STATE OF INDIANA)
) SS.
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT 4
CAUSE NO. 49D04-2405-MI-020041

STATE OF INDIANA,

Plaintiff,

v.

$42,825.00 in U.S. CURRENCY,
HENRY MINH,
PATRICK H.,
as their interest may appear,

Defendant(s).

HENRY MINH, INC., on behalf of itself and all others similarly situated,

Counterclaim-Plaintiff,

v.

STATE OF INDIANA; and RYAN MEARS, in his official capacity as Marion County Prosecutor,

Counterclaim-Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: CERTIFICATION OF CLASSES

Before the Court is Counterclaim-Plaintiff Henry Minh, Inc.'s motion for class certification. The Court having considered the evidence and admissions in the record, taken judicial notice of court records, and considered the arguments presented in filings and at the hearing on May 2, 2025, now enters the following findings of fact and conclusions of law granting Counterclaim-Plaintiff's motion. To the extent that any part of these findings of fact and conclusions of law appears to have been adopted from either party's proposed findings of fact and

conclusions of law, the Court represents that any such language adopted constitutes the Court's own finding or conclusion. In addition, all conclusions of law that are more appropriately findings of fact are deemed findings of fact, and all findings of fact that are more appropriately conclusions of law are deemed conclusions of law.

FINDINGS OF FACT

1. Henry Minh, Inc. seeks certification of two classes, based on two alleged defects in the Marion County Prosecutor's and the State of Indiana's (together "the State" or "the Prosecutor") practices for forfeiting currency in state court:

   a. the State's practice of bringing actions to forfeit money seized from in-transit FedEx parcels that have no link to Indiana beyond the parcel's temporary en route presence at the Indianapolis FedEx hub because of FedEx's shipping routes (the focus of Counts 1, 2, 3, and 4); and

   b. the State's practice—when suing to forfeit currency alone—of using boilerplate forfeiture complaints that give property owners no notice of the factual and legal basis on which the State claims forfeiture (the focus of Counts 5, 6, and 7).

A. The Marion County Prosecutor's Practice of Suing to Forfeit In-Transit Currency

2. Counterclaim-Plaintiff Henry Minh, Inc.'s first set of claims (Counts 1–4) concerns the State's practice of suing in Indiana state court to forfeit currency seized from in-transit FedEx parcels that are being neither sent from nor sent to Indiana. According to the company, the parcels'

happenstance stop-off in FedEx's Indianapolis facility is not a sufficient link to support the forfeiture under the state's civil-forfeiture statute or under the state and federal constitutions.

3. Indianapolis is home to a FedEx Express hub where shipments from across the United States pass along conveyor belts en route to their final destinations. [Answer at 7, ¶ 12.]

4. Officers with the Indianapolis Metropolitan Police Department visit the FedEx facility, view parcels, and pull aside ones they find suspicious based on various factors. [Answer at 8, ¶ 14; Ex. C to Miller Aug. 6 Aff. (sample of 50 probable-cause affidavits).]

5. Parcels that are pulled aside are presented to a K-9. [Ex. C. to Miller Aug. 6 Aff.; Answer at 9, ¶ 21.]

6. When a K-9 alerts to a parcel, the officers seek and secure a warrant to open it. [Answer at 9, ¶ 21.]

7. When an officer finds currency, the Marion County Prosecutor's Office often sues in Indiana state court on behalf of the State of Indiana to forfeit the currency under Indiana state law. [Answer at 10, ¶ 23; Ex. B to Miller Aug. 6 Aff. (139 complaints to forfeit currency seized from in-transit parcels).]

8. In more than 130 instances since 2022, the Marion County Prosecutor has sued to forfeit currency from a FedEx parcel that was seized while in-transit from a jurisdiction that is not Indiana to a jurisdiction that is not Indiana. [Answer at 10, ¶ 25; *id.* at 13, ¶ 32; Ex. B to Miller Aug. 6 Aff.]

9. In none of the cases the Prosecutor has brought to forfeit currency from parcels en route from one state outside Indiana to another state outside Indiana did the Prosecutor have any evidence or any reason to believe that:

a. the out-of-state sender had any control over the flight route of the FedEx airplanes transporting the parcel [Answer at 14, ¶ 35];

b. the out-of-state recipient intended the parcel to be routed through the Indianapolis FedEx hub [Answer at 14, ¶ 37]; or

c. the out-of-state recipient had any control over the flight route of the FedEx airplanes transporting the parcel [Answer at 14, ¶ 38].

10. According to the State, rather, the fact that in-transit currency is shipped through Indiana by FedEx is alone sufficient to permit forfeiture under the state's civil-forfeiture statute. [*See* Gov't Cert. Opp. 13 ("The physical presence of the parcel containing money in Indiana . . . gives the State of Indiana standing to bring a civil forfeiture action against it.").]

B. The Marion County Prosecutor's Practice of Filing Complaints that Do Not Notify Property Owners of the Factual and Legal Basis for Forfeiture

11. Counterclaim-Plaintiff Henry Minh, Inc.'s second set of claims (Counts 5–7) concerns, not in-transit parcels specifically, but the amount of notice the Marion County Prosecutor provides when it sues to forfeit currency (whether seized from FedEx parcels or otherwise). According to the company, what the company describes as the Prosecutor's "boilerplate" complaints do not provide the degree of notice required by the state civil-forfeiture statute and by the state and federal constitutions.

12. Hundreds of times since June 2023, the Prosecutor has sued to forfeit currency alone (that is, not alongside other property) with complaints that do not allege the factual basis on which forfeiture is sought or the criminal offense that is alleged to be the basis for the forfeiture. [Ex. A to Miller Aug. 6 Aff.]

13. When suing to forfeit currency alone, the Prosecutor's practice is to use complaints with boilerplate language that does not supply the factual basis for forfeiture or the Indiana crime that serves as a legal predicate for forfeiture. [*See* Exs. A, B to Miller Aug. 6 Aff.]

14. The boilerplate language alleges that:

a. on a certain date a certain amount of currency was seized from a certain location;

b. the currency "was furnished or was intended to be furnished in exchange for a violation of a criminal statute, or is traceable as proceeds of a violation of a criminal statute, in violation of Indiana law, as provided in I.C. 34-24-1-1"; and

c. certain people are named in the complaint so that they may respond as their interests may appear.

[Exs. A, B to Miller Aug. 6 Aff.]

15. The Prosecutor has a practice to sue to forfeit currency with complaints that contain only the allegations and information detailed at paragraph 14 above. [Exs. A, B to Miller Aug. 6 Aff.]

16. Along with its complaints, the State files probable-cause affidavits with the court when it sues to forfeit currency. As a practice, the State does not serve those probable-cause affidavits on individuals with an interest in the civil-forfeiture matter. [Mar. 6, 2025 Notice to Court; *see also, e.g.*, Ex. A to Miller Mar. 6 Aff. at 9–10 (Resp. to Req. for Admission 11) ("Without waiving objections, MCPO admits that the State of Indiana, through its work in MCPO, does not as a practice serve individuals interested in civil forfeiture matters with probable cause affidavits or motions for probable cause findings together with the complaints and summons in

civil forfeiture matters."); *id.* at 10 (Resp. to Req. for Admission 12) ("Without waiving objections, MCPO admits that the State of Indiana, through its work in MCPO, does file probable cause affidavits and motions for probable cause finding ex parte.").]

C. The Case to Forfeit Henry Minh, Inc.'s Currency

17. Henry Minh, Inc. is a small jewelry wholesale business located in California. [Henry Cheng Oct. 16 Aff. ¶¶ 1–3.]

18. The company's sole owners and employees, Henry Cheng and his wife, Minh, are U.S. citizens and residents of California. [Henry Cheng Oct. 16 Aff. ¶ 2.]

19. The company sells jewelry—mostly pieces imported from Italy and Hong Kong—to dozens of retail jewelry stores across the United States. [Henry Cheng Oct. 16 Aff. ¶ 3.]

20. In January 2024, the company shipped a wholesale order of jewelry to one of its retail-jeweler customers, Linh Gems & Jewelry, Inc. (Linh Gems for short), located in Falls Church, Virginia. [Henry Cheng Oct. 16 Aff. ¶ 6.]

21. The total price of the merchandise was $42,825.00. [Henry Cheng Oct. 16 Aff. ¶ 6; Ex. 1 to Henry Cheng Oct. 16 Aff.]

22. The jewelry was delivered to Linh Gems, but Linh Gems was slow to submit payment for it. [Henry Cheng Oct. 16 Aff. ¶ 7.]

23. Minh inquired about payment in April 2024, and in response, Linh Nguyen (the owner of Linh Gems) said that she could pay promptly with cash. [Minh Cheng Oct. 16 Aff. ¶ 6.]

24. Minh agreed that Linh Gems could make the payment by sending the $42,825.00 in cash. [Minh Cheng Oct. 16 Aff. ¶ 6.]

25. Henry then created a FedEx label online, and it was transmitted to Linh Gems, in Virginia, to use for shipping the money. [Henry Cheng Oct. 16 Aff. ¶ 7.]

26. The label showed Henry Minh c/o Linh G. as the sender, with the retailer's (Linh Gems) Virgina store address. [Ex. 2 to Henry Cheng Oct. 16 Aff.]

27. Given the high-value merchandise it ships, Henry Minh, Inc. uses a third-party shipping insurer and creates its FedEx labels through that company's platform. [Henry Cheng Oct. 16 Aff. ¶ 9.]

28. In doing so, the company adheres to certain security best-practices to minimize the risk of theft, including using the receipt information on the label Henry generated, which listed as the addressee:

> PATRICK H
> FEDEX HOLD FOR PICK UP
> 2125 FOOTHILL BLVD.
>
> LA CANADA FLINTRIDGE CA 91011

[Henry Cheng Oct. 16 Aff. ¶ 9; Ex. 2 to Henry Cheng Oct. 16 Aff.]

29. The parcel containing the $42,825.00 was shipped through FedEx and intercepted at the Indianapolis FedEx Express Hub by an Indianapolis Metropolitan Police Officer. [Affidavit for Probable Cause in the present case, No. 49D04-2405-MI-020041 (filed May 2, 2024).]

30. When intercepted, the parcel was en route from Virginia to California. [Answer at 21 ¶ 63; Ex. 2 to Henry Cheng Oct. 16 Aff.]

31. Henry Minh, Inc. did not know the parcel would be processed through the FedEx hub in Indianapolis, did not intend for the parcel to be processed through that hub, and had no control over the flight paths of the FedEx airplanes assigned to transport the parcel. [Henry Cheng Oct. 16 Aff. ¶ 10.]

32. In the forfeiture case against Henry Minh, Inc., the Prosecutor had no evidence or any reason to believe that:

a. the out-of-state sender (Linh Gems) had any control over the flight route of the FedEx airplanes transporting the parcel [Answer at 14, ¶ 35];

b. the out-of-state recipient (Henry Minh, Inc.) intended the parcel to be routed through the Indianapolis FedEx hub [Answer at 14, ¶ 37]; or

c. the out-of-state recipient (Henry Minh, Inc.) had any control over the flight route of the FedEx airplanes transporting the parcel [Answer at 14, ¶ 38].

33. With the parcel pulled aside, the officer's K-9, according to the officer's affidavit, alerted to it. [Aff. for Search Warrant at 6–7 (filed May 2, 2024); Answer at 24 ¶ 70.]

34. The officer obtained a warrant, opened the parcel, and found only the $42,825.00 cash payment—no illegal substances or other contraband. [Aff. for Search Warrant at 6–7 (filed May 2, 2024); Answer at 24 ¶¶ 72–73.]

35. The Marion County Prosecutor then filed an action to forfeit the currency in this Court, under Indiana's civil-forfeiture statute. [Answer at 24 ¶ 74.]

36. Consistent with the Prosecutor's complaints filed in other cases to forfeit currency from in-transit parcels, the complaint nowhere identified what crime was alleged to support the forfeiture. [*Compare* Ex. B to Miller Aug. 6 Aff., *with* Compl.]

37. The complaint exhibits the boilerplate features of hundreds of other complaints the Prosecutor has filed in actions to forfeit currency alone. [*Compare* Ex. A to Miller Aug. 6 Aff., *with* Compl.]

38. The Complaint states that:

a. on a certain date (on or about April 26, 2024) a certain amount of currency was seized ($42,825.00) from a certain location (in Marion County in a parcel that lists Henry Minh as the sender and Patrick H. as the recipient);

b. the currency "was furnished or was intended to be furnished in exchange for a violation of a criminal statute, or is traceable as proceeds of a violation of a criminal statute, in violation of Indiana law, as provided in I.C. 34-24-1-1"; and

c. certain people are named in the complaint (Henry Minh and Patrick H.) so that they may respond as their interests may appear.

[Compl.]

39. The Complaint nowhere alleges any connection of the parcel or its contents to Indiana. [Compl.]

40. Henry Minh, Inc. owns the $42,825.00 that was seized and subjected to a forfeiture action. [Henry Cheng Oct. 16 Aff. ¶ 5.]

41. On October 16, 2024, Henry Minh, Inc. moved this Court for partial summary judgment, designating evidence and arguing that the State could not tie the currency to any violation of Indiana's criminal statutes. [Dkt. Oct. 16, 2024.]

42. On November 14, 2024, the State agreed to return the company's money, and the parties agreed to an order under which the forfeiture complaint would be dismissed with prejudice while the company's individual and putative-class counterclaims would remain pending. [Dkt. Nov. 14, 2024.] This court entered that order on November 15, 2024. [Dkt. Nov. 15, 2024.]

43. Despite the company having recovered its money, it is undisputed that the company remains committed to vigorously representing the classes detailed below. [Henry Cheng Jan. 17 Aff. ¶ 6 ("I am submitting this affidavit to inform the Court that—even though my company's money has been returned—I intend to diligently pursue the interests of the classes in this case.").]

D. The Putative Classes

44. Simultaneously with its answer to the State's forfeiture complaint (and before the government agreed to return the seized funds), Henry Minh, Inc., filed a class-action counterclaim against the State and the Marion County Prosecutor in his official capacity. That counterclaim challenges two aspects of Marion County's civil-forfeiture program. **First**: the State's policy of bringing actions to forfeit money seized from in-transit FedEx parcels that have no link to Indiana beyond the happenstance of FedEx's shipping routes. According to the company, that link to Indiana is insufficient to give the State authority to forfeit the in-transit currency under the state civil-forfeiture statute, the state constitution, and the federal constitution. [Counterclaim ¶¶ 105–32; *see generally An-Hung Yao v. State*, 975 N.E.2d 1273, 1278 (Ind. 2012) ("Acts done outside a jurisdiction, *but intended to produce and producing detrimental effects within it*, justify a State in punishing the cause of the harm as if [the defendant] had been present at the effect . . . ." (emphasis added; citation omitted)).] **Second**: for actions to forfeit currency more generally, the State's policy of using boilerplate complaints that do not give property owners notice of the factual and legal basis on which the State claims forfeiture. According to the company, that lack of notice in the complaints violates the state civil-forfeiture statute and the state and federal due-process clauses. [Counterclaim ¶¶ 133–50.]

45. To challenge those two aspects of Marion County's forfeiture program, Henry Minh, Inc. has moved this Court to certify two classes:

> **The Parcel Class**: All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code (1) seeking the forfeiture of currency contained in parcels that were (a) in-transit via FedEx from an originating location outside of Indiana to a destination location outside of Indiana and (b) seized at the FedEx Express Indianapolis Hub and (2) in which the complaint makes no allegation that the currency is connected to Indiana beyond the in-transit parcel's presence in Indiana when it was seized.

> **The Notice Class**: All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code to forfeit currency alone, in which the Marion County Prosecutor's Office represents the State of Indiana or any other government plaintiff and in which the complaint does not identify the specific predicate crime it alleges supports the forfeiture.

[Motion for Class Certification, Dkt. Aug. 7, 2024.]

46. That motion was fully briefed this past January; Henry Minh, Inc., filed a supplemental notice in March; and a hearing was held on May 2, 2025.

CONCLUSIONS OF LAW

1. "The principal purpose of the class action device is 'promotion of efficiency and economy of litigation.'" *Farno v. Ansure Mortuaries of Ind., LLC*, 953 N.E.2d 1253, 1269 (Ind. Ct. App. 2011) (citation omitted).

2. With those goals in mind, trial courts retain "broad discretion in determining whether an action will be maintained as a class action." *Indep. Hill Conservancy Dist. v. Sterley*, 666 N.E.2d 978, 980 (Ind. Ct. App. 1996).

3. To certify a class, a court must first be satisfied that the class definition is sufficiently "definite," or—stated another way—that it is "specific enough for the court to determine whether or not an individual is a class member." *Id.* at 981. This requirement is "looser" for classes (like those here) seeking only "declaratory and injunctive relief pursuant to [Rule 23(B)(2)]." *Perdue v. Murphy*, 915 N.E.2d 498, 506 (Ind. Ct. App. 2009). In these cases, the requirement is often met so long as "the 'defendants' alleged policies and practices shape the contours of the class.'" *Id.* (citation omitted). That is because Rule 23(B)(2) "was specifically drafted to facilitate relief in civil rights suits," making it "proper for a class to be defined generally, even amorphously, in actions . . . seeking declaratory or injunctive relief." *Id.*

4. The case must also meet the four requirements of Trial Rule 23(A):

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

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

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

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

5. In addition, the case must meet one of the three conditions of Trial Rule 23(B). *Perdue v. Murphy*, 915 N.E.2d 498, 504 (Ind. Ct. App. 2009). Henry Minh, Inc. seeks certification under Rule 23(B)(2), which is satisfied if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

6. When deciding whether to certify a class, Indiana courts often "consider federal court interpretations when applying the Indiana rule," because Trial Rule 23 "is based upon Rule 23 of the Federal Rules of Civil Procedure." *Associated Med. Networks, Ltd. v. Lewis*, 824 N.E.2d 679, 685 (Ind. 2005); *see also* Gov't Cert. Opp. 5 (agreeing). When determining whether the plaintiff has satisfied the requirements for class certification, a trial court must "assum[e] the merits of an action" and "not conduct a preliminary inquiry into the merits of the suit." *LHO Indianapolis One Lessee, LLC v. Bowman*, 40 N.E.3d 1264, 1268 (Ind. Ct. App. 2015) (citation omitted).

7. Here, both proposed classes meet all the requirements for certification.

A. The Parcel Class should be certified.

8. The Parcel Class's members have been subjected to the State's practice of bringing actions to forfeit money seized from in-transit FedEx parcels that—Henry Minh, Inc. alleges—have no link to Indiana beyond the happenstance of FedEx's shipping routes (the focus of Counts 1–4). And this practice shapes the contours of the class.

9. Again, Henry Minh, Inc. seeks certification of the Parcel Class defined as follows:

> All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code (1) seeking the forfeiture of currency contained in parcels that were (a) in-transit via FedEx from an originating location outside of Indiana to a destination location outside of Indiana and (b) seized at the FedEx Express Indianapolis Hub and (2) in which the complaint makes no allegation that the currency is connected to Indiana beyond the in-transit parcel's presence in Indiana when it was seized.

[Motion for Class Certification, Dkt. Aug. 7, 2024.]

10. The Parcel Class meets all the requirements for certification.

A.1. The Parcel Class is sufficiently definite.

11. A proposed class's definition must be "specific enough for the court to determine whether or not an individual is a class member." *Perdue v. Murphy*, 915 N.E.2d 498, 505 (Ind. Ct. App. 2009). This requirement is met when the definitions use "objective criteria." *Mullins v. Direct Digit., LLC*, 795 F.3d 654, 657 (7th Cir. 2015). The requirement is "looser" for classes like those here, seeking only "declaratory and injunctive relief pursuant to [Rule 23(B)(2)]." *Perdue*, 915 N.E.2d at 506. That is because Rule 23(B)(2) "was specifically drafted to facilitate relief in civil rights suits," making it "proper for a class to be defined generally, even amorphously, in actions . . . seeking declaratory or injunctive relief." *Id.* In those cases, like the case here, the definiteness requirement is usually met so long as "the 'defendants' alleged policies and practices shape the contours of the class.'" *Id.* (citation omitted).

12. The Parcel Class's definition meets this standard.

13. The alleged policies and practices of the Marion County Prosecutor shape the contours of the class. And the class is defined exclusively in objective terms.

14. The Court can determine whether an individual is a member of the Parcel Class by answering four questions based entirely on objective criteria: (1) Is the person or entity a defendant in an action brought under Title 34, Article 24, Chapter 1, of the Indiana Code? (2) Does that action seek to forfeit currency seized from a parcel that was in-transit via FedEx from an originating location outside Indiana to a destination outside Indiana? (3) Was the parcel seized at the FedEx Express hub in Indianapolis? (4) Does the complaint allege any connection to Indiana beyond the in-transit parcel's presence in Indiana when it was seized? A person or entity is a member when the answer to all four questions is 'yes.'

15. Reinforcing the conclusion that the Parcel Class is sufficiently definite, the class definition mirrors those of classes certified in two other cases addressing the State's civil-forfeiture practices, *Sparger-Withers v. Taylor*, 628 F. Supp. 3d 821, 830–31 (S.D. Ind. 2022), and *Washington v. Marion County Prosecutor*, 264 F. Supp. 3d 957, 963–64 (S.D. Ind. 2017). Nowhere has the State argued that the class-certification orders in *Sparger-Withers* or *Washington* are distinguishable from the class certification requested here. Nor has the State anywhere argued to this Court that the class-certification orders in either of those cases suffered from any errors. *See* Proposed Conclusions of Law ¶¶ 18–19, below. The Court considers the State's silence on this point telling.

16. What arguments the State does make do not cast doubt on the definiteness of the Parcel Class's definition. The State argues that classes with future members are necessarily either "not sufficiently ascertainable" or impermissibly "fail-safe" [Gov't Cert. Opp. 7], and that the "tremendous variability in the facts and procedural histories" of class members' forfeiture actions

makes the class insufficiently definite [Gov't Cert. Opp. 8–9]. As detailed below, these three arguments lack merit.

17. To start, courts have held for decades that the inclusion of future members in a class—and particularly an injunctive-relief class—"does not render the class definition so vague as to preclude certification." *Honorable v. Easy Life Real Est. Sys., Inc.*, 182 F.R.D. 553, 558–59 (N.D. Ill. 1998) (citation omitted). Indeed, "[t]here is no rule that a class open to future members is unascertainable," and "courts routinely certify such classes." *Sparger-Withers*, 628 F. Supp. 3d at 830. Examples abound. *Matter of Tina T.* (an Indiana Supreme Court case) involved a certified class of children who "are *or will be* considered for restrictive placement" under the challenged statute. 579 N.E.2d 48, 51 (Ind. 1991) (emphasis added). *Golitko v. Indiana Department of Corrections* involved a certified class of "all present and future inmates" of the Department of Corrections. 712 N.E.2d 13, 15 n.1 (Ind. Ct. App. 1999), *trans. denied*; *cf. Faver v. Bayh*, 689 N.E.2d 727, 728 n.2 (Ind. Ct. App. 1997) (noting that trial court certified class of "present and future prisoners"). *State ex rel. Van Buskirk v. Wayne Township* involved a certified class of people "who either have in the past [applied] or will in the future" apply for poor relief from Wayne Township and were or will be denied. 418 N.E.2d 234, 238 n.1 (Ind. Ct. App. 1981). Even *Brown v. Board of Education* involved a "class definition includ[ing] future members." 84 F.R.D. 383, 394 (D. Kan. 1979). *See also County of Riverside v. McLaughlin*, 500 U.S. 44, 49 (1991) (addressing a class action that included "present and future prisoners"); *Walsh v. Kelley*, No. 17-cv-5405, 2021 WL 4459531, at *2 (N.D. Ill. Sept. 29, 2021) ("A class of present and future detainees subjected to the relevant policies can certainly be ascertained because—by Defendants' own admission—the policies are applied to all detainees at the [prison.]").

18. Similarly unpersuasive is the State's argument that the proposed future class membership creates an impermissible fail-safe in the class definition. A "fail-safe" class is one that is defined circularly: "whether a person qualifies as a member depends on whether the person has a valid claim" on the merits. *Individual Members of Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 444 (Ind. Ct. App. 2024) (citation omitted), *trans. denied*; *see also id.* ("Such a class definition is improper because a class member either wins, or by virtue of losing, is defined out of the class and is therefore not bound by the judgment." (citation omitted)). But the Parcel Class definition has no such flaw. Membership in no way depends on whether the State wins or loses on the merits; the class does not cover only persons who are entitled to relief against the State. Confirming the absence of a fail-safe problem, this Court could certify the Parcel Class, and the State might later prevail against the class without depleting the class of all its members. Having certified the Parcel Class, for example, the Court could later hold that the State's FedEx-forfeiture practices are entirely valid. That decision on the merits would not define any members out of the Parcel Class; rather, it would bind all members in a way that would inure directly to the State's benefit. Notably, moreover, this is not the first time the State has pressed a fail-safe argument unsuccessfully. That argument was rejected in *Sparger-Withers*, 628 F. Supp. 3d at 830 (reasoning that the class definition "make[s] no reference to the liability of the Defendants"), in *Anonymous Plaintiff 1*, No. 49D01-2209-PL-031056, 2023 WL 12016994, at *6–7 (Ind. Super. Ct. June 6, 2023), and later on appeal in *Individual Members of Medical Licensing Board*, 233 N.E.3d at 444. Despite every opportunity, the State has nowhere distinguished those cases from this one—or even acknowledged those adverse authorities.

19. Finally, the State's argument about the variability in the facts and procedural histories of class members' civil-forfeiture actions is misplaced. The definiteness inquiry concerns

the face of the class definitions as written. *See Perdue*, 915 N.E.2d at 505; *Mullins*, 795 F.3d at 659 ("When courts wrote of this implicit requirement of 'ascertainability,' they trained their attention on the adequacy of the class definition itself."). And the Parcel Class's definition turns on none of the purported factual variabilities the State cites. It turns instead on the four discrete, objective criteria noted above (Proposed Conclusion of Law ¶ 14)—much like those held to be sufficiently definite in the two other recent challenges to Indiana's civil-forfeiture program. *Cf. Sparger-Withers*, 628 F. Supp. 3d at 830 ("Two objective criteria govern class membership: whether the potential class member is subject to a civil forfeiture prosecution 'brought under Title 34, Article 24 of the Indiana Code' and whether 'Joshua N. Taylor represents the State of Indiana or any other government plaintiff.'"); *Washington*, 264 F. Supp. 3d at 964 ("[T]he definition proposed by Mr. Washington is based upon objective criteria, and it outlines a sufficiently identifiable class."). The definiteness requirement demands nothing more.

20. The Parcel Class is sufficiently definite.

A.2. The Parcel Class meets the four requirements of Trial Rule 23(A).

21. The Parcel Class also meets each of the four requirements of Trial Rule 23(A): numerosity, commonality, typicality, and adequacy of representation.

A.2.a. Numerosity: The Parcel Class members are sufficiently numerous.

22. The numerosity requirement is met when "the class is so numerous that joinder of all members is impracticable." Trial R. 23(A)(1). No "'magic' number" makes joinder impracticable, but the requirement is often regarded as met when "class members number forty or more." *N. Ind. Pub. Serv. Co. v. Bolka*, 693 N.E.2d 613, 616 (Ind. Ct. App. 1998) (citation omitted); *see also Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 336 F.R.D. 165, 172 (S.D. Ind. 2020).

23. That figure is easily met here, and the State's opposition brief nowhere argued otherwise. At least 130 times since 2022 alone, for example, the Marion County Prosecutor has sued to forfeit currency seized from FedEx parcels in-transit from one state outside Indiana to another state outside Indiana, without alleging any connection to Indiana beyond the parcel's in-transit presence in Indiana when seized. [Exs. B, C to Miller Aug. 6 Aff.]

24. That the Parcel Class encompasses *future* members further confirms that the numerosity requirement is readily met. It is well-established that—when it comes to classes seeking injunctive relief—the existence of "prospective" class members "may have a tendency to make certification more, not less, likely." *Hizer v. Pulaski County*, No. 3:16-cv-885, 2017 WL 3977004, at *6 (N.D. Ind. Sept. 11, 2017). After all, the presence of future members "makes joinder . . . a difficult proposition" for obvious reasons. *Wilburn v. Nelson*, 329 F.R.D. 190, 195 (N.D. Ind. 2018) (citation omitted). Based on the Marion County Prosecutor's past practice of filing dozens of FedEx-related forfeiture actions each year and the Prosecutor's position that the Indiana civil-forfeiture statute allows its challenged practice of suing to forfeit currency from in-transit FedEx parcels, "common sense" supports a finding that the Prosecutor will file many more such cases in the future. *Ind. C.L. Union Found., Inc.*, 336 F.R.D. at 172 (citation omitted); *see also N. Ind. Pub. Serv. Co.*, 693 N.E.2d at 616 ("A finding of numerosity may be supported by common sense assumptions."). In this way, the existence of future class members not only makes the class more numerous; it also fortifies the finding that joinder is impracticable.

25. Finally, the impracticality of joinder here is exacerbated by "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);

see also Individual Members of Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1, 233 N.E.3d 416, 446 (Ind. Ct. App. 2024), *trans. denied.*

26. In its opposition to Henry Minh, Inc.'s class-certification motion, the State nowhere denied that the numerosity requirement is met. [Transcript, May 2 Hearing, at 6:16–18 ("On the question of numerosity, counsel's representations are fair that it isn't a focus in our response.").] At the hearing, the State noted in passing that not all the civil-forfeiture actions referenced in the filings in this case remain pending today. [Transcript at 6:18–7:3.] But that casts no doubt on numerosity. Revolving class membership is a common feature of injunctive-relief class actions. *See, e.g.*, *Shreve v. Franklin County*, No. 10-cv-644, 2010 WL 5173162, at *12 (S.D. Ohio Dec. 14, 2010) ("Obviously, class membership will fluctuate throughout the course of this litigation."). And just as defendants in closed civil-forfeiture actions may rotate out of the class, so defendants in newly filed civil-forfeiture actions will rotate in—in much the same way prison-condition class actions revolve as some inmates are released and others are incarcerated. Far from detracting from numerosity, that fluid feature of the Parcel Class affirmatively supports a finding that "the class is so numerous that joinder of all members is impracticable." Trial R. 23(A)(1); 1 *Newberg and Rubenstein on Class Actions* § 3:15 (6th ed. June 2025 update) ("When discussing the practicability of joining future claimants, courts generally state that the numerosity requirements are relaxed due to the difficulty in determining the number and identity of these future claimants.").

27. The Parcel Class meets the numerosity requirement of Rule 23(A).

A.2.b. Commonality: The case presents questions of law or fact common to the class as a whole.

28. The commonality requirement is met when "there are questions of law or fact common to the class." Trial R. 23(A)(2). This requirement is met if "the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members." *Suchanek v.*

Sturm Foods, Inc., 764 F.3d 750, 756 (7th Cir. 2014); *Ind. Bus. Coll. v. Hollowell*, 818 N.E.2d 943, 950 (Ind. Ct. App. 2004) ("A common nucleus of operative fact exists where there is a common course of conduct." (citation omitted)). The question is whether the proposed class's claim "depend[s] upon a common contention," the truth or falsity of which "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). "[E]ven a single common question will do" to meet this requirement. *Id.* at 359 (cleaned up).

29. There are questions of law and fact common to the Parcel Class. At base, Henry Minh, Inc.'s legal theory is that it is unlawful (whether under the civil-forfeiture statute itself or under the state or federal constitutions) for the State to forfeit in-transit currency whose only link to Indiana is the happenstance of FedEx's shipping routes. Whether or not that theory will ultimately prevail on the merits, it readily satisfies the commonality requirement of Rule 23(A)(2).

30. Common questions of fact include:

a. Whether the Prosecutor has a policy and practice of filing and prosecuting forfeiture actions against members of the Parcel Class with no evidence (and no reason to believe) that the currency targeted for forfeiture has any connection to any activity in Indiana besides the happenstance of the in-transit parcel's passing through Indianapolis's FedEx hub;

b. Whether the Prosecutor has a policy and practice of filing and prosecuting forfeiture actions against the Parcel Class with no evidence (and no reason to believe) that the currency targeted for forfeiture has any connection to any alleged crime occurring in Indiana; and

c. Whether the Prosecutor's Office has a policy and practice of filing and prosecuting forfeiture actions against the Parcel Class with no evidence (and no reason to believe) that the currency targeted for forfeiture has any connection to any alleged crime occurring outside Indiana and intended to produce or producing detrimental effects within Indiana.

31. Common questions of law include:

a. Whether the Prosecutor has a policy and practice of filing and prosecuting forfeiture actions against the Parcel Class with no evidence (and no reason to believe) that the currency targeted for forfeiture has any connection to any alleged crime that the State of Indiana has the statutory or constitutional jurisdiction to prosecute criminally; and

b. Whether the Prosecutor's policy and practice of filing and prosecuting forfeiture actions against the Parcel Class with no evidence (and no reason to believe) that the currency targeted for forfeiture has any connection to any alleged crime that the State of Indiana has the statutory or constitutional jurisdiction to prosecute criminally violates Indiana's civil-forfeiture statute; Article 1, Section 12 of the Indiana Constitution; the Tenth and Fourteenth Amendments to the U.S. Constitution; and principles of horizontal federalism.

32. The State, for its part, does not dispute that all members of the class are subject to the same allegedly defective practice by the Prosecutor. The State instead asserts that "[t]here exists too much variability with the facts, evidence, notice, and procedural position" of class members' individual forfeiture cases. [Gov't Cert. Opp. 9; Transcript at 8:11–10:3.] But the facts

that *matter* to the class's claims are uniform; no variation among the individual class members' forfeiture cases detracts from the common questions that support class certification under Rule 23(A)(2). *See N. Ind. Pub. Serv. Co. v. Bolka*, 693 N.E.2d 613, 617 (Ind. Ct. App. 1998) ("Individual questions do not prevent a class action on the common questions."), *trans denied*. The Parcel Class ultimately seeks to determine whether the Prosecutor's blanket practice of forfeiting in-transit currency comports with Indiana's civil-forfeiture statute and the state and federal constitutions. That question "does not vary across the class, no matter what the underlying facts of each civil forfeiture prosecution." *Sparger-Withers*, 628 F. Supp. 3d at 832. In this regard—once again—the analysis neatly tracks the federal courts' reasoning in *Sparger-Withers* and *Washington*. *Sparger-Withers*, 628 F. Supp. 3d at 832 ("[The plaintiffs'] central contention is that contingency fee civil forfeiture prosecutions violate the Due Process clause. That contention is capable only of class-wide resolution—an injunction against [the prosecutor's] fee structure would apply to each of his civil forfeiture cases—and does not vary across the class, no matter what the underlying facts of each civil forfeiture prosecution. This case presents a question of law that has systemic, not particularized, effects." (citation omitted)); *Washington*, 264 F. Supp. 3d at 965 ("Here, [the plaintiff's] claim arises out of the same event or course of conduct as the class members' claims—*i.e.*, Defendants' seizure of their vehicles pursuant to Ind. Code Section 34-24-1-1(a)(1) *et seq.* And, as discussed above, the factual distinctions cited by Defendants are not relevant to either [the plaintiff's] due process claim or the class certification.").

33. The State also makes arguments about the merits of the Parcel Class's claims. [*See* Gov't Cert. Opp. 13 ("The physical presence of the parcel containing money in Indiana . . . gives the State of Indiana standing to bring a civil forfeiture action against it.").] But that preview of the State's merits argument is entirely irrelevant to the class-certification question. Indeed, it would

be reversible error for this Court to entertain that argument at this stage. For the Court may not "conduct a preliminary inquiry into the merits of the suit" when "making a determination regarding class certification." *LHO Indianapolis One Lessee, LLC*, 40 N.E.3d at 1268 (citation omitted).

34. The Parcel Class satisfies Rule 23(A)(2)'s commonality requirement.

A.2.c. Typicality: Henry Minh, Inc.'s claims are typical of those of the class.

35. The typicality requirement is met when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Trial R. 23(A)(3). The named representative's claims are typical if they "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members" and are "based on the same legal theory." *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998) (citation omitted); *see also Lake Cnty. Tr. Co. v. Wine*, 704 N.E.2d 1035, 1043 (Ind. Ct. App. 1998) ("Typicality may be satisfied if the claims of the representatives and class members stem from a single event or are based on the same legal theory." (citation omitted)); *cf. Individual Members of Med. Licensing Bd.*, 233 N.E.3d at 446 ("[T]he typicality requirement is satisfied by one showing: that the representative plaintiffs' claims are neither in conflict with nor antagonistic to the class as a whole.").

36. Henry Minh, Inc. and the Parcel Class, alike, allege that the Prosecutor's practice of seeking to forfeit currency from parcels in-transit from an origin outside Indiana to a destination outside Indiana offends state and federal law when there is no link to Indiana beyond the happenstance of the FedEx shipping route. Henry Minh, Inc.'s claims and the class claims are thus based on the same facts (the Prosecutor's practice of bringing those forfeiture actions) and assert the same legal theories. Driving home the point, the counterclaim counts for the Parcel Class allege nothing that would set Henry Minh, Inc. apart from the other class members. [Counterclaim ¶¶ 105–32.]

37. As a result, all class members "will benefit from a favorable judgment in the event that [it] is entered." *Meisberger v. Donahue*, 245 F.R.D. 627, 631 (S.D. Ind. 2007).

38. The State recycles its argument that certain facts in civil-forfeiture cases tend to vary. And it is certainly true (if unremarkable) that no two cases are identical. Not all class members are small jewelry businesses based in California, for example. Nor do they all involve $42,825.00. But (as with the commonality analysis above) the facts that matter are all the same: For each member of the Parcel Class, the forfeiture complaint is brought to forfeit currency; that currency was seized from a parcel in-transit at the Indianapolis FedEx facility; the parcel was en route from an origin outside Indiana to a destination outside Indiana; and there was no allegation linking the currency to Indiana beyond the happenstance of FedEx's shipping route. Henry Minh, Inc.'s case meets these criteria as much as all the cases of the other members of the Parcel Class. Those are the "essential characteristics" that matter for purposes of the Parcel Class's claims. *Washington*, 264 F. Supp. 3d at 965 (citation omitted). And because those essential characteristics are shared by Henry Minh, Inc. and all members of the Parcel Class, the typicality requirement is met. *Rose v. Denman*, 676 N.E.2d 777, 784 (Ind. Ct. App. 1997) ("Although facts may differ, typicality may be satisfied through the existence of the same legal theory of the plaintiff's claims and defenses.").

39. The State has pointed to no facts that detract from the common characteristics of Henry Minh, Inc.'s and the Parcel Class's claims. The State has argued that the settling of underlying forfeiture actions, with some class members' "waiving and releasing" claims against the State, makes Henry Minh, Inc.'s claims atypical. [Gov't Cert. Opp. 17.] But the waiver and release of claims by certain forfeiture defendants who settle their underlying forfeiture actions simply means those individuals or entities have rotated out of the class—just as a member rotates

out when his or her forfeiture case ends for any other reason. *See* Proposed Conclusion of Law ¶ 26, above. That does not make Henry Minh, Inc.'s claims atypical of those of the remaining class members'. More to the point, it is well-established that Rule 23(A)(3)'s typicality requirement is determined "not with respect to particularized defenses" the defendant may have "against certain class members," but instead "with reference to the [defendant's] actions." *Wagner v. NutraSweet Co.*, 95 F.3d 527, 534 (7th Cir. 1996); *Bank One Indianapolis, N.A. v. Norton*, 557 N.E.2d 1038, 1042 (Ind. Ct. App. 1990) (reasoning that "the possibility of unique defenses" as to some class members "is irrelevant" to commonality and typicality). Here, the State's actions against members of the Parcel Class give rise to precisely the claims Henry Minh, Inc. seeks to assert on their behalf.

40. The Parcel Class meets the typicality requirement of Rule 23(A)(3).

A.2.d. Adequacy of Representation: Henry Minh, Inc. and its counsel will adequately represent the class's interests.

41. The adequacy requirement is met when "the representative parties will fairly and adequately protect the interests of the class." Trial R. 23(A)(4). This means the proposed class representative (a) does "not have claims antagonistic to or conflicting with other members of the class," (b) has "a sufficient interest in the outcome to ensure vigorous advocacy," and (c) has counsel that are "competent, experienced, and generally able to conduct the proposed litigation vigorously." *Ind. Bus. Coll.*, 818 N.E.2d at 951. The State's opposition brief nowhere mentions these three elements, and Henry Minh, Inc.'s burden to show adequacy "is not a heavy one." *Sledge v. Sands*, 182 F.R.D. 255, 259 (N.D. Ill. 1998) (citation omitted). As with the requirements above, the adequacy requirement is readily met.

42. Henry Minh, Inc.'s claims match those of the Parcel Class. The company challenges the same practice by the Prosecutor to which all members of the Parcel Class are subject: the filing of an action to forfeit currency seized at the Indianapolis FedEx hub from a parcel that was in-

transit from an origin outside Indiana to a destination outside Indiana, with no link to Indiana besides the happenstance of FedEx's shipping routes. There is no conflict between the company's counterclaims and those of the putative class members. (The State has conceded as much. [Transcript at 19:22–24.]) The claims all seek the same declaratory and injunctive relief.

43. The company's counsel is competent, experienced, and generally able to conduct the proposed litigation vigorously. (Again, the State makes no argument against the competency of counsel. [Transcript at 20:7–8.]) The Institute for Justice has litigated class actions in state and federal courts nationwide, including *Sparger-Withers v. Taylor*, 628 F. Supp. 3d 821 (S.D. Ind. 2022), involving civil-forfeiture practices in Indiana. The Institute for Justice also has particular expertise litigating civil-forfeiture matters in Indiana, with Marie Miller or Sam Gedge arguing civil-forfeiture appeals at the Indiana Supreme Court five times in the past six years. As the Southern District of Indiana observed, the Institute for Justice "has significant experience in complex litigation, including in the civil forfeiture context," its "attorneys know the law," and it "apparently has the resources to pursue its litigation to the highest level of appeal." *Sparger-Withers*, 628 F. Supp. 3d at 833.

44. Appointment of Marie Miller and Sam Gedge of the Institute for Justice as class counsel is appropriate.

45. The State, for its part, argues that the company is an inadequate representative because the forfeiture case against the company and its money was dismissed several months after the class-certification motion was filed. [Gov't Cert. Opp. 14.]

46. That argument lacks merit. As courts consistently recognize, not even the full-on mooting of a named plaintiff's claims makes the party an inadequate representative for the class. Most instructive and binding is the Supreme Court's decision in *Matter of Tina T.*, 579 N.E.2d 48

(Ind. 1991). There, plaintiffs challenged the State's process for placing delinquent children into restrictive placements. Before class certification, the named plaintiffs' delinquency proceedings ended and the named representatives aged out of them. They were no longer children. On that basis, the State argued that the plaintiffs were inadequate class representatives. *Id.* at 55. But the Indiana Supreme Court squarely rejected that argument, instructing that even the full-fledged mooting of the named plaintiffs' individual claims "cast[s] no pall on the adequacy of class representation and . . . constitute[s] no bar to th[e] cases proceeding as class actions." *Id.*

47. Nor is *Tina T.* an outlier. In a case much like this one, the district court in *Sparger-Withers* explained that "[a]dequacy does not require that [the named plaintiff's] claim remain live." 628 F. Supp. 3d at 832. And in *Washington*—which involved a challenge to a State practice concerning the forfeiture of vehicles—the State had returned the named plaintiff's vehicle while his class-certification motion was pending. Even so, then-Chief Judge Magnus-Stinson had no trouble holding that the plaintiff remained an adequate representative for the class. 264 F. Supp. 3d at 966.

48. In neither its briefing nor at the May 2 hearing did the State have any response to *Tina T.*, which is a binding precedent on this Court. In neither its briefing nor at the hearing did the State have any response to *Washington*, which is highly persuasive authority, since it involves the analogous federal Rule 23 and involves a challenge to Indiana's civil-forfeiture regime. As for *Sparger-Withers*, the State conspicuously ignored it, too, in its briefing. And at the hearing, the State offered only one comment on that opinion: that following class certification in that case, the State was ultimately "successful at the summary judgment stage" on the merits. [Transcript at 20:2–7.] It is unclear why that matters. Under Federal Rule of Civil Procedure 23(f), the State *could have* sought leave to immediately appeal the class-certification order to the Seventh Circuit.

It didn't. Following summary judgment, the State again *could have* cross-appealed the class-certification order to the Seventh Circuit. Again, it didn't. That the State took no steps to challenge the class-certification order in *Sparger-Withers* suggests, if anything, that Judge Sweeney's reasoning in that order was persuasive enough that even the State saw no grounds to try to disturb it. And at no point either in its briefing or at the May 2 hearing did the State make any argument that Judge Sweeney's class-certification order in *Sparger-Withers* was flawed or otherwise erroneous. The State made no argument that the class-certification order in *Sparger-Withers* applied federal principles that differed in any way from the class-certification principles that apply under Indiana's analogous Trial Rule 23. And the State made no argument that the class-certification analysis here is distinguishable in any way from that conducted by the federal court in *Sparger-Withers.* The Court also notes that Judge Sweeney's summary-judgment ruling in *Sparger-Withers* remains pending on appeal at the Seventh Circuit and that the Marion County Prosecutor himself joined an amicus brief urging reversal in Ms. Sparger-Withers's favor. *See* Brief of Amici Curiae 55 Current and Former Elected Prosecutors and Law Enforcement Leaders, and Former Attorneys General, U.S. Attorneys, and U.S. Department of Justice Officials in Support of Appellant, *Sparger-Withers v. Taylor*, No. 24-1367 (7th Cir. Apr. 29, 2024), *available at* https://tinyurl.com/4dchxe7m.

49. Finally, the State reiterates its argument that civil-forfeiture cases are "highly fact-sensitive." [Gov't Cert. Opp. 15.] But as above, the State identifies no factual variabilities that matter to the straightforwardly legal statutory and constitutional claims the Parcel Class would present. Nor does the State identify any factual variabilities that bear on the three criteria for adequacy of representation in particular—(1) whether the named plaintiff has "antagonistic or conflicting claims with other members of the class," (2) whether the named plaintiff has "a

sufficient interest in the outcome to ensure vigorous advocacy," or (3) whether "counsel for the named plaintiff [is] competent, experienced qualified, and generally able to conduct the proposed litigation vigorously." *Individual Members of Med. Licensing Bd.*, 233 N.E.3d at 446.

50. Henry Minh, Inc. is an adequate representative for the Parcel Class under Trial Rule 23(A)(4).

A.3. The Parcel Class satisfies Trial Rule 23(B)(2).

51. Trial Rule 23(B)(2) is satisfied when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Trial R. 23(B)(2). This rule was "specifically drafted to facilitate relief in civil rights suits" like this one. *Perdue*, 915 N.E.2d at 506. In recent years, two class actions were certified under the analogous federal Rule 23(b)(2), challenging forfeiture policies in Indiana, including one action against the Marion County Prosecutor specifically. *Sparger-Withers*, 628 F. Supp. 3d at 832–33; *Washington*, 264 F. Supp. 3d at 966–67.

52. The State nowhere argued that the Parcel Class fails to satisfy Rule 23(B)(2). [Gov't Cert. Opp. 12 (mentioning Rule 23(B)(2) as to the Notice Class only).] And the Class indeed meets this requirement.

53. The Prosecutor's practice of seeking forfeiture of in-transit currency with no indication that the currency is linked to an Indiana crime applies to all members of the class. The class claims contend that this practice violates statutory and constitutional law. Judgment in the Parcel Class's favor would simply invalidate the Prosecutor's practice of confiscating in-transit currency absent any sign of a connection to an Indiana crime. It would not require the Court to scrutinize individual civil-forfeiture actions, in much the same way a judgment in *Sparger-Withers*

and *Washington* would not have required the district court to scrutinize individual actions. If the Parcel Class's claims are valid, rather (and at this stage, the Court must assume they are), the relief "would, if granted, be 'appropriate respecting the class as a whole.'" *Sparger-Withers*, 628 F. Supp. 3d at 833 (citation omitted); *see also Individual Members of Med. Licensing Bd.*, 233 N.E.3d at 447. Like *Sparger-Withers* and *Washington* (and many other cases besides), this case thus presents "a 'prime example[]' of a proper class under Rule 23(b)(2)." *Washington*, 264 F. Supp. 3d at 967 (citation omitted).

54. Because the Prosecutor "has acted . . . on grounds generally applicable to the class," final injunctive or declaratory relief for the class as a whole is appropriate. Indeed, the Parcel Class is a textbook example of a class that is appropriate for certification under Rule 23(B)(2).

B. The Notice Class should be certified.

55. For similar reasons to those detailed above, the Notice Class is likewise eligible for class certification.

56. The Notice Class members have been (or will be) subjected to the State's practice of using boilerplate forfeiture complaints that give property owners no notice of the factual and legal basis on which the State claims forfeiture (the focus of Counts 5–7). And this practice shapes the contours of the class.

57. Again, Henry Minh, Inc. seeks certification of the Notice Class defined as follows:

> All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code to forfeit currency alone, in which the Marion County Prosecutor's Office represents the State of Indiana or any other government plaintiff and in which the complaint does not identify the specific predicate crime it alleges supports the forfeiture.

[Motion for Class Certification, Dkt. Aug. 7, 2024.]

58. This Class meets all the requirements for certification.

B.1. The Notice Class is sufficiently definite.

59. For much the same reasons the Parcel Class is sufficiently definite, the Notice Class easily meets the definiteness requirement. *See* Proposed Conclusions of Law ¶¶ 11–20, above.

60. The Notice Class claims allege that the State maintains a practice of using boilerplate complaints that give property owners no notice of the factual and legal basis on which the State claims forfeiture, and that practice violates Indiana's civil-forfeiture statute and the Indiana and federal constitutions.

61. The alleged policies and practices of the Marion County Prosecutor shape the contours of the class. *See Perdue*, 915 N.E.2d at 506. And the class is defined exclusively in objective terms. *Mullins*, 795 F.3d at 657.

62. The Court can determine whether an individual is a class member by answering three questions based entirely on objective criteria: (1) Is the person or entity a defendant in an action brought under Title 34, Article 24, Chapter 1, of the Indiana Code in which the Marion County Prosecutor's Office represents the State of Indiana or another government plaintiff? (2) Does the action seek to forfeit currency alone? And (3) does the complaint identify the specific predicate crime it alleges supports forfeiture? A person or entity is a member when the answer to all three questions is 'yes.'

63. As with the Parcel Class, the Notice Class definition mirrors the definitions of classes certified in *Sparger-Withers*, 628 F. Supp. 3d at 830–31, and *Washington*, 264 F. Supp. 3d at 963–64. As with the Parcel Class, the State offers no response to those precedents. *See* Proposed Conclusions of Law ¶ 15, above.

64. The State's arguments that the Notice Class is unascertainable because the class definition includes future members and is improperly "fail-safe," are incorrect for the reasons explained above concerning the Parcel Class. *See* Proposed Conclusions of Law ¶¶ 17–19, above. In short, including future class members does not make the class insufficiently definite; classes with future members are routinely certified. *E.g.*, *Sparger-Withers*, 628 F. Supp. 3d at 830. And there is no fail-safe problem because the class members are not defined based on whether they will ultimately succeed on the merits. *Individual Members of Med. Licensing Bd.*, 233 N.E.3d at 444.

B.2. The Notice Class meets the four requirements of Trial Rule 23(A).

65. The Notice Class also meets each requirement of Trial Rule 23(A): numerosity, commonality, typicality, and adequacy of representation. Again, much of the reasoning detailed above applies with equal force to the Notice Class.

B.2.a. Numerosity: The Notice Class members are sufficiently numerous.

66. The number of class members far exceeds 40, which is often regarded as a number that makes joinder impracticable. *N. Ind. Pub. Serv. Co.*, 693 N.E.2d at 616. As the materials in the record demonstrate, the Marion County Prosecutor sued to forfeit currency alone at least 244 times just between June 27, 2023, and June 18, 2024. [Miller Aug. 6 Aff.; Ex. A to Miller Aug. 6 Aff.] And as with the Parcel Class, the inclusion of future members in the Notice Class reinforces that the numerosity requirement is met. *See* Proposed Conclusions of Law ¶¶ 24–26, above. So, too, do the putative members' geographic diversity, judicial economy, and the limited ability of the putative class members to institute individual lawsuits, *Ind. C.L. Union Found., Inc.*, 336 F.R.D. at 173. Simply, "common sense" supports the finding above that the Prosecutor will file many more cases in the future, adding to the class's numerosity. Reasonably estimated, the class contains hundreds of current and future members. [Ex. A to Miller Aug. 6 Aff.]

67. Again as above, the State has not meaningfully contested the numerosity requirement, only pointed out that not all the civil-forfeiture actions referenced in the filings in this case remain pending. [Transcript at 6:16–7:3.] But as already explained, it is common for class membership to "fluctuate throughout the course of th[e] litigation." *Shreve*, 2010 WL 5173162, at *12; Proposed Conclusions of Law ¶¶ 24–26, above. And just as defendants in closed civil-forfeiture actions may rotate out of the class, so defendants in newly filed civil-forfeiture actions will rotate in. Indeed, many have done so since the filing of the class-certification motion in this case. Far from detracting from numerosity, that fluid feature of the Parcel Class supports a finding that "the class is so numerous that joinder of all members is impracticable." Trial R. 23(A)(1); *see also* Proposed Conclusions of Law ¶ 26, above.

68. The Notice Class meets the numerosity requirement of Rule 23(A).

B.2.b. Commonality: The case presents questions of law or fact common to the class as a whole.

69. The Notice Class also presents questions of fact and law common to the class as a whole.

70. The crux of the Notice Class's claims is that, in actions to forfeit currency, the Prosecutor's complaints systematically fail to identify what crime is the basis for the forfeiture and fail to identify any operative facts concerning the crime. That allegedly systematic failure is common to all members of the Notice Class. And because the "same conduct or practice by the same defendant gives rise to the same kind of claims from all class members," there is "a common question" for purposes of Rule 23(A)(2). *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014). Whether or not the Notice Class ultimately prevails on the merits, its claims—that the State's forfeiture complaints are systematically defective—present self-evidently common questions of law and fact.

71. Common questions of fact include:

a. Whether the Prosecutor has a policy and practice of initiating actions to forfeit currency with complaints that do not identify what crime the State alleges is the basis for the forfeiture action; and

b. Whether the Prosecutor has a policy and practice of initiating actions to forfeit currency with complaints that do not identify any operative facts concerning the crime the State alleges is the basis for the forfeiture action.

72. Common questions of law include:

a. Whether the Prosecutor's policy and practice of initiating civil-forfeiture actions with complaints that do not notify the property owners of the crime that is alleged to be the basis for the forfeiture or the operative facts alleged to be the basis for forfeiture violates Indiana's civil-forfeiture statute; Article 1, Section 12 of the Indiana Constitution; and the Fourteenth Amendment to the U.S. Constitution.

73. The State's arguments to the contrary are unpersuasive.

74. **First**, the State argues that notice is sufficient because, whatever the Prosecutor may or may not include in the forfeiture complaints themselves, the Prosecutor separately files a probable-cause affidavit with the trial court. [Gov't Cert. Opp. 10; Transcript at 8:11–10:3, 12:16–13:21.] That argument is wrong on law and facts alike.

75. On the law, the State's arguments about its probable-cause affidavits go to the merits of the Notice Class's claims and do not affect whether the class is subjected to a common course of conduct. On *that* question about a common course of conduct, the State has not denied that the Prosecutor as a practice files *complaints*, to forfeit currency alone, that do not supply the

factual or legal basis on which forfeiture is sought. Whether the probable-cause affidavits prevent or cure the alleged problem with the complaints is a question about the merits of the Notice Class claims. It does not detract from the fact that all members of the Notice Class are subjected to the same practice concerning the forfeiture complaints. And that is the question that matters at the class-certification stage. *See Individual Members of Med. Licensing Bd.*, 233 N.E.3d at 445 ("[T]he State's focus on varying harms allegedly suffered by Plaintiffs appears to be an improper invitation to consider the merits of Plaintiffs' claims.").

76. On the facts, the State's argument is equally misplaced. After filing its opposition brief, the State admitted that it in fact "does not serve" its probable-cause affidavits on "individuals interested in civil forfeiture matters." [Ex. A to Miller Mar. 5 Aff., at 9 (Resp. to Req. for Admission 10); *see also id.* at 9–10 (Resp. to Req. for Admission 11) ("Without waiving objections, MCPO admits that the State of Indiana, through its work in MCPO, does not as a practice serve individuals interested in civil forfeiture matters with probable cause affidavits or motions for probable cause findings together with the complaints and summons in civil forfeiture matters."); *id.* at 10 (Resp. to Req. for Admission 12) ("Without waiving objections, MCPO admits that the State of Indiana, through its work in MCPO, does file probable cause affidavits and motions for probable cause finding ex parte.").] Given those admissions, it is unclear how the State can suggest that members of the Notice Class somehow receive adequate notice from a document the State does not send to them. Here, too, the State's argument distills to a merits question that is common to the Notice Class as a whole and, if anything, reinforces that Rule 23(A)(2)'s commonality requirement is met.

77. **Second**, at the May 2 hearing, the State also suggested that providing adequate notice to interested parties is not required by the civil-forfeiture statute and would be difficult as a

practical matter. [Transcript at 9:9–12, 12:16–13:21.] Yet the State *already* provides documents to all interested parties—it serves them with the complaints. [*See, e.g.*, Henry Cheng Jan. 17 Aff. ¶ 9; Ex. A to Henry Cheng Jan. 17 Aff.] Indeed, the civil-forfeiture statute itself contemplates "service of the complaint" on "[t]he owner of the seized property" and "any person whose right, title, or interest is of record." Ind. Code § 34-24-1-3(d). The problem alleged by Henry Minh, Inc. is that the forfeiture complaints the State serves on those people do not include even basic *information* that might alert the recipients to the factual and legal basis on which the State intends to forfeit their property. That is the crux of the company's claims for the Notice Class.

78. Relatedly, the State also suggested at the May 2 hearing that property owners in civil-forfeiture cases are not entitled to notice at all because "the action is brought against the currency," not the owners. [Transcript at 12:21. *But see* Compl. ("Plaintiff demands judgment against HENRY MINH . . . ."); Summons (advising Henry Minh, Inc. that "You are hereby notified that you have been sued by the person(s) named as Plaintiff in the Court indicated above.").] That suggestion is one that did not appear in the State's brief, and it flatly contradicts not just decades of precedent but the text of the Constitution itself, under which no state may "deprive any person of . . . property, without due process of law." U.S. Const. amend. XIV; *see also, e.g.*, *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 62 (1993) ("Unless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture."). More to the point, this argument, too, is mired in the merits and has no place in the class-certification analysis.

79. The Notice Class meets the commonality requirement of Rule 23(A).

B.2.c. Typicality: Henry Minh, Inc.'s claims are typical of those of the class.

80. Again, for much the same reasons the Parcel Class meets the typicality requirement, so too does the Notice Class. *See* Proposed Conclusions of Law ¶¶ 35–39, above.

81. Henry Minh, Inc. and the class, alike, allege that the Prosecutor's practice of seeking to forfeit currency alone with complaints that do not identify the particular crime that allegedly supports forfeiture violates Indiana's civil-forfeiture statute and the state and federal constitutions. Henry Minh, Inc.'s claims and the class claims thus stand on the same practice (the alleged defects in the Prosecutor's boilerplate complaints) and assert the same legal theories. In this way, Henry Minh, Inc.'s claims exemplify those of the Notice Class. They allege the same legal theory for why the Prosecutor's practice—to which Henry Minh, Inc. and the class members, alike, have been subjected—is invalid. In turn, all class members "will benefit from a favorable judgment in the event that [it] is entered." *Meisberger*, 245 F.R.D. at 631.

82. The State again reiterates its view that class members' underlying civil-forfeiture cases vary on their facts. But (as with the Parcel Class) the cases are alike in all the ways that *matter* for the class counterclaims. Henry Minh, Inc.'s forfeiture case, like those of all the putative Notice Class members, was an action (1) brought under Title 34, Article 24, Chapter 1, of the Indiana Code in which the Marion County Prosecutor's Office represents the State of Indiana or another government plaintiff; (2) seeking to forfeit currency alone; and (3) in which the complaint does not identify the specific predicate crime it alleges supports forfeiture. Those are the "essential characteristics" of the company's and the Notice Class's common legal theory: that the Prosecutor's practice is unlawful under Indiana's civil-forfeiture statute and the state and federal constitutions. *See Washington*, 264 F. Supp. 3d at 965 (citation omitted). Driving home the point, the counterclaim counts for the Notice Class allege nothing that would set Henry Minh, Inc. apart from the other class members. [Counterclaim ¶¶ 133–50.]

83. The State's other arguments are identical to those it pressed in opposition to certification of the Parcel Class, and they are rejected for the same reasons explained above. *See* Proposed Conclusions of Law ¶¶ 38–39, above.

84. The Notice Class meets the typicality requirement of Rule 23(A)(3).

B.2.d. Adequacy of Representation: Henry Minh, Inc. and its counsel will adequately represent the class's interests.

85. Again, for much the same reasons Henry Minh, Inc. and its counsel will adequately represent the Parcel Class, the company and its counsel will adequately represent the Notice Class. Proposed Conclusions of Law ¶¶ 41–49, above. In short, the company's claims are not antagonistic to or conflicting with those of the class; the company has a sufficient interest in the outcome to ensure vigorous advocacy; and the company's counsel is competent, experienced, and generally able to conduct the proposed litigation vigorously. *Ind. Bus. Coll.*, 818 N.E.2d at 951.

86. Henry Minh, Inc.'s claims match those of the Notice Class. The company challenges the same practice by the Prosecutor to which all members of the Notice Class are subject: the filing of an action to forfeit currency alone without the complaint identifying the specific predicate crime that allegedly supports forfeiture. And the claims all seek the same declaratory and injunctive relief.

87. Appointment of counsel to represent the class is appropriate for the same reasons explained above, concerning the Parcel Class. *See* Proposed Conclusions of Law ¶¶ 43–44. And the State's arguments about the dismissal of Henry Minh, Inc.'s underlying forfeiture action and the perceived variation among civil-forfeiture cases are incorrect for the reasons discussed above concerning the Parcel Class. *See* Proposed Conclusions of Law ¶¶ 45–49, above.

88. Henry Minh, Inc. is an adequate representative for the Notice Class under Trial Rule 23(A).

B.3. The Notice Class satisfies Trial Rule 23(B)(2).

89. Just as the Parcel Class meets the requirement of Rule 23(B)(2), so does the Notice Class, for the much same reasons. Proposed Conclusions of Law ¶¶ 51–54, above.

90. The Prosecutor has allegedly "acted . . . on grounds generally applicable to the class," Trial R. 23(B)(2)—by filing boilerplate forfeiture complaints that suffer from the alleged shared flaw of providing insufficient notice of the alleged factual and legal basis for forfeiture. Each member of the class has been (or will be) subjected to this same practice.

91. A class-wide judgment invalidating the practice "would provide relief to each member of the class." *Wal-Mart Stores, Inc.*, 564 U.S. at 360.

92. As above, the State argues that differences among the facts in underlying civil-forfeiture actions make class certification inappropriate. [Gov't Cert. Opp. 12.]

93. But because all members of the class allegedly fall victim to the same practice by the Prosecutor, class-wide injunctive or declaratory relief to remedy that allegedly flawed practice is appropriate. And (as with the Parcel Class) issuing that class-wide injunctive or declaratory relief would not require this Court to review the procedural posture of each forfeiture action against class members. *See* Proposed Conclusions of Law ¶¶ 53–54, above. Judgment in the Notice Class's favor would simply invalidate the Prosecutor's practice of providing no notice in its complaints of the claimed basis for forfeiture.

94. The Court's analysis above (Proposed Conclusions of Law ¶¶ 51–54) applies with equal force to the Notice Class. Like with the Parcel Class, the Notice Class is a textbook example of a class that is appropriate for certification under Rule 23(B)(2).

95. Certification of the Notice Class is warranted under Rule 23(B)(2).

CONCLUSION

Both proposed classes meet the requirements for certification under Indiana Trial Rule 23. It is hereby ORDERED that Counterclaim-Plaintiff and all others similarly situated as described below shall be designated as "The Parcel Class" for counterclaim counts 1, 2, 3, and 4. The Parcel Class shall consist of the following:

> All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code (1) seeking the forfeiture of currency contained in parcels that were (a) in-transit via FedEx from an originating location outside of Indiana to a destination location outside of Indiana and (b) seized at the FedEx Express Indianapolis Hub and (2) in which the complaint makes no allegation that the currency is connected to Indiana beyond the in-transit parcel's presence in Indiana when it was seized.

It is hereby ORDERED that Counterclaim-Plaintiff and all others similarly situated as described below shall be designated as "The Notice Class" for counterclaim counts 5, 6, and 7. The Notice Class shall consist of the following:

> All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code to forfeit currency alone, in which the Marion County Prosecutor's Office represents the State of Indiana or any other government plaintiff and in which the complaint does not identify the specific predicate crime it alleges supports the forfeiture.

It is further ORDERED that Marie Miller, of the Institute for Justice, along with her colleague Samuel Gedge, be appointed class counsel.

Dated this 21st day of July, 2025.

Anne Flannelly
Anne Flannelly, Magistrate Judge
Marion County Superior Court

Distribution:

Attorneys of Record