IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

AMYA SPARGER-WITHERS, on behalf of herself and all others similarly situated,

Plaintiff,

v.

JOSHUA N. TAYLOR, *et al.*,

Defendants.

Case No. 1:21-cv-2824-JRS-MG

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION (ECF No. 6)

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INTRODUCTION

This is a civil-rights lawsuit challenging a systemic defect in Indiana's system of civil-forfeiture: Unlike every other state in the nation, Indiana outsources civil-forfeiture prosecutions to private lawyers on a contingency-fee basis. This arrangement gives the private prosecutor a personal financial stake in the forfeiture action. And at a structural level, that stake violates the constitutional rights of all defendants facing such a prosecutor. With personal profit on the line, private prosecutors are systematically incentivized to make money, not to steward the public trust and see that justice is done.

Defendant Joshua N. Taylor is one of the most prolific contingency-fee prosecutors in Indiana. He prosecutes civil-forfeiture actions in no fewer than sixteen counties, filing over 100 such cases each year. In each, he makes money if the government wins; he does not if the government loses. A system that distorts prosecutorial discretion in this way violates the due-process rights of everyone subjected to it. Plaintiff Amya Sparger-Withers—currently a defendant in one of Taylor's contingency-fee prosecutions—thus seeks relief on behalf of herself and all others similarly situated. As a first step, she requests an order certifying this case as a class action under Rule 23(a) and (b)(2), with the class defined as:

> All persons who are or will be named as defendants in civil-forfeiture actions (a) brought under Title 34, Article 24 of the Indiana Code and (b) in which Joshua N. Taylor represents the State of Indiana or any other government plaintiff.

BACKGROUND

A. Like many states, Indiana has a civil-forfeiture regime under which the state can sue to confiscate property linked to certain crimes. Ind. Code §§ 34-24-1-1 *et seq.*; Ind. Code §§ 34-24-2-1 *et seq.* Often, the state need not show that the property's owner is guilty of any wrongdoing, only that his or her property has a connection to a crime. "Civil forfeiture," in the Indiana Supreme Court's words, "is a device, a legal fiction, authorizing legal action against

inanimate objects for participation in alleged criminal activity, regardless of whether the property owner is proven guilty of a crime—or even charged with a crime." *Serrano v. State*, 946 N.E.2d 1139, 1140 (Ind. 2011).

The system is both "punitive and profitable." *State v. Timbs*, 134 N.E.3d 12, 21 (Ind. 2019). It is "punitive for those whose property is confiscated; and profitable for the government, which takes ownership of the property." *Id.* It is also vulnerable to abuse. The Indiana Supreme Court, for example, has characterized "the way Indiana carries out civil forfeitures" as "concerning." *Id.* at 31; *see also id.* at 33 (commenting on "the widened use of aggressive *in rem* forfeiture practices" nationwide). Individual members of that court have likewise noted "overreach," *Sargent v. State*, 27 N.E.3d 729, 735 (Ind. 2015) (Massa, J., dissenting); have likened civil forfeiture to a "law enforcement Weapon[] of Mass Destruction," *id.*; and have voiced "serious concerns with the way Indiana carries out civil forfeitures." *Horner v. Curry*, 125 N.E.3d 584, 612 (Ind. 2019) (Slaughter, J., concurring in the judgment).

B. In one respect, Indiana is unique: For decades, prosecutors in Indiana have outsourced civil-forfeiture cases to private lawyers on a contingency-fee basis. These arrangements inject financial self-interest into the justice system. And they are notorious. A leading treatise on civil forfeiture describes them as a "scandal." David B. Smith, *Prosecution and Defense of Forfeiture Cases* ¶ 1.01, at 1-13 (2018). They have even led to at least one instance of attorney discipline. In 2011, the prosecuting attorney for Delaware County had his license suspended for having abdicated "his duties as a public official" in service of "his private interest in his continued pursuit of forfeiture property." *In re McKinney*, 948 N.E.2d 1154, 1155-56 (Ind. 2011) (per curiam).

For all that, Indiana remains a "defiant outlier" when it comes to contingency-fee forfeitures. Louis S. Rulli, *Prosecuting Civil Asset Forfeiture on Contingency Fees: Looking for Profit in All the Wrong Places*, 72 Ala. L. Rev. 531, 561 (2021). In 2018, in fact, the General Assembly doubled down, codifying contingency-fee forfeitures into statutory law. As amended, Indiana's Civil Forfeiture Statute now provides explicitly that county prosecuting attorneys "may retain an attorney to bring an action under this chapter." Ind. Code § 34-24-1-8(a). Those private lawyers can be compensated *only* through contingency-fee agreements, pocketing as much as a one-third cut from each case they win. *Id.* § 34-24-1-8(e).

C. Defendant Joshua N. Taylor is one of the most prolific contingency-fee forfeiture prosecutors in Indiana; he prosecutes civil-forfeiture actions in no fewer than sixteen counties. Under his contingency-fee agreements, Taylor stands to profit personally—up to 30 percent of all recovered proceeds—if the State wins or settles a civil-forfeiture action he prosecutes. *See id.*; *see also* Compl. Ex. 1 (ECF No. 1-1 at 4) ("Contract Between Joshua N. Taylor and the Hancock County Prosecuting Attorney"). By contrast, he does not stand to profit—and may even lose money—if the State loses the civil-forfeiture action (or if the recovery is not large enough to cover his costs of prosecuting it).

D. Earlier this year, the State filed a civil-forfeiture action in the Superior Court of Hancock County, seeking to forfeit $6,096 seized from Named Plaintiff Amya Sparger-Withers. *See* Greenberg Decl. Ex. 9 (ECF No. 6-12 at 2); *id.* Ex. 10 (ECF No. 6-13 at 2). Joshua N. Taylor represents the State in that action. And under Indiana Code § 34-24-1-8(e) and his contingency-fee arrangement, he stands to profit personally from prosecuting the case. As in all the civil-forfeiture cases Taylor prosecutes, that personal financial stake structurally skews his incentive away from stewarding the public trust and toward maximizing his own personal financial gain.

Through this civil-rights lawsuit, Amya Sparger-Withers seeks to eliminate that financial stake on behalf of herself and all persons who are or will be named as defendants in civil-forfeiture actions prosecuted by Joshua N. Taylor.

LEGAL STANDARD

"The purpose of class action litigation is to avoid repeated litigation of the same issue and to facilitate prosecution of claims that any one individual might not otherwise bring on her own." *Chi. Tchrs. Union v. Bd. of Educ.*, 797 F.3d 426, 433 (7th Cir. 2015). With those goals in mind, the district courts retain "broad discretion to determine whether certification of a class-action lawsuit is appropriate." *Dubinski v. Sentry Ins.*, No. 1:14-cv-551-TWP-DKL, 2015 WL 540523, at *2 (S.D. Ind. Feb. 10, 2015) (citation omitted).

To certify a class, a court must first be satisfied that the class is ascertainable, or, put differently, that it is "defined by objective criteria." *Mullins v. Direct Digit., LLC*, 795 F.3d 654, 657 (7th Cir. 2015).

The case also must meet the four requirements of Rule 23(a):

(1) the class is so numerous that joinder of all members is impracticable (numerosity);

(2) there are questions of law or fact common to the class (commonality);

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and

(4) the representative parties will fairly and adequately protect the interests of the class (adequacy of representation).

Chi. Tchrs. Union, 797 F.3d at 433.

In addition, the case must meet at least one of the four conditions of Rule 23(b). *Id.* Under Rule 23(b)(2), certification is proper if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

Rule 23 requires that a court certifying a class appoint class counsel as well. Fed. R. Civ. P. 23(c)(1)(B). That decision is guided by a non-exclusive set of factors, including the work counsel has done in identifying or investigating potential claims in the action; their experience in handling class actions, other complex litigation, and the types of claims asserted in the action; their knowledge of the applicable law; and the resources they will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A); *see also* Fed. R. Civ. P. 23(g)(1)(B).

ARGUMENT

Four years ago, then-Chief Judge Magnus-Stinson certified a class action asserting a different due-process challenge to Indiana's civil-forfeiture laws. *See Washington v. Marion Cnty. Prosecutor*, 264 F. Supp. 3d 957 (S.D. Ind. 2017) (holding that the lack of a prompt post-seizure hearing violates due process). Procedurally, the same course is appropriate here. As in *Washington*, Plaintiff Amya Sparger-Withers's proposed class is marked by objective criteria (Section I, below). It satisfies Rule 23(a)'s four requirements (Section II) and Rule 23(b)(2) (Section III). And it will be fairly and adequately represented by the counsel below, who should be appointed class counsel (Section IV). For these reasons, the class should be certified.

I. The class's membership is ascertainable.

As an initial matter, the Seventh Circuit recognizes an implicit requirement that a proposed class be "ascertainab[le]." *Mullins*, 795 F.3d at 657. That "does not mean that all members of a class must be identifiable at the time of certification." *Hizer v. Pulaski Cnty.*, No.

16-cv-885, 2017 WL 3977004, at *4 (N.D. Ind. Sept. 11, 2017). It simply means that the class must be defined by "objective criteria." *Mullins*, 795 F.3d at 657.

That condition is met here. Named Plaintiff proposes the following class definition: "**All persons who are or will be named as defendants in civil-forfeiture actions (a) brought under Title 34, Article 24 of the Indiana Code and (b) in which Joshua N. Taylor represents the State of Indiana or any other government plaintiff**." The definition calls for just two factual inquiries to determine whether someone is in the class. First, is he or she a defendant in a civil-forfeiture action brought under Title 34, Article 24 of the Indiana Code? Second, is Joshua N. Taylor representing the government plaintiff? Each of these criteria is clear and objectively defined. Simply, "the class is indeed identifiable as a class," meaning the ascertainability requirement is met. *Lacy v. Butts*, No. 1:13-cv-811-RLY-DML, 2015 WL 5775497, at *2 (S.D. Ind. Sept. 30, 2015) (citation omitted).

II. The class meets the four requirements of Rule 23(a).

To show that class certification is justified, a plaintiff must first satisfy the four requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. Each is met here.

A. Numerosity: The class includes hundreds of current and future members.

The proposed class contains hundreds of current and future members, meaning the class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). While "[t]here is no magic number that applies to every case," a "forty-member class is often regarded as sufficient to meet the numerosity requirement." *Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 336 F.R.D. 165, 172 (S.D. Ind. 2020) (citation omitted). And here, public records indicate that, as of yesterday, at least 98 Taylor-prosecuted civil-forfeiture actions were active (some of which include more than one person as a defendant). *See* Greenberg

Decl. ¶¶ 8-9 (ECF No. 6-2 at 2-3); *id.* Ex. 7 (ECF No. 6-10 at 2-115); *id.* Ex. 8 (ECF No. 6-11 at 2-47); *see generally Carrel v. MedPro Grp., Inc.*, No. 16-cv-130, 2017 WL 1488359, at *3 (N.D. Ind. Apr. 26, 2017) (observing that "a plaintiff need not plead or prove the exact number of class members to establish numerosity" and that "court[s] may make common sense assumptions to determine numerosity" (citations omitted)). That figure alone satisfies Rule 23(a)'s numerosity requirement.

Because the proposed class extends to *future* civil-forfeiture defendants, moreover, the class is larger still. Past practice shows that Joshua N. Taylor files over 100 new civil-forfeiture cases each year. *See* Greenberg Decl. ¶¶ 4-7 (ECF No. 6-2 at 2); *id.* Ex. 3 (ECF No. 6-6 at 2-119); *id.* Ex. 4 (ECF No. 6-7 at 2-56); *id.* Ex. 5 (ECF No. 6-8 at 2-171); *id.* Ex. 6 (ECF No. 6-9 at 2-58); *see also id.* ¶¶ 2-3 (ECF No. 6-2 at 1); *id.* Ex. 1 (ECF No. 6-4 at 2-87); *id.* Ex. 2 (ECF No. 6-5 at 2-26). "[S]imple common sense" supports a finding that he will file hundreds more such cases in the future. *Ind. C.L. Union Found., Inc.*, 336 F.R.D. at 172 (citation omitted). And a "good faith estimate" of numerosity includes everyone who will be named as defendants in those future cases. *Lacy*, 2015 WL 5775497, at *5. That reinforces the need for class treatment. *Hizer*, 2017 WL 3977004, at *6 (noting that the presence of "prospective" class members "may have a tendency to make certification more, not less, likely"); *Wilburn v. Nelson*, 329 F.R.D. 190, 195 (N.D. Ind. 2018) (noting that the presence of future members "makes joinder . . . a difficult proposition" (citation omitted)).

Other considerations drive home the point. In evaluating whether joinder is impracticable, for example, courts may consider such factors as "the putative class members' geographic diversity, judicial economy and the ability of the putative class members to institute individual lawsuits." *Ind. C.L. Union Found., Inc.*, 336 F.R.D. at 173 (citation omitted). Those

considerations underscore the impracticability of joinder here and, in turn, the need for class-wide relief. Taylor prosecutes civil-forfeiture cases against people all over Indiana, meaning "the class spans the entire state." *Id.*; *see, e.g.,* Greenberg Decl. Ex. 7 (ECF No. 6-10 at 61 (complaint in Harrison County) and 114 (complaint in Starke County)). And many of the civil-forfeiture actions involve relatively small sums of money. *See, e.g.*, Greenberg Decl. Ex. 5 (ECF No. 6-8 at 113, 127, 136 (seeking forfeiture of $48, $82, and $75, respectively)). For people in those cases, it often does not make economic sense to retain a lawyer at all—much less to hire one to vindicate their Fourteenth Amendment right to a financially disinterested prosecutor.[1] The Court can thus "reasonabl[y] . . . infer" that many class members "may not have the ability" to vindicate their due-process rights individually. *Ind. C.L. Union Found., Inc.*, 336 F.R.D. at 173. Without class-wide relief, in other words, profit-driven civil-forfeiture prosecutions will likely persist for decades to come.

B. Commonality: The proposed class challenges a systemwide defect in Indiana's civil-forfeiture program.

Certification also is warranted because the case presents "questions of law or fact common to the class" as a whole. Fed. R. Civ. P. 23(a)(2). The "commonality" element requires that the proposed class's claim "depend upon a common contention" that is "of such a nature . . . that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Simply, if "the same conduct or practice by the same defendant gives rise to the same kind of

[1] *See* State's Pet. for Reh'g 8, *Abbott v. State*, No. 19A-PL-1635 (Ind. Ct. App. Mar. 15, 2021) ("Based on the relatively-small amount of money at issue and the low probability of success . . . it is unlikely that even a litigant of significant means would hire counsel to defend this action."), *trans. granted*; *see generally* Lisa Knepper et al., Inst. for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* 30 (3d ed. Dec. 2020) (discussing this phenomenon in more detail), https://tinyurl.com/bnfve3ej.

claims from all class members, there is a common question." *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014); *see also Wal-Mart Stores, Inc.*, 564 U.S. at 359 ("[E]ven a single common question will do." (citation, quotation marks, and brackets omitted)).

Here, too, Amya Sparger-Withers's proposed class fits the bill. All putative class members are (or will be) suffering the same practice by the same defendant: facing a civil-forfeiture prosecution at the hands of Joshua N. Taylor. In each case, Taylor will have a personal financial stake in the outcome. (By statute, in fact, he "must" have such a stake. Ind. Code § 34-24-1-8(e).) That personal financial stake is a structural violation of the Due Process Clause. In turn, Taylor's contingency-fee prosecutions violate each class member's due-process rights in the same way: by systematically impairing their right to a financially disinterested prosecutor. (To be clear, that claim does not rest on Taylor's exhibiting provable bias in any specific case. *See* Compl. ¶ 85 (ECF No. 1 at 18).) Class certification will "resolve . . . the validity" of that claim "in one stroke," *Wal-Mart Stores, Inc.*, 564 U.S. at 350, making it an efficient use of party and judicial resources.

C. Typicality: Amya Sparger-Withers's due-process claim is typical of the due-process claims of the class as a whole.

For similar reasons, Rule 23's typicality requirement is satisfied as well. Amya Sparger-Withers's claim is "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3); *see also Washington*, 264 F. Supp. 3d at 965 ("The commonality and typicality requirements tend to merge . . . ."). That is because it "arises from the same event or practice or course of conduct that gives rise to the claims of other class members" and is "based on the same legal theory." *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998) (citation omitted). As discussed, Sparger-Withers is now named as a defendant in a civil-forfeiture action prosecuted by Joshua N. Taylor. Taylor's personal financial stake in that action violates her due-process rights; the more of her property he

forfeits, the more he pockets. The same is necessarily true of every other class member: Each is—or will be—involved in a civil-forfeiture action that suffers the same structural defect. As a result, the relief Sparger-Withers seeks—a judgment invalidating that defect—will "redound to the benefit of all class members." *Shepherd v. ASI, Ltd.*, 295 F.R.D. 289, 298 (S.D. Ind. 2013). All class members "will benefit from [that] favorable judgment in the event that [it] is entered," *Meisberger v. Donahue*, 245 F.R.D. 627, 631 (S.D. Ind. 2007), meaning the typicality requirement is met.

D. Adequacy of representation: Amya Sparger-Withers and her counsel will adequately represent the class's interests.

Amya Sparger-Withers and her counsel also "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4).

1. Named Plaintiff. The burden of showing a class representative's adequacy "is not a heavy one." *Sledge v. Sands*, 182 F.R.D. 255, 259 (N.D. Ill. 1998) (citation omitted). A named plaintiff adequately represents the proposed class if she is "part of the class and possess[es] the same interest and suffer[s] the same injury as the class members." *Washington*, 264 F. Supp. 3d at 966 (citation omitted). A named plaintiff possesses the same interest as the class if she does not "make claims that are antagonistic to or in conflict with the claims of other class members." *Meisberger*, 245 F.R.D. at 631. And these conditions are met here. Sparger-Withers is a class member because she is a defendant in a civil-forfeiture action brought by Joshua N. Taylor. With that as the backdrop, there is no conflict between her claim and those of the putative class members; she seeks the same declaratory and injunctive relief for the class as she does for herself.

2. Named Plaintiff's counsel. Sparger-Withers's counsel is "qualified, experienced, and generally able to conduct the proposed litigation" and will thus fairly and adequately

represent the interests of the class. *Hubler Chevrolet, Inc. v. General Motors Corp.*, 193 F.R.D. 574, 578 (S.D. Ind. 2000); *see also id.* ("Courts generally presume competency of class counsel at the outset of the litigation 'in the absence of specific proof to the contrary by the defendant.'"). The Institute for Justice is a nonprofit, public-interest law firm that, since its founding in 1991, has litigated constitutional issues nationwide. *See* Inst. for Justice, *About Us*, https://tinyurl.com/nsk8rbfx. The firm has litigated several federal class actions, including against Philadelphia[2]; New York City[3]; and Pagedale, Missouri[4]; and the federal government.[5] It has also litigated a state-court class action raising profit-incentive claims like the one here.[6]

The Institute for Justice has particular expertise litigating issues involving civil forfeiture. Firm attorneys (including Sam Gedge, one of those listed below) have been counsel in almost every civil-forfeiture-related appeal decided by the Indiana Supreme Court in recent years. *Abbott v. State*, No. 21S-PL-347 (Ind., oral arg. Dec. 9, 2021); *State v. Timbs*, 169 N.E.3d 361 (Ind. 2021); *State v. Timbs*, 134 N.E.3d 12 (Ind. 2019); *Horner v. Curry*, 125 N.E.3d 584 (Ind. 2019). (The below-signed attorneys from McNeelyLaw LLP served ably as local counsel in both *Horner* and *Timbs*.) They represented the petitioner before the Supreme Court of the United

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[2] *Sourovelis v. City of Philadelphia*, No. 14-cv-4687, 2021 WL 344598, at *1 (E.D. Pa. Jan. 28, 2021) (appointing the Institute for Justice as Class Counsel and approving federal consent decree in challenge to civil-forfeiture procedures).

[3] *Cho v. City of New York*, No. 16-cv-7961 (S.D.N.Y. Oct. 2, 2020) (ECF No. 111) (approving systemic-relief settlement of a putative class action relating to coercive property seizures).

[4] *Whitner v. City of Pagedale*, No. 15-cv-1655 (E.D. Mo. May 21, 2018) (ECF No. 116) (approving federal consent decree prohibiting abusive ticketing practices).

[5] *Snitko v. United States*, No. 21-cv-4405 (C.D. Cal. Oct. 12, 2021) (ECF No. 78) (certifying class of property owners challenging FBI searches and seizures as unlawful).

[6] *Morales v. City of Indio*, No. RIC1803060 (Cal. Super. Ct. filed Feb. 13, 2018).

States in the civil-forfeiture case *Timbs v. Indiana*, 139 S. Ct. 682 (2019). They have represented property owners in state- and federal-court civil-forfeiture actions across the nation, from Nevada to Arizona to Texas to Louisiana to Massachusetts to Michigan.[7] In short, each of the attorneys listed below will well-represent the interests of the class. *See* Gedge Decl. ¶¶ 1-8 (ECF No. 6-1 at 1-3).

III. Rule 23(b)(2) is satisfied.

As detailed above, the proposed class meets each of the elements of Rule 23(a). It also satisfies Rule 23(b)(2), which provides that class certification is warranted when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Rule 23(b)(2) is "the appropriate rule to enlist when the plaintiffs' primary goal is not monetary relief, but rather to require the defendant to do or not do something that would benefit the whole class." *Chi. Tchrs. Union*, 797 F.3d at 441; *see also Washington*, 264 F. Supp. 3d at 967 (noting that actions seeking "injunctive relief to prevent future allegedly illegal deprivations of civil rights" are "'prime example[s]' of a proper class under Rule 23(b)(2)"). And the Rule applies straightforwardly here. Joshua N. Taylor is prosecuting (or will prosecute) each putative class member under a system that, Amya Sparger-Withers maintains, violates the Due Process Clause at a structural level. To remedy that systemic flaw, Sparger-Withers thus seeks relief that would apply to the class across the board: a class-wide judgment invalidating Joshua N. Taylor's

[7] *See, e.g.*, Inst. for Justice, *Nevada Civil Forfeiture*, https://tinyurl.com/j32ruvbw; Inst. for Justice, *Arizona Forfeiture Appeal*, https://tinyurl.com/bsckfwjz; Inst. for Justice, *Texas Forfeiture II*, https://tinyurl.com/b8hwvyne; Inst. for Justice, *Kermit Warren Forfeiture*, https://tinyurl.com/45hwemhh; Inst. for Justice, *Detroit Civil Forfeiture*, https://tinyurl.com/2kzfd5w8; Inst. for Justice, *Massachusetts Forfeiture*, https://tinyurl.com/cerxxkw.

contingency-fee stake in civil-forfeiture cases. That "single injunction [and] declaratory judgment would provide relief to each member of the class," *Wal-Mart Stores, Inc.*, 564 U.S. at 360, making class certification warranted under Rule 23(b)(2).

IV. Plaintiff's counsel should be appointed class counsel under Rule 23(g).

An order certifying a class action "must" appoint class counsel under Rule 23(g). *See* Fed. R. Civ. P. 23(c)(1)(B). The factors informing appointment include: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A); *see also* Fed. R. Civ. P. 23(g)(1)(B).

Undersigned counsel merit appointment as class counsel. As illustrated by today's filings, the Institute for Justice has performed substantial work in identifying the claim pleaded in the complaint, in defining the contours of the class, and in determining its numerosity. The firm also has extensive experience litigating class actions, and claims involving civil-forfeiture and profit motives in particular. *See* pp. 10-11, above. The firm and the more senior attorneys listed below have deep knowledge of the substantive law at issue. *See* Gedge Decl. ¶¶ 2-3 (ECF No. 6-1 at 1-2). And as the firm's record of successful class-action and systemic-relief litigation shows, it has substantial resources to commit to the case. *Id.* ¶¶ 7-8 (ECF No. 6-1 at 3). Co-counsel at McNeelyLaw LLP also have a record of effectively aiding the Institute for Justice in public-interest litigation in this state. *Id.* ¶ 6 (ECF No. 6-1 at 2-3). Appointment as class counsel is therefore appropriate.

CONCLUSION

For these reasons, Amya Sparger-Withers respectfully requests that this Court certify the proposed class and appoint undersigned counsel as class counsel.

Dated: November 10, 2021.

Respectfully submitted,

s/Anthony B. Sanders

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2021, a copy of the foregoing was filed electronically with the Clerk of this Court and was served on the below-named persons by first class U.S. Mail, postage pre-paid:

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93 W. Hill Street
Wabash, IN 46992

Morgan County Prosecuting Attorney
Morgan County Prosecutor's Office
60 S. Jefferson Street
Martinsville, IN 46151

Miami County Prosecuting Attorney
Miami County Courthouse
25 N. Broadway, Room 116
Peru, IN 46970

Harrison County Prosecuting Attorney
Harrison County Prosecutor's Office
1445 Gardner Lane N.W., Suite 3101
Corydon, IN 47112-2079

Marshall County Prosecuting Attorney
Marshall County Building
112 W. Jefferson Street, Suite 101
Plymouth, IN 46563

Rush County Prosecuting Attorney
Rush County Courthouse
101 E. Second Street, Room 317
Rushville, IN 46173

Fulton County Prosecuting Attorney
Fulton County Prosecutor's Office
815 N. Main Street, Room 301
Rochester, IN 46975

Shelby County Prosecuting Attorney
Shelby County Prosecutor's Office
407 S. Harrison Street, Suite 30
Shelbyville, IN 46176

s/Anthony B. Sanders
Anthony B. Sanders