

CONFORMED
COPY OF ORIGINAL FILING

OCT 05 2016

NAVAJO COUNTY SUPERIOR COURT
DEANNE M. ROMO, CLERK

1 INSTITUTE FOR JUSTICE
2 Paul V. Avelar (Bar No. 023078)
3 Keith E. Diggs (Bar No. 032692)
4 398 South Mill Avenue, Suite 301
5 Tempe, AZ 85281
6 Telephone: 480.557.8300
7 Email: pavelar@ij.org
8 kdiggs@ij.org
9 Attorneys for Plaintiffs
10 William and Maria Platt

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF NAVAJO

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
ATTORNEY'S OFFICE; NAVAJO COUNTY DRUG
TASK FORCE a/k/a MAJOR CRIMES
APPREHENSION TEAM; ARIZONA DEPARTMENT
OF PUBLIC SAFETY; NAVAJO COUNTY
SHERIFF'S OFFICE; WINSLOW POLICE
DEPARTMENT; HOLBROOK POLICE
DEPARTMENT; SNOWFLAKE-TAYLOR POLICE
DEPARTMENT; SHOW LOW POLICE
DEPARTMENT; and the PINETOP-LAKESIDE
POLICE DEPARTMENT,

Defendants.

Case No. CV2016-00389

COMPLAINT

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 compel the return of their car which has been seized for forfeiture, enjoin the

1 pending forfeiture proceeding,¹ secure a declaration that several provisions of Arizona's civil
2 forfeiture scheme are unconstitutional, and obtain judicial recognition of the violation of their
3 constitutional rights through the award of nominal damages.

4 2. Terry and Ria have broken no laws, but Defendants are treating them like
5 criminals. Defendants are trying to take their car because, while their son was driving it,
6 Defendant Navajo County Drug Task Force, a/k/a the Major Crimes Apprehension Team (the
7 "Task Force") found "\$31,780.US [sic] currency and personal use marijuana and drug
8 paraphernalia" in it. But, under black-letter Arizona law, those allegations (even if true) do not
9 give rise to forfeiture. And, even if forfeiture were possible here, Terry and Ria are innocent
10 owners, as defined by Arizona law, and must have their property returned to them.

11 3. The government must follow its own laws. Even though Terry and Ria's property
12 is not forfeitable, the government is flouting Arizona law to pursue forfeiture. Defendant Jason
13 Moore—acting on behalf of Defendant Brad Carlyon, the Navajo County Attorney; Defendant
14 Navajo County Attorney's Office; and Defendant Task Force—initiated forfeiture proceedings
15 against Terry and Ria's car by filing a Notice of Pending Forfeiture Making Uncontested
16 Forfeiture Available in this Court. This filing required Terry and Ria to respond with a
17 sophisticated legal document in a very short timeframe or they would forever lose their car.
18 Terry and Ria—acting *pro se*—timely responded and objected to forfeiture. Defendant Moore
19 acknowledged receipt of this timely objection but unilaterally declared it "null and void" for an
20 alleged failure to meet unspecified statutory requirements. Defendant Moore then filed an
21 Application for Forfeiture to have this Court immediately strip Terry and Ria of their car
22 without further opportunity to contest the forfeiture based on the fiction that Terry and Ria did
23 not object to the forfeiture. The Application did not disclose to this Court the contents of Terry
24 and Ria's objection to forfeiture, did not disclose to this Court which legal requirements Terry
25 and Ria allegedly failed to meet, and did not tell Terry and Ria that their objection was
26 supposedly deficient before filing the Application.

27
28 ¹ The pending forfeiture proceeding is *In re: U.S. Currency \$31,780; 2012 Volkswagen Jetta, VIN 3VW3L7AJ0CM366141*, Navajo County Superior Court No. CV-201600217.

1 4. Even if Defendant Moore had acknowledged Terry and Ria's attempts to protect
2 their car from forfeiture, Terry and Ria still faced and continue to face a forfeiture scheme that
3 violates their property, due process, and other constitutional rights by stacking the deck against
4 innocent property owners and discouraging—at every turn—innocent property owners from
5 even trying to fight back against forfeiture abuse by the government.

6 5. Notwithstanding Arizona's forfeiture scheme and Defendant Moore's lawless
7 actions, Terry and Ria have persisted in asserting their rights. They filed a Claim with this Court
8 in an attempt to preserve their property rights by making themselves parties to the forfeiture
9 proceeding. Defendant Moore has since moved to strike their Claim and have this Court order
10 forfeiture in Terry and Ria's "absence." The sole basis for Defendant Moore's demand to
11 immediately strip Terry and Ria of their rights without any judicial review is that Terry and
12 Ria's *pro se* objection, which was signed by both Terry and Ria, does not expressly say it was
13 "signed under penalty of perjury." But, given the facts and circumstances, this omission
14 amounted at most to a technical defect, which Arizona case law requires an opportunity to
15 correct. Defendant Moore's unilateral rejection of Terry and Ria's objection to forfeiture is not
16 only impermissible, it is unbecoming of an office that is to serve justice rather than pursue its
17 own profit.

18 6. Civil forfeiture in Arizona is driven by a pernicious—and unconstitutional—
19 profit incentive, which inexorably leads to abuses like those in this case. Arizona law, A.R.S.
20 § 13-4315, allows police and prosecutors to keep up to 100% of the proceeds of civil forfeiture
21 for their own use. Since 2000, Arizona law enforcement has taken in nearly a half-billion dollars
22 through the Arizona forfeiture scheme.² That figure eclipses the amount received by state law
23 enforcement in California, whose population is *six times* that of Arizona.³ In fiscal year 2015
24 alone (the most recent year for which figures are available), Defendant Task Force claims to
25

26 ² See *Policing for Profit: The Abuse of Civil Asset Forfeiture: Arizona*, INSTITUTE FOR JUSTICE 2 ed. (last visited
27 Sep. 29, 2016), <http://ij.org/pfp-state-pages/pfp-Arizona/>.

28 ³ Compare *QuickFacts: California*, U.S. CENSUS BUREAU (last visited Sept. 29, 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>.

1 have taken in more than \$700,000 of asset seizures.⁴ As of the end of fiscal year 2015 (the most
2 recent year for which figures are available), the Navajo County Pooled Account (in which
3 forfeiture proceeds are deposited) had more than \$650,000 available to spend.⁵

4 7. This forfeiture account is beyond the control of any other branch of government
5 and can be used, among other things, to pay the salaries of the very people engaged in taking
6 Terry and Ria's car. Due to the lack of checks and balances and lax reporting requirements,
7 forfeiture proceeds have been used for various illegal purposes over the years, including
8 prohibited electioneering, donations in violation of the Arizona Constitution's Gift Clause, and
9 spending that personally benefits law enforcement officials but not the public.⁶

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

12 9. Arizona courts have already recognized that "Arizona's forfeiture statutes are
13 broad and far-reaching and therefore subject to potential prosecutorial abuse."⁷ Terry and Ria
14 have been abused, are being abused, and are threatened with continuing abuse at the hands of
15 Defendants because of Arizona's forfeiture statutes. It is up to the courts to put a stop to this
16 abuse.

17 PARTIES

18 I. PLAINTIFFS

19 10. Plaintiff William Terence Platt ("Terry") is 77 years old and a retired
20 boilermaker. He is a U.S. citizen and resident of Prosser, Washington. He is married to Plaintiff
21 Maria B. Platt, with whom he co-owns the 2012 Volkswagen Jetta that is the subject of the
22 pending forfeiture proceeding.

23 ⁴ *Enhanced Drug and Gang Enforcement Report*, ARIZ. CRIM. JUSTICE COMM'N. at 59 (2015),
24 http://www.azcjc.gov/ACJC.Web/Pubs/Home/EDGE_Report_2015.pdf.

25 ⁵ *Forfeiture Monies Report 4Q 2015*, ARIZ. CRIM. JUST. COMM'N. (2015),
26 http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2015/4th_Qtr_FY15_RICO_Report.pdf. Plaintiffs allege in
27 paragraph 145 that the "Navajo County Pooled Account" is the "county anti-racketeering revolving fund"
28 authorized by A.R.S. § 13-2314.03.

⁶ Indeed, the FBI is currently investigating the use of forfeiture funds in Pinal County. Katie Campbell, *Pinal
Official Confirms FBI Subpoena Related to RICO Funds*, CASA GRANDE DISPATCH (Sept. 9, 2016),
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.

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

1 11. Plaintiff Maria B. Platt ("Ria") is 74 years old and was born to a Jewish mother
2 (and non-Jewish father) in Nazi Germany. She is a U.S. citizen and resident of Prosser,
3 Washington. She is married to Plaintiff William Terence Platt, with whom she co-owns the
4 2012 Volkswagen Jetta that is the subject of the pending forfeiture proceeding.

5 12. In the pending forfeiture proceeding, *In re: U.S. Currency \$31,780; 2012*
6 *Volkswagen Jetta, VIN 3VW3L7AJ0CM366141*, Navajo County Superior Court No. CV-
7 201600217, Terry and Ria have previously submitted or filed: a Petition for Remission to
8 Defendant Moore, a Claim in this Court, and an Opposition to a Motion to Strike filed by
9 Defendant Moore. They are "Claimants" in the pending forfeiture proceeding and must be
10 parties in the pending forfeiture proceeding if that proceeding goes forward.

11 II. DEFENDANTS

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

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

25 15. Defendant Navajo County Attorney's Office ("NCAO") is a prosecuting agency
26 located in Holbrook, Arizona. NCAO is under the direction and supervision of Defendant Brad
27 Carlyon. As the prosecuting agency, NCAO has a pecuniary interest in the pending forfeiture
28 proceeding against Terry and Ria's car. A.R.S. § 13-4315. On information and belief, NCAO is

1 also a participant in Defendant Navajo County Drug Task Force and, as such, has a pecuniary
2 interest in the pending forfeiture proceeding against Terry and Ria's car. A.R.S. § 13-4315.

3 16. Defendant Navajo County Drug Task Force (the "Task Force") has represented
4 itself as the seizing agency that employs the officer who seized Terry and Ria's car for
5 forfeiture in the pending forfeiture proceeding. As the seizing agency, the Task Force has a
6 pecuniary interest in the pending forfeiture proceeding against Terry and Ria's car. A.R.S.
7 § 13-4315. On information and belief, the Task Force is a multi-jurisdictional, multi-agency
8 task force that is also known as the Major Crimes Apprehension Team.

9 17. Defendant Arizona Department of Public Safety ("DPS") is a law-enforcement
10 agency headquartered in Phoenix, Arizona, with its District 3 office located in Holbrook,
11 Arizona. DPS regularly employs peace officers, including the peace officer(s) who seized Terry
12 and Ria's car for forfeiture in the pending forfeiture proceeding and, as such, is a seizing agency
13 as defined in A.R.S. § 13-4301(8). As a seizing agency, DPS has a pecuniary interest in the
14 pending forfeiture proceeding against Terry and Ria's car. A.R.S. § 13-4315. On information
15 and belief, DPS is also a participant in Defendant Task Force and, as such, has a pecuniary
16 interest in the pending forfeiture proceeding against Terry and Ria's car. A.R.S. § 13-4315.

17 18. Defendant Navajo County Sheriff's Office (the "Sheriff's Office") is a law-
18 enforcement agency located in Holbrook, Arizona. On information and belief, the Sheriff's
19 Office is a participant in Defendant Task Force and, as such, has a pecuniary interest in the
20 pending forfeiture proceeding against Terry and Ria's car. A.R.S. § 13-4315.

21 19. Defendant Winslow Police Department is a law-enforcement agency located in
22 Winslow, Arizona. On information and belief, it is a participant in Defendant Task Force and, as
23 such, has a pecuniary interest in the pending forfeiture proceeding against Terry and Ria's car.
24 A.R.S. § 13-4315.

25 20. Defendant Holbrook Police Department is a law-enforcement agency located in
26 Holbrook, Arizona. On information and belief, it is a participant in Defendant Task Force, and
27 as such has a pecuniary interest in the pending forfeiture proceeding against Terry and Ria's car.
28 A.R.S. § 13-4315.

1 21. Defendant Snowflake-Taylor Police Department is a law-enforcement agency
2 located in Snowflake, Arizona. On information and belief, it is a participant in Defendant Task
3 Force and, as such, has a pecuniary interest in the pending forfeiture proceeding against Terry
4 and Ria's car. A.R.S. § 13-4315.

5 22. Defendant Show Low Police Department is a law-enforcement agency located in
6 Show Low, Arizona. On information and belief, it is a participant in Defendant Task Force and,
7 as such, has a pecuniary interest in the pending forfeiture proceeding against Terry and Ria's
8 car. A.R.S. § 13-4315.

9 23. Defendant Pinetop-Lakeside Police Department is a law-enforcement agency
10 located in Lakeside, Arizona. On information and belief, it is a participant in Defendant Task
11 Force, and as such has a pecuniary interest in the pending forfeiture proceeding against Terry
12 and Ria's car. A.R.S. § 13-4315.

13 24. On information and belief, all Defendants have been acting at all relevant times
14 as agents of each other and/or of Defendant Task Force, under color of Arizona's forfeiture
15 statutes.

16 **III. THE RES**

17 25. The subject of the pending forfeiture proceeding is one 2012 Volkswagen Jetta,
18 bearing Vehicle Identification Number 3VW3L7AJ0CM366141 (the "car"). As described
19 below, Defendant Task Force (acting through Defendant DPS and its Troopers) seized the car
20 for forfeiture, and Defendant Moore initiated forfeiture proceedings and applied for forfeiture of
21 the car.

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

24 27. There is another subject of the pending forfeiture proceeding, namely, \$31,780 in
25 U.S. currency (the "cash"). Plaintiffs Terry and Ria Platt have no property interest in the cash.

26 28. If the pending forfeiture proceeding goes forward, Defendant NCAO, acting
27 though Defendants Carlyon and Moore, will have to file a complaint for forfeiture in which the
28

1 car and the cash would be considered "Defendants" in an *in rem* forfeiture proceeding. The car
2 and the cash are not defendants (or plaintiffs) here because they are intimate objects.

3 JURISDICTION AND VENUE

4 29. Plaintiffs bring this civil rights lawsuit pursuant to Article II, Sections 4, 5, and
5 13 of the Arizona Constitution; the First and Fourteenth Amendments to the United States
6 Constitution; the Arizona Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831 *et seq.*; and
7 the Civil Rights Act of 1871, 42 U.S.C. § 1983.

8 30. This Court has original jurisdiction pursuant to Article VI, Section 14 of the
9 Arizona Constitution and A.R.S. § 12-123(A).

10 31. The Court has *in rem* jurisdiction over the pending forfeiture proceeding under
11 A.R.S. § 13-4302.

12 32. Venue in Navajo County is proper under A.R.S. §§ 12-401(11), (14), (16), and
13 13-4303(A).

14 STATEMENT OF FACTS

15 33. Defendants are unlawfully and unconstitutionally threatening Terry and Ria Platt
16 with the loss of their property rights in their car though Arizona's forfeiture statutes, which are
17 "broad and far-reaching and therefore subject to potential prosecutorial abuse." *In re*
18 \$315,900.00, 183 Ariz. at 216.

19 I. TERRY AND RIA PLATT

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

23 35. Terry and Ria live off of Terry's modest union pension income from his former
24 career as a boilermaker. In 2014, they also received a substantial amount of money when they
25 did a cash-out refinancing of their home.

26 36. Terry and Ria have had three children. They have two adult sons and had a
27 daughter who died young in a car crash.
28

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

5 38. Terry and Ria are the titled owners of the car that is the subject of the pending
6 forfeiture proceeding: a 2012 Volkswagen Jetta, bearing VIN 3VW3L7AJ0CM366141, titled
7 under the laws of Washington State, title no. 1415059526.

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

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

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

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

16 43. The Defendants have recognized Terry and Ria as owners of and as persons
17 known to have an interest in the car since shortly after its seizure for forfeiture and before
18 initiating the pending forfeiture proceedings.

19 **II. EVENTS LEADING TO THE CAR’S SEIZURE FOR FORFEITURE**

20 44. The car has been seized for forfeiture as defined in A.R.S. § 13-4301(9).

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

23 46. At no point did Terry or Ria empower Shea with legal or equitable power to
24 convey Terry and/or Ria’s interest in the car.

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

27 48. On information and belief, Shea never used the car to engage in any conduct
28 giving rise to forfeiture.

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

3 50. DPS Trooper Plumb alleged the reason for the stop was a potential window-tint
4 violation.

5 51. DPS Trooper Plumb issued a repair order, colloquially known as a "fix-it ticket,"
6 for the alleged window-tint violation.

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

9 53. DPS Trooper Plumb ran his drug-sniffing dog Doenja around the car.

10 54. Doenja alerted near the driver-side door of the car, and DPS Trooper Plumb then
11 searched the car together with DPS Trooper Mortenson, who had by then arrived on the scene.

12 55. DPS reports that Troopers Plumb and Mortenson found "\$31,780.US [sic]
13 currency and personal use marijuana and drug paraphernalia."

14 56. Shea was arrested on suspicion of three criminal counts: possession of marijuana,
15 possession of paraphernalia, and money laundering.

16 57. Any amount of marijuana that DPS officers found in the car was an amount less
17 than the statutory "threshold amount" of two pounds. *See* A.R.S. §§ 13-3401(36)(h), 13-
18 4304(3)(a).

19 58. Any amount of marijuana that DPS officers found in the car was for personal
20 use.

21 59. Any amount of marijuana that DPS officers found in the car was not possessed or
22 in any other way intended for financial gain.

23 60. Any marijuana that that DPS officers found in the car did not give rise to
24 forfeiture of the car under Arizona law.

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

27 62. There was not and is not probable cause to believe that Shea was committing
28 "money laundering" as that crime is defined in A.R.S. § 13-2317.

1 63. There was not and is not probable cause to believe that the cash the DPS officers
2 found in the car was used or intended to be used in, or was traceable to, any offense that gives
3 rise to forfeiture of the car.

4 64. Any cash that DPS officers found in the car did not give rise to forfeiture of the
5 car under Arizona law.

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

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

12 67. Defendant Moore told DPS Trooper Plumb to seize and impound the car, which
13 DPS Trooper Plumb did on May 4.

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

17 69. Not all personal property from the car was returned.

18 70. Terry had very expensive hearing aids in the car that have never been returned to
19 him.

20 71. Terry and Ria have not committed, or intended to commit, any crime that gives
21 rise to forfeiture of the car.

22 72. Terry and Ria have never been charged with, much less convicted of, any crime.

23 73. Shea has not committed, or intended to commit, any crime that gives rise to
24 forfeiture of the car.

25 74. Shea has not been convicted of any crime related to the May 3 stop.

26 75. There are no pending criminal charges against Shea as of the date of this
27 Complaint.
28

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

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

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

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

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

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

18 81. Such law enforcement agencies may keep the forfeited property for their own use
19 or sell it and use the proceeds.

20 82. The forfeiture statutes thus allow law enforcement agencies to augment their
21 budgets without any legislative appropriation.

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

26 84. Unlike a criminal proceeding, people whose property is caught up in Arizona's
27 civil forfeiture scheme do not have the right to an attorney provided to them if they cannot
28

1 afford one. This means the government can take a person's car, life savings, and home without
2 that person getting the benefit of legal representation.

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

7 86. Arizona's forfeiture scheme even purports to create a Fourth-Amendment-free
8 zone by claiming that "[n]o evidence may be suppressed in any hearing pursuant to this chapter
9 on the ground that its acquisition by search or seizure violated constitutional protections
10 applicable in criminal cases relating to unreasonable searches or seizures." A.R.S.
11 § 13-4310(E)(3).

12 87. Unique in all the nation, Arizona's civil forfeiture statutes contain reverse
13 attorney's fees provisions that chill the exercise of the right to petition the government.

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

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

19 90. Government uses the reverse attorney's fees provisions to intimidate and threaten
20 innocent property owners into not contesting forfeiture.

21 91. The low standard of proof for the government, clear financial incentive for law
22 enforcement to pursue forfeiture, strict procedural hoops for property owners to jump through,
23 presumption of property owners' guilt, and clear financial disincentive for property owners to
24 contest forfeiture all stack the deck to the government's benefit. It should not be surprising that
25 this one-sided scheme was originally authored by county attorneys and an assistant state
26 attorney general, and sponsored by the Arizona Prosecuting Attorneys' Advisory Council.⁸

27
28 ⁸ 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 92. Taken together, Arizona's civil forfeiture scheme chills the exercise of the right
2 to petition the government for redress of grievances, is corrosive of private property rights, and
3 antithetical to due process of law.

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

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

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

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

13 96. 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 prohibited
16 chemicals or substances; trafficking in explosives, weapons or stolen property; participating in a
17 criminal syndicate; obstructing or hindering criminal investigations or prosecutions; asserting
18 false claims including, but not limited to, false claims asserted through fraud or arson;
19 intentional or reckless false statements or publications concerning land for sale or lease or sale
20 of subdivided lands or sale and mortgaging of unsubdivided lands; resale of realty with intent to
21 defraud; intentional or reckless fraud in the purchase or sale of securities; intentional or reckless
22 sale of unregistered securities or real property securities; a scheme or artifice to defraud;
23 obscenity; sexual exploitation of a minor; prostitution; restraint of trade or commerce in a
24 public-works contract; terrorism; money laundering; obscene or indecent telephone
25 communications to minors for commercial purposes; counterfeiting marks; animal terrorism or
26 ecological terrorism; smuggling of human beings; child prostitution; sex trafficking; trafficking
27 of persons for forced labor or services; and manufacturing, selling or distributing misbranded
28

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

3 97. 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 receipt
5 of, or in which is contained or possessed, any item or drug,” that is “used or intended for use in
6 violation” of the drug laws. A.R.S. § 13-3413(A).

7 98. 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 “statutory
9 threshold amount.”

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

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

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

16 101. In the pending forfeiture proceeding, Defendant Moore chose to make a
17 procedure called “uncontested forfeiture” available to Terry and Ria.

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

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

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

27 105. Uncontested forfeiture requires a property owner to contest the forfeiture either
28 by (1) filing a “claim” with the court, or (2) filing a “petition for remission or mitigation” with

1 the attorney for the state. A property owner may not file both a claim and a petition in response
2 to a notice making uncontested forfeiture available, A.R.S. § 13-4309(2), though, as explained
3 below, a property owner who initially files a petition may later file a claim.

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

6 107. A claim or petition must be signed under penalty of perjury and set forth each of
7 eight required items:

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

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

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

24 109. A property owner who fails to meet the strict deadline for a claim or petition
25 loses his ability to contest the forfeiture, in which case the attorney for the state may apply *ex*
26 *parte* for an order of forfeiture—which is granted based on a mere showing of probable cause.
27 A.R.S. § 13-4314(A).

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

111. If a property owner files a timely petition, the attorney for the state has up to 120
days from the notice of pending forfeiture to complete an informal investigation and issue a

1 written declaration of forfeiture, remission, or mitigation. A.R.S. § 13-4309(3)(a)–(b). There is,
2 however, no apparent statutory consequence for failure to meet that deadline.

3 112. If the attorney for the state *does* issue a declaration of forfeiture, the property
4 owner must then file a claim with the court within thirty days to preserve his or her property
5 rights.

6 113. Because the attorney for the state has a pecuniary interest in forfeited property,
7 the attorney for the state has a financial incentive to take the path of least resistance to an order
8 of forfeiture.

9 114. Uncontested forfeiture is the path of least resistance to an order of forfeiture. It
10 provides the attorney for the state with both the opportunity and the incentive to keep property
11 owners from having their day in court.

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

16 116. In the pending forfeiture proceeding, Defendant Moore applied for uncontested
17 forfeiture based on Terry and Ria's omission of the words "under penalty of perjury" from their
18 petition, even though Terry and Ria complied with every other requirement in A.R.S. § 13-
19 4311(E), even though Terry and Ria signed their petition believing themselves to be under
20 penalty of perjury, and even though the State admits Terry and Ria's ownership interest in the
21 car, which is the thing required to be verified.

22 117. There is another procedural trap in Navajo County, where the attorney for the
23 state shares his mailing address with this Court. This requirement means that an unwary and
24 unrepresented *pro se* property owner may intend to submit a "claim" to this Court but
25 mistakenly submit it to the attorney for the state instead. This mistake transforms the "claim"
26 into a "petition" and unwittingly subjects the property owner to the "uncontested forfeiture"
27 process.
28

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

4 119. Under Arizona's forfeiture statutes, the attorney for the state has the incentive
5 and opportunity to unilaterally represent to the court—as Defendant Moore has in this case—
6 that a timely petition (or attempted claim) does not meet the requirements of A.R.S. § 13-
7 4311(E)–(F) without ever specifying which requirements were supposedly not met, giving the
8 petitioner an opportunity to correct the supposed defects, or giving the court a copy of the
9 petition for independent judicial review.

10 120. In practice, Arizona's uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-
11 4314(A), provide no meaningful check on the authority exercised by the attorney for the state to
12 determine whether a property owner has served a claim or a petition, or whether that claim or
13 petition is sufficient to preserve the property owner's interest in the property.

14 121. The authority vested in the attorney for the state by the uncontested forfeiture
15 statutes, A.R.S. §§ 13-4309 and 13-4314(A), violates due process of law insofar as it allows him
16 to adjudicate a claim in which he has a pecuniary interest. *Tumey v. Ohio*, 273 U.S. 510, 522-32
17 (1927).

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

19 122. In criminal proceedings, the government must prove its case beyond a reasonable
20 doubt.

21 123. In a contested civil forfeiture, Arizona law allows the government to prove the
22 property is subject to forfeiture by a preponderance of the evidence. A.R.S. § 13-4311(M).
23 Preponderance of the evidence is a lower standard of proof than the beyond a reasonable doubt
24 standard.

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

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

3 125. In the upside-down world of civil forfeiture, a property owner is presumed guilty
4 until proven innocent.

5 126. In Arizona, an innocent owner whose property is used in the commission of a
6 crime without his or her knowledge may plead an “innocent owner” defense, *every element of*
7 *which* he or she must affirmatively prove by a preponderance of the evidence. A.R.S. §§ 13-
8 4304(4), 13-4311(M).

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

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

16 129. As is relevant here, there are three elements to proving an innocent-owner
17 defense:

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

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

23 C. Third, an innocent owner must prove that “[h]e did not know and could
24 not reasonably have known of the act or omission or that it was likely to occur.” A.R.S.
25 § 13-4304(4)(c).

26 130. As described by one of its authors, the Arizona forfeiture scheme “is ‘strict
27 liability’ . . . [i]t divests some property interests without regard to personal fault.”⁹

28 ⁹ Holmes *supra* n.8, at 18.

1 131. Under Arizona's forfeiture scheme, property owners can have their property
2 taken from them forever if:

- 3 A. No one, much less themselves, has ever been convicted of a crime.
- 4 B. No one, much less themselves, has ever been charged with a crime.
- 5 C. The alleged perpetrator of criminal conduct has been acquitted.
- 6 D. They cannot prove their own innocence of the alleged criminal activity.
- 7 E. They cannot prove they could not have known that criminal activity was
8 likely to occur (thus proving a negative).

9 132. Terry and Ria are innocent owners in the common understanding of the term but
10 must prove themselves to be "innocent owners" as defined by Arizona law.

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

13 133. The forfeiture statutes give law enforcement a pecuniary interest in all property
14 subject to forfeiture. This scheme encourages policing for profit rather than for public safety.

15 134. In Arizona, every county has a "county anti-racketeering . . . fund," which is
16 administered by the county attorney. A.R.S. § 13-2314.03(A).¹⁰ Forfeiture proceeds must be
17 deposited in the anti-racketeering funds.

18 135. Whenever a judgment of forfeiture is entered, law enforcement keeps up to 100%
19 of the net proceeds from the forfeiture.

20 136. The only situation in which law enforcement keeps less than 100% of forfeiture
21 proceeds is when an "injured person" successfully makes a claim for "economic loss caused by
22 the conduct giving rise to the forfeiture of the designated property." A.R.S. § 13-4311(N)(3).
23 Only when an "injured person" successfully makes a claim and receives forfeiture proceeds
24 does 10% of the remaining proceeds get transmitted to the Arizona Criminal Justice
25 Commission for deposit in the victim compensation and assistance fund. A.R.S. § 13-
26 4311(N)(3)(c). Law enforcement then keeps the remaining proceeds.

27
28 ¹⁰ The State also has an anti-racketeering fund, which is administered by the Attorney General. A.R.S. § 13-2314.01.

1 137. Upon information and belief, the vast majority of forfeiture proceedings in
2 Arizona involve no "injured person," such that law enforcement keeps 100% of the proceeds of
3 forfeiture in the vast majority of cases.

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

7 139. Whenever the property forfeited is an interest in a vehicle, the interest in the
8 vehicle is awarded to the seizing agency. A.R.S. § 13-4315(B)(2); *see also* A.R.S. § 13-4301(8)
9 (defining "seizing agency"). The seizing agency may then sell the vehicle with all net proceeds
10 going into the county anti-racketeering fund. A.R.S. § 13-4315(A)(2).

11 140. Money deposited in a county anti-racketeering fund pursuant to a forfeiture
12 "shall be held for the benefit of the agency or agencies responsible for the seizure or forfeiture."
13 A.R.S. § 13-2314.03(D).

14 141. The seizing agency of Terry and Ria's car is Defendant Navajo County Drug
15 Task Force.

16 142. The members of the Task Force include Defendants the Navajo County Attorney
17 and Navajo County Attorney's Office, the Navajo County Sheriff's Office, the Arizona
18 Department of Public Safety, and the Police Departments of Winslow, Holbrook,
19 Snowflake-Taylor, Show Low, and Pinetop-Lakeside.

20 143. If Terry and Ria's car is forfeited, the Task Force would receive title to Terry and
21 Ria's car.

22 144. Any proceeds from the forfeiture of Terry and Ria's car would have to be
23 deposited in the Navajo County anti-racketeering revolving fund.

24 145. On information and belief, the Navajo County anti-racketeering revolving fund is
25 also known as the "Navajo County Pooled Account," that name appearing in the Arizona
26 Criminal Justice Commission's required reports on the use of forfeiture proceeds.

27 146. Defendant Brad Carlyon is the sole official given authority to administer the
28 Navajo County anti-racketeering revolving fund.

1 147. Accordingly, all Defendants, directly or indirectly, will financially benefit from
2 the forfeiture of Terry and Ria's car.

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

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

8 149. The various county attorneys administer the various anti-racketeering revolving
9 funds, into which any monies obtained as a result of forfeiture must be deposited. A.R.S. § 13-
10 2314.03.

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

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

18 152. What little transparency there has been was reduced further in 2016 in the face of
19 growing public concern about forfeiture and the use of forfeiture proceeds. Before 2016, reports
20 had been required quarterly, but Laws 2011, Ch. 83, § 7 (HB2016) revised ARS §§ 13-
21 2314.01(H) and 13-2314.03(H) to require ACJC to compile an annual report instead of quarterly
22 reports. The fiscal year 2016 Annual Single Comprehensive Report was due September 30,
23 2016. It was published on October 3, 2016, but with no information about the individual county
24 accounts, the proceeds deposited into the individual county accounts, the expenditures from the
25 individual county accounts, or the amounts held in the individual county accounts.¹¹

26
27
28 ¹¹ *Forfeiture Monies Report FY 2016*, ARIZ. CRIM. JUST. COMM'N (2016),
http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2016/FY16_RICO_Report.pdf.

153. The Navajo County anti-racketeering fund had a balance of \$654,128 at the close of fiscal year 2015 (the most recent year for which figures are available).

154. The Navajo County anti-racketeering fund received \$112,300 in incoming forfeitures and \$2,145 in interest during fiscal year 2015 (the most recent year for which figures are available).¹²

155. There were \$328,233 in total expenditures from the Navajo County anti-racketeering fund in fiscal year 2015 (the most recent year for which figures are available), including \$185,458 for administrative expenses, \$44,802 for equipment, and \$44,580 for “other operating” costs.¹³

156. Administrative expenses include salaries.

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

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

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

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

¹² *Forfeiture Monies Report 1Q 2015*, ARIZ. CRIM. JUST. COMM’N (2015), http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2015/1st_Qtr_FY15_RICO_Report.pdf; *Forfeiture Monies Report 2Q 2015*, ARIZ. CRIM. JUST. COMM’N (2015), http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2015/2nd_Qtr_FY15_RICO_Report.pdf; *Forfeiture Monies Report 3Q 2015*, ARIZ. CRIM. JUST. COMM’N (2015), http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2015/3rd_Qtr_FY15_RICO_Report.pdf; *Forfeiture Monies Report 4Q 2015*, *supra* n.5, (collectively hereinafter “FY 2015 RICO Reports.”).

¹³ FY 2015 RICO Reports.

1 160. To an innocent property owner, the reverse attorney's fees provision is a
2 profound disincentive to defending his or her property against an unjust forfeiture.

3 161. The reverse attorney's fees provision is used by attorneys for the state as
4 leverage to discourage property owners from contesting a pending forfeiture.

5 **IV. EVENTS FOLLOWING THE CAR'S SEIZURE FOR FORFEITURE**

6 162. Following the seizure for forfeiture of Terry and Ria's car, Defendant Moore—in
7 his capacity as the attorney for the state and acting on behalf of Defendant Carlyon, Defendant
8 NCAO, and Defendant Task Force—engaged in a pattern of conduct calculated to extinguish
9 Terry and Ria's ability to protect their interest in the car before a judge and thereafter augment
10 the budget(s) of all Defendants via an "uncontested" forfeiture.

11 **A. Notice of Pending Forfeiture**

12 163. On May 23, 2016, Defendant Moore filed a Notice of Pending Forfeiture (the
13 "Notice") with this Court, giving notice that Defendants would claim Terry and Ria's car
14 "pursuant to § 13-2314, § 13-3413, and § 13-4301 *et seq.*"

15 164. The Notice made uncontested forfeiture available.

16 165. Defendant Moore caused the Notice to be mailed to Terry and Ria Platt, as
17 "persons known to have an interest" as defined by A.R.S. § 13-4301(6) and as required by
18 § 13-4307(1), on May 25, 2016.

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

20 **B. Terry and Ria Timely File Their Petition**

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

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

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

1 170. Because Terry and Ria's Petition was timely filed and prominently states in the
2 upper-right corner of the first page that the pending forfeiture is "NOT UNCONTESTED!", the
3 Petition clearly informed the State of Terry and Ria's interest and their intent to contest the
4 forfeiture. Pet. at 1.

5 171. Terry and Ria's Petition therefore satisfies the basic substantive concerns
6 underlying A.R.S. § 13-4311(E).

7 172. Terry and Ria's Petition addresses the eight enumerated requirements of A.R.S.
8 § 13-4311(E).

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

16 **C. The Application for Forfeiture**

17 174. Defendant Moore—in his capacity as the attorney for the state and acting on
18 behalf of Defendant Brad Carlyon, the Navajo County Attorney, Defendant NCAO, and
19 Defendant Task Force—neither inquired into the facts and circumstances surrounding the
20 Petition nor issued a declaration of forfeiture, remission, or mitigation as required by A.R.S.
21 § 13-4309(3).

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

24 175. On July 5, 2016, Defendant Moore filed an Application for Forfeiture (the
25 "Application") with this Court representing—incorrectly—that "no timely claim or Petition for
26 Remission has been filed."

27 176. The Application admits that "correspondence was received by [Defendant
28 NCAO] from . . . William and Maria Platt," but claims that "that correspondence did not meet

1 the legal requirements for a Claim or Petition for Remission, and were legally null and void
2 under pursuant to [sic] A.R.S. §§ 13-4311(E) &(F), as well as 13-4309(2).”

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

5 178. The Application does not attach a copy of the Petition/“correspondence” for this
6 Court’s review.

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

9 180. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A), provide
10 for no judicial oversight of Defendant Moore’s conduct and representations as described in
11 paragraphs 174–179.

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

15 **2. The Application Wrongly Asserts Probable Cause for Forfeiture.**

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

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

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

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

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

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

9 188. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A), provide
10 for no adversarial challenge to an assertion in an application for forfeiture (such as the assertion
11 described in paragraph 182) that probable cause exists for forfeiture.

12 189. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A), provide
13 no procedure by which Terry and Ria may move to dismiss the pending Application on the
14 grounds described in paragraphs 183–188. This omission violates their due process rights.

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

17 190. The actions of Defendant Moore, in his capacity as the attorney for the state and
18 acting on behalf of Defendant Carlyon, the Navajo County Attorney; Defendant NCAO; and
19 Defendant Task Force, wrongfully created a state of affairs wherein Terry and Ria appeared to
20 have no standing to defend or recover their property. The uncontested forfeiture statutes provide
21 no way to remedy that apparent state of affairs.

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

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

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

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

7 195. Rather than file an application, if Defendant Moore wished to proceed with
8 forfeiture here, he should have filed a written declaration of forfeiture as described in A.R.S.
9 § 13-4309(3).

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

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

13 198. On August 10, 2016—exactly 35 days after Defendant Moore mailed the
14 “Application” to Terry and Ria on July 6, 2016—Terry and Ria caused their Claim to be filed in
15 this Court.

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

18 200. Terry and Ria’s Claim is signed by both of them under penalty of perjury, sets
19 forth each of the eight enumerated requirements of A.R.S. § 13-4311(E), and thus complies with
20 A.R.S. § 13-4311(E).

21 201. On August 16, 2016, Terry and Ria’s Claim was mailed to Defendant Task Force
22 and Defendant Moore.

23 202. Because Terry and Ria’s Claim in the pending forfeiture proceeding is timely, it
24 must be adjudicated in any judicial forfeiture proceeding that follows. A.R.S. § 13-4309(6)(a).

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

26 203. On September 6, 2016, Defendant Moore—in his capacity as the attorney for the
27 state and acting on behalf of Defendant Carlyon, the Navajo County Attorney, Defendant
28 NCAO, and Defendant Task Force—filed a Motion to Strike Terry and Ria’s August 10 Claim.

1 204. The Motion argues that the Claim must be stricken solely because Terry and
2 Ria's June 28 Petition was not signed under penalty of perjury.

3 205. The Motion does not argue that Terry and Ria's June 28 *pro se* Petition was
4 untimely.

5 206. The Motion does not otherwise argue that any remaining element of Terry and
6 Ria's June 28 *pro se* Petition was insufficient.

7 207. Terry and Ria signed their June 28 *pro se* Petition.

8 208. Defendant Moore intends to deprive Terry and Ria of both their car and the
9 ability to contest the deprivation of their car just because their *pro se* Petition did not expressly
10 state "signed under penalty of perjury."

11 **F. Current Procedural Posture of the Pending Forfeiture Proceeding**

12 209. No judgment, order, or ruling has been entered on the Application, the Claim, or
13 in any other way with respect to the pending forfeiture of Terry and Ria's car.

14 **INJURIES TO TERRY AND RIA PLATT**

15 210. The uncontested forfeiture statutes, A.R.S. §§ 13-4309 and 13-4314(A), purport
16 to confer authority upon Defendant Moore to adjudicate Terry and Ria's property interest in the
17 car, even though A.R.S. §§ 13-2314.03 and 13-4315 give Defendant Moore's supervisor,
18 Defendant Carlyon, the Navajo County Attorney, and employer, Defendant NCAO, a pecuniary
19 interest in the outcome of such adjudication.

20 211. Upon information and belief, some portion of Defendant Moore's and/or
21 Defendant Carlyon's salary or compensation is attributable to forfeiture proceeds.

22 212. But for the uncontested forfeiture statutes and the incentive statutes, Terry and
23 Ria's property interest in the car would have been adjudicated by a person or agency without a
24 pecuniary interest in the outcome of the forfeiture proceeding.

25 213. The reverse attorney's fees provision, A.R.S. § 13-4314(F), instills Terry and Ria
26 with an actual and well-founded fear that they may incur additional liability for the State's fees
27 and costs by the simple act of contesting the pending forfeiture in court—even if Terry and Ria
28 prevail on 99% of their claim. This fear chills their willingness to defend their rights in court.

1 214. But for the reverse attorney's fees provision, there would be no chilling effect on
2 Terry and Ria's right to petition the government for redress of grievances.

3 215. The reverse attorney's fees provision, A.R.S. § 13-4314(F), insofar as it could
4 subject Terry and Ria to additional liability for the State's fees and costs, also treats Defendants
5 differently from Terry and Ria—who may *not* recover fees and costs under A.R.S. § 13-
6 4314(E)—even though Defendants and Terry and Ria are similarly situated as parties to any
7 judicial forfeiture proceeding.

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

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

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

18 219. But for the incentive statutes, Terry and Ria would not be entangled in a scheme
19 in which Defendants are incentivized to abandon the proper role of law enforcement and the
20 balance between the state and citizens.

21 220. Defendant Moore's conduct in ignoring Terry and Ria's Petition—and then
22 representing to this Court that no petition or claim has been timely filed—has threatened to
23 deprive Terry and Ria of their property without giving them an opportunity to be heard.

24 221. But for Defendant Moore's conduct, Terry and Ria's objection to the forfeiture
25 of their car would be heard by a neutral adjudicator.

26 222. The pending forfeiture clouds the validity of Terry and Ria's interest in the car
27 even though the facts set forth in the Application and accompanying Exhibits do not give rise to
28 forfeiture.

1 223. But for the pending forfeiture proceeding, Terry and Ria would know their
2 rights, status, and other legal relations with respect to the car.

3 224. The ongoing seizure for forfeiture means that Terry and Ria have neither
4 possession nor custody of their car even though they have title and even though the facts set
5 forth in the Application and accompanying Exhibits do not give rise to forfeiture.

6 225. But for the seizure for forfeiture and ongoing forfeiture proceeding, Terry and
7 Ria would enjoy the possession and custody of their car, to which they are entitled.

8 226. Even if Defendants returned Terry and Ria's car, A.R.S. § 13-4308(B) gives
9 Defendants a seven-year statute of limitations in which to file a complaint for forfeiture,
10 meaning Terry and Ria's property rights in their car are threatened and clouded for years to
11 come.

12 227. But for Arizona's forfeiture laws, Terry and Ria's property rights in their car
13 would be clear and not threatened.

14 **FIRST CAUSE OF ACTION**

15 **(Uncontested Forfeiture Allows the Attorney for the State to Adjudicate a Proceeding in**
16 **Which He Has a Pecuniary Interest and Thereby Denies Due Process of Law)**

17 228. Plaintiffs incorporate and re-allege paragraphs 1-227.

18 229. Uncontested forfeiture, as provided in A.R.S. §§ 13-4309 and 13-4314(A),
19 differs from judicial forfeiture in that uncontested forfeiture allows forfeiture to be obtained
20 without any adversarial proceeding ever taking place before an officer of the judicial
21 department.

22 230. Uncontested forfeiture allows the attorney for the state to characterize an
23 attempted claim as a petition.

24 231. The ability to characterize an attempted claim as a petition allows the attorney
25 for the state to subject property owners to the uncontested forfeiture process even when they
26 have tried to invoke their right to an adversarial proceeding before an officer of the judicial
27 department.
28

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

3 233. 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.

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

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

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

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

19 SECOND CAUSE OF ACTION

20 **(The Reverse Attorney’s Fees Provision Chills the Exercise of The Right to Petition for** 21 **Redress and Denies the Equal Protection of the Laws)**

22 238. Plaintiffs incorporate and re-allege paragraphs 1–227.

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

25 240. The contingent liability imposed by the reverse attorney’s fees provision vests
26 upon the entry of any judgment other than a judgment that the claimant’s entire interest is
27 exempt from forfeiture.
28

241. 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.

242. 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.

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

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

245. 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.

THIRD CAUSE OF ACTION

(The Incentive Statutes Encourage Law Enforcement Officers to Seek Forfeiture in Violation of the Due Process Guarantee to the Impartial Administration of Justice)

246. Plaintiffs incorporate and re-allege paragraphs 1–227.

247. The incentive statutes, A.R.S. §§ 13-2314.03 and 13-4315, reward law enforcement officers (including attorneys for the state as defined in A.R.S. § 13-4301(1)) with ownership and control of nearly all property on which a judgment of forfeiture is entered.

248. The effects of the incentive to police for profit are obvious: Since fiscal year 2000, Arizona law enforcement took in nearly half a billion dollars in forfeiture proceeds under state law.

249. The incentive to police for profit grossly distorts Arizona law enforcement's priorities in enforcing the laws.

250. Because forfeiture can and does lead directly to the augmentation of Defendants' budgets, Defendants are motivated to aggressively seize and seek forfeiture of property even where, as here, there is neither evidence of conduct giving rise to forfeiture nor any benefit to the public health, safety, or welfare.

251. Because the incentive statutes impair the ability of law enforcement to administer justice impartially, they deprive persons of property without due process of law and thereby violate the Fourteenth Amendment to the U.S. Constitution and Article 2, section 4 of the Arizona Constitution.

FOURTH CAUSE OF ACTION

(Defendants Have Deprived Terry and Ria of Their Property Without a Meaningful Opportunity to Be Heard in Violation of Due Process of Law)

252. Plaintiffs incorporate and re-allege paragraphs 1–227.

253. Terry and Ria have been and continue to be deprived of their property—the car—since its seizure for forfeiture and on an ongoing basis.

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

255. Defendant Moore was thus obligated to consider the merits of Terry and Ria's Petition, but did not.

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

257. Based on Defendant Moore's representations, Terry and Ria's assertion of their interest in their car and intent to contest the pending forfeiture may never be heard, even though, in timely filing their Petition and later timely filing their Claim, they performed the acts prescribed by statute for them to assert such interest and intent.

258. Defendant Moore's conduct, by itself and in concert with the conduct of all other Defendants, has thereby deprived Terry and Ria of their property without having given them an opportunity to be heard.

259. The conduct of Defendants in the pending forfeiture of Terry and Ria's car thus violates the Fourteenth Amendment to the U.S. Constitution and Article 2, section 4 of the Arizona Constitution.

FIFTH CAUSE OF ACTION

**(Defendants Have Unlawfully Applied for Forfeiture Based on Facts Which, Even If True,
Do Not Give Rise to Forfeiture)**

260. Plaintiffs incorporate and re-allege paragraphs 1–227.

261. Defendants have applied for forfeiture by asserting that they have set forth facts showing probable cause, as contemplated in A.R.S. § 13-4314(A), that Terry and Ria's car is subject to forfeiture.

262. Relatedly, Defendants have implied that, in the event the pending forfeiture were contested (and it is), they could establish by a preponderance of the evidence that Terry and Ria's car is subject to forfeiture. *See* A.R.S. § 13-4311(M).

263. Defendants have, however, set forth no evidence of any criminal conduct committed for financial gain.

264. Defendants have set forth no evidence of any drug crime involving an amount of an unlawful substance in excess of the statutory threshold amount.

265. Defendants have set forth no evidence linking the the car to any racketeering crime.

266. Defendants have set forth no evidence of any conduct giving rise to forfeiture of the car.

267. On the facts and evidence set forth by Defendants, and under *either* the probable cause standard of an uncontested forfeiture or the preponderance standard of a contested forfeiture, this Court can and should declare that Terry and Ria's car is not subject to forfeiture.

SIXTH CAUSE OF ACTION

1 **(Defendants Have Unlawfully Applied for Forfeiture of a Property Interest That Qualifies**
2 **for the Innocent Owner Exemption from Forfeiture Despite the Innocent Owners' Timely**
3 **Assertion of Such Affirmative Defense)**

4 268. Plaintiffs incorporate and re-allege paragraphs 1–227.

5 269. Even assuming that Defendants had set forth facts and evidence tending to show
6 that Terry and Ria's car is subject to forfeiture (and they have not), Terry and Ria timely
7 asserted an innocent-owner defense in both their Petition and their Claim.

8 270. Terry and Ria acquired their interest in the car before any alleged conduct giving
9 rise to forfeiture.

10 271. Terry and Ria never empowered any person whose alleged act or omission gives
11 rise to forfeiture with legal or equitable power to convey Terry and Ria's interest in the car.

12 272. Terry and Ria did not know and could not reasonably have known of any alleged
13 act or omission giving rise to forfeiture, or that such alleged act or omission was likely to occur.

14 273. Because Terry and Ria thus meet every element of the innocent-owner defense,
15 A.R.S. § 13-4304(4), this Court can and should declare that Terry and Ria's car is not subject to
16 forfeiture.

17 **SEVENTH CAUSE OF ACTION**

18 **(Defendants Have Failed to Timely Initiate Forfeiture Proceedings After Their Deemed**
19 **Declaration of Forfeiture)**

20 274. Plaintiffs incorporate and re-allege paragraphs 1–227.

21 275. Defendants' Application for Forfeiture was filed on July 5, 2016, and mailed on
22 July 6, 2016, and had the effect of a written declaration for forfeiture as contemplated by A.R.S.
23 § 13-4309(3).

24 276. Under A.R.S. § 13-4308(B) and Arizona Rule of Civil Procedure 6(e),
25 Defendants had up to sixty-five days from the mailing of a declaration of forfeiture in which to
26 file a complaint for forfeiture or the property sought for forfeiture "shall be released from its
27 seizure for forfeiture on the request of an owner or interest holder," even though Defendants
28 could still subsequently file a forfeiture complaint at any time within the seven-year statute of
limitations. A.R.S. § 13-4308(B).

1 277. Calculated sixty-five days from July 6, 2016, the deadline to have filed a
2 forfeiture complaint in the pending forfeiture proceeding was no later than September 9, 2016.

3 278. The deadline having passed, Terry and Ria, as owners and interest holders in the
4 car, are entitled upon request to secure the release of their car from seizure for forfeiture and
5 this Court should so declare.

6 **PRAYER FOR RELIEF**

7 Plaintiffs respectfully request the following:

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

- 1 F. Entry of judgment declaring the incentive statutes, A.R.S. §§ 13-2314.03 and 13-4315,
2 unconstitutional under the Fourteenth Amendment to the U.S. Constitution and Article
3 2, section 13 of the Arizona Constitution because they provide law enforcement officers
4 with an incentive to seize and seek forfeiture of property even in cases where such
5 officers know or should know that no conduct giving rise to forfeiture has occurred;
- 6 G. Entry of a permanent injunction prohibiting Defendants from initiating or participating
7 in any seizure for forfeiture in which they have a pecuniary interest, including against
8 Plaintiffs, and enjoining Defendants Moore, Carlyon, and NCAO from initiating or
9 participating in any forfeiture proceeding in which they have a pecuniary interest,
10 including against Plaintiffs;
- 11 H. Entry of judgment ordering the return of Terry and Ria's car to them as well as all
12 personal property in the car, including Terry's hearing aids;
- 13 I. Entry of judgment declaring that Terry and Ria's car is not forfeitable and/or that Terry
14 and Ria are innocent owners;
- 15 J. An award of nominal damages in the amount of \$1 for violation of Terry and Ria's
16 constitutional rights;
- 17 K. An award of attorney fees pursuant to ARS §§ 12-341, 12-348(A)(6), the private
18 attorney general doctrine, and 42 U.S.C. § 1988; and
- 19 L. Such further legal and equitable relief as the Court may deem just and proper.
20

21 RESPECTFULLY SUBMITTED this 5th day of October, 2016.

22 INSTITUTE FOR JUSTICE

23
24 By: 

25 Paul V. Avelar (Bar No.023078)
26 Keith E. Diggs (Bar No. 032692)
27 398 South Mill Avenue, Suite 301
28 Tempe, AZ 85281
Telephone: 480.557.8300
Email: pavelar@ij.org
kdiggs@ij.org

Attorneys for Plaintiffs
William and Maria Platt

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing Complaint is being served via third party courier with the appropriate Notice of Claim of Unconstitutionality on the following:

The Honorable Andy Biggs
President of the Senate
Arizona State Senate
Capitol Complex
1700 West Washington
Phoenix, AZ 85007-2890

The Honorable Mark Brnovich
Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007-2890

The Honorable David Gowan
Speaker of the House
Arizona State Senate
Capitol Complex
1700 West Washington
Phoenix, AZ 85007-2890

Respectfully submitted, this 5th day of October, 2016.

By: 
Paul V. Avelar (AZ Bar No. 023078)
INSTITUTE FOR JUSTICE
398 South Mill Avenue, Suite 301
Tempe, AZ 85281
Telephone: 480.557.8300
Email: pavelar@ij.org