

Jean-Jacques Cabou (Bar No. 022835)
 PERKINS COIE LLP
 2901 North Central Avenue, Suite 2000
 Phoenix, Arizona 85012-2788
 Telephone: 602.351.8000
 Facsimile: 602.648.7000
 JCabou@perkinscoie.com
 DocketPHX@perkinscoie.com

Emma A. Andersson (CA Bar No. 260637)
 (*pro hac vice pending*)
 ACLU CRIMINAL LAW REFORM PROJECT
 125 Broad Street, 18th Floor
 New York, New York 10004
 Telephone: 212.284.7365
 eandersson@aclu.org

Victoria Lopez (Bar No. 330042)**
 Daniel J. Pochoda (Bar No. 021979)
 Darrell Hill (Bar No. 030424)
 ACLU FOUNDATION OF ARIZONA
 P. O. Box 17148
 Phoenix, Arizona 85011-0148
 Telephone: 602.650.1854
 vlopez@acluaz.org
 dpochoda@acluaz.org
 dhill@acluaz.org

**Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

Attorneys for Plaintiff Rhonda Cox

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Rhonda Cox,

Plaintiff,

v.

Lando M. Voyles, Pinal County Attorney; Paul
 Babeu, Pinal County Sheriff; Detective Samuel
 Hunt, Deputy Pinal County Sheriff; Amanda
 Stanford, Pinal County Clerk of the Superior
 Court; Craig Cameron, Deputy Pinal County
 Attorney,

Defendants.

No.

COMPLAINT

(Jury Trial Demanded)

INTRODUCTION

Plaintiff Rhonda Cox brings this civil rights action to redress the unconstitutional application of Arizona's Civil Asset Forfeiture Laws, Arizona Revised Statutes §§ 13-4301 to 13-4315 (the "Forfeiture Laws"), to her and to prevent these facially unconstitutional laws from being used against her in the future.

1. Defendants Lando M. Voyles, Pinal County Attorney; Paul Babeu, Pinal County Sheriff; and Amanda Stanford, Pinal County Clerk of the Superior Court are each sued in their official capacities.

2. Defendants Craig Cameron, Deputy Pinal County Attorney, and Detective Samuel Hunt, Deputy Pinal County Sheriff, are sued in their individual capacities and only because of the unlawful seizure described in Claim Six.

3. Rhonda Cox has lived in Arizona with her family for 10 years. She works in sales for a shade company and she has four children and four grandchildren. In April 2013, she purchased a used pickup truck for \$6,000 (the "Truck"). The Truck was paid for by her, titled in her name, and she carried its insurance.

4. Sometimes, Rhonda lent the Truck to her son Chris.

5. In August 2013, Rhonda's son drove the Truck to a parking lot at a store, where he was contacted by deputies of the Pinal County Sheriff's Department. The deputies were investigating the earlier theft of a white Tonneau Cover (a flat cover which covers the back of a pickup truck) and a white truck hood.

6. Eventually, Defendant Babeu's deputies concluded that the Tonneau Cover and the hood that were attached to Rhonda's Truck had been stolen. They arrested Rhonda's son and decided to seize the Truck along with the stolen items on it.

7. Rhonda learned by telephone that her son was being arrested and went to the scene. By the time she got there, her son was gone. The only person left on the scene was one deputy who was sitting in his car guarding Rhonda's Truck.

8. Rhonda approached the deputy and explained that the Truck was hers, asking if she could get it back. The deputy curtly told Rhonda that she would never be

1 getting the Truck back. He gave her no other information about what was happening to
2 her son or to her property. Rhonda pleaded with the deputy that she had nothing to do
3 with the alleged crime that occurred. He simply said “too bad.” In the words of the
4 Forfeiture Laws, Rhonda told him that she was an “innocent owner” and that she “did not
5 know and could not reasonably have known of the act or omission or that it was likely to
6 occur.” See A.R.S. § 13-4304(4)(C).

7 9. Later that day, Rhonda received a telephone call from a different deputy
8 who was interrogating her son. The deputy told Rhonda that her son was being
9 uncooperative and threatened that things would be worse for her son if he did not
10 immediately confess. Rhonda wisely advised her son to ask for an attorney. She then
11 explained to the deputy on the telephone that she had nothing to do with the alleged crime
12 and that the Truck belonged to her and not to her son. The deputy told her that they were
13 initiating forfeiture proceedings against the Truck and that she would never get it back.

14 10. It did not matter to the deputies that Rhonda was an innocent owner entitled
15 to get her Truck back. And that did not matter to Defendant Voyles and his prosecutors.
16 Both the County Attorney’s Office and the Sheriff’s Office stood to financially benefit
17 from seizing and forfeiting the Truck.

18 11. Under the Forfeiture Laws, all of the revenue received from the forfeiture of
19 the Truck would go to the County Attorney’s Office and/or to the Sheriff’s Office.

20 12. With the help of Defendant Voyles’s deputy, Defendant Cameron,¹ the
21 Sheriff’s department, despite knowing that the Truck belonged to Rhonda and despite
22 knowing that she had absolutely nothing to do with the theft, initiated proceedings against
23 the Truck under the Forfeiture Laws seeking to forfeit the Truck.

24 13. Rhonda, unable to afford a lawyer, tried to fight the seizure on her own
25 through a series of phone calls, emails, and filings in court. Eventually, threatened by
26

27 ¹ Pursuant to A.R.S. § 13-4301(1), Defendant Voyles is designated as the
28 “Attorney for the [S]tate” in forfeiture proceedings like the case against the Truck.

1 Defendant Cameron with having to pay the State's attorneys' fees if she lost her fight for
2 the Truck, she gave up.

3 14. Arizona's Forfeiture Laws are unconstitutional on their face and
4 unconstitutional as applied to the seizure, proceedings against, and ultimate forfeiture of
5 Rhonda's Truck.

6 15. Specifically, Rhonda challenges and seeks to correct the violations by the
7 Defendants of her rights under the First, Fourth, Fifth, and Fourteenth Amendments of the
8 United States Constitution.

9 16. The Forfeiture Laws infringe the Fifth and Fourteenth Amendments'
10 guarantee of Due Process by providing an unconstitutional financial incentive for
11 Defendants Voyles and Babeu (and their employees and agencies) (collectively the "Law
12 Enforcement Defendants") to seize, proceed against, and ultimately forfeit Rhonda's
13 property (and the property of others).

14 17. In fighting to regain her Truck, even though she is an innocent owner, and
15 even though she lacked the assistance of counsel, Rhonda was caught in a Kafkaesque
16 predicament where, bizarrely, she bore the burden of proving that she was entitled to get
17 the Truck back. The State did not have to prove that Rhonda did anything wrong—let
18 alone criminal—in order to keep the Truck.

19 18. The Forfeiture Laws further infringe the Fifth and Fourteenth Amendments
20 by providing that if Rhonda fights the forfeiture of her Truck and loses, she not only loses
21 the Truck, but is further punished by being liable for the attorneys' fees and for the costs
22 of investigation of the State.

23 19. Put differently, on top of authorizing the seizure of her Truck even though
24 she did nothing wrong, the Forfeiture Laws then punish Rhonda for standing up for
25 herself and her property in court.

26 20. Furthermore, the Forfeiture Laws twice place an unconstitutional burden on
27 Rhonda's rights under the First Amendment to "petition the government for redress of
28

1 grievances.” First, the Forfeiture Laws unconstitutionally burden her rights by taxing
2 them with the attorneys’ fee liability provision discussed in the preceding Paragraph.

3 21. Second, the Forfeiture Laws violate the First Amendment by requiring
4 Rhonda to pay a \$304 filing fee simply for the right to bear the burden of proof in the
5 action to defend her property.

6 22. Through these and other unconstitutional means, the Forfeiture Laws have
7 created a system in which few people like Rhonda can afford to take the risk of defending
8 their property. And Defendants have profited, and continue to profit, wildly through this
9 system.

10 23. According to the most recent Forfeiture Monies Report compiled and
11 submitted by the Arizona Criminal Justice Commission as of the date of this filing: the
12 Attorney General Master Account held \$16,653,523; the Attorney General Individual
13 Account held \$15,423,990; the County Attorney Master/Pooled Account held
14 \$43,233,148; and Local Agencies held \$9,508,052.²

15 24. All of this money is controlled only by people and agencies, including the
16 Law Enforcement Defendants, whose direct pecuniary interest in these monies is created
17 by the Forfeiture Laws and results in a perverse, unfair, unconstitutional incentive to seize
18 and forfeit as much money and property as possible as a means to ensure a slush fund
19 available to them with little or no oversight.

20 25. This powerful, unconstitutional financial incentive for the Law Enforcement
21 Defendants encouraged them to make sure that Rhonda failed in her attempt to reclaim her
22 Truck.

23 26. This same incentive also ensures that she will fail in the event her property
24 is seized pursuant to the Forfeiture Laws in the future—for instance the next time a friend
25 or family member borrows her vehicle.

26
27
28

² Ariz. Crim. Justice Comm’n, Forfeiture Monies Summary (2014), *available*
at <http://www.azcjc.gov/ACJC.Web/pubs/finance/fy2015/2ndQtrFY15RICOREport.pdf>.

NATURE OF THE ACTION

27. This is an action brought pursuant to 42 U.S.C. § 1983 and § 1988 to redress violations of Rhonda's rights under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

28. This action seeks declaratory, injunctive, and other equitable relief against Defendants Voyles, Babeu, Stanford and their successors, as well as their officers, employees, agents, and all persons acting in cooperation with them, under their authority and/or supervision, at their direction, or under their control in the enforcement, application and use of the Forfeiture Laws.

29. This action seeks nominal monetary damages against Defendants Cameron and Hunt for violation of Rhonda's Fourth Amendment rights.

30. An actual, definite, and concrete controversy exists between Rhonda and the Law Enforcement Defendants concerning the seizure of, forfeiture of, and wrongful retention of her Truck (or of profits from the sale of her Truck).

31. An actual, definite, and concrete controversy exists between Rhonda and Defendant Stanford concerning the imposition and collection of an unconstitutional fee in order to contest the seizure and attempted forfeiture of her Truck.

32. An actual, definite, and concrete controversy exists between Rhonda and Defendants Cameron and Hunt concerning the unlawful seizure and retention of the Truck.

33. The controversy between Rhonda and the Defendants will be resolved through the declaratory, injunctive, monetary, and other equitable relief sought by Rhonda.

34. In this action, Rhonda seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 on the grounds that the Forfeiture Laws are unconstitutional on their face and as applied to Rhonda in this case because they:

- i. Provide an unconstitutional pecuniary incentive to the Law Enforcement Defendants, who participate in the seizure of, adjudication of, and

- 1 prosecution of property seized for forfeiture while at the same time
2 deriving substantial financial benefit from those official actions;
- 3 ii. Deny her due process by imposing on her liability for the State's
4 attorneys' fees if she is unsuccessful in challenging the State's case
5 against her property;
- 6 iii. Deny her due process by imposing upon her a fee (constituting a
7 significant percentage of the value of her property) to contest the seizure
8 and attempted forfeiture of her property in court;
- 9 iv. Impose, via the required filing fee, a tax on her right to petition the
10 government for return of her property; and
- 11 v. Impose, via the attorneys' fee liability provision, a further tax and
12 enormous disincentive, on her right to petition the government for return
13 of her property.
- 14 35. Rhonda also seeks further relief pursuant to 42 U.S.C. § 1983, specifically:
- 15 i. A permanent injunction enjoining the Law Enforcement Defendants
16 from employing the Forfeiture Laws so long as:
- 17 1. They receive a direct financial benefit from the profits of
18 forfeitures under the Forfeiture Laws;
- 19 2. The Forfeiture Laws require Rhonda to be liable for the
20 State's attorneys' fees in any unsuccessful attempt to reclaim
21 property owned by her and seized under the Forfeiture Laws;
- 22 ii. A permanent injunction enjoining Defendant Stanford from charging a
23 fee to Rhonda for the right to contest the seizure of her property;
- 24 iii. An order disgorging from the Law Enforcement Defendants the profits
25 from the forfeiture and sale of Rhonda's Truck;
- 26 iv. An order awarding damages in the amount of \$1 for Defendants Hunt
27 and Cameron's unlawful seizure for forfeiture of her Truck.
28

1 42. Defendant Amanda Stanford is the elected Clerk of the Pinal County
2 Superior Court. In her capacity as the Clerk of the Pinal County Superior Court, she is
3 responsible for her Office's policies and procedures regarding fees charged to claimants,
4 including Rhonda, who seek to contest the seizure of property in cases filed in Defendant
5 Stanford's Court. Defendant Stanford is ultimately responsible for the conduct of the
6 employees in her Office, including those employees involved in Rhonda's forfeiture case.

7 **JURISDICTION AND VENUE**

8 43. Because this action arises under the Constitution and laws of the United
9 States, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201.

10 44. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391
11 because the Defendants reside within the District of Arizona.

12 **FACTUAL ALLEGATIONS**

13 **The Truck, the Seizure, and the Flawed Notice of** 14 **Seizure and Uncontested Forfeiture.**

15 45. Rhonda bought the Truck in April 2013 for \$6,000 dollars and, in July of
16 that year, she paid \$1,307 to put a new engine in it.

17 46. As many parents do, she "allowed [her] son to use the vehicle as a way to
18 better himself and get on his feet until such time he could purchase his own vehicle."
19 [Exhibit ("Ex.") 1 (Petition for Remission or Mitigation)]

20 47. Evidently, Chris drove the Truck on the night of August 1 into the morning
21 of August 2, 2013. Rhonda had no idea he drove the Truck that night until she learned
22 that her son had been contacted by Mr. Babeu's deputies.

23 48. On August 2, 2013, while Deputy Traynor interrogated Chris, Defendant
24 Hunt, in consultation with Defendant Cameron, issued Chris a "Notice of Property Seizure
25 & Pending Uncontested Forfeiture" ("NOPS") for the Truck. [Ex. 2 (NOPS dated Aug. 2,
26 2013)]

27 49. The NOPS, the document which was legally required to begin the case
28 against the Truck and without which the State would have no case, appears to be a

1 boilerplate, fill-in-the-blank document, which is partially printed and partially filled in by
2 hand.

3 50. The NOPS contains numerous fatal flaws that would require a court to
4 dismiss the case.

5 i. The Seizing Agency is falsely identified as the Pinal County Narcotics
6 Task Force (“PCNTF”), *even though there are no narcotics involved in*
7 *this case and even though the PCNTF had no involvement in the case.*

8 ii. The NOPS states that a claim is required pursuant to A.R.S. § 13-
9 4300(F), *but no such statute or subsection exists.*

10 iii. The NOPS alleges that forfeiture is authorized pursuant to A.R.S. §§ 13-
11 2301 *et seq.*, and 13-3401 *et seq.*, *but these statutes pertain to*
12 *racketeering and narcotics and have nothing to do with this case.*

13 iv. The NOPS alleges that forfeiture is authorized “particularly” by A.R.S.
14 § 13-1506.A.1, *but that citation is to Burglary in the Third Degree, an*
15 *offense for which forfeiture is not authorized by law.*

16 v. The NOPS alleges that “suspected contraband, more particularly
17 described as *burglary*” is the basis for forfeiture. Of course, that makes
18 no sense. Burglary is not contraband.

19 vi. The NOPS contains an affidavit of service on which the name of the
20 person allegedly served is *blank*.

21 [*Id.*]

22 51. The NOPS stated that “Uncontested Forfeiture” was being offered to anyone
23 wishing to challenge the seizure.

24 52. Defendant Voyles, through Defendant Cameron, sent Rhonda by mail a
25 “Notice of Pending Uncontested Forfeiture” on August 28, 2013 (the “August 28th
26 Notice”). [Ex. 3]

27 53. The August 28th Notice was substantially similar to the NOPS, including by
28 listing the narcotics and racketeering statutes, even though no such conduct is at issue

1 here, and by listing the basis of forfeiture as A.R.S. § 13-1506.A.1, which does not
2 authorize forfeiture.

3 **Rhonda attempted to work with Defendant Voyles's Office to get the Truck back,**
4 **which is rightfully hers.**

5 54. After the Deputy at the scene and the Deputy on the telephone both told
6 Rhonda that she would never get her Truck back on the day of the seizure, she contacted
7 the County Attorney's Office to ask them to return her Truck.

8 55. Rhonda tried to explain that the Truck was hers, that she had no knowledge
9 of any wrongful activity, and that she would like the Truck back.

10 56. Defendant Voyles' Office, and Defendant Cameron in particular, denied that
11 Rhonda was entitled to get her Truck back.

12 57. After her initial informal attempts to get her Truck back failed, Rhonda tried
13 to follow the "uncontested forfeiture" procedures set forth in the NOPS and the August
14 28th Notice.

15 58. This process purports to offer an out-of-court procedure whereby Rhonda
16 was offered a chance to persuade Defendants Voyles and Cameron to return her property.

17 59. In uncontested forfeiture, Defendant Voyles is both the prosecutor and the
18 profiteer, unilaterally empowered to decide whether to return the Truck and also a primary
19 financial beneficiary of the Truck's ultimate forfeiture.

20 60. Rhonda filed a Petition for Mitigation, as provided for by law, on
21 September 13, 2013. [Ex. 1]

22 61. The Petition for Mitigation explained and provided evidence that Rhonda
23 owned, exclusively paid for, and insured the Truck.

24 62. The Petition for Mitigation explained that Rhonda has no knowledge of any
25 unlawful activities being conducted with the Truck.

26 63. The Petition for Mitigation explained that, despite the bizarre, false
27 statements in the NOPS and the August 28th Notice to the contrary, there were no
28 allegations in the case about narcotics or racketeering.

64. The Petition for Mitigation stated, correctly, that Rhonda is “an innocent owner” of the Truck, that she did not know, and could not have known, about any illegal acts involving the Truck, and is entitled to its return. *See* A.R.S. § 13-4304(4)(C).

65. And the Petition for Mitigation cited various Arizona laws supporting its request and attached numerous exhibits verifying these claims.

66. Unsurprisingly Defendant Voyles, who was entitled by law to direct the proceeds generated from the forfeiture of the Truck to his agency or to Defendant Babeu’s agency, refused to return the Truck.

Rhonda, alone and without a lawyer, goes to court against the State.

67. On September 27, 2013, Defendant Voyles, through Defendant Cameron, rejected Rhonda’s Petition for Mitigation, sending her the State’s Declaration of Forfeiture, Remission, or Mitigation (the “Declaration of Forfeiture”). [Ex. 4]³

68. As justification for their wrongful refusal to return the Truck, Defendants Voyles and Cameron stated that because the Truck was purchased “for family use” and “[t]he family purpose doctrine applies in the [S]tate of Arizona” “it is hereby declared that the alleged interest of Rhonda Cox is forfeit.” [*Id.* at 2]

69. The “family purpose doctrine” is a principle of tort liability for registered owners of cars in automobile accidents. It has never been, and cannot constitutionally be, applied to a forfeiture case.

70. In fact, the Forfeiture Laws expressly provide for a *bona fide* registered owner like Rhonda to have their property returned if they establish they “did not know and could not reasonably have known of the act or omission or that it was likely to occur.” A.R.S. § 13-4304(4)(c).

71. Upon receiving the Declaration of Forfeiture, Rhonda emailed Defendant Cameron, explaining that even though he was refusing to return the Truck she was

³ Curiously, while the NOPS claimed that “burglary” was the predicate act giving rise to forfeiture, the Declaration of Forfeiture recited that “theft” was the basis. This change in theories was never explained or justified by the State.

1 “hoping [to] at least get” some “personal items” out of it. Specifically, she explained,
2 “some of the tools in the truck belonged to [her] deceased grandfather and have
3 sentimental value.” [Ex. 5 (Email from R. Cox to C. Cameron, dated Oct. 23, 2013)]

4 72. In response to this email, Defendant Cameron refused to consider returning
5 the tools, writing: “I am sorry to hear your son used tools with sentimental value to
6 commit a theft.” [*Id.*]

7 73. Defendant Cameron then filed the Complaint seeking forfeiture of the
8 Truck.

9 74. Rhonda, without a lawyer, filed a timely Answer, again challenging the
10 State’s claims for forfeiture.

11 75. To file her Answer, Rhonda was required to pay a \$304 filing fee to the
12 Pinal County Clerk of Court.

13
14 **Rhonda abandons her case under direct threat of being charged
the State’s attorneys’ fees.**

15 76. Rhonda and Defendant Cameron then proceeded to exchange limited
16 discovery. Following the exchange of Rule 26.1 disclosure statements, Defendant
17 Cameron, on March 19, 2014, served on Rhonda Requests for Admission.

18 77. Rhonda was confused by the Requests and their many pages of
19 “instructions,” frustrated that Defendant Cameron was using information against her that
20 she had shared with him in a good faith effort to get her Truck back, and exhausted of
21 trying to defend her property without the assistance of counsel. She wrote to Defendant
22 Cameron on April 2, 2014, letting him know that she was unable to proceed and stating
23 “the lay person does not stand a chance over someone [like Defendant Cameron] who
24 does this everyday.” [Ex. 6 (Email from R. Cox to C. Cameron, dated Apr. 2, 2014)]

25 78. The next day, April 3, 2014, Defendant Cameron wrote back. In his
26 response, Defendant Cameron called Rhonda a “straw owner,” claimed, erroneously, that
27 as a “straw owner” Rhonda did “not have standing to bring a claim,” reiterated the
28

1 nonsensical argument that the “family purpose doctrine” defeated her claim for the
2 Truck’s return, and called her attempt to get her Truck back “disingenuous.” [*Id.*]

3 79. His response went on to state that “[u]nder A.R.S. 13-4314(G) the State is
4 due attorney fees from a party who does not prove they are entitled an exception to
5 forfeiture. . . . You may wish to file a motion of withdrawal of the claim to drop the case.”
6 [*Id.*] Put differently, he made clear that if she persisted in her efforts to have the Truck
7 returned, he would seek to have the State’s attorneys’ fees assessed against her.

8 80. Indeed, A.R.S. § 13-4314(F) is a one-way attorneys’ fee provision that
9 directs courts to order unsuccessful claimants to pay the State’s attorneys’ fees. So
10 claimants lose the property that is seized and forfeited and, on top of that, have to pay for
11 the State’s lawyer. But if a claimant hires her own lawyer and is successful in getting her
12 property back, the law does not require the court to order the State to pay her attorneys’
13 fees.

14 81. Defendant Cameron has used the attorneys’ fee provision to threaten other
15 claimants as well. In an email dated June 19, 2014, Defendant Cameron wrote to a
16 claimant’s attorney: “I have started to ask for fees in every case. Its[sic] more for the
17 education of the judge who is new to her position/young. I suspect you didn’t consider
18 attorney fees when you took the case. By asking for fees, I’m reinforcing to the criminal
19 defense bar the risks associated with making a claim in a forfeiture case. I’m sure you
20 may disparage me to your criminal defense brethren for asking for fees, but they will
21 know the risks and rewards better.” [Ex. 7 (Email from C. Cameron to “Nathan,” dated
22 June 19, 2014)]

23 82. On April 14, 2014, Rhonda filed a “Motion to Withdrawal Claim.” In that
24 Motion, Rhonda stated that she was withdrawing her claim “based on the likelihood of the
25 [S]tate winning the case and the fear of additional financial loss [from having attorneys’
26 fees awarded against her].” [Ex. 8]

27 83. Rhonda believed that if she continued her fight and lost, the State’s costs
28 and attorneys’ fees would have greatly exceeded the value of the Truck.

1 84. Rhonda felt bullied, threatened, and lied to during this process. Her
2 experience with Defendants Voyles's and Babeu's deputies has left her distrustful and
3 fearful of the very law enforcement officials who are supposed to protect innocent people
4 like her.

5 85. After Rhonda gave up her fight, the State applied for and received an order
6 forfeiting the Truck to the State. The Truck and its contents were forfeited and awarded
7 to the Pinal County Sheriff's Department.

8 86. Upon information and belief, following the forfeiture of the Truck, it was
9 sold at auction by Defendant Babeu or those acting with his authority and the proceeds
10 were distributed as prescribed by law, including to Defendant Voyles's Office.

11 **The Origin of the Forfeiture Laws.**

12 87. The Forfeiture Laws under which the Truck was seized and ultimately
13 forfeited worked against Rhonda at every turn.

14 88. The Forfeiture Laws were first enacted in 1986. They were drafted by an *ad*
15 *hoc* committee composed solely of prosecutors and sponsored by the Arizona Prosecuting
16 Attorneys Advisory Council ("APAAC").

17 89. The purpose of Arizona's Forfeiture Laws is "removing the economic
18 incentive to engage in racketeering, reducing the financial ability of racketeers to continue
19 to engage in crime, preventing unfair business competition by persons with access to
20 crime proceeds, compensating victims of racketeering, and reimbursing the State for the
21 costs of prosecution." *See State ex rel. Napolitano v. Gravano*, 204 Ariz. 106, 113, 60
22 P.3d 246, 253 (Ct. App. 2002).

23 90. Upon information and belief, despite the intended purpose of the Forfeiture
24 Laws to combat large-scale racketeering, the vast majority of cases brought under the
25 Forfeiture Laws are low-dollar seizures alleging low-level criminal conduct.

26 91. For example, the Pinal County Treasurer's records for August 1, 2013
27 through August 31, 2013 include numerous forfeitures by Defendants Voyles and Babeu
28 worth less than \$1,000, and many worth less than the \$304 filing fee required for a

1 claimant to fight a forfeiture case in court. [Ex. 9 (Pinal County Treasurer Monthly
2 Statement) at 1-3] The Treasurer's records from November and December 2013 [*id.* at 4-
3 8] and February 2014 show the same pattern [*id.* at 9-11].

4 92. Despite being on the books for over three decades, these laws, in large part
5 because of the perverse incentives for law enforcement and substantial obstacles to
6 individuals defending their property, have been rarely challenged.

7 93. In addition to the fact that few defendants have the wherewithal to challenge
8 seizures under the Forfeiture Laws, the State can always settle or drop a particular case in
9 which a challenge exists in order to keep the statutes from being seriously attacked in
10 court.

11 **Arizona law enforcement agencies and the Law Enforcement Defendants directly**
12 **profit from, depend on the profits from, and direct the spending of profits from**
seizures for forfeiture, including the seizure of the Truck.

13 94. The Forfeiture Laws have created a lucrative system in which police and
14 prosecutors are heavily incentivized to seize and forfeit property. Indeed, A.R.S. § 13-
15 4315(A) and (B)(2), provide that “[a]ny property, including all interests in property,
16 forfeited to the state under this title shall be transferred as requested by the attorney for the
17 state to the seizing agency or to the agency or political subdivision employing the attorney
18 for the state . . .” and “[i]f the property declared forfeited is an interest in a vehicle, the
19 court shall order it forfeited to the local, state or other law enforcement agency seizing the
20 vehicle for forfeiture or to the seizing agency.”

21 95. As a result, Law Enforcement Defendants are able to supplement their
22 budgets without any legislative oversight.

23 96. The APAAC advertised its May 31, 2013 Forfeiture Training by telling its
24 members that “an asset forfeiture practice that supplements other law enforcement
25 activities provides an opportunity that is unique among governmental agencies—the direct
26 augmentation of the agency’s budget through the performance of its designated function.”
27 [Ex. 10 (Email from E. Iniguez, dated Apr. 25, 2013)]
28

1 97. In addition to touting forfeiture's budget "augmentation" benefits to its
 2 members, APAAC also knows that abuses of this system are common. In a forfeiture
 3 ethics training, APAAC encouraged its members:

4 "Don't Ruin Forfeiture for All of Us"

- 5 • When your bosses can't find any money in their budget
- 6 • When they get depressed they tell you to start doing
- 7 • When you start doing forfeiture cases you go to a
- 8 • When you go to a Forfeitures seminar you feel like a
- 9 • When you feel like a winner you go back to your
- 10 • When you just start seizing everything in sight you screw
- 11 • When you screw things up and lose everything you ruin
- 12 • Don't ruin forfeitures for all of us. Get the purpose of this
- 13 seminar and follow an educated, ethical and professional
- 14 forfeiture practice.

14 [Ex. 11 (APAAC Training Presentation) at 7]

15 98. Though ethical use of Arizona's Forfeiture Laws may be encouraged in
 16 trainings, these laws simultaneously create powerful incentives to self-deal and "just start
 17 seizing everything in sight" and grant expansive power to do so.

18 99. Rhonda's experience demonstrates why "Arizona's civil asset forfeiture
 19 laws are in need of serious reform." See Marian R. Williams, Ph.D., *et al.*, Policing for
 20 Profit, The Abuse of Civil Asset Forfeiture, Institute for Justice, 47 (Mar. 2010),
 21 available at http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf.

22 100. Unlike proceeds from forfeitures in many other states, which are paid into
 23 the state treasury or other legislatively-supervised funds, all the proceeds from Arizona
 24 state forfeitures go to the law enforcement agencies involved in seizing and prosecuting
 25 the case.

26 101. Law enforcement agencies are dependent on forfeiture monies for their
 27 continuing operations, paying for everything from traditional law enforcement equipment
 28 to office supplies, furniture, office refreshments, and even toilets.

1 102. In the words of one Deputy County Attorney and Bureau Chief in Pima
2 County “[w]hen the economy tanked and we lost a good part of our budget, we could
3 absolutely not survive without [revenue from forfeiture].” [Ex. 12 (Lupita Murillo,
4 “RICO funds help Southern Arizona law enforcement agencies,” KVOA News Tucson
5 (June 19, 2013))]

6 103. In 2013, APAAC conducted an informal “survey as to the uses for which
7 RICO funds are applied” in response to “criticism amongst the chattering classes
8 regarding RICO funds.” Among the responses received, one County Attorney wrote: “All
9 of my RICO funds are used to supplement the salaries of my employees and office
10 operating expenses. This use of my RICO funds has become necessary to avoid furloughs
11 and/or layoffs as the county has cut back on staffing due to budget cuts.” [Ex. 13 (Email
12 from E. Rheinheimer to K. MacEachern, dated Mar. 13, 2013)]

13 104. The Arizona Department of Public Safety (AZ DPS) apparently relies
14 entirely on forfeiture monies to fund its bomb squad, S.W.A.T. team, and hazardous
15 materials unit.

16 105. “The State Bomb Squad is not an appropriated funded unit, and relies solely
17 on RICO funding to continue performing its high-risk and ever expanding mission.” [Ex.
18 14 (Application Arizona DPS RICO Funds (“DPS RICO App.”), Bomb Squad Unit FY
19 2014) at 2]

20 106. The same is true of AZ DPS’s S.W.A.T. team: “DPS S.W.A.T. is not an
21 appropriated funded unit, and relies on RICO funding in order to continue performing its
22 high-risk mission.” [Ex. 15 (DPS RICO App., S.W.A.T. TEAM FY2014) at 1]

23 107. AZ DPS has also used forfeiture monies to pay for immunizations and other
24 medical expenses for thousands of employees [Ex. 16 (DPS RICO App., Safety and Loss
25 Prevention Grant)] and for its entire drug testing program of employees and potential new
26 hires [Ex. 17 (DPS RICO App., Drug-Free Workplace (DFW) Program)].

27 108. Forfeiture money is regularly used to pay overtime and is sought for specific
28 employees.

1 109. AZ DPS works closely with the Law Enforcement Defendants. For
2 example, AZ DPS “currently assigns two full time narcotics detectives to a task force
3 managed by [Defendant Babeu’s] Pinal County Sheriff’s office. DPS is responsible for
4 the full costs of the two detectives assigned and as such needs to provide replacement
5 equipment on a regular basis. Currently there is an immediate need for two vehicles, at
6 least one being a heavy-duty 4X4 pickup truck and the other a full size SUV.” [Ex. 18
7 (DPS RICO App., Pinal Narcotics – Vehicle Replacement)]

8 110. That task force is known as the Pinal County Narcotics Task Force (the
9 “PCNTF”), which is governed by the “Intergovernmental Agreement for Agency
10 Participation in the [PCNTF].” [Ex. 19] The PCNTF is headquartered at and supervised
11 by Defendant Babeu’s Office.

12 111. Section 10 of the Agreement explicitly discusses the seizure of assets, and
13 notes that seized assets are “first allocated to Task Force requirements.” Remaining assets
14 from seizures for forfeiture are distributed to the participating law enforcement agencies,
15 including those led by Defendants Babeu and Voyles. [*Id.* at 4]

16 112. Arizona law enforcement agencies also use the profits of forfeitures to fund
17 “pet projects,” including many that provide favorable exposure to the Law Enforcement
18 Defendants amongst their constituents.

19 113. Defendant Voyles issued a press release on September 4, 2013, touting the
20 community groups (i.e., the constituents whose votes he seeks) to which his Office had
21 given \$188,000 in forfeiture monies. [Ex. 20 (Press Release, Office of Pinal County
22 Attorney, “Pinal County Attorney Lando Voyles announces \$188K awarded to
23 semiannual RICO Community Outreach Funding recipients” (on file with author) (Sept. 4,
24 2013))]

25 114. As detailed in a critical audit report by the Pinal County Office of Internal
26 Audit of the forfeited funds controlled by Defendants, Defendant Voyles gave money to,
27
28

1 various sports teams, the County of Salt Lake, something called “Maricopa 1st Ward,”⁴
2 and a company called “Maricopa Dance and Fitness, LLC.” [Ex. 21 (Kate Witek, Pinal
3 County Office of Internal Audit, Report to the Board of Supervisors, County Attorney
4 Anti-Racketeering Fund Audit (Sept. 2014)) at App. II]

5 115. Defendant Voyles’s personal home security system is paid for by forfeiture
6 monies. [Ex. 22 (Pinal County Spending Records, QuickZoom Report 7/1/2013 -
7 9/30/2013)]

8 116. Defendant Voyles pays personnel costs of employees in his Office with
9 forfeiture monies. [Ex. 23 (Pinal County State Account Statement (“PC Acct.
10 Statement”)))]

11 117. Defendant Voyles pays for the retirement contributions of employees in his
12 Office with forfeiture monies. [*Id.*]

13 118. Defendant Babeu, his agency, and causes he supports, also benefit
14 financially from seizures and forfeitures.

15 119. The Arizona Public Safety Foundation, Inc. is a 501(c)(3) organization
16 originally named the “Pinal County Sheriff’s Office Justice Foundation, Inc.” (the
17 “Foundation”). It was incorporated in 2007. [Ex. 24 (Ariz. Corp. Comm’n Articles of
18 Incorporation (May 2007))]

19 120. Originally, the Foundation had its offices at 971 N. Jason Lopez Circle,
20 Bldg. C., in Florence, Arizona. That is the same address as the Pinal County Sheriff’s
21 Office. Now, the Foundation’s “address” is a private P.O. Box.

22 121. The Foundation and the Sheriff’s Office have been, and remain, closely
23 linked.

24 122. The current treasurer of the Foundation is a Pinal County Sheriff’s deputy
25 and advisor to the Sheriff’s Explorer program. Several members of the Foundation’s
26

27
28

⁴ Upon information and belief, this is a religious organization.

1 Board of Directors are employees of, or were employees of, the Sheriff's Office. Another
2 Board Member owns a crime scene clean-up company.

3 123. According to IRS filings, in 2013 the Foundation received \$290,007, or
4 86.62% of its funding, from the Pinal County Sheriff's Office's forfeiture fund. It
5 received another \$44,512, or 13.30%, from other Sheriff's Office sources. The remaining
6 0.28% of Foundation income was interest earned. [Ex. 25 (IRS Form 990 (2013))]

7 124. In 2012, the Foundation received \$229,835, or 99.38% of its funding, from
8 forfeiture funds from the Pinal County Sheriff's Office. Again, the only other revenue
9 received was from interest.

10 125. In 2013 and 2014, the Foundation received hundreds of thousands of dollars
11 from the Pinal County Attorney's forfeiture money.⁵ In its reporting to the Arizona
12 Criminal Justice Commission, the County Attorney's Office categorized this money as
13 "Gang & Substance Abuse Prevention & Education Program."⁶

14 126. Oddly for a group that appears to get nearly all of its money from Defendant
15 Voyles's County Attorney's Office and Defendant Babeu's Sheriff's Office, the
16 Foundation's stated purpose is "to promote and assist in fund raising activities for
17 volunteer groups associated with the Pinal County Sheriff's Department." [Ex. 24] At a
18 minimum, it seems that by funneling money to a private group which buys things for him
19 and his department, Defendant Babeu is able to avoid procurement laws and other
20 transparency regulations which usually apply to government purchasing.

21 127. IRS filings, while often too general to discern how the Foundation's money
22 is being spent, reveal that since its inception money has been spent on things like:

23 ⁵ **\$20,000** on July 9, 2013 [Ex. 26 (PC Acct. Statement (July 2013)) at 2];
24 **\$26,500** on October 17, 2013 [Ex. 27 (PC Acct. Statement (Oct. 2013)) at 4]; **\$25,000** on
25 December 5, 2013 [Ex. 28 (Pinal County RICO State Account Fund 184 ("PC RICO
26 Fund") (Dec. 2013)) at 1]; **\$16,525.75** on December 19, 2013 [*id.* at 3]; **\$68,025.75** in the
27 second quarter of FY 2014 [Ex. 29 (Az. Crim. Justice Comm'n, Forfeiture Monies Report
28 Quarterly, Pooled Account Summary ("Az. CJC Forfeiture Report") (2nd Qtr. FY14))];
\$244,700 in the third quarter of 2014 [Ex. 30 (Az. CJC Forfeiture Report (3rd Qtr. FY
14))]; **\$16,500** in April 2014 [Ex. 31 (PC RICO Fund (Apr. 2014)) at 2]; **\$122,053** on
May 29, 2014 [Ex. 32 (PC RICO Fund (May 2014)) at 2].

⁶ See *e.g.*, Exs. 29-30.

- i. “Automatic Rifles for deputies to have for illegals involved in drug related situations;”
- ii. “Supplies;”
- iii. “Police Dogs;”
- iv. “Horses;” and “feed.”

[Ex. 33 (IRS Form 990 (2011)) at 2, 10]

128. The Forfeiture Laws motivated and enabled the Law Enforcement Defendants to seize and forfeit property with minimum resistance from Rhonda, who, despite being the lawful owner of the Truck and despite using her best efforts to get it back, was still unsuccessful.

129. Arizona’s Forfeiture Laws stack the deck against claimants and incentivize law enforcement to maximize their profits at the expense of Arizonans’ constitutional rights.

130. This racket has to stop. And Rhonda’s rights must be vindicated.

CLAIM ONE

DUE PROCESS FACIAL CHALLENGE

Violation of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 Based on Improper Financial Motivation of Law Enforcement Defendants

(Rhonda against Law Enforcement Defendants (Voyles and Babeu))

131. Rhonda incorporates by reference Paragraphs 1 through 130 above as though fully set forth herein.

132. The Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution prohibits Defendants from depriving Rhonda, and any person, of her property without due process of law.

133. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

134. Pursuant to A.R.S. § 13-4315, the Law Enforcement Defendants are financially incentivized to seize and forfeit as much property as they can from whomever

1 they can. All, or substantially all, of the property seized and forfeited is returned to the
2 Law Enforcement Defendants for their own minimally-supervised use.

3 135. The Law Enforcement Defendants are reliant on proceeds from civil
4 forfeitures to keep their agencies running, including as described above.

5 136. This financial interest in the conduct of, and decisions made, in law
6 enforcement duties violates Due Process, as determined by the United States Supreme
7 Court in, among other cases, *Tumey v. Ohio*, 273 U.S. 510 (1927).

8 137. Declaratory, injunctive, and other equitable relief is necessary to stop
9 Defendants' enforcement of the unconstitutional statute; without such relief the
10 enforcement of this statute will continue unlawfully.

11 **CLAIM TWO**

12 **DUE PROCESS FACIAL CHALLENGE**

13 **Violation of the Fifth and Fourteenth Amendments to the** 14 **United States Constitution and 42 U.S.C. § 1983 Based on Improper** 15 **Financial Motivation in Uncontested Forfeiture**

16 **(Rhonda against Defendant Voyles)**

17 138. Rhonda incorporates by reference Paragraphs 1 through 137 above as
18 though fully set forth herein.

19 139. The Due Process Clause of the Fifth and Fourteenth Amendments to the
20 United States Constitution prohibits Defendant from depriving Rhonda, and any person,
21 of her property without due process of law.

22 140. 42 U.S.C. § 1983 provides for suit against the government for constitutional
23 violations.

24 141. Defendant Voyles, as the "Attorney for the [S]tate" is the prosecutor of, the
25 decision-maker for, and the financial beneficiary of, seizures and forfeitures processed by
26 means of "uncontested forfeiture" pursuant to A.R.S. § 13-4309.

27 142. Uncontested forfeiture is unconstitutional, in addition to the other reasons
28 set forth in this Complaint, because in uncontested forfeiture Defendant Voyles and his

deputies retain their pecuniary interest in the seized property while also being directly responsible for deciding whether to return it to the claimant.

143. This conflict of interest, which offends not just the appearance but also the reality of fairness, violates due process as determined by the United States Supreme Court in, among other cases, *Tumey v. Ohio*, 273 U.S. 510 (1927).

144. Declaratory, injunctive, and other equitable relief is necessary to stop Defendants' enforcement of the unconstitutional statute; without such relief the enforcement of this statute will continue unlawfully.

CLAIM THREE

FIRST AMENDMENT AND DUE PROCESS FACIAL CHALLENGE

Violation of the First, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 Based on Attorneys' Fees and Costs of Investigation Liability

(Rhonda against Defendant Voyles)

145. Rhonda incorporates by reference Paragraphs 1 through 144 above as though fully set forth herein.

146. The First Amendment of the United States Constitution protects, among other things, the right to petition the government for a redress of grievances.

147. The Due Process Clause of the United States Constitution protects, among other things, a person like Rhonda from being deprived of her property without a timely, meaningful, fair procedure.

148. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

149. The exclusive means available to an innocent property owner, like Rhonda, to seek return of her property is to follow the procedures set forth in the Forfeiture Laws.

150. Rhonda's petition for remission, claim, answer, other filings, and communications to the State in this case are "petitions" within the meaning of the First Amendment.

151. Rhonda's efforts to recover her property, through participation in both uncontested and contested forfeiture, necessarily involved causing the Law Enforcement Defendants to perform further work and spend further time on the case involving the seizure of the Truck.

152. Rhonda desisted from her attempts to recover her property only because of the threat of having a judgment entered against her for the State's attorneys' fees and costs pursuant to A.R.S. § 13-4314(F).

153. Such fees and costs, if the case had gone to trial, would have exceeded the value of the Truck, perhaps many times over.

154. A.R.S. § 13-4314(F) thus imposes an unconstitutional burden, disincentive, and tax upon Rhonda's right to petition the State to redress her grievances and return her Truck.

155. A.R.S. § 13-4314(F) thus also fails to provide a constitutionally adequate process by which to challenge the seizure and forfeiture of the Truck.

156. Declaratory, injunctive, and other equitable relief is necessary to stop Defendants' enforcement of the unconstitutional statute; without such relief the enforcement of this statute will continue unlawfully.

CLAIM FOUR

FIRST AMENDMENT AND DUE PROCESS FACIAL CHALLENGE

Violation of the First, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 Based on Filing Fee

(Rhonda against Defendant Stanford)

157. Rhonda incorporates by reference Paragraphs 1 through 156 above as though fully set forth herein.

158. The First Amendment of the United States Constitution protects, among other things, the right to petition the government for a redress of grievances.

159. The Due Process Clause of the United States Constitution protects, among other things, a person like Rhonda from being deprived of her property without a timely, meaningful, fair procedure.

160. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

161. The Law Enforcement Defendants paid no fee to file, in Pinal County Superior Court, the action seeking to forfeit the Truck.

162. On the other hand, in order to contest the seizure of the Truck, Rhonda was forced to pay a filing fee of \$304, which is among the highest fees charged by the Clerk of the Superior Court, to Defendant Stanford.

163. In many cases, the cost of the fee is greater than the value of the property. The charging of such a fee further burdens Rhonda's petitioning rights under the First Amendment and erects a further financial disincentive to litigate her claim in violation of Due Process.

164. Declaratory, injunctive, and other equitable relief is necessary to stop Defendant's enforcement of the unconstitutional statute; without such relief the enforcement of this statute will continue unlawfully.

CLAIM FIVE

DUE PROCESS FACIAL CHALLENGE

Violation of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 Based on Cumulative Combination of Failures

(Rhonda against Defendants Voyles, Babeu, and Stanford)

165. Rhonda incorporates by reference Paragraphs 1 through 164 above as though fully set forth herein.

166. The Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution prohibits Defendants from depriving Rhonda, and any person, of her property without due process of law.

167. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

168. The Forfeiture Laws violate Rhonda's rights under the First, Fifth, and Fourteenth Amendments as set forth above.

169. The Forfeiture Laws set forth the exclusive means by which Rhonda can seek the return of the Truck. The Forfeiture Laws first provide a "process" of "uncontested forfeiture" whereby Defendant Voyles is the decision-maker, prosecutor, and profiteer.

170. After unsuccessful uncontested forfeiture, the Forfeiture Laws then provide a "process" in which Defendant Voyles has a financial incentive to aggressively pursue seizures and forfeitures by any means necessary, in which Rhonda is charged a fee for litigating, in which Rhonda, without the assistance of counsel, bears the burden of proof, and in which Rhonda is overtly threatened with further financial ruin for participating in the only "process" available to seek redress for the wrongful seizure of her property. Such a process is not "meaningful" as required by the Constitution.

171. The Forfeiture Laws provide Rhonda with a process so rigged against the pursuit of her rights, that the cumulative effect of the individual constitutional failings set forth above amounts to a further, separate violation of her right to Due Process.

172. Declaratory, injunctive, and other equitable relief is necessary to stop Defendants' enforcement of the unconstitutional statute; without such relief the enforcement of this statute will continue unlawfully.

CLAIM SIX

AS APPLIED FOURTH AMENDMENT VIOLATION

Violation of the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983 Based on Illegal Seizure of Truck

(Rhonda against Defendants Hunt and Cameron)

173. Rhonda incorporates by reference Paragraphs 1-172 above as though fully set forth herein.

174. The Fourth Amendment to the United States Constitution prohibits Defendants from unreasonably seizing Rhonda's property.

175. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

176. As described above, including in Paragraph 50, the Notice of Seizure and the Notice of Forfeiture are defective in that they claim the Truck was seized pursuant to A.R.S. § 13-1506; forfeiture is not authorized for violations of § 13-1506.

177. As described above, including in Paragraph 67, the Declaration of Forfeiture [Ex. 4], without prior notice to Rhonda, and without any revisions to the Notices of Seizure, purported to seek forfeiture of the Truck pursuant to A.R.S. § 13-1802, Theft, for which forfeiture *would* be authorized by law.

178. The seizure of the Truck for forfeiture was without lawful basis, as the statute listed in the Notice of Seizure and pursuant to which the Truck was seized does not authorize forfeiture.

179. By seizing and retaining the Truck without lawful basis, Defendants Hunt and Cameron violated Rhonda's rights under the Fourth Amendment of the United States Constitution from the time the NOPS was issued until the Court's order of forfeiture was entered.

CLAIM SEVEN

AS APPLIED DUE PROCESS AND FIRST AMENDMENT CHALLENGE

Violation of the First, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983

(Rhonda against Defendants Voyles, Babeu, and Stanford)

180. Rhonda incorporates by reference Paragraphs 1 through 179 above as though fully set forth herein.

181. The Forfeiture Laws are not only unconstitutional on their face for the reasons stated elsewhere in this Complaint, but also as applied to Rhonda in the seizure, attempted recovery of, and forfeiture of the Truck.

182. Declaratory, injunctive, and other equitable relief is necessary to stop Defendants' enforcement of the unconstitutional statute; without such relief the enforcement of this statute will continue unlawfully.

RELIEF REQUESTED

WHEREFORE Rhonda:

1. Respectfully requests that this Court, pursuant to 28 U.S.C. § 2201, enter a declaratory judgment stating that Arizona's Forfeiture Laws, A.R.S. §§ 13-4301 to 13-4315, facially and as applied to her, violate the First, Fifth, and Fourteenth Amendments to the United States Constitution because they unfairly burden her right to challenge the seizure of her property and fail to ensure due process by providing an improper financial incentive to Law Enforcement Defendants.

2. Further requests that this Court enter an order enjoining enforcement of Arizona's Forfeiture Laws, A.R.S. §§ 13-4301 to 13-4315.

3. Further requests that this Court enter an order: (a) disgorging from the Law Enforcement Defendants all proceeds received from the sale of the Truck and (b) disgorging from Defendant Stanford the filing fee she received from Rhonda.

4. Further requests an award of nominal damages of \$1 for violation of her Fourth Amendment rights as set forth in Claim Six.

5. Further requests that this Court award the costs of this suit, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988, and all further relief to which she may be entitled.

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1 Dated: July 22, 2015

PERKINS COIE LLP

2 By: /s/ Jean-Jacques Cabou

3 Jean-Jacques Cabou
4 2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788

5 Emma A. Andersson (CA Bar No. 260637)
6 (*pro hac vice pending*)
7 ACLU CRIMINAL LAW REFORM
PROJECT
8 125 Broad Street, 18th Floor
New York, New York 10004
Telephone: 212.284.7365
9 eandersson@aclu.org

10 Victoria Lopez (Bar No. 330042)**
Daniel J. Pochoda (Bar No. 021979)
11 Darrell Hill (Bar No. 030424)
ACLU FOUNDATION OF ARIZONA
12 P. O. Box 17148
Phoenix, Arizona 85011-0148
Telephone: 602.650.1854
13 vlopez@acluaz.org
14 dpochoda@acluaz.org
dhill@acluaz.org

15 **Admitted pursuant to Ariz. Sup. Ct.
16 R. 38(f)

17 *Attorneys for Plaintiff Rhonda Cox*