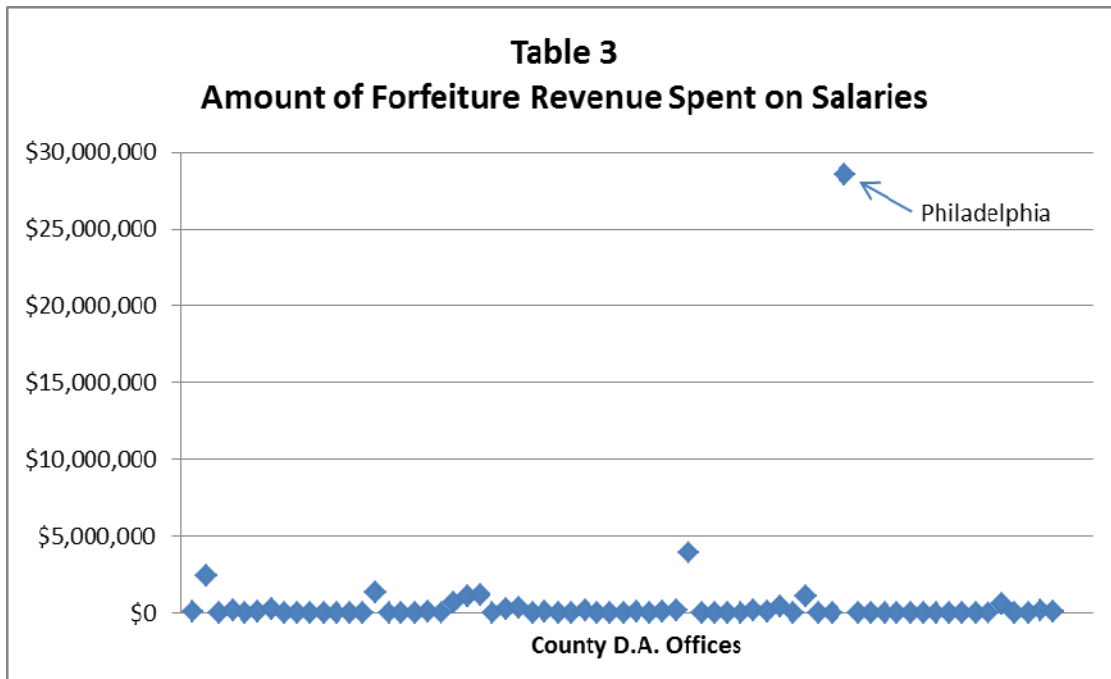
61. By comparison, the civil-forfeiture revenue taken in by the District Attorney’s Office for Allegheny County, the second largest county in Pennsylvania, averaged approximately 8 percent of that office’s appropriated budget.

62. 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.

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

64. The Philadelphia D.A.’s Office spends nearly twice as much of its forfeiture revenue on salaries as all other county D.A.’s offices combined. From Fiscal Years 2002

through 2014, the Philadelphia D.A.’s Office spent \$28,545,692.00 of its forfeiture revenue on salaries, compared to \$15,712,597.91 spent on salaries by all other D.A.’s Offices in the Commonwealth. The amount of forfeiture revenue D.A.’s Offices in the Commonwealth spent on salaries during Fiscal Years 2002 through 2014 is illustrated below in Table 3.



65. Again, taking into account population size, the total amount *per capita* that Philadelphia spent on salaries during this time period was \$18.83, while all other counties combined only spent \$1.42 *per capita*.

66. In contrast, from Fiscal Years 2002 through 2014, 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.

67. 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. District Attorney Williams had a substantially similar agreement with former Police Commissioner Ramsey and Police Commissioner Ross to share forfeiture proceeds. Upon information and belief, both Commissioner Ross and D.A. Krasner have continued this practice of sharing in forfeiture proceeds.

***A. The City and District Attorney Defendants Seize Large Quantities of Personal Property for Forfeiture.***

68. 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.

69. 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.

70. 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.

71. The bulk of Philadelphia’s forfeiture revenue comes from confiscating cash.

72. From Fiscal Years 2002 through 2014, Philadelphia seized and forfeited \$50,440,292.00 in cash.

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

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

75. 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, <http://citypaper.net/article.php?The-Cash-Machine-19189>. In many of these cases, the amount involved was less than \$100.

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

77. The City and District Attorney 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.

78. The City and District Attorney Defendants also seize a large number of vehicles through their forfeiture power. From Fiscal Years 2002 through 2014, Philadelphia seized and forfeited 3,541 vehicles.

79. It is the City and District Attorney 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.

80. Defendants routinely fail to advise vehicle owners that storage fees will continue to accumulate until the owner files a motion for return of property.

81. Philadelphia also relies on 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. The City and District Attorney Defendants Seize and Restrain Numerous Real Properties for Forfeiture.***

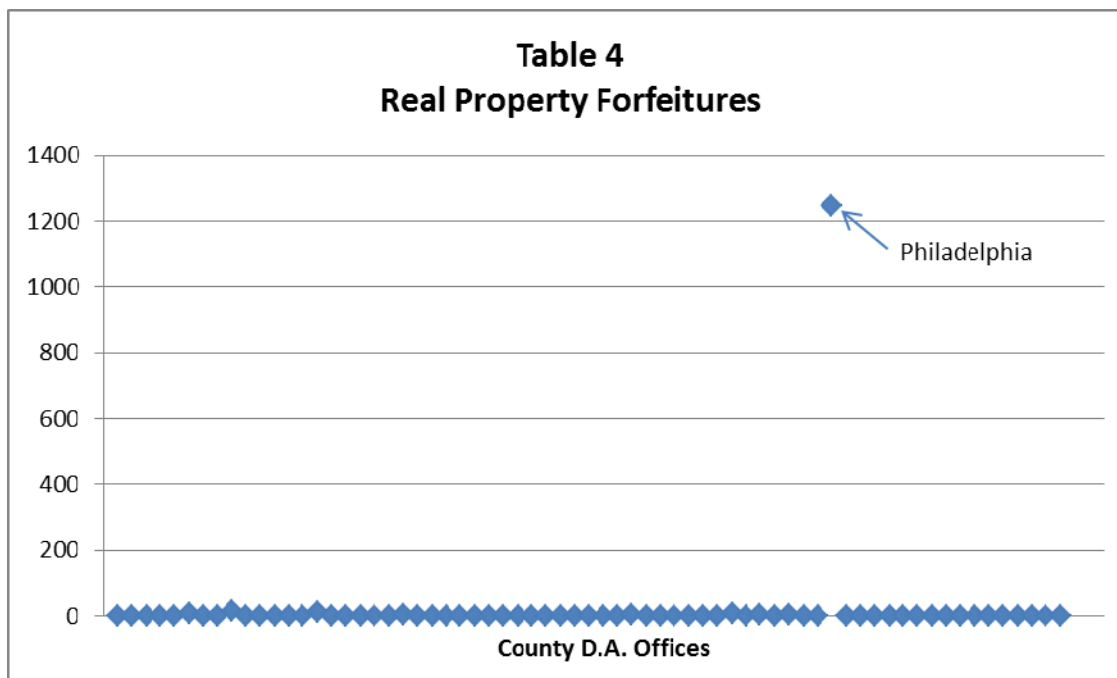
82. Philadelphia aggressively uses civil forfeiture to seize and restrain real property on a scale unlike that of any other county in Pennsylvania.

83. 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.

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

85. As illustrated in Table 4 below, from Fiscal Years 2002 to 2014, Philadelphia forfeited 1,248 real properties compared to just 72 real properties forfeited by all other counties combined.





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

86. The enormous volume of forfeiture cases—and ultimately the very substantial amount of revenue taken in—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.

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

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

89. 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.

90. From August 11, 2012 to July 29, 2016, the Public Nuisance Task Force has filed 20,590 forfeiture petitions related to controlled-substance forfeitures: 451 or 2% of those petitions were filed against real property and 20,139 (approximately 98%) of those petitions were filed against personal property, mostly against cash and vehicles.

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

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

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

94. 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.***

95. 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.

96. Until on or about September 22, 2014, it was the policy and practice of the Philadelphia D.A.'s Office to, before filing forfeiture petitions for real property, 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*.

97. Until on or about September 22, 2014, it was 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.

98. In addition to applying for temporary restraining orders to restrain the transfer of the target property, it was the policy and practice of the Philadelphia D.A.'s Office, until on or about September 22, 2014, to apply for an *ex parte* order to seize and seal the target property under 42 Pa. Cons. Stat. § 6802(f) and (g). Applications to seize and seal contained 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 contained minimal factual allegations copied verbatim from the Philadelphia Police Department Arrest Report, which was incorporated and attached to the application.

99. Until on or about September 22, 2014, it was 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 was needed to preserve the specific property for civil forfeiture.

100. Until a partial settlement was approved on behalf of a class of property owners, it was 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 would be insufficient to protect Defendants' interests during the pendency of the civil-forfeiture proceedings.

101. Until a partial settlement was approved on behalf of a class of property owners, it was 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.

102. Under the City and District Attorney Defendants' policies and practices, Plaintiffs Sourovelis, Welch, and Hernandez, as well as members of the putative class, first learned that their homes were threatened with forfeiture when officers of the Philadelphia Police Department appeared at their home, and, armed with the order to "seize and seal" the premises, forcibly evicted them and all residents without any prior notice or opportunity to be heard.

103. 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.

104. 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.

105. 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."

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

107. 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."

108. 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.”

109. 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) was set for a specified date and time in a specific courtroom. Until January 6, 2016, forfeiture proceedings took place in Courtroom 478, City Hall, Philadelphia, Pennsylvania.

110. For some time during the summer and fall of 2015, the District Attorney Defendants stopped filing new forfeiture petitions. However, during that time, the City and District Attorney Defendants continued to seize people’s property for civil forfeiture. Although the District Attorney Defendants resumed filing new forfeiture petitions for a brief period, they again stopped filing new petitions in February 2016. Yet since then, the City and District Attorney Defendants have continued to seize property for civil forfeiture. Consequently, during this period people whose property has been seized have been deprived of their property without any notice of how to obtain their property back or what procedures will govern.

111. Court records demonstrate that it was the Defendants’ policy and practice to list anywhere from 40 to 95 civil-forfeiture actions to be heard in Courtroom 478 in a single day.

***B. The Creation of “Courtroom” 478.***

112. The First Judicial District of Pennsylvania is composed of two courts which make up the Philadelphia County Court System: the Court of Common Pleas and the Municipal Court. The Court of Common Pleas is responsible for providing a judicial forum for civil-forfeiture actions.

113. State Court Administrators have a history of vacillating between having the judiciary control forfeiture proceedings and then relinquishing control over those proceedings to the Philadelphia D.A.’s Office. In addition, State Court Administrators have a history of

intermittently allowing forfeiture proceedings to be conducted with no judge present.

114. Prior to January 2, 2007, predecessors of the State Court Administrators assigned forfeiture matters to various courtrooms in the Criminal Justice Center—often overseen by a Court of Common Pleas judge.

115. Upon information and belief, from 1999 to approximately 2004, predecessors of the State Court Administrators assigned a criminal court judge to hear all forfeiture cases in a dedicated courtroom in the Criminal Justice Center. This courtroom was equipped with a complete court staff, including a stenographer, a Clerk of Quarter Sessions, and criminal listing support staff.

116. Upon information and belief, the judge in the dedicated courtroom in the Criminal Justice Center was also responsible for a second courtroom in the Criminal Justice Center, which only handled initial listings of forfeiture cases involving personal property.

117. Upon information and belief, law clerks for the Philadelphia D.A.'s Office handled initial listings in this secondary courtroom—providing some information to property owners and determining whether forfeiture cases were contested.

118. Upon information and belief, law clerks for the Philadelphia D.A.'s Office presented forfeiture cases to the criminal court judge: Contested cases would move forward to trial and non-contested cases would be reviewed by the criminal court judge.

119. Upon information and belief, from approximately 2004 to 2007, predecessors of the State Court Administrators assigned forfeiture cases to the presiding criminal motions judge in Courtroom 504 of the Criminal Justice Center.

120. Upon information and belief, from approximately 2004 to 2007, predecessors of the State Court Administrators eliminated the courtrooms that handled only initial listings of

forfeiture cases and combined those cases with forfeiture cases set for status conferences in a separate courtroom.

121. Upon information and belief, predecessors of the State Court Administrators assigned a Criminal Listings Trial Commissioner, a Clerk of Quarter Sessions, a stenographer, and criminal listings support staff to this courtroom.

122. Upon information and belief, within six months of creating this new courtroom, a shortage of personnel resulted in no Clerk of Quarter Sessions or stenographer in this new courtroom.

123. Upon information and belief, on or about January of 2007, representatives of the State Court Administrators, including Defendant Civil Court Administrator Charles Mapp, informed then Assistant District Attorney Beth Grossman and Assistant District Attorney Clarence Dupree that forfeiture and related proceedings would eventually be transferred to the Civil Court Division. Accordingly, initial listings and status listings for forfeiture and related proceedings would be held in Courtroom 478 in City Hall. But Courtroom 504 of the Criminal Justice Center would be available for any cases referred to the criminal motions judge.

124. Courtroom 478 lacked a presiding judge or any officer with the adjudicative ability, and consequently, there was no stenographer or court reporter. Courtroom 478 also lacked a Clerk of Quarter Sessions, who would maintain the court records and update the court docket.

125. Upon information and belief, State Court Administrators never completed the transition of forfeiture and related proceedings to the Civil Court Division.

***C. The Legal Rabbit Hole of “Courtroom” 478.***

126. Until approximately October 2015, Courtroom 478 operated as follows:

127. Property owners who sought to fight the civil forfeiture and reclaim their property

had to show up in Courtroom 478 in City Hall by 9:00 a.m.

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

129. Assistant district attorneys with the Public Nuisance Task Force fully controlled the proceedings inside “Courtroom” 478. There was no judge, no jury, and not even a court reporter to transcribe these “hearings.”

130. Employees of the Philadelphia District Attorney’s Office occupied 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.

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

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

133. For listed cases in which the property owner was present, the assigned prosecutor or paralegal discussed the case with the property owner. These conversations frequently took 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.

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



135. Prosecutors and paralegals frequently advised property owners that their civil-forfeiture case was not complicated and they did not need an attorney.

136. Prosecutors and paralegals routinely gave property owners a set of more than 50 pattern interrogatories, with multiple discrete subparts, which they characterized as “questionnaires.” These “questionnaires” had to be answered under penalty of perjury.

137. In cases in which there was an order to seize and seal, prosecutors compelled 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.

138. Prosecutors and paralegals routinely continued and relisted civil-forfeiture cases, and they unilaterally determined whether any documentation provided by the property owner was sufficient.

139. When a case was relisted, the assigned prosecutor or paralegal filled 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 instructed 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 advised the property owner:

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

140. Property owners contesting a forfeiture action were sometimes required to appear as many as a dozen times in Courtroom 478 over the course of months or even years before the case was concluded.

141. In a review of 8,284 civil-forfeiture cases, property owners had 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, <http://citypaper.net/article.php?The-Cash-Machine-19189>.

142. On or about June 2, 2015, the Philadelphia D.A.’s Office sent the State Court Administrators a memorandum that summarized the process at that time for administering forfeiture cases and proposed alternatives. This memorandum explained that forfeiture proceedings were conducted in the following way:

- (a) Civil-forfeiture proceedings were being adjudicated in *criminal* court, notwithstanding their civil form and the applicability of the Pennsylvania Rules of Civil Procedure;
- (b) Courtroom 478 was being staffed by the State Court Administrators with only a trial commissioner who served a ministerial role, and no judge was present;
- (c) Instead, proceedings in Courtroom 478 were being run by prosecutors who advised property owners as to the process going forward, discussed settlement, and presented owners with interrogatories to be completed;
- (d) There was no record of proceedings in Courtroom 478 as no court reporter or stenographer was assigned to the room;
- (e) There was no opportunity to challenge the seizure or retention of property before an ultimate hearing on the merits of the forfeiture;
- (f) Cases were relisted on a monthly basis by the prosecutors numerous times prior to any hearing; and

(g) Very few of these cases proceeded to a hearing on the merits; most were resolved either by agreement or by a default order when the claimant failed to appear. If a claimant failed to appear for a relisting date, the case was usually listed for default.

143. On or about June 25, 2015, State Court Administrators met with the Philadelphia D.A.'s Office to discuss changes to the administration of forfeiture proceedings, including limiting the Philadelphia D.A.'s Office interaction with property owners contesting forfeiture.

***D. Despite Incremental Reforms, Constitutional Violations Remain.***

144. As an interim measure starting on October 19, 2015, Court of Common Pleas Trial Commissioners, assisted by courtroom clerks, began presiding over all forfeiture and related proceedings in Courtroom 478, which was also equipped with digital recording technology to ensure records of these proceedings. As of that date, the Trial Commissioners began referring all disputed matters to the judge presiding over the Criminal Motions Court in the Criminal Justice Center.

145. On or about January 2016, State Court Administrators assigned a dedicated courtroom in the Criminal Justice Center to handle forfeiture and related cases in place of Courtroom 478. Wednesdays are dedicated to forfeiture and related proceedings involving vehicles.

146. Upon information and belief, under the State Court Administrators' forfeiture proceedings, when property owners are served with forfeiture petitions, they also receive an order signed by the Administrative Judge—Trial Division stating the date for an "Initial Listing," also termed a "Pretrial Conference."

147. Property owners are required to answer the forfeiture petition within 30 days of being served. This means that the answer is often due before the Initial Listing where a neutral

judicial officer informs property owners—most of whom are unrepresented—both of their rights and of the procedures applicable in forfeiture proceedings.

148. Property owners typically appear at this Initial Listing without any understanding of what is happening to their property and often believe that the proceeding is actually a hearing in their underlying criminal case—not a separate, civil-forfeiture action.

149. Forfeiture proceedings, including Initial Listings, begin at 9:30 a.m. and are divided into two approximately hour-long proceedings. A Common Pleas Court Trial Commissioner oversees the first hour and a Common Pleas Court Judge oversees the second hour when available.

150. Forfeiture matters are assigned a criminal docket number when they are opened and remain docketed as criminal matters unless the property owner requests a jury trial.

151. As of at least July 25, 2016, property owners were not advised of their right to request a jury trial until the Initial Listing. If a property owner requests a jury trial, the matter is transferred to the civil division of the Court of Common Pleas and receives a civil docket number.

152. On July 25, 2016, State Court Administrators posted on the First Judicial District's website General Court Regulation No. 2 of 2016 (hereinafter, "General Court Regulation No. 2" or "GCR"), entitled "Proceedings Seeking Civil Forfeiture of Real Estate and Seized Property."

153. By its own terms, the procedures adopted in the GCR apply neither to motions for return of property under Pennsylvania Rule of Criminal Procedure 588 nor to proceedings involving common law forfeitures.

154. The GCR is also problematic in the following ways:

- (a) It requires that civil-forfeiture petitions be filed and docketed in the

Criminal Court Division, and that civil-forfeiture proceedings be administered by criminal judges applying criminal rules;

(b) It implicates Fifth Amendment rights by requiring an answer to be filed, with the risk of default judgment as a penalty, without any notice that the answer may be used by the Commonwealth in related criminal proceedings;

(c) It increases the risk of erroneous deprivation of property by deferring an explanation of the forfeiture process until the Pretrial Conference;

(d) It seems to authorize Trial Commissioners to perform adjudicative acts beyond the scope of their authorities, such as deciding whether a case presents any genuine issue of material fact, or whether property owners are knowingly and voluntarily waiving their right to a jury trial;

(e) Property owners are not advised of the burdens of proof that they should need to meet either in the forfeiture action itself or in proving any affirmative defense;

(f) It does not notify property owners of the right to request a prompt post-deprivation hearing until the Pretrial Conference, which occurs after an answer is due and up to 60 days after the forfeiture petition is filed, assuming that the forfeiture petition must be served within 30 days of filing; and

(g) It does not clarify or explain any of the procedures that will apply in a prompt post-deprivation hearing.

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

155. 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.***

156. 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.

157. 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.

158. 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.

159. 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.

160. 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.

161. 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.

162. 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.

163. 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.

164. 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."

165. 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.

166. 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.

167. 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.

168. 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.

169. 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.

170. 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.”

171. 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.

172. 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.

173. 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.

174. 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.

175. 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.”

176. 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 their 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.

177. 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 their home.

178. 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.

179. 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.

180. 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.

181. 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.

182. 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.

183. 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.

184. 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.”

185. 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.

186. On or about August 11, 2004, 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.

187. 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 Fines Clause***, if the Commonwealth refiles the forfeiture petition in the future.

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

189. 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. was anxious to start his life over and felt he could not really move past his mistakes while he was still living in limbo at his brother's place. He wanted the security of being back at home with his parents. Additionally, Y.S. found 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.

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

191. Mr. Sourovelis and his family 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.

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

193. 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.

194. Mr. Sourovelis was 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.

195. In December of 2014, four months after Named Plaintiff Sourovelis brought this federal class action, the Philadelphia D.A.’s Office submitted a consent motion for discontinuance of the forfeiture action against Mr. Sourovelis’s home. Under the terms of this discontinuance, Mr. Sourovelis agreed to take reasonable measures to ensure that no controlled-substance violations occur on his property. At the time of the filing of the First Amended Complaint, Mr. Sourovelis faced irreparable injury of losing his family’s home.

***B. Named Plaintiff Doila Welch.***

196. 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.

197. 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.

198. 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.

199. 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.

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

201. 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.

202. 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.

203. 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.

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

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

206. 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.

207. 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.

208. 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.

209. 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.

210. 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.

211. 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.

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

213. 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.

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

215. 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.

216. 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.

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

218. 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.

219. 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.

220. 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.

221. 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.



222. 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.

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

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

225. 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.

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

227. 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.

228. 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.”

229. Based on the clear language of this proposed order, Ms. Welch reasonably believed that she and her family would be evicted from their home if she failed to sign the order. Ms. Welch did not want to sign the proposed order because she believed her son should be allowed to reside in the home.

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

231. 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.

232. Ms. Welch suffered anxiety from the uncertainty as to whether her son is allowed to live with her or whether the City and District Attorney Defendants will permanently bar her son from her home.

233. 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 did not get an opportunity to be heard by a fair and neutral arbiter.

234. In December of 2014, four months after Named Plaintiff brought this federal class action, the Philadelphia D.A.’s Office submitted a consent motion for discontinuance of the forfeiture action against Ms. Welch’s home. Under the terms of this discontinuance, Ms. Welch

agreed to take reasonable measures to ensure that no controlled-substance violations occur on her property. At the time of the filing of the First Amended Complaint, Ms. Welch faced irreparable injury of losing her family's home.

***C. Named Plaintiff Norys Hernandez.***

235. 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.

236. 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.

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

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

239. 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.

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

241. 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.

242. 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.

243. 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.

244. The forfeiture case was relisted for August 12, 2014 for a “hearing” in Courtroom 478.

245. 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.

246. 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, was prohibited from entering the property.

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

248. On or about June of 2016, the Philadelphia D.A.’s Office entered a consent motion for discontinuance of the forfeiture matter, whereby Mrs. Hernandez and Ms. Gonzalez agreed to take reasonable measures to ensure that no controlled-substance violations would occur on their property subsequent to the execution of the agreement. At the time of the filing of the First Amended Complaint, Mrs. Hernandez faced irreparable injury of losing her family’s home.

***D. Named Plaintiff Nassir Geiger.***

249. 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.

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

251. 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.

252. 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.

253. On the advice of a court-appointed defense attorney, Mr. Geiger participated in the Accelerated Misdemeanor Program, Tier I ("AMP-I"), which is a nonconviction program.

254. As part of the AMP-I program, in exchange for paying a \$200 fine and performing 20 hours of community service, all records of Mr. Geiger's arrest on January 17, 2014 were expunged.

255. Participation in AMP-I did not include forfeiture of Mr. Geiger's car or his money. To the contrary, Mr. Geiger's defense attorney advised him that participation in AMP-I was the easiest way to get his car and money back.

256. 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.

257. 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.

258. 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.

259. 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.

260. 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.

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

262. 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."

263. At the August 13, 2014 "hearing," Assistant District Attorney Jennifer Kralle 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.

264. 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.

265. On or about October 22, 2014, Mr. Geiger appeared with his counsel in the forfeiture action before the Honorable Vincent Melchiorre in Courtroom 504 to, among other things, request an extension for the next “hearing.”

266. During this hearing, Assistant District Attorney Krall was “baffled” when Mr. Geiger’s counsel indicated he was prepared for a preliminary hearing because, as she stated on the record: “[I]n forfeiture cases there are no preliminary hearings.” The court later concurred, stating that “[o]nce you leave 478, you go to trial; no preliminary hearing.”

267. Due to the City and District Attorney 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.

268. 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.

269. Additionally, due to state law, Mr. Geiger was 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.

270. At the time the First Amended Complaint was filed, Mr. Geiger faced the irreparable injury of losing his car.

271. About April 6, 2015, Mr. Geiger entered into a settlement agreement whereby he agreed to pay \$500 in storage fees in exchange for return of his vehicle. Assistant District

Attorney Kralle filed a Praecipe to Settle, Discontinue and End the forfeiture matter on or about May 3, 2015.

*E. Plaintiff Members of the Putative Class.*

272. 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.

273. The City and District Attorney 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.

274. The City and District Attorney 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.

275. The City and District Attorney 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.

276. The City and District Attorney Defendants' practice of retaining forfeited property and its proceeds has injected a direct financial incentive and conflict of interest that has impermissibly tainted the seizure and forfeiture of the property.

277. Defendants' policies and practices have deprived property owners a prompt post-deprivation hearing to challenge the retention of their property before a neutral arbiter prior to final disposition of their forfeiture matter.

278. 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.

279. 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.

280. 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.

281. Defendants’ policies and practices in administering forfeiture cases have deprived property owners of notice and due process.

### **CLASS ACTION ALLEGATIONS**

282. Named Plaintiffs Sourovelis, Welch, Hernandez, and Geiger seek to maintain this action on behalf of themselves and all others similarly situated under Rules 23(b)(2) and 23(b)(3) 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.

283. The Named Plaintiffs propose the following Rule 23(b)(2) class definition for the Third, Fourth, and Seventh Claims for Relief:

All persons holding legal title to or otherwise having a legal interest in real or personal property:

- (i) which was the subject of civil-forfeiture or return-of-property proceedings as of August 11, 2012; or
- (ii) which had been seized on or after August 11, 2012; or
- (iii) which was or will be the subject of a civil-forfeiture petition or a return-of-property or related proceeding in the Court of Common Pleas of Philadelphia County on or after August 11, 2012.

284. The Named Plaintiffs propose the following Rule 23(b)(2) class definition for the Sixth Claim for Relief:

All persons receiving a notice directing them to appear in, or who appeared in, Courtroom 478 for forfeiture, return-of-property, or related proceedings from August 11, 2012 until January 6, 2016.

285. The Named Plaintiffs propose the following Rule 23(b)(3) class definition for the Fifth and Sixth Claims for Relief:

All persons who held or hold legal title to, or otherwise had or have a legal interest in property against which a Statutory or Common Law civil-forfeiture petition (i) was pending in the Court of Common Pleas of Philadelphia County as of August 11, 2012; or (ii) was filed in the Court of Common Pleas of Philadelphia County on or after August 11, 2012 until the date the Court grants preliminary approval.

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

287. **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.

c. Since August 11, 2012, the Public Nuisance Task Force filed 20,590 forfeiture petitions related to controlled-substance forfeitures.

288. **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 failing to provide prompt post-seizure hearings to individuals whose property has been seized?

b. 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?

c. Do the City and District Attorney Defendants have a policy and practice of retaining all forfeited property and its proceeds?

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

e. Do the procedures governing administration of forfeiture and seized property cases deprive property owners of due process?

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.

289. ***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.

290. ***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-five years and has considerable experience in bringing class actions.

291. This action also meets the requirements of, and is brought in accordance with, Rule 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.

292. This action also meets the requirements of, and is brought in accordance with, Rule 23(b)(3) of the Federal Rules of Civil Procedure.

293. ***Predominance.*** Common issues of law and fact predominate over any questions affecting only individual class members. As set forth in detail above, all of Plaintiffs' claims are based on the same underlying facts, and Defendants acted in a manner generally applicable to the entire Class. The constitutional nature of the claims and the availability of common damages methodologies ensure that individualized issues will not predominate.

294. ***Superiority.*** A class action is superior to other available methods for fair and efficient adjudication of this controversy. The damages sought by each class member are such that individual prosecution would be burdensome and expensive given the complex litigation necessitated by Defendants' conduct. It would be extremely difficult for class members to

effectively redress the wrongs done to them on an individual basis. And even if class members themselves could afford such individual litigation, it would be an unnecessary burden on the courts. The proposed classes do not present any difficulties of management that would preclude maintenance of this lawsuit as a class action.

### **CONSTITUTIONAL VIOLATIONS**<sup>3</sup>

#### **FIRST CLAIM FOR RELIEF ASSERTED AGAINST THE CITY AND DISTRICT ATTORNEY DEFENDANTS:**

##### **Failing to Provide Notice or a Hearing Before Seizing Real Property Violates the Due Process Clause of the Fourteenth Amendment.**

295. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 294 above.

296. Under the City and District Attorney 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.

297. The City and District Attorney 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.

298. The City and District Attorney Defendants and their agents have seized and sealed real property owned by Named Plaintiff Hernandez and members of the putative class without

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<sup>3</sup> On November 4, 2015, the Court approved a class-wide settlement agreement on the First and Second Claims for Relief. (Order, ECF No. 104; Ex. A.) This Court dismissed these claims without prejudice under Rule 41(a)(2), and retained jurisdiction over these two claims to enforce the terms of the settlement for a term of eighteen (18) months. (*Id.* at 16, § "G".) In the interest of avoiding confusion regarding how the claims are referenced, Plaintiffs retained the numbering of the claims from the original complaint.

first providing them with notice and a meaningful opportunity to be heard.

299. The City and District Attorney 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.

300. The City and District Attorney 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.

301. 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.

302. 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.

303. 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.

304. 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.

305. The City and District Attorney 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.

306. The City and District Attorney 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.

307. As a direct and proximate result of the City and District Attorney 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.

308. As a direct and proximate result of the City and District Attorney 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.

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

**SECOND CLAIM FOR RELIEF  
ASSERTED AGAINST THE CITY AND DISTRICT ATTORNEY DEFENDANTS:**

**Compelling Property Owners to Give Up Constitutional Rights  
Violates the Due Process Clause of the Fourteenth Amendment.**

310. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 294 above.

311. 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, the City and District Attorney Defendants and their agents require property owners to agree to certain conditions in order to re-enter their properties.

312. The City and District Attorney Defendants propose similar conditions as part of settlement deals.

313. The City and District Attorney Defendants have a policy and practice of compelling property owners to agree that if the City and District Attorney 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.

314. The City and District Attorney 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.

315. The City and District Attorney 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.

316. The City and District Attorney 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 the City and District Attorney 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.

317. The City and District Attorney 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 the City and District Attorney Defendants.

318. The City and District Attorney 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.

319. The City and District Attorney 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.

320. The City and District Attorney 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 the City and District Attorney Defendants.

321. As a direct and proximate result of the City and District Attorney 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 the City and District Attorney Defendants pursue against their real properties.

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

**THIRD CLAIM FOR RELIEF  
ASSERTED AGAINST ALL DEFENDANTS:**

**Failing to Provide an Adequate Prompt, Post-Deprivation Hearing  
Violates the Due Process Clause of the Fourteenth Amendment.**

323. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 294 above.

324. After seizing or restraining property for civil-forfeiture determinations, Defendants and their agents failed to give the Named Plaintiffs and members of the putative class notice of how to seek return or remove any restraints on their property.

325. After seizing or restraining property for civil-forfeiture determinations, Defendants and their agents continue to fail to give members of the putative class notice of how

to seek return or remove any restraints on their property.

326. 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 a prompt hearing 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 an ultimate determination on the merits of whether the property should be forfeited.

327. After seizing or restraining property for civil-forfeiture determinations, Defendants and their agents continue to fail to provide members of the putative class with a prompt hearing at which they would be able to challenge, before a neutral arbiter, the basis for the seizure, restraint, and/or indefinite retention of their property pending an ultimate determination on the merits of whether the property should be forfeited.

328. The City Defendants have a policy and practice of seizing, restraining, or indefinitely retaining property for civil forfeiture when they know or should reasonably know that there is no meaningful opportunity to contest the seizure or restraint at a meaningful time before the ultimate hearing on the merits of forfeiture.

329. The District Attorney Defendants have a policy and practice of initiating civil-forfeiture proceedings against seized or restrained property when they know or should reasonably know that there is no meaningful opportunity to contest the seizure or restraint at a meaningful time before the ultimate hearing on the merits of forfeiture.

330. The State Court Administrators have a policy and practice of administering civil-forfeiture proceedings against seized or restrained property when they know or should reasonably know that those proceedings afford property owners no meaningful opportunity to contest the seizure or restraint at a meaningful time before the ultimate hearing on the merits of

forfeiture.

331. Defendants' policy and practice of seizing and restraining property and initiating and administering civil-forfeiture proceedings, without providing property owners an opportunity for a prompt post-deprivation hearing, 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.

332. General Court Regulation No. 2 fails to cure this due-process violation. It does not apply to "common law forfeitures" conducted by the District Attorney Defendants. And as to statutory forfeitures, it forces property owners to wait at least 60 days before being informed of the availability of post-deprivation relief and then an indefinite amount of time before a prompt, post-deprivation hearing is scheduled.

333. 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 notice or a meaningful opportunity to be heard.

334. 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  
ASSERTED AGAINST ALL DEFENDANTS:**

**Repeatedly "Relisting" Forfeiture Proceedings  
Violates the Due Process Clause of the Fourteenth Amendment.**

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

forth in ¶¶ 1 through 294 above.

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

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

338. 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.

339. 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.

340. General Court Regulation No. 2 does not cure the relisting problem as there continues to be a high risk of erroneous deprivation through default judgments.

341. 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.

342. Declaratory and injunctive relief is necessary to remedy Defendants'

unconstitutional policy and practice 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  
ASSERTED AGAINST THE CITY AND DISTRICT ATTORNEY DEFENDANTS:**

**Retaining Forfeited Property and Its Proceeds  
Violates the Due Process Clause of the Fourteenth Amendment.**

343. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 294 above.

344. The City and District Attorney 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.

345. 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.

346. D.A. Lawrence S. Krasner—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.

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

348. Police Commissioner Ross and his predecessors—the very officials charged with enforcing civil-forfeiture laws on behalf of the Philadelphia Police Department—have 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.

349. The direct financial stake that the City and District Attorney 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.

350. As a direct and proximate cause of the City and District Attorney 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. Declaratory and injunctive relief is necessary to remedy the City and District Attorney Defendants' conflict of interest. Without appropriate declaratory and injunctive relief, the City and District Attorney Defendants' unconstitutional policies and practices will continue.

351. As a direct and proximate result of Defendants' actions, policies, and practices, the Named Plaintiffs and members of the putative class have suffered money damages in an amount to be determined during the trial of this action. Plaintiffs are also entitled to prejudgment and postjudgment interest.

**SIXTH CLAIM FOR RELIEF  
ASSERTED AGAINST ALL DEFENDANTS:**

**Having Prosecutors Control Forfeiture Proceedings  
Violates the Due Process Clause of the Fourteenth Amendment.**

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

forth in ¶¶ 1 through 294 above.

353. Defendants have a policy and practice of having prosecutors run the forfeiture proceedings, 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.

354. 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.

355. 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.

356. 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.

357. General Court Regulation No. 2 does not cure this due-process violation because it could be easily reversed without declaratory and injunctive relief.

358. 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.

359. As a direct and proximate result of Defendants' actions, policies, and practices, the Named Plaintiffs and members of the putative class have suffered money damages in an amount to be determined during the trial of this action. Plaintiffs are also entitled to prejudgment and postjudgment interest.



**SEVENTH CLAIM FOR RELIEF  
ASSERTED AGAINST ALL DEFENDANTS:**

**Defendants' Administration of Forfeiture Proceedings  
Violates the Due Process Clause of the Fourteenth Amendment.**

360. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 294 above.

361. Defendants are jointly and severally responsible for how civil-forfeiture proceedings are conducted—including notices to property owners, the filing of forfeiture petitions, the timing for answering or otherwise responding to forfeiture petitions, access to court hearings, and other procedures involved in forfeiture proceedings.

362. Defendants' civil-forfeiture policies and practices do not provide property owners with adequate notice of their constitutional rights and legal responsibilities in forfeiture proceedings.

363. Defendants' civil-forfeiture policies and practices occur with criminal judges using criminal rules of procedure, which creates a high risk of erroneous deprivation of property and other constitutional rights.

364. Upon information and belief, the relisting problem is a function of forfeiture cases being docketed in the criminal system and being subject to procedures for criminal cases.

365. As a direct and proximate result of the Defendants' actions, policies, and practices related to civil-forfeiture adjudication, 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 meaningful notice or an opportunity to be heard.

366. Declaratory and injunctive relief is necessary to remedy Defendants' unconstitutional failure to provide due process in the way in which civil forfeiture proceedings

are adjudicated.

### **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 Rules of Civil Procedure 23(b)(2) and 23(b)(3);
2. For entry of judgment declaring as unconstitutional under the Due Process Clause of the Fourteenth Amendment:
  - a. The City and District Attorney 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. The City and District Attorney Defendants' policy and practice of treating the presence of drugs in real property alone as exigent circumstances;
  - c. The City and District Attorney 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 adequate and 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. The City and District Attorney Defendants' policy and practice of retaining all forfeited property and its proceeds;
- 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; and
- h. Defendants' policy and practice of depriving property owners of their due-process rights during the adjudication of civil-forfeiture matters.

3. For an entry of judgment declaring the Defendants jointly and severally liable for their particular, 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. Cons. Stat. § 6802(f) and (g) was unconstitutional as applied to real property to the extent these provisions authorized *ex parte* seizure of real property, without notice or a pre-deprivation opportunity to contest the seizure;
- b. 42 Pa. Cons. Stat. § 5803(b)(4) (formerly § 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. §§ 5801 *et seq.* (formerly §§ 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. § 5803(f)–(i) (formerly § 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. restitution in the form of return of 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 entry of judgment against Defendants, jointly and severally, and in favor of Plaintiffs, for the damages sustained by Plaintiffs and the Class defined herein, and for any additional damages, penalties, and other monetary relief provided by applicable law;

8. For an award of \$1.00 in nominal damages for each of the seven claims for relief against the City and District Attorney Defendants. Plaintiffs seek this award for the class as a whole and do not request nominal damages for each class member;

9. For pre-judgment and post-judgment interest;

10. For an award of attorney's fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988(b); and

11. For further legal and equitable relief as this Court may deem just and proper.

Respectfully submitted,

**INSTITUTE FOR JUSTICE**

By: /s/ *Darpana M. Sheth*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of September, 2018, a true and correct copy of this THIRD AMENDED COMPLAINT was served upon the following counsel of record via the ECF system:

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