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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

William Terence Platt and Maria B. Platt,  
  
Plaintiffs,

v.

Jason Moore, in his official capacity as Deputy Navajo  
County Attorney; Brad Carlyon, in his official capacity  
as Navajo County Attorney; Navajo County Drug Task  
Force a/k/a Major Crimes Apprehension Team; Navajo  
County, Arizona, a body politic and corporate; Frank  
Milstead, in his official capacity as Director of the  
Arizona Department of Public Safety; K.C. Clark, in  
his official capacity as Navajo County Sheriff; City of  
Winslow, a municipal corporation; Chris Vasquez, in  
his official capacity as Chief of Police for the City of  
Winslow; City of Holbrook, a municipal corporation;  
Mark Jackson, in his official capacity as the Chief of  
Police for the City of Holbrook; Town of Snowflake, a  
municipal corporation; Town of Taylor, a municipal  
corporation; Larry Scarber, in his official capacity as  
Chief of Police of Snowflake-Taylor Police  
Department; City of Show Low, a municipal  
corporation; Joe Shelley, in his official capacity as  
Chief of Police for the City of Show Low; Town of  
Pinetop-Lakeside, a municipal corporation; and David  
Sargent, in his official capacity as the Chief of Police  
for the Town of Pinetop-Lakeside,

Case No. CV-16-8262-PCT-BSB

**FIRST AMENDED  
COMPLAINT**

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Defendants,  
  
And  
  
State of Arizona,  
  
Intervenor-Defendant.

**INTRODUCTION**

1. This is a civil rights complaint. Plaintiffs William “Terry” and Maria “Ria” Platt have been deprived of their property in violation of Arizona statutes and without due process of law. Further, their right to access the courts to petition for redress has been chilled. They file this complaint to enjoin the operation and enforcement of the forfeiture statutes that violated—and continue to threaten—their property rights, secure a declaration that several provisions of Arizona’s civil forfeiture scheme are unconstitutional, and obtain judicial recognition of the violation of their constitutional rights through the award of nominal damages.

2. Terry and Ria have broken no laws, but Defendants have treated them like criminals. Defendants tried to take their car because, while their son was driving it, the Navajo County Drug Task Force, a/k/a the Major Crimes Apprehension Team (the “Task Force”) found “\$31,780.US [sic] currency and personal use marijuana and drug paraphernalia” in it. But, under black-letter Arizona law, those allegations (even if true) do not give rise to forfeiture and Terry and Ria’s car should never have been threatened by forfeiture. And, even if forfeiture were possible here, Terry and Ria are innocent owners, as defined by Arizona law, and should not have had their car threatened by forfeiture.

3. The government must follow its own laws. Even though Terry and Ria’s property is not forfeitable, the government flouted Arizona law to pursue forfeiture. Defendant Jason Moore—acting on behalf of Defendant Brad Carlyon, the Navajo County Attorney; and for the benefit of all other Defendants—initiated forfeiture

1 proceedings against Terry and Ria’s car by filing a Notice of Pending Forfeiture Making  
2 Uncontested Forfeiture Available in the Navajo County Superior Court.<sup>1</sup> This filing  
3 required Terry and Ria to respond with a sophisticated legal document in a very short  
4 timeframe or they would forever lose their car. Terry and Ria—acting *pro se*—timely  
5 responded and objected to forfeiture. Defendant Moore acknowledged receipt of this  
6 timely objection but unilaterally declared it “null and void” for an alleged failure to meet  
7 unspecified statutory requirements. Defendant Moore then filed an Application for  
8 Forfeiture to have the Navajo County Superior Court strip Terry and Ria of their car  
9 without further opportunity to contest the forfeiture based on the fiction that Terry and  
10 Ria did not object to the forfeiture. The Application did not disclose to the court the  
11 contents of Terry and Ria’s objection to forfeiture, did not disclose to the court which  
12 legal requirements Terry and Ria allegedly failed to meet, and did not tell Terry and Ria  
13 that their objection was supposedly deficient before filing the Application.

14 4. Even if Defendant Moore had acknowledged Terry and Ria’s attempts to  
15 protect their car from forfeiture, Terry and Ria still faced and, notwithstanding the  
16 voluntary dismissal of the underlying forfeiture proceeding, continue to face a forfeiture  
17 scheme that violates their property, due process, and other constitutional rights by  
18 stacking the deck against innocent property owners and discouraging—at every turn—  
19 innocent property owners from even trying to fight back against forfeiture abuse by the  
20 government.

21 5. Notwithstanding Arizona’s forfeiture scheme and Defendant Moore’s  
22 lawless actions, Terry and Ria persisted in asserting their rights. They filed a Claim in an  
23 attempt to preserve their property rights by making themselves parties to the underlying  
24 forfeiture proceeding. Defendant Moore moved to strike their Claim and have the court  
25 order forfeiture in Terry and Ria’s “absence.” The sole basis for Defendant Moore’s  
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27 <sup>1</sup> The underlying forfeiture proceeding is *In re: U.S. Currency \$31,780; 2012*  
28 *Volkswagen Jetta, VIN 3VW3L7AJ0CM366141*, Navajo County Superior Court No. CV-  
201600217.

1 motion to strike was that Terry and Ria’s *pro se* objection, which was signed by both  
2 Terry and Ria, does not expressly say it was “signed under penalty of perjury.” This  
3 omission amounted at most to a technical defect, which Arizona case law requires an  
4 opportunity to correct. Defendant Moore’s unilateral rejection of Terry and Ria’s  
5 objection to forfeiture was not only impermissible, it was unbecoming of an office that is  
6 to serve justice rather than pursue its own profit.

7 6. Civil forfeiture in Arizona is driven by a pernicious—and  
8 unconstitutional—profit incentive, which inexorably leads to abuses like those in this  
9 case. Arizona law, A.R.S. § 13-4315, allows police and prosecutors to keep up to 100%  
10 of the proceeds of civil forfeiture for their own use. Since 2000, Arizona law enforcement  
11 has taken in nearly a half-billion dollars through the Arizona forfeiture scheme.<sup>2</sup> That  
12 figure eclipses the amount received by state law enforcement in California, whose  
13 population is *six times* that of Arizona.<sup>3</sup> In fiscal year 2015 alone (the most recent year  
14 for which figures are available), the Task Force claims to have taken in more than  
15 \$700,000 of asset seizures.<sup>4</sup> As of the end of fiscal year 2016, the Navajo County Pooled  
16 Account (in which forfeiture proceeds are deposited) had more than \$500,000 available  
17 to spend.<sup>5</sup>

18 7. This forfeiture account is beyond the control of any other branch of  
19 government and can be used, among other things, to pay the salaries of the very people  
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21 <sup>2</sup> See *Policing for Profit: The Abuse of Civil Asset Forfeiture: Arizona*, INSTITUTE  
22 FOR JUSTICE 2 ed. (last visited Sep. 29, 2016), <http://ij.org/pfp-state-pages/pfp-Arizona/>.

23 <sup>3</sup> Compare *QuickFacts: California*, U.S. CENSUS BUREAU (last visited Sept. 29,  
24 2016), <https://www.census.gov/quickfacts/table/PST045215/06>, with *QuickFacts:*  
*Arizona*, U.S. CENSUS BUREAU (last visited Sept. 29, 2016),  
<http://www.census.gov/quickfacts/table/PST045215/04>.

25 <sup>4</sup> *Enhanced Drug and Gang Enforcement Report*, ARIZ. CRIM. JUSTICE COMM’N.  
26 at 59 (2015), [http://www.azcjc.gov/ACJC.Web/Pubs/Home/EDGE\\_Report\\_2015.pdf](http://www.azcjc.gov/ACJC.Web/Pubs/Home/EDGE_Report_2015.pdf).

27 <sup>5</sup> *Forfeiture Monies Report FY 2016*, ARIZ. CRIM. JUST. COMM’N (2016),  
28 [http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2016/FY16\\_RICO\\_Report.pdf](http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2016/FY16_RICO_Report.pdf).  
Plaintiffs allege in paragraph 154 that the “Navajo County Pooled Account” is the  
“county anti-racketeering revolving fund” authorized by A.R.S. § 13-2314.03.

1 engaged in pursuing forfeiture (including Defendants, in their pursuit of the forfeiture of  
2 Terry and Ria's car). Due to the lack of checks and balances and lax reporting  
3 requirements, forfeiture proceeds have been used for various illegal purposes over the  
4 years, including prohibited electioneering, donations in violation of the Arizona  
5 Constitution's Gift Clause, and spending that personally benefits law enforcement  
6 officials but not the public.<sup>6</sup>

7 8. Because incentives matter, civil forfeiture warps law enforcement priorities  
8 away from pursuing justice to pursuing assets.

9 9. Only after Terry and Ria filed this action was their car returned to them, but  
10 by that point Terry and Ria had already been denied their rights for a period of five  
11 months. Even though the car has been returned, Defendants insist that the return was  
12 discretionary and that Defendants have not acted unlawfully or unconstitutionally.  
13 Because of Arizona's seven-year statute of limitations, the car remains potentially subject  
14 to forfeiture for years to come; there is nothing that prohibits Defendants from re-  
15 initiating forfeiture proceedings at any time within the statute of limitations. The threat of  
16 a re-initiated forfeiture proceeding continues to cloud Terry and Ria's interest in the car  
17 and their rights, status, and other legal relations with respect to the car. Moreover, not all  
18 personal property from the car has been returned to Terry and Ria, specifically, a set of  
19 expensive hearing aids.

20 10. Arizona courts have already recognized that "Arizona's forfeiture statutes  
21 are broad and far-reaching and therefore subject to potential prosecutorial abuse."<sup>7</sup> Terry  
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23 <sup>6</sup> Indeed, the FBI is investigating the use of forfeiture funds in Pinal County. Katie  
24 Campbell, *Pinal Official Confirms FBI Subpoena Related to RICO Funds*, CASA GRANDE  
25 DISPATCH (Sept. 9, 2016),  
[http://www.trivalleycentral.com/casa\\_grande\\_dispatch/area\\_news/pinal-official-  
26 confirms-fbi-subpoena-related-to-rico-funds/article\\_d04c4b06-75f2-11e6-a918-  
27 97c02ae40974.html](http://www.trivalleycentral.com/casa_grande_dispatch/area_news/pinal-official-confirms-fbi-subpoena-related-to-rico-funds/article_d04c4b06-75f2-11e6-a918-97c02ae40974.html). Moreover, the chief deputy at the Pima County Sheriff's Department  
28 was indicted in federal court for theft and conspiracy to launcher monetary instruments  
because of his alleged misuse of forfeiture funds. *United States v. Radtke*, Case no. 4:16-  
cr-01830-JAS-EJM-1 (indictment filed Sept. 28, 2016).

<sup>7</sup> *In re \$315,900.00*, 183 Ariz. 208, 216, 902 P.2d 351, 359 (App. 1995).

1 and Ria have been abused at the hands of Defendants because of Arizona's forfeiture  
2 statutes. They are threatened with continuing abuse, due to the seven-year statute of  
3 limitations as well as Defendants' failure to return Terry's expensive hearing aids. Only  
4 the courts have the power to remedy and permanently stop this abuse.

## 5 **PARTIES**

### 6 **I. PLAINTIFFS**

7 11. Plaintiff William Terence Platt ("Terry") is 77 years old and a retired  
8 boilermaker. He is a U.S. citizen and resident of Prosser, Washington. He is married to  
9 Plaintiff Maria B. Platt, with whom he co-owns the 2012 Volkswagen Jetta that was  
10 unlawfully seized and sought for forfeiture.

11 12. Plaintiff Maria B. Platt ("Ria") is 74 years old and was born to a Jewish  
12 mother (and non-Jewish father) in Nazi Germany. She is a U.S. citizen and resident of  
13 Prosser, Washington. She is married to Plaintiff William Terence Platt, with whom she  
14 co-owns the 2012 Volkswagen Jetta that was unlawfully seized and sought for forfeiture.

### 15 **II. DEFENDANTS**

16 13. Defendant Jason Moore is a Deputy Navajo County Attorney, and is sued  
17 in his official capacity. He is the Navajo County Attorney's Office's "asset forfeiture  
18 attorney." He represented himself to be the attorney for the state in the forfeiture  
19 proceeding, which made him responsible for investigating, commencing, and prosecuting  
20 the forfeiture of Terry and Ria's car. A.R.S. § 13-4301(1).

21 14. Defendant Brad Carlyon is the Navajo County Attorney, and is sued in his  
22 official capacity. He sets policy and practices regarding and supervises the investigation,  
23 commencement, and prosecution of forfeiture proceedings in Navajo County, including  
24 the forfeiture proceeding against Terry and Ria's car. He is responsible for administering  
25 the Navajo County anti-racketeering revolving fund, wherein any monies obtained as a  
26 result of forfeiture by his agency, the Navajo County Attorney's Office, must be  
27 deposited, including any proceeds from any forfeiture proceeding against Terry and Ria's  
28 car. A.R.S. § 13-2314.03.

1           15. Defendant Navajo County Drug Task Force (the “Task Force”) represented  
2 itself as the “seizing agency” in the underlying forfeiture proceeding against Terry and  
3 Ria’s car. A.R.S. § 13-4301(8). As the seizing agency, the Navajo County Drug Task  
4 Force, and by extension each of its participating agencies, has a pecuniary interest in any  
5 forfeiture proceeding against Terry and Ria’s car. A.R.S. § 13-4315. On information and  
6 belief, the Task Force is a multi-jurisdictional, multi-agency task force that is also known  
7 as the Major Crimes Apprehension Team, with its participating agencies being: the  
8 Navajo County Attorney’s Office, the Arizona Department of Public Safety, the Navajo  
9 County Sheriff’s Office, the Winslow Police Department, the Holbrook Police  
10 Department, the Snowflake-Taylor Police Department, the Show Low Police Department,  
11 and the Pinetop-Lakeside Police Department.

12           16. Defendant Navajo County, a body politic and corporate, is a jural entity  
13 associated with the the Navajo County Attorney’s Office and the Navajo County Sheriff’s  
14 Office, both of which are members of the Task Force. The Navajo County Attorney’s  
15 Office and the Navajo County Sheriff’s Office conduct seizures and forfeitures within  
16 Navajo County and have a pecuniary interest in the county anti-racketeering revolving  
17 fund, as well as in the proceeds of any forfeitures obtained by their participation in the  
18 Task Force. A.R.S. §§ 13-2413.03, -4315. Navajo County, the Navajo County Attorney’s  
19 Office, and the Navajo County Sheriff’s Office have made a conscious decision to and  
20 have a policy or practice of seizing property for forfeiture and obtaining forfeiture  
21 proceeds.

22           17. Defendant Frank Milstead is the Director of the Arizona Department of  
23 Public Safety (“DPS”), and is sued in his official capacity. DPS is a law-enforcement  
24 agency headquartered in Phoenix, Arizona, with its District 3 office located in Holbrook,  
25 Arizona. DPS conducts seizures for forfeiture within Navajo County and has a pecuniary  
26 interest in the county anti-racketeering revolving fund, as well as in the proceeds of any  
27 forfeitures obtained by its participation in the Task Force. A.R.S. §§ 13-2413.03, -4315.

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1           18. Defendant K.C. Clark is the Navajo County Sheriff, and is sued in his  
2 official capacity. He directs and supervises the Navajo County Sheriff's Office (the  
3 "Sheriff's Office"), a law-enforcement agency located in Holbrook, Arizona. The  
4 Sheriff's Office conducts seizures for forfeiture within Navajo County and has a  
5 pecuniary interest in the county anti-racketeering revolving fund, as well as in the  
6 proceeds of any forfeitures obtained by its participation in the Task Force. A.R.S.  
7 §§ 13-2413.03, -4315.

8           19. Defendant City of Winslow, an Arizona municipal corporation, is the jural  
9 entity associated with the Winslow Police Department, a member of the Task Force. The  
10 Winslow Police Department conducts seizures for forfeiture within Navajo County and  
11 has a pecuniary interest in the county anti-racketeering revolving fund, as well as in the  
12 proceeds of any forfeitures obtained by its participation in the Task Force. A.R.S. §§ 13-  
13 2413.03, -4315. The City of Winslow and the Winslow Police Department have made a  
14 conscious decision to and have a policy or practice of seizing property for forfeiture and  
15 obtaining forfeiture proceeds.

16           20. Defendant Chris Vasquez is the Chief of Police for the City of Winslow,  
17 and is sued in his official capacity as the chief officer for the Winslow Police  
18 Department.

19           21. Defendant City of Holbrook, an Arizona municipal corporation, is the jural  
20 entity associated with the Holbrook Police Department, a member of the Task Force. The  
21 Holbrook Police Department conducts seizures for forfeiture within Navajo County and  
22 has a pecuniary interest in the county anti-racketeering revolving fund, as well as in the  
23 proceeds of any forfeitures obtained by its participation in the Task Force. A.R.S. §§ 13-  
24 2413.03, -4315. The City of Holbrook and the Holbrook Police Department have made a  
25 conscious decision to and have a policy or practice of seizing property for forfeiture and  
26 obtaining forfeiture proceeds.

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1           22. Defendant Mark Jackson is the Chief of Police for the City of Holbrook,  
2 and is sued in his official capacity as the chief officer for the Holbrook Police  
3 Department.

4           23. Defendant Town of Snowflake, an Arizona municipal corporation, is a jural  
5 entity associated with the Snowflake-Taylor Police Department, a member of the Task  
6 Force. The Snowflake-Taylor Police Department conducts seizures for forfeiture within  
7 Navajo County and has a pecuniary interest in the county anti-racketeering revolving  
8 fund, as well as in the proceeds of any forfeitures obtained by its participation in the Task  
9 Force. A.R.S. §§ 13-2413.03, -4315. The Town of Snowflake and the Snowflake-Taylor  
10 Police Department have made a conscious decision to and have a policy or practice of  
11 seizing property for forfeiture and obtaining forfeiture proceeds.

12           24. Defendant Town of Taylor, an Arizona municipal corporation, is a jural  
13 entity associated with the Snowflake-Taylor Police Department, a member of the Task  
14 Force. The Snowflake-Taylor Police Department conducts seizures for forfeiture within  
15 Navajo County and has a pecuniary interest in the county anti-racketeering revolving  
16 fund, as well as in the proceeds of any forfeitures obtained by its participation in the Task  
17 Force. A.R.S. §§ 13-2413.03, -4315. The Town of Taylor and the Snowflake-Taylor  
18 Police Department have made a conscious decision to and have a policy or practice of  
19 seizing property for forfeiture and obtaining forfeiture proceeds.

20           25. Defendant Larry Scarber is the Chief of Police for the Town of  
21 Snowflake-Taylor, and is sued in his official capacity as the chief officer for the  
22 Snowflake-Taylor Police Department.

23           26. Defendant City of Show Low, an Arizona municipal corporation, is the  
24 jural entity associated with the Show Low Police Department, a member of the Task  
25 Force. The Show Low Police Department conducts seizures for forfeiture within Navajo  
26 County and has a pecuniary interest in the county anti-racketeering revolving fund, as  
27 well as in the proceeds of any forfeitures obtained by its participation in the Task Force.  
28 A.R.S. §§ 13-2413.03, -4315. The City of Show Low and the Show Low Police

1 Department have made a conscious decision to and have a policy or practice of seizing  
2 property for forfeiture and obtaining forfeiture proceeds.

3 27. Defendant Joe Shelley is the Chief of Police for the City of Show Low, and  
4 is sued in his official capacity as the chief officer for the Show Low Police Department.

5 28. Defendant Town of Pinetop-Lakeside, an Arizona municipal corporation, is  
6 the jural entity associated with the Pinetop-Lakeside Police Department, a member of the  
7 Task Force. The Pinetop-Lakeside Police Department conducts seizures for forfeiture  
8 within Navajo County and has a pecuniary interest in the county anti-racketeering  
9 revolving fund, as well as in the proceeds of any forfeitures obtained by its participation  
10 in the Task Force. A.R.S. §§ 13-2413.03, -4315. The City of Show Low and the Show  
11 Low Police Department have made a conscious decision to and have a policy or practice  
12 of seizing property for forfeiture and obtaining forfeiture proceeds.

13 29. Defendant David Sargent is the Chief of Police for the Town of  
14 Pinetop-Lakeside, and is sued in his official capacity as the chief officer for the  
15 Pinetop-Lakeside Police Department.

16 30. On information and belief, all Defendants, by and through the law-  
17 enforcement agencies under their control, have been acting at all relevant times as agents  
18 of each other and/or of the Task Force, under color of Arizona's forfeiture statutes.

### 19 **III. THE RES**

20 31. The subject of the underlying forfeiture proceeding was one 2012  
21 Volkswagen Jetta, bearing Vehicle Identification Number 3VW3L7AJ0CM366141 (the  
22 "car"). As described below, the Task Force seized the car for forfeiture, and Defendant  
23 Moore initiated forfeiture proceedings and applied for forfeiture of the car.

24 32. Terry and Ria Platt have joint title to the car under the laws of the State of  
25 Washington. No one else has a valid claim as to ownership of the car.

### 26 **JURISDICTION, VENUE, AND PROCEDURAL HISTORY**

27 33. Plaintiffs brought this civil rights lawsuit in Navajo County Superior Court  
28 on October 5, 2016, pursuant to Article II, Sections 4, 5, and 13 of the Arizona

1 Constitution; the First and Fourteenth Amendments to the United States Constitution; the  
2 Arizona Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831 *et seq.*; and the Civil  
3 Rights Act of 1871, 42 U.S.C. § 1983.

4 34. The Navajo County Superior Court had original jurisdiction pursuant to  
5 Article VI, Section 14 of the Arizona Constitution and A.R.S. § 12-123(A), as well as *in*  
6 *rem* jurisdiction over the underlying forfeiture proceeding under A.R.S. § 13-4302.

7 35. Venue in Navajo County was proper under A.R.S. §§ 12-401(11), (14),  
8 (16), and 13-4303(A).

9 36. Most of the originally named Defendants removed this lawsuit to this Court  
10 on November 4, 2016; all remaining originally named Defendants consented to removal  
11 on November 23, 2016.

12 37. On December 2, 2016, the State of Arizona moved to intervene into the  
13 federal action as a defendant. On December 6, 2016, the State’s motion to intervene was  
14 granted.

15 38. Now that the case has been removed, Plaintiffs invoke the federal  
16 Declaratory Judgments Act, 28 U.S.C. §§ 2201 *et seq.*, together with the provisions  
17 invoked in paragraph 33.

18 39. This Court has federal-question jurisdiction pursuant to 28 U.S.C. § 1331,  
19 as well as supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

20 40. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1).

21 41. Because this case has been removed to this Court, “[i]f at any time before  
22 final judgment it appears that [this Court] lacks subject matter jurisdiction,” this case  
23 “*shall* be remanded” to the Navajo County Superior Court. 28 U.S.C. § 1447(c)  
24 (emphasis added).

## 25 **STATEMENT OF FACTS**

26 42. Defendants have unlawfully and unconstitutionally threatened Terry and  
27 Ria Platt with the loss of their property rights in their car though Arizona’s forfeiture  
28 statutes, which are “broad and far-reaching and therefore subject to potential

1 prosecutorial abuse.” *In re \$315,900.00*, 183 Ariz. at 216. Even though their car has been  
2 voluntarily returned, Terry and Ria’s property rights in their car are still threatened by  
3 Arizona’s forfeiture statutes because it was seized for forfeiture, there is a seven-year  
4 statute of limitations, and there is nothing that prohibits Defendants from re-initiating  
5 forfeiture within the statute of limitations.

6 **I. TERRY AND RIA PLATT**

7 43. Terry and Ria Platt have been married for 57 years and are living out their  
8 retirement in Prosser, Washington. Terry is 77 years old, and Ria is 74. They are in  
9 decent health for their age but it is difficult for them to travel outside of Washington  
10 State.

11 44. Terry and Ria live off of Terry’s modest union pension income from his  
12 former career as a boilermaker. In 2014, they also received a substantial amount of  
13 money when they did a cash-out refinancing of their home.

14 45. Terry and Ria have had three children. They have two adult sons and had a  
15 daughter who died young in a car crash.

16 46. In addition to supporting themselves, Terry and Ria have given both of  
17 their adult sons substantial financial support over the years. One of their sons is  
18 schizophrenic and lives with them so that they can attend to his condition. Their other  
19 son, Terence Shea Platt (“Shea”), lives in nearby Richland, Washington.

20 47. Terry and Ria are the titled owners of the car that was sought to be forfeited  
21 by, to, and for the benefit of Defendants: a 2012 Volkswagen Jetta, bearing VIN  
22 3VW3L7AJ0CM366141, titled under the laws of Washington State, title no.  
23 1415059526.

24 48. Terry and Ria acquired full title to the car on May 19, 2014, with a \$21,200  
25 check to Gesa Credit Union, paid from their checking account with Hapo Community  
26 Credit Union. Their title to their car has been unencumbered since that time.

27 49. The money that Terry and Ria used to buy the car came from Terry’s  
28 pension income and the money received when they refinanced their home.

1           50. Terry and Ria are owners of the car as defined in A.R.S. § 13-4301(5).

2           51. Terry and Ria are persons known to have an interest in the car as defined in  
3 A.R.S. § 13-4301(6).

4           52. The Defendants have recognized Terry and Ria as owners of and as persons  
5 known to have an interest in the car since shortly after its seizure for forfeiture and before  
6 initiating the underlying forfeiture proceeding.

7           53. On October 19, 2016, the underlying forfeiture proceeding was withdrawn  
8 with respect to the car, but under Arizona's forfeiture laws, Defendants retain the power  
9 to initiate a forfeiture proceeding against the car for up to seven years in the future.  
10 A.R.S. § 13-4308(B).

11           **II. EVENTS LEADING TO THE CAR'S SEIZURE FOR FORFEITURE**

12           54. The car was seized for forfeiture as defined in A.R.S. § 13-4301(9).

13           55. In early April of 2016, Terry and Ria lent the car to their son Shea so that  
14 he could drive it from eastern Washington to south Florida for a vacation.

15           56. At no point did Terry or Ria empower Shea with legal or equitable power to  
16 convey Terry and/or Ria's interest in the car.

17           57. At no point did Terry or Ria know or have reason to know that Shea would  
18 be likely to use the car to engage in any conduct giving rise to forfeiture.

19           58. On information and belief, Shea never used the car to engage in any  
20 conduct giving rise to forfeiture.

21           59. On May 3, 2016, Shea was pulled over while driving the car on I-40  
22 westbound near Holbrook, Arizona, by DPS Trooper C. Plumb.

23           60. DPS Trooper Plumb alleged the reason for the stop was a potential  
24 window-tint violation.

25           61. DPS Trooper Plumb issued a repair order, colloquially known as a "fix-it  
26 ticket," for the alleged window-tint violation.

27           62. After Shea signed the repair order, DPS Trooper Plumb detained Shea for  
28 the purpose of obtaining consent to search the car and/or use a drug-sniffing dog.

1           63.    DPS Trooper Plumb ran his drug-sniffing dog Doenja around the car.

2           64.    Doenja alerted near the driver-side door of the car, and DPS Trooper Plumb  
3 then searched the car together with DPS Trooper Mortenson, who had by then arrived on  
4 the scene.

5           65.    DPS reports that Troopers Plumb and Mortenson found “\$31,780.US [sic]  
6 currency and personal use marijuana and drug paraphernalia.”

7           66.    Shea was arrested on suspicion of three criminal counts: possession of  
8 marijuana, possession of paraphernalia, and money laundering.

9           67.    Any amount of marijuana that DPS officers found in the car was an amount  
10 less than the statutory “threshold amount” of two pounds. *See* A.R.S. §§ 13-3401(36)(h),  
11 13-4304(3)(a).

12           68.    Any amount of marijuana that DPS officers found in the car was for  
13 personal use.

14           69.    Any amount of marijuana that DPS officers found in the car was not  
15 possessed or in any other way intended for financial gain.

16           70.    Any marijuana that that DPS officers found in the car did not give rise to  
17 forfeiture of the car under Arizona law.

18           71.    Any drug paraphernalia that the DPS officers found in the car did not give  
19 rise to forfeiture of the car under Arizona law.

20           72.    There was not and is not probable cause to believe that Shea was  
21 committing “money laundering” as that crime is defined in A.R.S. § 13-2317.

22           73.    There was not and is not probable cause to believe that the cash the DPS  
23 officers found in the car was used or intended to be used in, or was traceable to, any  
24 offense that gives rise to forfeiture of the car.

25           74.    Any cash that DPS officers found in the car did not give rise to forfeiture of  
26 the car under Arizona law.

27

28

1           75. On May 4, 2016, DPS Trooper Plumb completed a vehicle history search  
2 and identified Terry and Ria Platt as the car's registered owners at their true address in  
3 Prosser, Washington.

4           76. That same day, DPS Trooper Plumb relayed the information regarding  
5 Terry and Ria's identity, address, and registered ownership of the car to Defendant  
6 Moore in his capacity as the Navajo County "asset forfeiture attorney."

7           77. Defendant Moore told DPS Trooper Plumb to seize and impound the car,  
8 which DPS Trooper Plumb did on May 4.

9           78. Shea was released from jail on May 9, 2016. On that day, he was given  
10 notice of seizure for forfeiture of the car and the cash. Some personal property from the  
11 car was returned to Shea at that time.

12           79. Not all personal property from the car was returned, specifically, Terry had  
13 very expensive hearing aids in the car that have never been returned to him.

14           80. Terry and Ria have not committed, or intended to commit, any crime that  
15 gives rise to forfeiture of the car.

16           81. Terry and Ria have never been charged with, much less convicted of, any  
17 crime.

18           82. Shea has not committed, or intended to commit, any crime that gives rise to  
19 forfeiture of the car.

20           83. Shea has not been convicted of any crime related to the May 3 stop.

21           84. There are no pending criminal charges against Shea as of the date of this  
22 Complaint.<sup>8</sup>

23           85. If Shea at any point committed or intended to commit a crime that gives  
24 rise to forfeiture—and there is no evidence that he has—Terry and Ria did not know and  
25 could not reasonably have known that Shea would use or was likely to use the car to do  
26 so.

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28           <sup>8</sup> There is a pending forfeiture proceeding against the currency.

1           **III. THE STATUTORY ARCHITECTURE OF FORFEITURE**

2           86. Arizona’s civil forfeiture scheme—including the civil anti-racketeering  
3 laws, A.R.S. §§ 13-2314 *et seq.*; the drug forfeiture enabling statute, A.R.S. § 13-3413;  
4 and all of chapter 39 of the Arizona criminal code, A.R.S. §§ 13-4301 *et seq.*—vests the  
5 government with awesome authority to accuse property, rather than people, of criminal  
6 conduct and thereby obtain a forfeiture.

7           87. Law enforcement relies on the legal fiction that forfeiture is about property,  
8 not people, to justify the incredible ease with which it can take property and keep it for its  
9 own use.

10          88. Unlike a criminal proceeding, there is no requirement that the government  
11 convict anyone, let alone prove *any* element of a crime beyond a reasonable doubt, in  
12 order to obtain a forfeiture.

13          89. When the government obtains a forfeiture, the law enforcement agencies  
14 (police and prosecutors) that participate in the forfeiture are in most cases awarded 100%  
15 of the forfeited property.

16          90. Such law enforcement agencies may keep the forfeited property for their  
17 own use or sell it and use the proceeds.

18          91. The forfeiture statutes thus allow law enforcement agencies to augment  
19 their budgets without any legislative appropriation.

20          92. Unlike a criminal proceeding, the government need not make any  
21 substantial showing to take people’s property. Indeed, in many instances the owner or  
22 interest holder of property being sought for forfeiture is presumed guilty until he or she  
23 proves his or her innocence.

24          93. Unlike a criminal proceeding, people whose property is caught up in  
25 Arizona’s civil forfeiture scheme do not have the right to an attorney provided to them if  
26 they cannot afford one. This means the government can take a person’s car, life savings,  
27 and home without that person getting the benefit of legal representation.

28



1           94. Unlike a criminal proceeding, the owner or interest-holder of property has  
2 only thirty days to navigate a maze of fine-print procedural requirements just to maintain  
3 *standing* to contest the pending forfeiture. If the owner or interest holder cannot afford an  
4 attorney, he or she must navigate this procedural maze *pro se*.

5           95. Arizona’s forfeiture scheme even purports to create a Fourth-Amendment-  
6 free zone by claiming that “[n]o evidence may be suppressed in any hearing pursuant to  
7 this chapter on the ground that its acquisition by search or seizure violated constitutional  
8 protections applicable in criminal cases relating to unreasonable searches or seizures.”  
9 A.R.S. § 13-4310(E)(3).

10           96. Unique in all the nation, Arizona’s civil forfeiture statutes contain reverse  
11 attorney’s fees provisions that chill the exercise of the right to petition the government.

12           97. When a property owner contests a pending forfeiture in court, he becomes  
13 liable for 100% of the government’s costs—even if the government prevails on only 1%  
14 of its case.

15           98. Conversely, a property owner is entitled to costs from the government only  
16 in the most extraordinary cases where the government fails to show reasonable cause for  
17 the seizure—a standard even more government-friendly than probable cause.

18           99. Government uses the reverse attorney’s fees provisions to intimidate and  
19 threaten innocent property owners into not contesting forfeiture.

20           100. The low standard of proof for the government, clear financial incentive for  
21 law enforcement to pursue forfeiture, strict procedural hoops for property owners to jump  
22 though, presumption of property owners’ guilt, and clear financial disincentive for  
23 property owners to contest forfeiture all stack the deck to the government’s benefit. It  
24 should not be surprising that this one-sided scheme was originally authored by county  
25 attorneys and an assistant state attorney general, and sponsored by the Arizona  
26 Prosecuting Attorneys’ Advisory Council.<sup>9</sup>

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27  
28 <sup>9</sup> Cameron H. Holmes, *History and Purpose of Arizona Forfeiture Under A.R.S. § 13-4301 et seq.*, OFF. OF THE ATT’Y GEN. OF ARIZ. at 1 (1986).

1            101. Taken together, Arizona’s civil forfeiture scheme chills the exercise of the  
2 right to petition the government for redress of grievances, is corrosive of private property  
3 rights, and antithetical to due process of law.

4            **A. Arizona’s Forfeiture Law Has Incredible Breadth.**

5            102. In Arizona, “All property . . . described in a statute providing for its  
6 forfeiture is subject to forfeiture.” A.R.S. § 13-4304.

7            103. Two statutes that provide for forfeiture are the racketeering forfeiture  
8 statute, A.R.S. § 13-2314(G), and the drug forfeiture statute, A.R.S. § 13-3413.

9            104. The racketeering forfeiture statute provides for the forfeiture of, among  
10 other things, “All proceeds traceable to an offense included in the definition of  
11 racketeering,” along with “all monies . . . and other property used or intended to be used”  
12 in such an offense. A.R.S. § 13-2314(G)(3).

13            105. There are more than thirty separate offenses included in the definition of  
14 “racketeering”—homicide; robbery; kidnapping; forgery; theft; bribery; gambling; usury;  
15 extortion; extortionate extensions of credit; prohibited drugs, marijuana or other  
16 prohibited chemicals or substances; trafficking in explosives, weapons or stolen property;  
17 participating in a criminal syndicate; obstructing or hindering criminal investigations or  
18 prosecutions; asserting false claims including, but not limited to, false claims asserted  
19 through fraud or arson; intentional or reckless false statements or publications concerning  
20 land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided  
21 lands; resale of realty with intent to defraud; intentional or reckless fraud in the purchase  
22 or sale of securities; intentional or reckless sale of unregistered securities or real property  
23 securities; a scheme or artifice to defraud; obscenity; sexual exploitation of a minor;  
24 prostitution; restraint of trade or commerce in a public-works contract; terrorism; money  
25 laundering; obscene or indecent telephone communications to minors for commercial  
26 purposes; counterfeiting marks; animal terrorism or ecological terrorism; smuggling of  
27 human beings; child prostitution; sex trafficking; trafficking of persons for forced labor  
28 or services; and manufacturing, selling or distributing misbranded drugs—but those

1 offenses are “racketeering” *only* if they are “committed for financial gain.” A.R.S. § 13-  
2 2301(D)(4)(b).

3 106. The drug forfeiture statute provides for the forfeiture of all “[p]roperty,”  
4 including “[v]ehicles to transport or in any manner facilitate the transportation, sale or  
5 receipt of, or in which is contained or possessed, any item or drug,” that is “used or  
6 intended for use in violation” of the drug laws. A.R.S. § 13-3413(A).

7 107. In any forfeiture based on a drug crime, the drug crime *must* have been  
8 “committed for financial gain” unless it involved an amount of drugs greater than a  
9 “statutory threshold amount.”

10 108. In the case of marijuana, the statutory threshold amount—the minimum  
11 amount that must be present before officers may initiate forfeiture—is two pounds.  
12 A.R.S. § 13-3401(36)(h).

13 **B. Uncontested Forfeiture Subjects Property Owners to a Procedural**  
14 **Maze.**

15 109. In Arizona, the statutory procedures for forfeiture make it easy for law  
16 enforcement to obtain forfeiture and hard for property owners to contest forfeiture.

17 110. In the underlying forfeiture proceeding, Defendant Moore chose to make a  
18 procedure called “uncontested forfeiture” available to Terry and Ria.

19 111. On information and belief, attorneys for the state (as defined in A.R.S.  
20 § 13-4301(1)) more often than not exercise the authority given to them by A.R.S. § 13-  
21 4309(1) to make uncontested forfeiture available.

22 112. The statutory authority to make uncontested forfeiture available does not  
23 mean that uncontested forfeiture is constitutional.

24 113. When an attorney for the state exercises his statutory authority to make  
25 uncontested forfeiture available, he makes that fact known by issuing a notice of pending  
26 forfeiture to all persons known to have an interest who have not previously received the  
27 notice. A.R.S. § 13-4309(1); *see also* A.R.S. § 13-4307.

28

1           114. Uncontested forfeiture requires a property owner to contest the forfeiture  
2 either by (1) filing a “claim” with the court, or (2) filing a “petition for remission or  
3 mitigation” with the attorney for the state. A property owner may not file both a claim  
4 and a petition in response to a notice making uncontested forfeiture available, A.R.S.  
5 § 13-4309(2), though, as explained below, a property owner who initially files a petition  
6 may later file a claim.

7           115. Property owners have just thirty days from notice of pending forfeiture in  
8 which to file a claim or petition. A.R.S. §§ 13-4309(2), 13-4311(D).

9           116. A claim or petition must be signed under penalty of perjury and set forth  
10 each of eight required items:

- 11           1. The caption of the proceeding as set forth on the notice of  
12           pending forfeiture or complaint and the name of the  
13           claimant.
- 14           2. The address at which the claimant will accept future  
15           mailings from the court or attorney for the state.
- 16           3. The nature and extent of the claimant’s interest in the  
17           property.
- 18           4. The date, the identity of the transferor and the  
19           circumstances of the claimant’s acquisition of the interest  
20           in the property.
- 21           5. The specific provisions of [the forfeiture statutes] relied on  
22           in asserting that the property is not subject to forfeiture.
- 23           6. All facts supporting each such assertion.
- 24           7. Any additional facts supporting the claimant’s claim.
- 25           8. The precise relief sought.

26           A.R.S. § 13-4311(E) (claim requirements); *see also* A.R.S. § 13-4309(2) (petitions also  
27           subject to A.R.S. § 13-4311(E)-(F)). A copy must be mailed to the seizing agency and to  
28           the attorney for the state. A.R.S. § 13-4311(F).

29           117. By statute, no extension of time for filing may be granted. A.R.S. § 13-  
30           4311(F).

31           118. A property owner who fails to meet the strict deadline for a claim or  
32           petition loses his ability to contest the forfeiture, in which case the attorney for the state

1 may apply *ex parte* for an order of forfeiture—which is granted based on a mere showing  
2 of probable cause. A.R.S. § 13-4314(A).

3 119. Even if a property owner files a timely claim, the attorney for the state has  
4 *seven years* after actual discovery of the last event giving rise to forfeiture in which to file  
5 a complaint for forfeiture. A.R.S. § 13-4308(B).

6 120. If a property owner files a timely petition, the attorney for the state has up  
7 to 120 days from the notice of pending forfeiture to complete an informal investigation  
8 and issue a written declaration of forfeiture, remission, or mitigation. A.R.S. § 13-  
9 4309(3)(a)–(b). There is, however, no apparent statutory consequence for failure to meet  
10 that deadline.

11 121. If the attorney for the state *does* issue a declaration of forfeiture, the  
12 property owner must then file a claim with the court within thirty days to preserve his or  
13 her property rights.

14 122. Because the attorney for the state has a pecuniary interest in forfeited  
15 property, the attorney for the state has a financial incentive to take the path of least  
16 resistance to an order of forfeiture.

17 123. Uncontested forfeiture is the path of least resistance to an order of  
18 forfeiture. It provides the attorney for the state with both the opportunity and the  
19 incentive to keep property owners from having their day in court.

20 124. Strict compliance with the requirements of A.R.S. § 13-4311(E)–(F) is  
21 difficult. This is especially true for *pro se* property owners who face severe time pressure  
22 to defend their property but who, unlike criminal defendants, do not enjoy the right to  
23 have an attorney provided to them if they cannot afford one.

24 125. In the underlying forfeiture proceeding, Defendant Moore applied for  
25 uncontested forfeiture based on Terry and Ria’s omission of the words “under penalty of  
26 perjury” from their petition, even though Terry and Ria complied with every other  
27 requirement in A.R.S. § 13-4311(E), even though Terry and Ria signed their petition  
28

1 believing themselves to be under penalty of perjury, and even though the State admits  
2 Terry and Ria’s ownership interest in the car, which is the thing required to be verified.

3 126. There is another procedural trap in Navajo County, where the attorney for  
4 the state shares the same mailing address as the Navajo County Superior Court. This  
5 means that an unwary and unrepresented *pro se* property owner may intend to submit a  
6 “claim” to the Navajo County Superior Court but mistakenly submit it to the attorney for  
7 the state instead. This mistake transforms the “claim” into a “petition” and unwittingly  
8 subjects the property owner to the “uncontested forfeiture” process.

9 127. The attorney for the state is authorized to characterize an attempted claim  
10 as a petition and vice versa. *State v. Jackson*, 210 Ariz. 466, 470 n.6, 113 P.3d 112, 116  
11 n.6 (App. 2005).

12 128. Under Arizona’s forfeiture statutes, the attorney for the state has the  
13 incentive and opportunity to unilaterally represent to the court—as Defendant Moore has  
14 in this case—that a timely petition (or attempted claim) does not meet the requirements of  
15 A.R.S. § 13-4311(E)–(F) without ever specifying which requirements were supposedly  
16 not met, giving the petitioner an opportunity to correct the supposed defects, or giving the  
17 court a copy of the petition for independent judicial review.

18 129. In practice, Arizona’s uncontested forfeiture statutes, A.R.S. §§ 13-4309  
19 and 13-4314(A), provide no meaningful check on the authority exercised by the attorney  
20 for the state to determine whether a property owner has served a claim or a petition, or  
21 whether that claim or petition is sufficient to preserve the property owner’s interest in the  
22 property.

23 130. The authority vested in the attorney for the state by the uncontested  
24 forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A), violates due process of law  
25 insofar as it allows him to adjudicate a claim in which he has a pecuniary interest. *Tumey*  
26 *v. Ohio*, 273 U.S. 510, 522-32 (1927).

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1           **C.     The Forfeiture Laws Require the Government to Do Less to Prove Its**  
2           **Case.**

3           131. In criminal proceedings, the government must prove its case beyond a  
4 reasonable doubt.

5           132. In a contested civil forfeiture, Arizona law allows the government to prove  
6 the property is subject to forfeiture by a preponderance of the evidence. A.R.S. § 13-  
7 4311(M). Preponderance of the evidence is a lower standard of proof than the beyond a  
8 reasonable doubt standard.

9           133. In an uncontested forfeiture, Arizona law allows the government to show  
10 only “jurisdiction, notice and facts sufficient to demonstrate probable cause for  
11 forfeiture” in order to be granted forfeiture. A.R.S. § 13-4314(A). Probable cause is a  
12 lower standard of proof than the preponderance of the evidence standard.

13           **D.     The Forfeiture Laws Presume that Property Owners Are Guilty Unless**  
14           **and Until They Can Prove Themselves Innocent.**

15           134. In the upside-down world of civil forfeiture, a property owner is presumed  
16 guilty until proven innocent.

17           135. In Arizona, an innocent owner whose property is used in the commission of  
18 a crime without his or her knowledge may plead an “innocent owner” defense, *every*  
19 *element of which* he or she must affirmatively prove by a preponderance of the evidence.  
20 A.R.S. §§ 13-4304(4), 13-4311(M).

21           136. This requirement stands stark contrast to how criminal conduct is supposed  
22 to be tried: “The principles that an accused is presumed innocent until proven guilty and  
23 that the state must establish the accused’s guilt by proof of every element of the offense  
24 beyond a reasonable doubt are fundamental to our criminal justice system.” *State v.*  
25 *Preston*, 197 Ariz. 461, 466, 4 P.3d 1004, 1009 (App. 2000).

26           137. Unless an innocent owner affirmatively proves he or she is an “innocent  
27 owner” as defined by statute, his or her interest in the property may be forfeited. A.R.S.  
28 § 13-4304(4).

1           138. As is relevant here, there are three elements to proving an innocent-owner  
2 defense:

3           A. First, an innocent owner must prove that “[h]e acquired the interest  
4 before . . . the conduct giving rise to forfeiture.” A.R.S. § 13-4304(4)(a).

5           B. Second, an innocent owner must prove that “[h]e did not empower  
6 any person whose act or omission gives rise to forfeiture with legal or equitable  
7 power to convey the interest, as to a bona fide purchaser for value.” A.R.S. § 13-  
8 4304(4)(b).

9           C. Third, an innocent owner must prove that “[h]e did not know and  
10 could not reasonably have known of the act or omission or that it was likely to  
11 occur.” A.R.S. § 13-4304(4)(c).

12           139. As described by one of its authors, the Arizona forfeiture scheme “is ‘strict  
13 liability’ . . . [i]t divests some property interests without regard to personal fault.”<sup>10</sup>

14           140. Under Arizona’s forfeiture scheme, property owners can have their  
15 property taken from them forever if:

16           A. No one, much less themselves, has ever been convicted of a crime.

17           B. No one, much less themselves, has ever been charged with a crime.

18           C. The alleged perpetrator of criminal conduct has been acquitted.

19           D. They cannot prove their own innocence of the alleged criminal  
20 activity.

21           E. They cannot prove they could not have known that criminal activity  
22 was likely to occur (thus proving a negative).

23           141. Terry and Ria are innocent owners in the common understanding of the  
24 term but must prove themselves to be “innocent owners” as defined by Arizona law.

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<sup>10</sup> Holmes *supra* n.9, at 18.



1           **E.     The Forfeiture Laws Incentivize Police and Prosecutors to Pursue**  
2                           **Assets Rather than Justice.**

3           142.   The forfeiture statutes give law enforcement a pecuniary interest in all  
4 property subject to forfeiture. This scheme encourages policing for profit rather than for  
5 public safety.

6           143.   In Arizona, every county has a “county anti-racketeering . . . fund,” which  
7 is administered by the county attorney. A.R.S. § 13-2314.03(A).<sup>11</sup> Forfeiture proceeds  
8 must be deposited in the anti-racketeering funds.

9           144.   Whenever a judgment of forfeiture is entered, law enforcement keeps up to  
10 100% of the net proceeds from the forfeiture.

11           145.   The only situation in which law enforcement keeps less than 100% of  
12 forfeiture proceeds is when an “injured person” successfully makes a claim for  
13 “economic loss caused by the conduct giving rise to the forfeiture of the designated  
14 property.” A.R.S. § 13-4311(N)(3). Only when an “injured person” successfully makes a  
15 claim and receives forfeiture proceeds does 10% of the remaining proceeds get  
16 transmitted to the Arizona Criminal Justice Commission for deposit in the victim  
17 compensation and assistance fund. A.R.S. § 13-4311(N)(3)(c). Law enforcement then  
18 keeps the remaining proceeds.

19           146.   Upon information and belief, the vast majority of forfeiture proceedings in  
20 Arizona involve no “injured person,” such that law enforcement keeps 100% of the  
21 proceeds of forfeiture in the vast majority of cases.

22           147.   Whenever the property forfeited is money, all of the money is used to  
23 reimburse the investigative costs of the participating law enforcement agency or agencies,  
24 with the excess deposited into the county anti-racketeering fund. A.R.S. § 13-4315(B)(1).

25           148.   Whenever the property forfeited is an interest in a vehicle, the interest in  
26 the vehicle is awarded to the seizing agency. A.R.S. § 13-4315(B)(2); *see also* A.R.S.

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28           <sup>11</sup> The State also has an anti-racketeering fund, which is administered by the  
Attorney General. A.R.S. § 13-2314.01.

1 § 13-4301(8) (defining “seizing agency”). The seizing agency may then sell the vehicle  
2 with all net proceeds going into the county anti-racketeering fund. A.R.S. § 13-  
3 4315(A)(2).

4 149. Money deposited in a county anti-racketeering fund pursuant to a forfeiture  
5 “shall be held for the benefit of the agency or agencies responsible for the seizure or  
6 forfeiture.” A.R.S. § 13-2314.03(D).

7 150. The seizing agency of Terry and Ria’s car is the Navajo County Drug Task  
8 Force.

9 151. The members of the Task Force include the Navajo County Attorney and  
10 Navajo County Attorney’s Office, the Navajo County Sheriff’s Office, the Arizona  
11 Department of Public Safety, and the Police Departments of Winslow, Holbrook,  
12 Snowflake-Taylor, Show Low, and Pinetop-Lakeside.

13 152. If Terry and Ria’s car were forfeited, the Task Force would receive title to  
14 Terry and Ria’s car.

15 153. Any proceeds from the forfeiture of Terry and Ria’s car would have to be  
16 deposited in the Navajo County anti-racketeering revolving fund.

17 154. On information and belief, the Navajo County anti-racketeering revolving  
18 fund is also known as the “Navajo County Pooled Account,” that name appearing in the  
19 Arizona Criminal Justice Commission’s required reports on the use of forfeiture  
20 proceeds.

21 155. Defendant Brad Carlyon is the sole official given authority to administer  
22 the Navajo County anti-racketeering revolving fund.

23 156. Defendants may draw on the Navajo County Pooled Account to fund  
24 salaries and other personnel costs, travel, equipment, operating expenses, and other  
25 expenses.

26 157. Accordingly, all Defendants, directly or indirectly, financially benefit from  
27 all forfeitures in Navajo County, including the attempted and potential forfeiture of Terry  
28 and Ria’s car.

1           **F. The Forfeiture Laws Do Not Meaningfully Restrict Police and**  
2           **Prosecutors' Use of Forfeiture Proceeds.**

3           158. There is no meaningful restriction on which expenditures may be made out  
4 of an anti-racketeering fund. Forfeiture proceeds are used by law enforcement agencies to  
5 augment their own budgets without any legislative appropriation.

6           159. The various county attorneys administer the various anti-racketeering  
7 revolving funds, into which any monies obtained as a result of forfeiture must be  
8 deposited. A.R.S. § 13-2314.03.

9           160. There is very little transparency required of a county anti-racketeering fund.  
10 The county attorney is required to file a report with the Arizona Criminal Justice  
11 Commission (“ACJC”) about “the sources of all monies and all expenditures,” but such  
12 report may not include “any identifying information about specific investigations.”  
13 A.R.S. § 13-2314.03(F).

14           161. In practice, the ACJC reports shed no light on how anti-racketeering funds  
15 are used. They reveal information that is highly aggregated and organized into vague  
16 categories such as “administrative expenses” and “other operating expenses.”

17           162. What little transparency there has been was reduced further in 2016 in the  
18 face of growing public concern about forfeiture and the use of forfeiture proceeds. Before  
19 2016, reports had been required quarterly, but Laws 2011, Ch. 83, § 7 (HB2016) revised  
20 ARS §§ 13-2314.01(H) and 13-2314.03(H) to require ACJC to compile an annual report  
21 instead of quarterly reports. The fiscal year 2016 Annual Single Comprehensive Report  
22 was due September 30, 2016. It was published on October 3, 2016, but with no  
23 information about the individual county accounts, the proceeds deposited into the  
24 individual county accounts, the expenditures from the individual county accounts, or the  
25 amounts held in the individual county accounts. The fiscal year 2016 Annual Single  
26 Comprehensive Report still does not include expenditure data by category.<sup>12</sup>

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28           <sup>12</sup> *Forfeiture Monies Report FY 2016*, ARIZ. CRIM. JUST. COMM’N (2016),  
[http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2016/FY16\\_RICO\\_Report.pdf](http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2016/FY16_RICO_Report.pdf).

1           163. The Navajo County anti-racketeering fund had a balance of \$654,128 at the  
2 close of fiscal year 2015; it had a balance of \$500,891 at the close of fiscal year 2016.

3           164. The Navajo County anti-racketeering fund received \$221,033 in incoming  
4 forfeitures and \$1,095 in interest during fiscal year 2016.<sup>13</sup>

5           165. There were \$327,622 in total expenditures from the Navajo County anti-  
6 racketeering fund in fiscal year 2016,<sup>14</sup> including \$155,967 for personnel services,  
7 including salaries, overtime, and other employee related expenses.

8           **G. The Forfeiture Laws Chill the Right to Petition by Making Claimants**  
9           **Liable for the Government’s Fees and Costs Even When the Claimant**  
10           **Prevails.**

11           166. In a contested forfeiture, the State is entitled to 100% of its attorneys’ fees  
12 even when it wins just 1% of its case, but a claimant is entitled to *none* of his or her  
13 attorneys’ fees even if he or she wins 100% of his or her case.

14           167. Arizona law provides: “The court shall order any claimant who fails to  
15 establish that his *entire interest* is exempt from forfeiture . . . to pay . . . the state’s costs  
16 and expenses of the investigation and prosecution of the matter, including reasonable  
17 attorney fees.” A.R.S. § 13-4314(F) (emphasis added).

18           168. Conversely: “On entry of judgment for a claimant . . . property shall be  
19 returned or conveyed immediately to the claimant . . . . If it appears that there was  
20 reasonable cause for the seizure for forfeiture . . . *the claimant is not . . . entitled to costs*  
21 . . . .” § 13-4314(E) (emphasis added).

22           169. To an innocent property owner, the reverse attorney’s fees provision is a  
23 profound disincentive to defending his or her property against an unjust forfeiture.

24           170. The reverse attorney’s fees provision is used by attorneys for the state as  
25 leverage to discourage property owners from contesting a pending forfeiture.

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27           <sup>13</sup> *Forfeiture Monies Report FY 2016*, ARIZ. CRIM. JUST. COMM’N  
(2016), [http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2016/FY16\\_RICO\\_Report.pdf](http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2016/FY16_RICO_Report.pdf) .

28           <sup>14</sup> *Id.*

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**IV. EVENTS FOLLOWING THE CAR’S SEIZURE FOR FORFEITURE**

171. Following the seizure for forfeiture of Terry and Ria’s car, Defendant Moore—in his capacity as the attorney for the state and acting on behalf of Defendant Carlyon, and for the benefit of all Defendants—engaged in a pattern of conduct calculated to extinguish Terry and Ria’s ability to protect their interest in the car before a judge and thereafter augment the budget(s) of all Defendants via an “uncontested” forfeiture.

**A. Notice of Pending Forfeiture**

172. On May 23, 2016, Defendant Moore filed a Notice of Pending Forfeiture (the “Notice”) in Navajo County Superior Court, giving notice that Defendants would claim Terry and Ria’s car “pursuant to § 13-2314, § 13-3413, and § 13-4301 *et seq.*”

173. The Notice made uncontested forfeiture available.

174. Defendant Moore caused the Notice to be mailed to Terry and Ria Platt, as “persons known to have an interest” as defined by A.R.S. § 13-4301(6) and as required by § 13-4307(1), on May 25, 2016.

175. The Notice was delivered to Terry and Ria via certified mail on May 29, 2016.

**B. Terry and Ria Timely Filed Their Petition**

176. Terry and Ria responded to the Notice by delivering copies of their Petition for Remission to Defendant Moore and the Task Force.

177. Terry and Ria’s Petition was delivered to Defendant Moore and the Task Force via FedEx on June 28, 2016—exactly thirty days after Terry and Ria’s receipt of the Notice.

178. Because Terry and Ria are persons known to have an interest in their car as defined by A.R.S. § 13-4301(6), and because Defendants have recognized Terry and Ria as such, no issue existed as to whether Terry and Ria own the car.

179. Because Terry and Ria’s Petition was timely filed and prominently stated in the upper-right corner of the first page that the pending forfeiture is “NOT

1 UNCONTESTED!”, the Petition clearly informed the State of Terry and Ria’s interest  
2 and their intent to contest the forfeiture. Pet. at 1.

3 180. Terry and Ria’s Petition therefore satisfied the basic substantive concerns  
4 underlying A.R.S. § 13-4311(E).

5 181. Terry and Ria’s Petition addressed the eight enumerated requirements of  
6 A.R.S. § 13-4311(E).

7 182. Because Terry and Ria’s timely Petition at least substantially complied with  
8 A.R.S. § 13-4311(E)–(F), Defendant Moore was obligated in his capacity as the attorney  
9 for the state to “inquire into whether the [car] is subject to forfeiture and the facts and  
10 circumstances surrounding” Terry and Ria’s Petition “provide [the Task Force] and  
11 [Terry and Ria] with a written declaration of forfeiture, remission or mitigation . . . within  
12 ninety days after the effective date of the notice of pending forfeiture,” after which Terry  
13 and Ria would have thirty days to file a claim in the Navajo County Superior Court.  
14 A.R.S. § 13-4309(3).

15 **C. The Application for Forfeiture**

16 183. Rather than consider the Petition and follow the procedure set forth in  
17 A.R.S. § 13-4309(3), on July 5, 2016, Defendant Moore—in his capacity as the attorney  
18 for the state and acting on behalf of Defendant Brad Carlyon, and for the benefit of all  
19 Defendants—filed an Application for Forfeiture (the “Application”) demanding the  
20 Navajo County Superior Court immediately forfeit the car to the Navajo County  
21 Attorney’s Office.

22 **1. The Application Wrongly Asserted that Terry and Ria Never**  
23 **Filed a Petition.**

24 184. The Application represented—incorrectly—that “no timely claim or  
25 Petition for Remission has been filed.”

26 185. The Application admitted that “correspondence was received by [the  
27 NCAO] from . . . William and Maria Platt,” but claimed that “that correspondence did not  
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1 meet the legal requirements for a Claim or Petition for Remission, and were legally null  
2 and void under pursuant to [sic] A.R.S. §§ 13-4311(E) &(F), as well as 13-4309(2).”

3 186. The Application did not specify which legal requirements the  
4 Petition/“correspondence” allegedly did not met.

5 187. The Application did not attach a copy of the Petition/“correspondence” for  
6 the Navajo County Superior Court’s review.

7 188. Before filing the Application, neither Defendant Moore nor any other  
8 Defendant contacted Terry and Ria to clear up any alleged deficiency in their Petition.

9 189. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A),  
10 provide for no judicial oversight of Defendant Moore’s conduct and representations as  
11 described in paragraphs 183-188.

12 190. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A), by  
13 their plain meaning and intended operation, deprive Terry and Ria of their right to defend  
14 their property rights in a proceeding before a neutral judge.

15 **2. The Application Wrongly Asserted Probable Cause for**  
16 **Forfeiture.**

17 191. The Application asserted that “[t]he attached Exhibits set forth facts  
18 sufficient to demonstrate probable cause to believe that [the car is] subject to forfeiture  
19 pursuant to A.R.S. §§ 13-2314(G)(3), 13-3413(A)(3).”

20 192. Under A.R.S. § 13-4314(A), even under the impermissible probable cause  
21 standard in uncontested forfeiture, the Application had to show “jurisdiction, notice and  
22 facts sufficient to demonstrate probable cause for forfeiture.” Because this application  
23 was brought pursuant to A.R.S. § 13-3413(A)(3), the Application had to show “probable  
24 cause to believe that the conduct giving rise to forfeiture involved an amount of unlawful  
25 substance greater than the statutory threshold amount as defined in section 13-3401 or  
26 was committed for financial gain.” A.R.S. § 13-4314(A).

27 193. The Exhibits attached to the Application set forth no probable cause to  
28 believe there has been any criminal conduct committed for financial gain.

1           194. The Exhibits attached to the Application set forth no probable cause to  
2 believe there has been any drug crime involving an amount of an unlawful substance in  
3 excess of the statutory threshold amount.

4           195. The Exhibits attached to the Application set forth no probable cause to  
5 believe that the money found in the car was used or intended to be used in or was  
6 traceable to any offense that gives rise to forfeiture.

7           196. The Exhibits attached to the Application set forth no probable cause to  
8 believe there has been any criminal activity giving rise to forfeiture of the car.

9           197. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A),  
10 provide for no adversarial challenge to an assertion in an application for forfeiture (such  
11 as the assertion described in paragraph 191) that probable cause exists for forfeiture.

12           198. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A),  
13 provide no procedure by which Terry and Ria could move to dismiss the Application on  
14 the grounds described in paragraphs 192–197. This omission violates their due process  
15 rights.

16           **D. Terry and Ria Timely Filed a Claim in Response to the Application,**  
17           **Which Should Have Been a Declaration of Forfeiture.**

18           199. The actions of Defendant Moore, in his capacity as the attorney for the state  
19 and acting on behalf of Defendant Carlyon, and for the benefit of all Defendants,  
20 wrongfully created a state of affairs wherein Terry and Ria appeared to have no standing  
21 to defend or recover their property. The uncontested forfeiture statutes provide no way to  
22 remedy that apparent state of affairs.

23           200. When a timely Petition for Remission is filed, the attorney for the state  
24 must follow the procedure of A.R.S. § 13-4309 and may not skip to filing an Application  
25 for Forfeiture.

26           201. When a timely Petition for Remission is filed, A.R.S. § 13-4309(3)(a)–(b)  
27 provides that the attorney for the state has up to 120 days from the notice of pending  
28 forfeiture to complete an informal investigation and issue a written declaration of



1 forfeiture, remission, or mitigation. In the underlying forfeiture proceeding, that would  
2 have been on or about September 20, 2016.

3 202. If the attorney for the state *does* issue a declaration of forfeiture, the  
4 property owner may then file a claim with the court to preserve his or her property rights.  
5 A.R.S. § 13-4309(3)(c).

6 203. When an application for forfeiture is filed, however, Arizona law purports  
7 to disallow any further challenge to the forfeiture proceeding. *Norriega v. Machado*, 179  
8 Ariz. 348, 352, 878 P.2d 1386, 1390 (App. 1994).

9 204. Rather than file an application, if Defendant Moore wished to proceed with  
10 forfeiture in the underlying proceeding, he should have filed a written declaration of  
11 forfeiture as described in A.R.S. § 13-4309(3).

12 205. The “Application” filed by Defendant Moore should have been a written  
13 declaration of forfeiture and Terry and Ria were justified in treating it as such.

14 206. The “Application” was mailed to Terry and Ria on July 6, 2016.

15 207. On August 10, 2016—exactly 35 days after Defendant Moore mailed the  
16 “Application” to Terry and Ria on July 6, 2016—Terry and Ria filed a Claim in Navajo  
17 County Superior Court.

18 208. Under A.R.S. § 13-4309(3)(c) and Arizona Rule of Civil Procedure 6(e), a  
19 claim filed thirty-five days after the mailing of a written declaration of forfeiture is  
20 timely.

21 209. Terry and Ria’s Claim was signed by both of them under penalty of perjury,  
22 set forth each of the eight enumerated requirements of A.R.S. § 13-4311(E), and thus  
23 complied with A.R.S. § 13-4311(E).

24 210. On August 16, 2016, Terry and Ria’s Claim was mailed to Defendant Task  
25 Force and Defendant Moore.

26 211. Because Terry and Ria’s Claim in the forfeiture proceeding was timely, it  
27 had to be adjudicated in any judicial forfeiture proceeding that followed. A.R.S. § 13-  
28 4309(6)(a)

1           **E. Defendant Moore Moved to Strike Terry and Ria’s Claim.**

2           212. On September 6, 2016, Defendant Moore—in his capacity as the attorney  
3 for the state and acting on behalf of Defendant Carlyon, and for the benefit of all  
4 Defendants—filed a Motion to Strike Terry and Ria’s August 10 Claim.

5           213. The Motion argued that the Claim must be stricken solely because Terry  
6 and Ria’s June 28 Petition was not signed under penalty of perjury.

7           214. The Motion did not argue that Terry and Ria’s June 28 *pro se* Petition was  
8 untimely.

9           215. The Motion did not otherwise argue that any remaining element of Terry  
10 and Ria’s June 28 *pro se* Petition was insufficient.

11           216. Terry and Ria signed their June 28 *pro se* Petition.

12           217. Defendant Moore intended to deprive Terry and Ria of both their car and  
13 the ability to contest the deprivation of their car just because their *pro se* Petition did not  
14 expressly state “signed under penalty of perjury.”

15           **F. Plaintiffs Get Lawyers; Defendants Change Their Tune.**

16           218. On September 26, 2016, Plaintiffs, having obtained pro bono counsel, filed  
17 an opposition to Defendant Moore’s motion to strike Plaintiffs’ Claim in the underlying  
18 forfeiture proceeding.

19           219. Plaintiffs then filed this civil rights action in Navajo County Superior Court  
20 on October 5, 2016.

21           220. On October 19, 2016, Defendant Moore filed a “Declaration of Partial  
22 Remission and Withdrawal of Motion to Strike and Application and Order of Forfeiture  
23 as to William and Maria Platt” (the “Withdrawal”) in the underlying forfeiture  
24 proceeding.

25           221. The Withdrawal asserted that “new information” had been “received”  
26 which “tend[ed] to support William Platt’s and Maria’s [sic] Platt’s assertion that the  
27 vehicle is subject to return based on the innocent owner exemption to asset forfeiture,”  
28 and was accompanied by a letter inviting Plaintiffs’ counsel to pick up the car.



1 Defendants a seven-year statute of limitations in which to file a complaint for forfeiture,  
2 and there is nothing that prohibits Defendants from re-initiating forfeiture proceedings at  
3 any time within the statute of limitations. This means that Terry and Ria’s property rights  
4 in their car are threatened and clouded for years to come.

5 230. Defendants, acting under color of Arizona’s civil forfeiture laws, have  
6 deprived and are depriving Terry of the use, possession, and custody of his hearing aids.

7 231. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A),  
8 purport to confer authority upon Defendant Moore to adjudicate Terry and Ria’s property  
9 interest in the car, even though A.R.S. §§ 13-2314.03 and 13-4315 give Defendant  
10 Moore’s supervisor, Defendant Carlyon, the Navajo County Attorney, and employer, the  
11 Navajo County Attorney’s Office, a pecuniary interest in the outcome of such  
12 adjudication.

13 232. Upon information and belief, some portion of Defendant Moore’s and/or  
14 Defendant Carlyon’s salary or compensation is attributable to forfeiture proceeds.

15 233. Defendant Moore adjudicated Terry and Ria’s property interest in the car  
16 when he rejected their Petition and applied for forfeiture—making the Platts non-parties  
17 to the forfeiture proceedings. But for the uncontested forfeiture statutes and the incentive  
18 statutes, Terry and Ria’s property interest in the car would have been adjudicated by a  
19 person or agency without a pecuniary interest in the outcome of the forfeiture proceeding.

20 234. The reverse attorney’s fees provision, A.R.S. § 13-4314(F), subjected Terry  
21 and Ria to the actual and well-founded fear that they could have incurred additional  
22 liability for the State’s fees and costs by the simple act of contesting forfeiture in court by  
23 filing their Claim—even if they prevailed on 99% of their claim. This fear chills their  
24 willingness to defend their rights in court. Because the car remains subject to potential  
25 forfeiture proceedings for almost another seven years, Terry and Ria are still potentially  
26 subject to the reverse attorney’s fees provision.

27 235. But for the reverse attorney’s fees provision, there would be no chilling  
28 effect on Terry and Ria’s right to petition the government for redress of grievances.

1           236. The reverse attorney’s fees provision, A.R.S. § 13-4314(F), insofar as it  
2 could have subjected Terry and Ria to additional liability for the State’s fees and costs,  
3 also treated Defendants differently from Terry and Ria—who may *not* recover fees and  
4 costs under A.R.S. § 13-4314(E)—even though Defendants and Terry and Ria are  
5 similarly situated as parties to any judicial forfeiture proceeding. Because the car remains  
6 subject to potential forfeiture proceedings for almost another seven years, Terry and Ria  
7 are still potentially subject to the reverse attorney’s fees provision.

8           237. But for the reverse attorney’s fees provision, Arizona’s forfeiture statutes  
9 would treat Terry, Ria, and Defendants equally in awarding fees and costs.

10           238. The incentive statutes, A.R.S. §§ 13-2314.03 and 13-4315, impermissibly  
11 color Defendants’ approach to enforcing the laws of Arizona by encouraging them to  
12 seize and seek forfeiture of Terry and Ria’s car, even though doing so deprives Terry and  
13 Ria (who are innocent) of their property with neither evidence of any conduct giving rise  
14 to forfeiture nor any measurable benefit to the public health, safety, or welfare.

15           239. Upon information and belief, some portion of the salary or compensation of  
16 Defendant Moore, Defendant Carlyon, and/or individual officers and troopers working  
17 for the Task Force, is attributable to forfeiture proceeds.

18           240. But for the incentive statutes, Terry and Ria would not have been entangled  
19 in a scheme in which Defendants are incentivized to abandon the proper role of law  
20 enforcement and the balance between the state and citizens. Because the car remains  
21 subject to potential forfeiture proceedings for almost another seven years, Terry and Ria’s  
22 property rights are still jeopardized by Defendants’ pecuniary interest in pursuing  
23 forfeiture.

24           241. Defendant Moore’s conduct in ignoring Terry and Ria’s Petition—and then  
25 representing to the Navajo County Superior Court that no petition or claim has been  
26 timely filed—threatened to deprive Terry and Ria of their property without giving them  
27 an opportunity to be heard.

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1           250. The attorney for the state has an economic incentive to characterize an  
2 attempted claim as a petition.

3           251. Uncontested forfeiture allows the attorney for the state to act in a judicial or  
4 quasi-judicial capacity by adjudicating the merits of a pending forfeiture.

5           252. Uncontested forfeiture authorizes the attorney for the state to obtain an  
6 order of forfeiture from the judicial department simply by representing to the judicial  
7 department that no timely claim or petition has been filed and asserting a boilerplate  
8 recitation of probable cause for forfeiture.

9           253. The incentive statutes, A.R.S. §§ 13-2314.03 and 13-4315, give the  
10 attorney for the state a pecuniary interest in any order of forfeiture—including any order  
11 of forfeiture obtained through an uncontested forfeiture in which the attorney for the state  
12 is the adjudicating officer.

13           254. “That officers acting in a judicial or quasi-judicial capacity are disqualified  
14 by their interest in the controversy to be decided is of course the general rule.” *Tumey v.*  
15 *Ohio*, 273 U.S. 510, 522 (1927).

16           255. The uncontested forfeiture statutes, together with the incentive statutes,  
17 thereby deprive persons of property without due process of law in violation of the  
18 Fourteenth Amendment to the U.S. Constitution and Article 2, section 4 of the Arizona  
19 Constitution.

20           256. Terry and Ria (and their car) were subjected to Arizona’s uncontested  
21 forfeiture scheme by Defendants.

22           257. Notwithstanding the voluntary return of Terry and Ria’s car, Defendants  
23 continue to insist their actions were lawful and constitutional. Arizona law makes the car  
24 subject to potential forfeiture proceedings for almost another seven years and there is  
25 nothing that prohibits Defendants from re-initiating forfeiture proceedings at any time  
26 within the statute of limitations. This threat continues to cloud Terry and Ria’s interest in  
27 the car and their rights, status, and other legal relations with respect to the car.

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**SECOND CAUSE OF ACTION**

**(The Reverse Attorney’s Fees Provision Chills the Exercise of The Right to Petition  
for Redress and Denies the Equal Protection of the Laws)**

258. Plaintiffs incorporate and re-allege paragraphs 1–245.

259. The reverse attorney’s fees provision, A.R.S. § 13-4314(F), imposes a contingent liability on forfeiture claimants for the simple act of filing a claim in a forfeiture proceeding.

260. The contingent liability imposed by the reverse attorney’s fees provision vests upon the entry of any judgment other than a judgment that the claimant’s entire interest is exempt from forfeiture.

261. Even when a forfeiture claimant wins a judgment that only 1% of his or her interest is subject to forfeiture the claimant thereby becomes liable for *100%* of the government’s fees and costs in litigating the forfeiture.

262. The contingent liability imposed by the reverse attorney’s fees provision—especially in cases where a claimant has a partially or mostly meritorious claim or will have to prove himself to be innocent—chills the claimant’s willingness to exercise his or her right to petition and thereby violates the First Amendment to the U.S. Constitution and Article 2, section 5 of the Arizona Constitution.

263. The reverse attorney’s fees provision also grants a privilege to the State that A.R.S. § 13-4314(E) denies to forfeiture claimants.

264. Section 13-4314(E) provides that even a *100% successful* forfeiture claimant is *not* “entitled to costs or damages.”

265. The reverse attorney’s fees provision therefore grants to that class of citizens, composed of all attorneys for the state as defined in A.R.S. § 13-4301(1), a special privilege which, upon the same terms, does not equally belong to any other citizen litigating a forfeiture, thereby violating the Fourteenth Amendment to the U.S. Constitution and Article 2, section 13 of the Arizona Constitution.





1 law and thereby violate the Fourteenth Amendment to the U.S. Constitution and Article  
2 2, section 4 of the Arizona Constitution.

3 274. Terry and Ria (and their car) were subjected to Arizona’s  
4 unconstitutionally-incentivized forfeiture scheme by Defendants.

5 275. Notwithstanding the voluntary return of Terry and Ria’s car, Defendants  
6 continue to insist their actions were lawful and constitutional. Arizona law makes the car  
7 subject to potential forfeiture proceedings for almost another seven years and there is  
8 nothing that prohibits Defendants from re-initiating forfeiture proceedings at any time  
9 within the statute of limitations. This means Terry and Ria are still threatened with being  
10 subjected to the chilling effects of Arizona’s unconstitutionally-incentivized forfeiture  
11 scheme by Defendants.

12 **FOURTH CAUSE OF ACTION**

13 **(Defendants Attempted to Deprive Terry and Ria of Their Property Without a**  
14 **Meaningful Opportunity to Be Heard in Violation of Due Process of Law)**

15 276. Plaintiffs incorporate and re-allege paragraphs 1–245.

16 277. Terry and Ria were deprived of their property—the car—for the five  
17 months between its seizure for forfeiture and its return.

18 278. After Terry and Ria received the Notice of Pending Forfeiture, they timely  
19 filed a Petition with Defendant Moore.

20 279. Defendant Moore was thus obligated to consider the merits of Terry and  
21 Ria’s Petition, but did not.

22 280. Instead, Defendant Moore represented to the Navajo County Superior Court  
23 that “no timely claim or Petition for Remission has been filed,” creating an apparent state  
24 of affairs in which Terry and Ria no longer had any standing to contest the pending  
25 forfeiture.

26 281. When Terry and Ria filed a Claim to preserve their rights to their car and to  
27 a meaningful opportunity to be heard, Defendant Moore represented to the Navajo  
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1 County Superior Court that they were not parties to the forfeiture proceeding and were  
2 not entitled to be heard by the court.

3 282. Based on Defendant Moore's representations, Terry and Ria's assertion of  
4 their interest in their car and intent to contest the pending forfeiture might never have  
5 been heard, even though, in timely filing their Petition and later timely filing their Claim,  
6 they performed the acts prescribed by statute for them to assert such interest and intent.

7 283. Terry and Ria never received a hearing from the Navajo County Superior  
8 Court.

9 284. Defendant Moore's refusal to consider the merits of Terry and Ria's  
10 Petition lengthened the amount of time they were deprived of their car.

11 285. Defendant Moore's conduct, by itself and in concert with the conduct of all  
12 other Defendants, thereby attempted to and did deprive Terry and Ria of their property  
13 without giving them an opportunity to be heard.

14 286. The conduct of Defendants in the attempted forfeiture of Terry and Ria's  
15 car thus violated the Fourteenth Amendment to the U.S. Constitution and Article 2,  
16 section 4 of the Arizona Constitution.

17 287. Notwithstanding the return of Terry and Ria's car, Defendants continue to  
18 insist their actions were lawful and constitutional.

19 **FIFTH CAUSE OF ACTION**

20 **(Defendants Have Failed to Return Personal Property to the Platts)**

21 288. Plaintiffs incorporate and re-allege paragraphs 1–245.

22 289. When Defendants seized Terry and Ria's car for forfeiture, the car  
23 contained personal property belonging to Terry and Ria, specifically, Terry's hearing  
24 aids.

25 290. Although Terry and Ria's car has been returned, Terry's hearing aids have  
26 not been returned to them.

27 291. There is no legal basis for Defendant's continued denial of Terry and Ria's  
28 use, possession, and custody of their personal property from the car.

1 292. Defendants must return the hearing aids to Terry and Ria.

2 **PRAYER FOR RELIEF**

3 Plaintiffs respectfully request the following:

- 4 A. Entry of judgment declaring the uncontested forfeiture statutes, A.R.S. §§ 13-4309  
5 and 13-4314(A), together with the incentive statutes, A.R.S. §§ 13-2314.03 and  
6 13-4315, unconstitutional under the Fourteenth Amendment to the U.S.  
7 Constitution and Article 2, section 4 of the Arizona Constitution because they  
8 allow the attorney for the state to act in a judicial or quasi-judicial capacity in a  
9 forfeiture proceeding in which he or she has a pecuniary interest;
- 10 B. Entry of a permanent injunction prohibiting Defendants Moore, Carlyon, and  
11 Navajo County (the Navajo County Attorney's Office) from pursuing uncontested  
12 forfeiture, including against Plaintiffs;
- 13 C. Entry of judgment declaring the reverse attorney's fees provision, A.R.S. § 13-  
14 4314(F), unconstitutional under the First and Fourteenth Amendments to the U.S.  
15 Constitution and Article 2, section 5 of the Arizona Constitution because it chills  
16 the exercise of the right to petition the government for redress of grievances;
- 17 D. Entry of judgment declaring the reverse attorney's fees provision unconstitutional  
18 under the Fourteenth Amendment to the U.S. Constitution and Article 2, section  
19 13 of the Arizona Constitution because it grants a special privilege to attorneys for  
20 the state in judicial forfeiture proceedings that does not equally belong to  
21 claimants against the State in the same proceedings;
- 22 E. Entry of a permanent injunction prohibiting Defendants Moore, Carlyon, and  
23 Navajo County (the Navajo County Attorney's Office) from seeking fees and costs  
24 under A.R.S. § 13-4314(F) in any judicial forfeiture proceeding, including against  
25 Plaintiffs;
- 26 F. Entry of judgment declaring the incentive statutes, A.R.S. §§ 13-2314.03 and 13-  
27 4315, unconstitutional under the Fourteenth Amendment to the U.S. Constitution  
28 and Article 2, section 13 of the Arizona Constitution because they provide law

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enforcement officers with an incentive to seize and seek forfeiture of property even in cases where such officers know or should know that no conduct giving rise to forfeiture has occurred;

- G. Entry of a permanent injunction prohibiting Defendants from initiating or participating in any seizure for forfeiture or forfeiture proceeding in which they have a pecuniary interest, including any forfeiture against Plaintiffs;
- H. Entry of judgment ordering the return of Terry’s hearing aids;
- I. An award of nominal damages in the amount of \$1 for violation of Terry and Ria’s constitutional rights;
- J. An award of attorney fees pursuant to ARS §§ 12-341, 12-348(A)(6), the private attorney general doctrine, and 42 U.S.C. § 1988; and
- K. Such further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 21st day of December, 2016.

**INSTITUTE FOR JUSTICE**

By: /s/ Paul V. Avelar

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