

Victim Law Day: Seeking Justice for Victims and Enforcing their Rights

Friday, November 15, 2019
APAAC Training Room
1951 W Camelback Rd., Unit 202,
Phoenix, Arizona



Victim Compensation & Other Financial Remedies for the Modern Prosecutor

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204 Ariz. 106, *; 60 P.3d 246, **;
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LEXSEE 204 ARIZ. 106

STATE OF ARIZONA, ex. rel. JANET NAPOLITANO, Plaintiff-Appellee, MONA GAROFALO, LAURA GAROFALO, KAREN GAROFALO, CATHERINE COLLUCI, DAWN DeBATT, MICHELLE DeBATT, AND SHIRLEY SHIFFREN, Intervenor-Appellees, v. SALVATORE GRAVANO, aka JIMMY MORAN, Defendant-Appellant. 1207 E. SECRETARIAT DRIVE, TEMPE, ET AL., Defendants-Appellants In Rem.

1 CA-CV 02-0025

COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT B

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December 24, 2002, Filed

SUBSEQUENT HISTORY: Review denied by *State v. Gravano*, 2003 Ariz. LEXIS 101 (Ariz., July 1, 2003) US Supreme Court certiorari denied by *Gravano v. Ariz.*, 2004 U.S. LEXIS 842 (U.S., Jan. 26, 2004)

PRIOR HISTORY: [***1] Appeal from the Superior Court in Maricopa County. Cause No. CV00-007692. The Honorable Mark R. Santana, Judge.

DISPOSITION: AFFIRMED.

COUNSEL: Janet A. Napolitano, Arizona Attorney General, Phoenix, by Cameron H. Holmes, Assistant Attorney General Attorneys for Plaintiff-Appellee.

Osborn Maledon, P.A., Phoenix, by Larry A. Hammond.

John A. Stookey and Maureen Beyers Attorneys for Defendant-Appellant.

JUDGES: LAWRENCE F. WINTHROP, Judge
CONCURRING: PHILIP HALL, Presiding Judge
EDWARD C. VOSS, Judge.

OPINION BY: WINTHROP

OPINION

[**248] [*108] **WINTHROP**, Judge

P1 In this appeal, we consider whether the application of Arizona's forfeiture statutes to royalties from a book about the life and crimes of a convicted

racketeer violates constitutional free speech guarantees. We further examine whether the royalties have the causal connection with racketeering required for forfeiture. For the reasons discussed below, we conclude that the statutes are constitutional in this [***2] setting and that the royalties are subject to forfeiture as proceeds traceable to racketeering. As a result, we affirm the trial court's judgment ordering forfeiture of the royalties.

FACTUAL AND PROCEDURAL BACKGROUND

P2 On February 24, 2000, appellant Salvatore Gravano, aka "Sammy the Bull," aka Jimmy Moran ("Gravano"), and others were arrested and charged in Maricopa County with state crimes related to the alleged distribution of MDMA, a dangerous drug with the street name of "Ecstasy." Gravano was no stranger to the criminal justice system; in 1991, he pled guilty in federal court in New York to one count of violating the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"). *See 18 U.S.C. § 1962.* Gravano's conviction arose from his participation in the Gambino organized crime family, in which he was involved in racketeering activity, including murder and extortion. As a result of his plea agreement, under which he cooperated with law enforcement in the prosecution of others involved in organized crime, Gravano was sentenced to five years in prison and placed in the federal witness protection program.

[**249] **P3** [*109] Two [***3] months after Gravano's arrest in Arizona, the State of Arizona filed a Notice of Pending Forfeiture and Notice of Seizure for Forfeiture relating to property owned by Gravano and the

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others charged with Ecstasy distribution. Included in items owned by Gravano and subject to forfeiture were money, guns, jewelry, cellular phones, and a vehicle. The State also sought forfeiture of all rights of Gravano "to payment, royalties, receipt of the beneficial interest of any trust, and receipt of any benefit by any means present or future" in connection with the preparation, publication, or promotion of the non-fiction work about Gravano's life that was written by Peter Maas, published by Harper-Collins (UK), Inc., in 1997, and entitled *Underboss: Sammy the Bull Gravano's Story of Life in the Mafia ("Underboss")*.

P4 On June 23, 2000, the State filed a civil complaint for racketeering and forfeiture under the Arizona Racketeering Act, *Arizona Revised Statutes ("A.R.S.") sections 13-2301 to -2318* (2001 & Supp. 2002), and the Arizona Forfeiture Reform Act, *A.R.S. §§ 13-4301 to -4316* (2001 & Supp. 2002). The State alleged that proceeds of participation [***4] in the Gambino organized crime family were used to acquire or maintain control of four businesses in Arizona, including Southwest Ecstasy Enterprise ("SEE"), and that SEE was conducted through racketeering, principally by the manufacture and distribution of Ecstasy. The State sought, among other relief, monetary judgments and orders forfeiting the defendants' property.

P5 Meanwhile, in Gravano's criminal case, Gravano asked the court for guidance regarding royalty income from *Underboss* that was to be released to him. ¹ The court in this forfeiture action subsequently ordered Gravano to cause the *Underboss* royalties to be deposited with the clerk of the superior court, and Gravano complied.

¹ The *Underboss* royalties had been withheld from Gravano pending final judgment in a case brought against him, Maas, the publisher, and others by the New York State Crime Victims Board under New York's revised "Son of Sam" law. The trial court in New York ruled that proceeds from sales of the book were not forfeitable in favor of victims of Gravano's crimes because the law applied only to state court convictions - and Gravano was convicted in federal court. See *N.Y. State Crime Victims Bd. v. T.J.M. Prods., Inc.*, 265 A.D.2d 38, 705 N.Y.S.2d 320, 322 (2000). That ruling was affirmed on appeal. *Id.* at 326. We note that, in this case, the State is *not* proceeding under the authority of Arizona's version of the "Son of Sam" law, *A.R.S. § 13-4202* (Supp. 2001).

[***5] **P6** Gravano moved for dismissal of the portion of the complaint that sought forfeiture of the

Underboss earnings. He argued that seizure of the *Underboss* proceeds would violate the *First Amendment to the United States Constitution*, that the book royalties were not proceeds traceable to racketeering, that the civil forfeiture statutes could not be invoked to seize the royalties because no injured person had filed a request for compensation or to intervene, ² and that the State could not recover the book proceeds under a theory of "substitute assets" because to do so would violate his Sixth Amendment right to counsel in the criminal case against him.

² Before the trial court ruled on the motion for partial dismissal, seven victims of Gravano's New York crimes moved to intervene in this forfeiture action.

P7 The trial court denied the motion. The court found that the *Underboss* proceeds were traceable to racketeering because "the proceeds would not exist were it not for Mr. [***6] Gravano's criminal activities in New York" and because those activities would also violate Arizona's racketeering laws. The court further noted that the forfeiture statutes allowed the State to seize any property that constituted the proceeds of racketeering and, thus, the statutes were not directed solely at published works. The forfeiture statutes, said the court, "provide for full due process before the deprivation of property" and "are content neutral and narrowly drawn." The court concluded that, to the extent application of the forfeiture statutes impact the First Amendment, the laws are justified by compelling state interests and no less restrictive alternative is available. The court also ruled that Gravano's Sixth Amendment rights did not prevail over the forfeiture action and that qualified individuals had timely intervened and asserted a claim to the funds. Finally, in light of its rulings, the court found it unnecessary to address the [**250] [*110] issue whether the book proceeds could serve as "substitute assets."

P8 The State then moved for partial summary judgment regarding the proceeds of *Underboss*. The State argued that the nexus between Gravano's racketeering and [***7] income from the book contract had been established by the court's ruling and that the resulting remedies were mandated by the forfeiture statutes. The State also requested an order forfeiting the book royalties on deposit with the court to the State, subject to the property interests of the interveners. Gravano objected to the motion and alleged that material issues of fact existed that should preclude summary judgment, but did not file a separate statement of facts or otherwise submit admissible evidence controverting the facts asserted by the State.

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P9 The trial court granted the State's motion for partial summary judgment. The court ordered that the royalties be forfeited to the State, and the court directed the State to attempt to locate and identify persons injured by Gravano's racketeering activities in New York. Gravano timely appealed from the judgment. We have jurisdiction to decide this appeal pursuant to A.R.S. § 12-120.21(A)(1) (1992).

ISSUES

P10 Gravano presents the following issues on appeal:

I. Does forfeiture of the *Underboss* royalties violate the *First Amendment to the United States Constitution* and *Article 2, Section 6, of the Arizona Constitution*? [***8]

II. Are the *Underboss* royalties "proceeds traceable to" racketeering as defined in A.R.S. § 13-2314 (2001)?

III. Does the State have jurisdiction to seize the *Underboss* royalties?

DISCUSSION

I. The First Amendment

P11 Gravano contends that application of the civil forfeiture statutes to the proceeds of *Underboss* violates the First Amendment and the comparable provision in the Arizona Constitution - Article 2, Section 6. Whether a statute is constitutional as applied is a question of law that we review *de novo*. *State v. Evenson*, 201 Ariz. 209, 212, P 12, 33 P.3d 780, 783 (App. 2001)(review granted in part Apr. 25, 2002); *In re United States Currency in the Amount of \$ 315,900.00*, 183 Ariz. 208, 211, 902 P.2d 351, 354 (App. 1995). Legislative enactments are presumed to be constitutional; the party challenging the validity of a statute has the burden of overcoming that strong presumption. *State v. Tocco*, 156 Ariz. 116, 119, 750 P.2d 874, 877 (1988).

P12 *Arizona Revised Statutes § 13-2314(A)* provides,

The attorney [***9] general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering . . . for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering . . .

Following a determination of liability, the superior court can order various remedies, including "payment to the general fund of the state or county as appropriate of an amount equal to the gain that was acquired or maintained

through an offense included in the definition of racketeering." A.R.S. § 13-2314(D)(7). The Arizona attorney general may also bring an *in rem* action for forfeiture of "any property or interest in property acquired or maintained by a person in violation of § 13-2312" ³ and "all proceeds traceable to an offense included in the definition of racketeering in § 13-2301, subsection D, paragraph 4 and all monies, negotiable instruments, securities and other property used or intended to be used in any manner or part to facilitate the commission of the offense." A.R.S. § 13-2314(G)(1),(3). [***10]

3 *Arizona Revised Statutes § 13-2312* (2001) concerns the illegal control and conducting of an enterprise through racketeering or its proceeds.

P13 Under this statutory scheme, "racketeering" is defined as [**251] [*111] any act, including any preparatory or completed offense, that is committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state and that would be punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving [a list of crimes including, among others, homicide, robbery, theft, bribery, gambling, extortion, and participating in a criminal syndicate].

A.R.S. § 13-2301(D)(4) (2001) (current version in Supp. 2002, *as amended* by 2002 Ariz. Sess. Laws, ch. 219, § 9). For [***11] the purposes of A.R.S. § 13-2314, the word "proceeds" is defined as "any interest in property of any kind acquired through or caused by an act or omission, or derived from the act or omission, directly or indirectly, and any fruits of this interest, in whatever form." A.R.S. § 13-2314(N)(3).

P14 Gravano argues that application of these forfeiture statutes to seize his royalties from *Underboss* violates the guarantee of freedom of speech contained in the United States and Arizona constitutions because (A) the forfeiture statutes as applied to the royalties are not content-neutral, (B) the State lacks a necessary "compelling state interest" to justify the impingement on Gravano's First Amendment rights, and (C) even if the State has a compelling interest, the forfeiture laws are not narrowly tailored to achieve that interest. We address these arguments in turn.

A. The Forfeiture Statutes are Content-Neutral.

P15 The threshold question is whether the laws that call for forfeiture of book royalties are content-based,

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because "statutory limitations on free speech are subject to varying levels of scrutiny, [***12] depending on whether the limitation is content-based or content-neutral." *Evenson*, 201 Ariz. at 212, P 13, 33 P.3d at 783. Gravano argues that the forfeiture of his book royalties imposes a financial burden on him solely because of the content of *Underboss*. He maintains that the State's attempt to seize the royalties is motivated by its disapproval of the content of the book, which depicts Gravano's life in organized crime. Gravano relies on *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board*, 502 U.S. 105, 116 L. Ed. 2d 476, 112 S. Ct. 501 (1991), to support his arguments.

P16 In *Simon & Schuster*, the United States Supreme Court examined the constitutionality of New York's "Son of Sam" law.⁴ *Id.* at 108. The law targeted any entity that contracted with an accused or convicted person to produce a depiction of the crime the person had committed or the person's thoughts, feelings, opinions, or emotions regarding the crime by way of several identified works, including a movie, book, magazine article, or radio or television presentation. The law required that the entity submit a copy of the contract [***13] to the New York State Crime Victims Board ("the Board") and turn over any income under that contract to the Board. *Id.* The Board was then required to deposit the funds in an escrow account, from which victims of the accused or convicted person could recover after obtaining a money judgment for damages against that person in a civil action. *Id.* The law defined the term "person convicted of a crime" as including "any person convicted of a crime in this state either by entry of a plea of guilty or by conviction after trial and any person who has voluntarily and intelligently admitted the commission of a crime for which such person is not prosecuted." *Id.* at 110.

4 The "Son of Sam" term for the law came from the name by which David Berkowitz, a serial killer in New York in 1977, was known. *Simon & Schuster*, 502 U.S. at 108. Acting to prevent Berkowitz from profiting from his notoriety while his victims and their families were left uncompensated, the New York legislature enacted the statute that was commonly called the "Son of Sam" law. *Id.*

[***14] **P17** The publisher in *Simon & Schuster* contracted to finance and publish a book in which Henry Hill told the story of his organized crime career. *Id.* at 112-13. After the Board learned of the publication [**252] [*112] of the book, it determined that all monies paid or owed to Hill under the contract were subject to the provisions of the "Son of Sam" law. *Id.* at

114-15. The publisher sued the Board, seeking a declaration that the law violated the First Amendment. *Id.* at 115.

P18 The *Simon & Schuster* Court noted at the outset that "[a] statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech." *Id.* (citing *Leathers v. Medlock*, 499 U.S. 439, 447, 113 L. Ed. 2d 494, 111 S. Ct. 1438 (1991)). The Supreme Court further noted that "regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Simon & Schuster*, 502 U.S. at 116 (quoting *Regan v. Time, Inc.*, 468 U.S. 641, 648-49, 82 L. Ed. 2d 487, 104 S. Ct. 3262 (1984)). The Court determined [***15] that the "Son of Sam" law was a content-based statute because it "singled out income derived from expressive activity for a burden the State placed on no other income, and it was directed only at works with a specified content." *Id.* See also *Keenan v. Superior Court*, 27 Cal. 4th 413, 40 P.3d 718, 729, 117 Cal. Rptr. 2d 1 (Cal. 2002) (concluding that California's "Son of Sam" law establishes a financial disincentive to create or publish works with a particular content and thus is a content-based regulation of speech).

P19 "The principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 105 L. Ed. 2d 661, 109 S. Ct. 2746 (1989). If a regulation serves purposes unrelated to the content of the expression, it is neutral, even if it incidentally affects some speakers or messages but not others. *Id.* "Government regulation of expressive activity is content neutral so long as it is 'justified without reference to the content of the regulated speech.'" *Id.* (emphasis added to original omitted) (quoting [***16] *Cnty. for Creative Non-Violence*, 468 U.S. 288, 293, 82 L. Ed. 2d 221, 104 S. Ct. 3065 (1984)). The Supreme Court has cautioned, however, that "even a regulation neutral on its face may be content based if its manifest purpose is to regulate speech because of the message it conveys." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 645, 129 L. Ed. 2d 497, 114 S. Ct. 2445 (1994).

P20 The State argues that we need not examine whether the forfeiture statutes are content-based because the First Amendment does not apply to those statutes. In support, it cites *Alexander v. United States*, 509 U.S. 544, 551, 125 L. Ed. 2d 441, 113 S. Ct. 2766 (1993), in which the United States Supreme Court observed that, in the case before it, assets were forfeited under RICO not because

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they were believed to be obscene but because they were related to Alexander's past racketeering violations. "The RICO forfeiture statute," explained the Court, "calls for the forfeiture of assets because of the financial role they play in the operation of the racketeering enterprise. The statute is oblivious to the expressive or nonexpressive nature of the assets [***17] forfeited; books, sports cars, narcotics, and cash are all forfeitable alike under RICO." *Id.*

P21 We disagree with the State that *Alexander* precludes further analysis. Even if the forfeiture statutes at issue can be said to be oblivious to the expressive nature of the royalties, seizure of the royalties nonetheless burdens Gravano's First Amendment rights. The work from which the royalties arise is expressive in nature and, even if the forfeiture laws are content-neutral, the financial disincentive the laws may have on creating or publishing works that present a picture of a life of crime "may effectively drive certain ideas or viewpoints from the marketplace." *Simon & Schuster, 502 U.S. at 116*. Therefore, Arizona's forfeiture statutes, as applied here, implicate First Amendment concerns. Consequently, we must examine the statutes to determine whether they are content-based or content-neutral.

P22 "As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based." *Turner, 512 U.S. at 643*. "By contrast, laws that confer benefits [***18] or impose burdens on speech without reference to the [**253] [*113] ideas or views expressed are in most instances content neutral." *Id.* The State argues that Arizona's racketeering forfeiture statutes are not based on the ideas or views expressed in a work, on the work's subject matter or medium of expression, or even on whether any type of expression is involved.

P23 Whether a statute's burden on expression is content-based turns on its primary purposes rather than its incidental effects; "statutes are content neutral where they are intended to serve purposes unrelated to the content of the regulated speech, despite their incidental effects on some speakers but not others." *Simon & Schuster, 502 U.S. at 122 n.**. "Content," in the constitutional sense, refers to the particular ideas or viewpoints that are expressed. *Ariz. Dep't of Revenue v. Great W. Publ'g, Inc., 197 Ariz. 72, 78, P 23, 3 P.3d 992, 998 (App. 1999)*.

P24 Arizona's forfeiture statutes contain no reference to the content of speech or expressive materials. As the State suggests, the purposes of these statutes apparently include removing the economic incentive to engage in

racketeering, [***19] reducing the financial ability of racketeers to continue to engage in crime, preventing unfair business competition by persons with access to crime proceeds, compensating victims of racketeering, and reimbursing the State for the costs of prosecution. These purposes are speech- and content-neutral, and any effect on speech is incidental.

P25 Furthermore, the forfeiture statutes as applied here are content-neutral. The forfeiture laws come into play based on the existence of a causal connection between racketeering and property. As the State asserts, when forfeiture of book proceeds is sought, the causal connection between racketeering conduct and the proceeds is present if the commercial value of the book contract is substantially the result of racketeering. In other words, a causal connection exists if the storyteller's notoriety from racketeering is what makes the story marketable. In contrast, a causal connection to racketeering may be absent even if a work includes a description of crimes, if the crimes do not fall within the definition of racketeering or do not enhance the story's or the storyteller's commercial value.⁵ Thus, whether proceeds of an expressive work [***20] are forfeitable under the statutory scheme does not depend on the content of the work, and the *Underboss* royalties owed to Gravano may be subject to forfeiture regardless of the message conveyed in the book if a causal connection between racketeering and the proceeds exists. Accordingly, the forfeiture statutes as applied here are content-neutral.

5 In this case, counsel for Gravano conceded at oral argument that the commercial value of *Underboss* was enhanced by Gravano's criminal history and notoriety.

B. Although Not Required, Compelling State Interests
are Served by the Forfeiture Statutes.

P26 The most exacting scrutiny is applied to regulations that suppress, disadvantage, or impose different burdens on speech because of its content. *Turner, 512 U.S. at 642*. Under this heightened standard, "in order to justify such differential treatment, 'the State must show that its regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve [***21] that end.'" *Simon & Schuster, 502 U.S. at 118* (quoting *Ark. Writers' Project, Inc. v. Ragland, 481 U.S. 221, 231, 95 L. Ed. 2d 209, 107 S. Ct. 1722 (1987)*). On the other hand, content-neutral regulations are subject to an intermediate level of scrutiny because, in general, "they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue." *Turner, 512 U.S.*

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at 642. Thus, statutes that place only an incidental burden on free speech do not violate the First Amendment "if they further 'an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.'" *Ariz. Libertarian Party v. Schmeral*, 200 Ariz. 486, 490-91 n.3, P 13, 28 P.3d 948, 952-53 n.3 (App. 2001) (quoting [**254] [*114] *Martin v. Reinstein*, 195 Ariz. 293, 320-21, 987 P.2d 779, P 98, 987 P.2d 779, 806-07 (App. 1999) ⁶).

6 *Martin* cited *United States v. Albertini*, 472 U.S. 675, 687-88, 86 L. Ed. 2d 536, 105 S. Ct. 2897 (1985), which quoted *United States v. O'Brien*, 391 U.S. 367, 377, 20 L. Ed. 2d 672, 88 S. Ct. 1673 (1968).

[***22]

P27 Although in this case the State need only show an important or substantial governmental interest in the forfeiture statutes, the State argues that it can show compelling interests. In *Simon & Schuster*, the Supreme Court noted (and at oral argument, counsel for Gravano conceded) that "there can be little doubt . . . that the State has a compelling interest in ensuring that victims of crime are compensated by those who harm them." 502 U.S. at 118. In addition, said the Court, states have "an undisputed compelling interest in ensuring that criminals do not profit from their crimes." *Id.* at 119. The Court recognized the equitable principle that "no one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime." *Id.* (quoting *Riggs v. Palmer*, 115 N.Y. 506, 22 N.E. 188, 190, 23 Abb. N. Cas. 452 (N.Y. 1889)). The Supreme Court also noted that "the force of this interest is evidenced by the State's statutory provisions for the forfeiture of the proceeds and instrumentalities of crime." *Id.*

P28 Gravano argues, however, [***23] that the State of Arizona lacks compelling interests in his case because the royalties come from a book based on activities and crimes perpetrated and prosecuted in New York, and the victims do not live in Arizona. The State responds that the location of the crime or the victims does not lessen the State's interest in the proceeds of the offense, in part because organized crime is a national problem that can be controlled most effectively if states are able to enforce their own laws to benefit a nationwide effort.

P29 In *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 597, 667 P.2d 1304, 1312 (1983), the Arizona Supreme Court rejected the argument that the Arizona attorney general was without authority to redress racketeering wrongs committed against non-residents of Arizona. Our supreme court noted that nothing in A.R.S. § 13- 2314(A) restricted the State to protecting only residents of Arizona. *Id.* We acknowledge that, in *Pickrell*, the injuries suffered by the out-of-state residents resulted from wrongs committed, at least in part, by Arizona enterprises. *See Id.* Nevertheless, our supreme court's statement, that the fact that Arizona "is [***24] willing to provide aid in redressing these wrongs [on behalf of out-of-state residents] is evidence that the state is serious in its fight to eradicate organized crime," *Id.*, lends support to the position that Arizona has a compelling interest in assisting out-of-state racketeering victims when the person who victimized them has become an Arizona resident.

P30 Furthermore, the State has a compelling interest in reducing the economic power of criminals and criminal enterprises that come into Arizona, regardless of where their racketeering proceeds originated. The effectiveness of forfeiture laws in addressing racketeering crimes would be greatly diminished if all that a person had to do to escape forfeiture would be to take such proceeds from the state in which the crime was committed to another state. Likewise, a victim of a racketeering crime has little remedy if the racketeer can avoid forfeiture by moving himself or herself, or the property, across the state line. In fact, Arizona's definition of racketeering includes acts that are committed in other states that would be chargeable or indictable under Arizona law, thus indicating that the legislature intended Arizona's [***25] remedial statutes to reach beyond crimes committed only in Arizona. *See A.R.S. § 13-2301(D)(4)*. We therefore conclude that Arizona has a compelling interest in ensuring that victims of crime are compensated and in ensuring that criminals do not profit from their crimes when the criminal has relocated to Arizona, even if the victims do not reside in Arizona and the crimes were committed elsewhere.

C. The Forfeiture Laws are Narrowly Tailored.

P31 We next consider whether the forfeiture laws' incidental restriction on freedom of [**255] [*115] speech is no greater than is essential to the furtherance of the State's compelling interests. *See Schmeral*, 200 Ariz. at 490-91 n.3, P 13, 28 P.3d at 952-53 n.3. In *Simon & Schuster*, the United States Supreme Court addressed a similar question under the "narrowly tailored" standard and concluded that New York's "Son of Sam" law was "significantly overinclusive" because it applied to works

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on any subject that expressed the author's thoughts or recollections about his crime, even tangentially or incidentally, and its broad definition of the phrase "person convicted of a crime" caused the escrow [***26] of income of any author who admitted in his work to having committed a crime, even if he or she had never been accused or convicted of the crime. 502 U.S. at 121. The State argues that these concerns do not apply to Arizona's forfeiture laws. We agree.

P32 Arizona's forfeiture statutes apply only to the proceeds of racketeering. Therefore, the statutes affect only speech that constitutes the proceeds of racketeering - in furtherance of the State's compelling interests. Forfeiture should not occur if the expressive material mentions a crime only tangentially or incidentally; Arizona's law is based on a causal connection with racketeering, not just a mention of it in an expressive work. The *Simon & Schuster* Court criticized the "Son of Sam" law because, under the law, "should a prominent figure write his autobiography at the end of his career, and include in an early chapter a brief recollection of having stolen (in New York) a nearly worthless item as a youthful prank, the Board would control his entire income from the book for five years, and would make that income available to all of the author's creditors." 502 U.S. at 123. That is not the [***27] factual scenario we face here, and this outcome, in all likelihood, would not be possible under Arizona's forfeiture laws. Additionally, the Supreme Court's concern that the "Son of Sam" law would encompass works by persons who committed crimes of civil disobedience and crimes related to campaigns for civil rights, *id.* at 121-22, does not apply to the forfeiture laws because forfeiture is available only when a racketeering crime is involved and the expressive work has a causal connection with racketeering. As the State notes, a mere crime of conscience would not trigger a racketeering remedy.

P33 Furthermore, the forfeiture laws afford full due process before depriving a person of his or her property. In *Opinion of the Justices to the Senate*, 436 Mass. 1201, 764 N.E.2d 343, 351-52 (Mass. 2002), the Massachusetts Supreme Court found that a proposed "Son of Sam"-type law violated the First Amendment, in part because the seizure of the proceeds of written work was determined by a non-judicial body in a decision that was final unless the contracting party sought judicial review. The contracting party then had the burden of demonstrating error [***28] under a standard that gave deference to the agency's decision. *Id.* at 352. In contrast, Arizona's forfeiture laws require the State to file an action in court and to prove the underlying racketeering and the connection between the racketeering and the property

subject to forfeiture. The burden of proof is on the State, and civil procedural rules are applied. Therefore, the due process concerns expressed by the Massachusetts Supreme Court are not present in Arizona's forfeiture statutes.

P34 In sum, the application of Arizona's forfeiture laws is limited to preventing racketeers from benefitting from their crimes, and to compensating victims for their losses and the State for costs incurred in the prosecution of racketeers. We conclude that Arizona's forfeiture statutes not only survive intermediate scrutiny, but also are narrowly tailored to further the compelling interests of the State, and therefore satisfy a strict statutory standard as well. We therefore hold that Arizona's forfeiture statutes, as applied to Gravano's royalties from *Underboss*, do not violate either federal or state freedom of speech provisions.⁷

7 The Arizona Constitution provides greater speech rights than the United States Constitution. *Mountain States Tel. & Tel. Co. v. Ariz. Corp. Comm'n*, 160 Ariz. 350, 354, 773 P.2d 455, 459 (1989). However, that greater protection "lies in the Arizona Constitution's extension of free speech rights to cover not only speech limitations imposed by the government, but also speech limitations emanating from other sources." *Evenson*, 201 Ariz. 209, 218 n.15, P 33, 33 P.3d 780, 789 n.15. Accordingly, we believe our analysis of the forfeiture laws under federal constitutional principles is equally applicable to and adequately supports the constitutionality of these statutes under *Article 2, Section 6, of the Arizona Constitution*.

[***29] [**256] [*116] *II. The Proceeds of Racketeering*

P35 Gravano argues that the *Underboss* proceeds are not subject to the forfeiture provisions of A.R.S. § 13-2314(G)(1) and (3), because the contract royalties are the product of his lawful labor in working with the author of the book and the connection between the royalties and the commission of racketeering acts is incidental or fortuitous. We review *de novo* the trial court's interpretations of A.R.S. § 13-2301, the statute defining "racketeering," and A.R.S. § 13-2314(G), the racketeering forfeiture statute. *In re 1996 Nissan Sentra Vin: 1N4AB41D1TC74220 Az Lic: 162ARH*, 201 Ariz. 114, 117, P 8, 32 P.3d 39, 42 (App. 2001).

P36 The State's motion for partial summary judgment was based primarily on A.R.S. § 13-2314(G), which provides for the forfeiture of any property or interest in

property acquired or maintained by a person in violation of racketeering enterprise laws, and the forfeiture of all proceeds traceable to an offense included in the definition of racketeering. *See A.R.S. § 13-2314(G)(1)* [***30] , (3). The State identifies the property in question as the contract rights received by Gravano under his agreement to collaborate in the publication of *Underboss*. The racketeering conduct relevant to the forfeiture complaint includes the acts of murder and extortion that Gravano admitted as part of his 1991 plea agreement.

P37 Although the State argues that both paragraphs (1) and (3) of subsection (G) provide for forfeiture of the *Underboss* royalties, we conclude that it is paragraph (3) that supports the trial court's order of forfeiture. This provision concerns "all proceeds traceable" to a racketeering offense. As we noted earlier, the word "proceeds" is broadly defined as including "any interest in property of any kind acquired through or caused by an act or omission, or derived from the act or omission, directly or indirectly, and any fruits of this interest, in whatever form." *A.R.S. § 13-2314(N)(3)*. Gravano's rights under his contract qualify as "property" under *A.R.S. § 13-105(32)* (2001), which defines the word "property" as "anything of value, tangible or intangible."

P38 Under these statutory [***31] definitions, the royalties are proceeds of racketeering because they were "caused by" or, in other words, resulted from Gravano's racketeering acts, at least indirectly. The phrase "caused by" involves a causal relationship between conduct and result, which *A.R.S. § 13-203(A)* (2001) explains as follows:

A. Conduct is the cause of a result when both of the following exist:

1. But for the conduct the result in question would not have occurred.
2. The relationship between the conduct and result satisfies any additional causal requirements imposed by the statute defining the offense.

Because *A.R.S. § 13-2314* does not contain any additional causal requirements relevant here, causation of the proceeds is determined by the "but for" test of *§ 13-203(A)(1)*.

P39 We agree with the State that Gravano would not have acquired the contract rights and resulting royalties "but for" his racketeering activities. At oral argument, counsel for Gravano conceded that there was a "substantial connection" between Gravano's criminal activities in New York and the resulting notoriety, and the book contract offered by the publisher, [***32]

Harper-Collins (UK), Inc. Without question, it was Gravano's notoriety from that conduct that made his story marketable and of commercial value. Although arguably the causation here is indirect, the definition of "proceeds" allows for such indirect causation. Therefore, a causal connection exists between Gravano's racketeering activities, the book contract, and the fruits of that contract.

P40 Also, the fact that Gravano contributed effort that was not directly unlawful to the book does not take the royalties out of the reach of the forfeiture statutes. A similar argument was made in *United States v. DeFries*, 327 U.S. App. D.C. 181, 129 F.3d 1293, 1312-13 (D.C. Cir. 1997), [**257] [*117] in which union officials who gained office through ballot tampering argued that their salaries should not be forfeited under RICO forfeiture provisions, because the government had failed to establish an adequate causal link between the ballot tampering and the electoral wins that afforded them their salaries. The circuit court noted that the district court's findings could sustain the necessary causal inference and concluded that the officials could not contest that "but for" the elections [***33] tainted by racketeering activity, they would not have received their salaries. *Id. at 1313*.

P41 Similarly, even if Gravano earned his book royalties by his effort in the same manner that the union officials earned their salaries by their work, "but for" Gravano's racketeering activities, he would not have been in the position to enter into the contract that called for him to expend the effort to earn the royalties. What Gravano proposes amounts to an exclusive cause test that would prevent forfeiture if any legal act contributes to proceeds that also have a racketeering cause. Such a test would largely negate the effect of forfeiture provisions in situations in which racketeering proceeds are funneled into and used by a lawful business or in which, for example, a company involved in a legal business is also engaged in extortion. An exclusive cause test is not supported by our statutes and, therefore, Gravano's efforts do not break the causal connection necessary for the proceeds of the book to be forfeitable.

III. Jurisdiction Over the Property

P42 Gravano also asserts that the State lacks jurisdiction over the *Underboss* royalties. He maintains that [***34] this is so because Arizona has no connection with his crimes, the victims and their families, or the publication of the book.

P43 In the State's statement of facts supporting its motion for partial summary judgment, the State declared,

204 Ariz. 106, *; 60 P.3d 246, **;
2002 Ariz. App. LEXIS 199, ***; 389 Ariz. Adv. Rep. 15

The Superior Court in and for Maricopa county has jurisdiction to enter appropriate orders both prior to and following a determination of liability pursuant to A.R.S. § 13-2314, including forfeiture orders pursuant to A.R.S. §§ 13-2314 and 13-4301, *et. seq.*, particularly 13-4302.

Gravano did not directly controvert this statement in the trial court.

P44 Under the heading of "Jurisdiction," A.R.S. § 13-4302 (2001) provides,

The state may commence a proceeding in the superior court if the property for which forfeiture is sought is within this state at the time of the filing of the action or if the courts of this state have in personam jurisdiction of an owner of or interest holder in the property.

Because Gravano was a resident of Arizona at the time the forfeiture proceeding was filed, the courts of this state had *in personam* [***35] jurisdiction over him.

P45 Additionally, an Arizona trial court generally has *in rem* jurisdiction over property that is located in Arizona. See *In re Approx. \$ 50,000.00 in United States Currency*, 196 Ariz. 626, 629, P 7, 2 P.3d 1271, 1274 (App. 2000). The proceeds are in Arizona and came here

only after Gravano requested direction from the court and represented that he would follow such direction. Furthermore, because the property at issue consists of, and has its genesis in, Gravano's rights under the book contract, which are intangible property, such property was located in Arizona because Gravano was a resident here. See *Kelly v. Bastedo*, 70 Ariz. 371, 377, 220 P.2d 1069, 1073 (1950) (concluding that the site of intangibles is with the owner). Therefore, the courts of Arizona have jurisdiction over this forfeiture proceeding.

CONCLUSION

P46 Arizona's forfeiture statutes as applied to Gravano's book royalties do not violate the free speech guarantees of the United States and Arizona constitutions. Furthermore, the proceeds of the book contract are subject to forfeiture because they are casually connected to Gravano's [***36] racketeering crimes. The judgment of the trial court is affirmed.

LAWRENCE F. WINTHROP, Judge

[**258] [*118] CONCURRING:

PHILIP HALL, Presiding Judge

EDWARD C. VOSS, Judge



**Arizona Attorney General
Mark Brnovich**

AG's Office Will Distribute Nearly \$2 Million in Recovered Funds to Victims of Bankcard Empire Boiler Room Telephone Fraud Operation

PHOENIX May 29, 2019

Attorney General Mark Brnovich announced almost \$2 million has been recovered for victims of a 10-year-old Phoenix-based boiler room telephone fraud operation through civil forfeiture and liquidation of seized property. The Attorney General's Financial Remedies Section (FRS) and the U.S. Postal Inspector conducted the investigation.

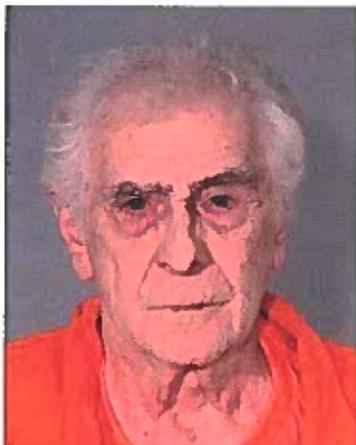
In 2009, according to detectives, a network of individuals made initial unsolicited calls designed to "hook" victims with "get-rich-quick" business opportunities. The umbrella organization, "Bankcard Empire," comprised of numerous associated LLCs, etc., sent follow-up packages to the victims via certified mail and received in return the signatures of the victims. They then used the signatures to forge credit card forms and place charges against the victims for services. Investigators identified Leslie Mersky as the principal of Bankcard Empire.

FRS secured a court-issued seizure warrant and seized cash, bank accounts, twelve vehicles, fourteen parcels of real property, and miscellaneous personal property pursuant to the warrant. FRS recovered more than \$1,800,000 through the forfeiture and liquidation of the seized property. Advocates for the Office of Victim Services (OVS) worked with victims to determine how much their losses were.

A Victim Compensation Plan will soon be presented to the court for review and approval. Once approved, recovered funds will be dispersed in two phases to at least 1,894 victims. Any additional victims who come forward prior to the second phase will be added to the victim pool and receive compensation. More information will be released from the Attorney General's Office.

Under Arizona law, law enforcement can use civil forfeiture statutes to seize and forfeit property that's been used in criminal activity and compensate victims who suffered economic loss from the activity.

Leslie Mersky was sentenced to 2.5 years in prison in March 2018.





**Arizona Attorney General
Mark Brnovich**

AG Brnovich Recovers Funds for Vulnerable Adult of Dark Web Scam

TUCSON October 18, 2018

Through a civil forfeiture proceeding, the Attorney General's Office has recovered \$28,000 for a vulnerable adult who fell victim to a dark web phishing scam. The investigation was conducted by the Attorney General's Special Investigations Section (SIS) and Financial Remedies Section (FRS).

Investigators say scammers initially made contact with the 72-year-old victim via Facebook and then the communication moved into emails and text messaging. After trust was established, the scammers convinced the victim to send a series of payments totaling \$28,000 to remove her personal information from the dark web. A financial institution contacted SIS in August about the transactions and an investigation was launched. Using bank records and information from the victim's smartphone, SIS identified the bank account where the payments were sent and deposited. That account was opened by a man using his Ghana passport as identification. Because scammers often transfer stolen funds out of the country quickly, SIS and FRS secured the funds through a seizure warrant served on that bank account. FRS then initiated a forfeiture proceeding to divest the funds from the fraudster and return the funds to the victim. Within 59 days, FRS obtained a court judgment forfeiting the funds from the fraudster and returning the \$28,000 to the victim. Under Arizona law, law enforcement can use civil forfeiture statutes to seize and forfeit property that's been used in criminal activity and compensate victims who suffered economic loss from the activity.

"Civil forfeiture is an important strategic tool we can use to recover compensation for racketeering victims," said Attorney General Mark Brnovich. "In these situations, we can often get victims their money back quickly and well before any criminal case can be issued and restitution can be obtained."

Investigators are currently trying to track down the suspects who may reside in the United States.

FRS Attorney Tom Rankin handled the forfeiture proceeding.

The SIS investigating case agent is Special Agent Roger Nusbaum.

AFFIDAVIT
IN SUPPORT OF
SEIZURE WARRANT
COUNTY OF PIMA
STATE OF ARIZONA

FILED
TONI L. HELLON
CLERK, SUPERIOR COURT
2018 AUG 21 AM 10:22

SEIZURE WARRANT NO. 18SW1300 D. WANDELL, DEPUTY

Your Affiant, AZ AGO Special Agent Roger A. Nusbaum # [REDACTED] a certified peace officer in the State of Arizona since 1987, being duly sworn, upon his oath deposes and says:

1. This Affidavit is submitted in support of a Seizure Warrant ordering the seizure for forfeiture of the property listed in Appendix One hereto, *in rem* and *in personam* and as substitute assets, and in support of the Application for the Seizure Warrant. Your Affiant submits that probable cause exists that racketeering offenses in violation of the Arizona Racketeering Act (AZRAC), A.R.S. §§ 13-2301 to 13-2323, have been committed under the name CHARLES FORD, a Ghana National Citizen, by that person and/or other persons known and unknown acting as or in concert with him, hereinafter referred to collectively as the "SUBJECT(s)." This Affidavit and the accompanying Application and Seizure Warrant, seek the seizure for forfeiture of up to \$28,000.00 from the account(s) in the name of "Charles Ford" at US Bank N.A. in order to secure and recover funds paid by a vulnerable adult named [REDACTED] due to theft, fraud, and other racketeering crimes committed against her by the SUBJECT(s), as set forth in this Affidavit.

2. The property listed on Appendix One is subject to forfeiture, and therefore should be ordered seized for forfeiture, pursuant to A.R.S. §§ 2301(D)(4), 13-2314, 13-2314(G), and the Arizona Forfeiture Reform Act (AFRA), A.R.S. §§ 13-4301 to 13-4315, including 13-4304, 13-4305, 13-4309, 13-4310, 13-4311, 13-4312, and 13-4313, because this Affidavit establishes probable cause that the listed property is one or more of the following: (a)

property acquired or maintained through an illegal enterprise, (b) proceeds in whatever form traceable to a racketeering offense; (c) property used or intended to be used to commit or facilitate the commission of a racketeering offense; (d) property or money up to the value of monies described in (a), (b), and/or (c) above which would foreseeably be received through participation in an illegal enterprise, and/or from the commission of the racketeering offenses of Theft from a Vulnerable Adult, Fraudulent Schemes and Artifices, participating in or assisting a criminal syndicate, Money Laundering, and the attempt to commit or conspiracy to commit the preceding racketeering offenses.

- 3. Your Affiant submits that this Affidavit establishes probable cause that property of the SUBJECT(s) having a value of not less than \$28,000.00 is subject to seizure for forfeiture and forfeiture of the property *in personam*, *in rem*, and as substitute assets.
- 4. Based on the information detailed in this Affidavit, your Affiant submits that probable cause exists that the SUBJECT(s) violated Arizona Revised Statutes of theft from a vulnerable adult, fraudulent schemes, and money laundering for financial gain, by knowingly deceitful practices through a social media stolen Facebook account Instant Messaging, regular E-mails, SMS and MMS messages made directly to the victim in a Phishing Scheme to defraud her out of monies or to have her personal accounts compromised.
- 5. Your Affiant believes and submits that the property listed in Appendix One is subject to forfeiture because probable cause exists that the SUBJECT(s) have committed, are committing, and will continue to commit the following offenses within or from Arizona:
 - A. A.R.S. § 13-2310 (Fraudulent Schemes & Artifices);
 - B. A.R.S. § 13-1802 (Theft, from a Vulnerable Adult);
 - C. A.R.S. § 13-2317 (Money Laundering)
 - D. A.R.S. § 13-2308 (Participating in or Assisting in a Criminal Syndicate)

6. Fraudulent Schemes & Artifices, Theft from a Vulnerable Adult, Money Laundering, and Participating in or assisting a criminal syndicate, committed for financial gain, constitute racketeering under A.R.S. § 13-2301(D)(4). Thus, all property used to commit or facilitate the commission of those offenses, all instrumentalities of those offenses, and the proceeds traceable to those offenses in whatever form, are subject to seizure for forfeiture *in personam*, *in rem*, and as substitute assets for property subject to *in personam* or *in rem* liability that is unavailable or otherwise falls under the terms of A.R.S. § 13-4313. The property that is the subject of this Affidavit and the requested Seizure Warrant is property acquired, maintained, transacted, transferred received and concealed by the SUBJECT(s) through racketeering; it is the proceeds or gain from the racketeering committed by the SUBJECT(s); it represents an identifiable and traceable amount of money stolen and defrauded from the victim of the racketeering crimes by the SUBJECT(s); and it is therefore property subject seizure for forfeiture and forfeiture based on *in personam* and *in rem* forfeiture liability and as substitute property in applicable circumstances. This affidavit is submitted in support of said seizure, and details the facts and circumstances for the seizure, and ultimately the forfeiture, of the assets.
7. In addition, your Affiant submits that this Affidavit establishes probable cause that the violations described above have been committed in, to, and from Arizona by Arizona or Ghana national residents, referred to as the SUBJECT(S).

AFFIANT'S EXPERIENCE

8. Your Affiant, Roger A. Nusbaum [REDACTED], is a Special Agent for the Arizona Attorney General's Office, and has been since January 2011, and is presently assigned to the Southern Arizona White Collar and Criminal Enterprise Section, Task Force Against Senior Abuse

(TASA), 400 West Congress Street Suite #315, Tucson, Arizona. Your Affiant's expertise and continuing education with the Arizona Attorney General's Office includes criminal investigations and prosecutions involving Financial Exploitation, Abuse and Neglect of Vulnerable Adults. Your Affiant has received training in financial crimes, money laundering, identity theft, statement analysis, open source intelligence, securities fraud, mortgage fraud, and real estate fraud, undue influence and isolation of elderly and vulnerable adults. Your Affiant has participated in the execution of several seizure warrants previously with the Arizona Attorney General's Office to include real property, bank accounts, safe deposit boxes and money laundering "funnel bank accounts." I know that the AZRAC and AFRA statutes discussed above authorize the seizure for forfeiture and forfeiture of property that is the instrumentalities of, facilitates the commission of, and is the proceeds of racketeering crimes based on *in rem* liability. I also know that persons who commit racketeering offenses are subject to having their property seized and forfeited based on *in personam* liability. I also know that substitute assets can be seized and forfeited when property subject to *in personam* or *in rem* forfeiture liability is not available or due to other statutory circumstances.

9. From 2011 through 2013, your Affiant worked for the AZAGO Health Care Fraud and Abuse Section (HCFA) a federally funded by US Health and Human Services (USHHS) and Arizona Health Care Cost Containment System (AHCCS) working closely with the Office of Inspector General related to provider based fraud, abuse and neglect cases.
10. As a certified peace officer conducting large scale investigations related to organized crime, narcotics trafficking, investment fraud, health care fraud and financial exploitation of vulnerable adults has received training and guidance from Elder Law Attorneys, Pima County Attorney Prosecutors, AZAGO Prosecutors and Civil Financial Remedies Attorneys

along with other private industry professionals. Your Affiant has on hundreds of occasions performed in-depth analysis on financial documents and bank records. Your affiant has worked combined cases with the Arizona Department of Economic Security, Arizona Corporation Commission, Arizona Department of Revenue, US Veteran's Affairs-Office of Inspector General, US Department of Justice, Federal Bureau of Investigation, US Secret Service, US Department of Homeland Security, Immigration and Customs Border Protection and other governmental agencies.

11. From 2008 to 2011, your Affiant was a member, then Chairman of the Tucson Old Pueblo Credit Union Supervisory Committee. This committee managed the internal auditor supervised the internal audit function of the credit union, dealing with Arizona Department of Finance Audits and National Credit Union Administration oversight. As a member of the committee I received federal Bank Security Act (BSA) training and Anti-Money Laundering (AML) training.
12. From 1987 through 2011, your Affiant was a sworn police officer for the Tucson Police Department. As a patrol officer your Affiant's duties included the protection of life and property through the enforcement of state laws, respond to emergency incidents, as well as crimes in progress, and conducted felony and misdemeanor investigations. Your Affiant was responsible for conducting background investigations on police officer candidates, and field training new Tucson Police Officers. Later I was assigned to the Major Offenders Unit for the investigation of "in progress crimes" to include those involving financial institutions of robbery, fraud, money laundering and other related financial crimes.

13. From 1998 through 2001 I was assigned to the Metropolitan Area Narcotics Trafficking and Interdiction Squads (MANTIS) a multi-jurisdictional enforcement group of local, county, state and federal officers. I was cross designated as a US Customs Officer by the Department of Homeland Security. My direct duties were in the enforcement of narcotics, money transportation and seizure of financial assets related to racketeering offenses under the State of Arizona civil forfeiture statutes.
14. From 2007 through 2009 Your Affiant was assigned to the Tucson Police Office of Professional Standards, Internal Affairs conducting audits and financial investigations into City of Tucson employees, police civilian and sworn personnel resulting in civil and criminal prosecutions.
15. From 2009-2011 Your Affiant worked exclusively cases relating to Fraud, Taking the Identity of Another, Forgery, Money Laundering and related state and federal economic crimes. Your Affiant was assigned from the Tucson Police Department to the Arizona Attorney General's Task Force Against Senior Abuse, a multi-jurisdictional task force housed at the AZAGO-Tucson Office. All cases were prosecuted by the AZAGO.
16. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other investigating officers and witnesses. This affidavit is intended to show that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

BACKGROUND INFORMATION

17. On June 25, 2018, a Pima Federal Credit Union (PFCU) Enterprise Risk Manager/Fraud Investigator reported to Arizona Attorney General's Office (AZAGO) Michele Shaw of the Tucson Office and US Department of Homeland Security (USDHS) - Immigration and

Customs Enforcement (ICE) Special Agent Andrew Jamal, and others attending the intelligence briefing held at the Tucson Better Business Bureau (BBB), information relating to a PFCU customer possibly being defrauded in a dating Phishing Scheme and sending her monies to suspicious subjects. Your Affiant reviewed preliminary documents sent by Pima Federal Credit Union relating to multiple transactions outlined as exploitation. AZAGO initiated a criminal investigation conducting background using police and public records into the alleged victim and suspect(s).

ARIZONA ADULT PROTECTIVE SERVICES

18. Pima Federal Credit Union (PFCU) reported on-line to Arizona Adult Protective Services (AZAPS) similar circumstances and provided information indicating that a suspected vulnerable adult named [REDACTED], an account holder, had been victimized in part due to suspicious transactions such as wire transfers, cashier's checks and personal checks being sent via US Mail and FedEx. The deposit and wire transfer transactions were being sent to National Banks such as US Bank N.A. and JP Morgan Chase Bank. Some of the transactions and amounts transacted appeared to be designed to avoid and evade federally mandated reporting requirements by financial institutions, such as Cash Transaction Records (CTR's), and to attempt to avoid the creation of Suspicious Activity Reports (SAR's) that are filed to FinCEN by the bankers. AZAPS declined to assign the case indicating it did not meet their guidelines for assignment to an investigator. Since the involvement of the AZAGO criminal division, AZAPS has opened an investigation to support the victim's ongoing and upcoming needs.

MENTAL CAPACITY OF [REDACTED]

19. On July 24, 2018, your Affiant escorted Arizona Adult Protective Services (AZAPS) contract psychologist Dr. Sloan King to the residence at [REDACTED], Arizona. This is the residence of [REDACTED] where [REDACTED] was now residing after liquidating her home in Phoenix, Arizona. Dr. King conducted a private psychological evaluation of Ms. [REDACTED]. The report was sent to [REDACTED], the son of Ms. [REDACTED] who was petitioning the court to appoint a guardian and conservator for his mother for her financial and executive functions. As a result of the psychological evaluation by Dr. King, Ms. [REDACTED] was determined to have a cognitive dysfunction and the recommendation was she needed someone to manage her financial and executive functions. A hearing was held in Pima County Superior Court, Probate Division, on August 8, 2018, in front of the Honorable Kenneth Lee. Ms. [REDACTED] was deemed incapacitated and assigned a private attorney guardian and licensed private conservator to inventory and manage her finances, ceasing her depletion of long held resources.

SOURCES OF INCOME FOR [REDACTED]

20. At the time of the Pima County Probate Conservator hearing Ms. [REDACTED]'s estate was limited to four \$25,000.00 certificates of deposit at Pima Federal Credit Union totaling \$100,000.00 and monthly deposits of re-occurring US Social Security deposits with a small US Postal pension from a deceased husband, jointly totaling less than \$2,000.00 into the Pima Federal Credit Union account. Previously, Ms. [REDACTED] had paid \$28,000.00 to a SUBJECT, Charles Ford, based on the racketeering conduct of Charles Ford described in this Affidavit. The manner of those payments is set forth below. Additionally, Ms. [REDACTED] had paid the amount of \$9,200.00 via a personal check in that amount to another

SUBJECT, Donald Huegel, based on racketeering conduct, by mailing it to him in West Sacramento, California. That \$9,200.00 had been recovered for Ms. [REDACTED] and re-deposited through US Bank recovery efforts on July 24, 2018.

[REDACTED] INTERVIEW

21. On July 3, 2018, Arizona Attorney General's Office (AZAGO) Special Agent Sussen and your Affiant went to make contact with [REDACTED] at the [REDACTED] [REDACTED] Arizona, residence, to interview her about funds she was transferring to people pursuant to fraud schemes. Upon arrival with a uniformed Deputy Judd from the Pima County Sheriff's Office, we knocked on the door. Ms. [REDACTED] at first was reluctant to give us much information other than she was paying for her personal information to be removed from the "Dark Web" by parties she was communicating with via her iPhone. As the conversation progressed she allowed Special Agent Sussen to manipulate and photograph screen shots on her iPhone validating she was communicating with someone she believed was "Chad Callahan," a potential Phishing stolen profile account via Facebook Instant Messenger. She admitted knowing she was being defrauded out of her monies by foreign nationals and agreed to stop sending monies to them.

SUSPICIOUS MONIES SENT FROM PIMA FEDERAL CREDIT UNION (PFCU) ACCOUNT(S) OF [REDACTED] TO CHARLES FORD

22. The manner of the payments in the amount of \$28,000.00 made by Ms. [REDACTED] to Charles Ford from her PFCU account is set forth below:

23. May 14, 2018	Cashier's Check #873318	\$10,000.00	Charles Ford
24. May 21, 2018	Cashier's Check #874066	\$10,000.00	Charles Ford
25. June 25, 2018	Cashier's Check #879000	\$4,000.00	Charles Ford
26. July 6, 2018	Personal Check #103	\$4,000.00	Charles Ford

27. AZAGO communications and research with Pima Federal Credit Union (PFCU) Dawn Blackmon revealed, from her inspection on the reverse side of the negotiated checks paid by Ms. [REDACTED] to Charles Ford, bank processing stamps identifying these checks were negotiated at US BANK N.A.

**APPLE iPhone FORENSIC EXTRACTION OF
[REDACTED]'S CELLULAR PHONE**

28. On July 25, 2018 AZAGO Special Agent Supervisor Kevin Spencer, who is certified in the CELLEBRITE forensic extraction methods of iPhones, conducted a voluntary download of the victim [REDACTED]'s cellular phone obtained by consent on July 24, 2018. Below are excerpts from the forensic download of SMS and MMS messages relating to "Charles Ford" or references to Charles Ford and financial transactions with [REDACTED]. Your Affiant reviewed a large number of the communications with Chad Callahan and others yet to be fully identified communicating with the victim about removing her personal information from the "Dark Web" from April 10, 2018 through July 24, 2018. This is a fraud scheme in which persons gain the trust of their target victims through various methods, convince the target victims of the danger of exposure of their personal, biographical and financial information to criminals who will use it to steal their assets, convince them that their information may already be on the "Dark Web," and then represent that for a fee they are able to and will remove the target victim's personal and financial information from the Dark Web. The Dark Web is a network of people, computer databases and electronically stored information on the world-wide web that exists as a marketplace to share, sell, purchase and otherwise transact hacked, stolen or otherwise obtained personal, business and financial information which can then be used for illicit purposes while retaining anonymity and avoiding law enforcement scrutiny. The perpetrators of a Dark Web scam convince their

target victim to pay them through various methods, including by cash, check, money orders, wired funds, and through money transmitters. They do not perform the service that they are promising to the target victim and in fact are defrauding and stealing from the target victim. This type of scam, and other scams such as Phishing and Romance scams, have a high incidence of being perpetrated by persons from, residing in, or who send the stolen funds to countries such as Nigeria and Ghana. In this investigation, in the communications between the SUBJECT(s) and Ms. [REDACTED], there are many references to sending monies for this purpose to various locations in California under the name "Charles Ford." There are also references to deposits being made in other national accounts by the victim other than US Bank.

29. Below are examples of communications between SUBJECT(s) and [REDACTED] related to suspect "Charles Ford" that were recovered from Ms. [REDACTED]'s iPhone forensic download. They are discussing her payment directions. These communications revealed the SUBJECT(s) were directing the victim to make the payee of the victim's PFCU cashier's checks and PFCU personal check listed above in the name of "Charles Ford." "Charles Ford" may be a real person or an aka/pseudonym/straw name/nominee name being used by the SUBJECT(s) to commit the racketeering conduct described in this Affidavit.

30. Examples of communications:

840	Sent	From [REDACTED] To +19172750732 Direction: Outgoing	7/6/2018 10:04(UTC-7)		Sent	4K Charles Ford Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x227283 (Table: message, handle, Size: 3854336 bytes)
841	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/6/2018 09:08(UTC-7)	Read: 7/6/2018 10:04(UTC-7)	Read	And what name is on the cashier check and which name and address you mail it to Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x2274BB (Table: message, handle, Size: 3854336 bytes)

842	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/6/2018 09:08(UTC-7)	Read: 7/6/2018 10:04(UTC-7)	Read	How much is on the cashler check? Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x22769A (Table: message, handle, Size: 3854336 bytes)
858	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/5/2018 13:11(UTC-7)	Read: 7/5/2018 13:13(UTC-7)	Read	Please give Chad the way I gave you Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x225875 (Table: message, handle, Size: 3854336 bytes)
859	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/5/2018 13:04(UTC-7)	Read: 7/5/2018 13:13(UTC-7)	Read	EDWARD JONATHAN 1442 E Lincoln Ave Apt 422, Orange CA 92865 Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x225FE8 (Table: message, handle, Size: 3854336 bytes)
860	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/5/2018 13:02(UTC-7)	Read: 7/5/2018 13:13(UTC-7)	Read	And mail it to this name and address Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x2245AC (Table: message, handle, Size: 3854336 bytes)
861	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/5/2018 13:01(UTC-7)	Read: 7/5/2018 13:13(UTC-7)	Read	I want you to write CHARLES FORD on the cashler check Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x2247B5 (Table: message, handle, Size: 3854336 bytes)
862	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/5/2018 13:00(UTC-7)	Read: 7/5/2018 13:13(UTC-7)	Read	Please read my message very well please Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x2249A0 (Table: message, handle, Size: 3854336 bytes)
863	Sent	From [REDACTED] To +19172750732 Direction: Outgoing	7/5/2018 12:59(UTC-7)		Sent	Tomorrow Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x224E45 (Table: message, handle, Size: 3854336 bytes)
864	Inbox	To [REDACTED] From +14808679096 Direction: Incoming	7/5/2018 12:22(UTC-7)	Read: 7/5/2018 12:59(UTC-7)	Read	Hello Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x224FE8 (Table: message, handle, Size: 3854336 bytes)
865	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/5/2018 12:12(UTC-7)	Read: 7/5/2018 12:18(UTC-7)	Read	When are you getting the cashler check? Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x22330F (Table: message, handle, Size: 3854336 bytes)
872	Inbox	To [REDACTED] From +19172750732 Direction: Incoming	7/5/2018 12:01(UTC-7)	Read: 7/5/2018 12:02(UTC-7)	Read	You gonna mail it through FedEx next day Source file: [REDACTED] iPhone/var/mobile/Library/SMS/sms.db : 0x223FE8 (Table: message, handle, Size: 3854336 bytes)

9227	Instant Messages	Incoming			6/25/2018 09:46(UTC-7)	From: 100014148092296 chad callahan	Please take the full picture of the cashier check Source file: [REDACTED] iPhone/App [REDACTED]om.facebook.Messenger/_store_6EE311CD-2788-4936-8CF4-5527AE6AFF83/messenger_messages.v1/orca2.db : 0x503751 (Table: messages, Size: 63913984 bytes) iPhone/Applications/group.com.facebook.Messenger/_store_6EE311CD-2788-4936-8CF4-5527AE6AFF83/messenger_contacts.v1/fbomnstore.db : 0xF3294 (Table: collection_index#messenger_contacts_ios:100000907049252_imNkZCM0YyQjktNjNBMC00MUQ3LUE2RjQtMjk3MDZDMEU0RDUX, Size: 1818624 bytes)
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10718	Instant Messages	Outgoing			7/5/2018 13:18(UTC-7)	From: 100000907049252 [REDACTED]	Put Charles Ford name on check Mail to Edward Jonathan 1442 Lincoln Ave Apt 422 Orange, Ca Source file: [REDACTED] iPhone/Applications/group.com.facebook.Messenger/_store_6EE311CD-2788-4936-8CF4-5527AE6AFF83/messenger_messages.v1/orca2.db : 0x2FFB788 (Table: messages, Size: [REDACTED]) iPhone/Applications/group.com.facebook.Messenger/_store_6EE311CD-2788-4936-8CF4-5527AE6AFF83/messenger_contacts.v1/fbomnstore.db : 0x458FE (Table: collection_index#messenger_contacts_ios:100000907049252_imNkZCM0YyQjktNjNBMC00MUQ3LUE2RjQtMjk3MDZDMEU0RDUX, Size: 1818624 bytes)
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10798	Instant Messages	Outgoing			7/6/2018 10:30(UTC-7)	[REDACTED] 0907049252	Charles Ford talk to agent you both are asking the same [REDACTED].facebook.Messenger/_store_6EE311CD-2788-4936-8CF4-5527AE6AFF83/messenger_messages.v1/orca2.db : 0x2C1F7B [REDACTED]ages, Size: 63913984 bytes iPhone/Applications/group.com.facebook.Messenger/_store_6EE311CD-2788-4936-8CF4-5527AE6AFF83/messenger_contacts.v1/fbomnstore.db : 0x458FE (Table: collection_index#messenger_contacts_ios:100000907049252_imNkZCM0YyQjktNjNBMC00MUQ3LUE2RjQtMjk3MDZDMEU0RDUX, Size: 1818624 bytes)
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31. Suspect "Chad Callahan" was communicating via Facebook Instant Messenger.

32. An unidentified subscriber from phone number [REDACTED]-0732 was communicating simultaneously via SMS.

COMMUNICATIONS WITH US BANK
BRANCH MANAGER-CORONA, CALIFORNIA

33. On August 14, 2018 your affiant made telephone contact with Dawn Blackmon, PFCU Risk Manager/Fraud Investigator. USDHS-ICE Special Agent Andrew Jamal was conferenced into the telephone call. We learned substantially the following and I verified this information first hand with Mr. Patel:
34. Hitesh "Rocky" Patel, Branch Manager, US BANK N.A., Corona, California, had made telephone contact with Ms. Blackmon regarding the transaction at US Bank N.A. of Ms. [REDACTED]'s personal check #103 in the amount of \$4,000.00 for Charles Ford, dated July 6, 2018.
35. A US BANK account numbered # [REDACTED] 0070 was opened in the name of CHARLES FORD. Mr. Patel, who was suspicious of the account holder and the account purpose, had placed the account on "temporary internal lockdown and restricted status."
36. Mr. Patel discovered upon his return from a vacation that there had been a \$20,000.00 wire transfer made to Nigeria from the account resources of Charles Ford. His internal inquiry with bank branch personnel verified the account was unlocked after a suspect identifying himself as "CHARLES FORD" produced a Ghana Passport and provided additional account opening information to complete the wire transfer transaction because he had no domestic state issued identification or driver's license.
37. Charles Ford had called attempting to conduct another wire transfer from US Bank in the amount of \$40,000.00. Mr. Patel stopped that attempt and all transactions for that account and notified his District Manager Scott Williams and the Legal Department for further instructions.

US DEPARTMENT OF HOMELAND SECURITY-HSI INVESTIGATION

38. AZAGO agents and investigators partnered with USDHS-HSI agents working to identify suspect CHARLES FORD from the possible Ghana Passport presented at US BANK. Special Agent Andrew Jamal located a "Charles Ford" in the federal data base as follows:

- A. Charles Ford, DOB: [REDACTED] 1982, Ghana Passport # [REDACTED] [REDACTED] [REDACTED] [REDACTED], Accra, Ghana. He listed a local address of [REDACTED] [REDACTED], California, 925 [REDACTED].
- B. Using police and public records I located a verification report Charles Ford began using the [REDACTED], California, address in May 2018.

AZAGO SUBPOENA RESPONSE FROM US BANK N.A.

39. On August 15, 2018 AZAGO-Tucson Office served US BANK N.A. with a subpoena for all account derivative records, transactions and surveillance video related to the account # [REDACTED] 0070 opening for Charles Ford, to include the Ghana Passport information used and any other identification information for Charles Ford. At the time of the subpoena investigators only knew the last 4 digits of the US Bank account into which Ms. [REDACTED] [REDACTED]'s \$28,000.00 in payments to Charles Ford were believed to have been deposited. The subpoena included a request for the full account number.

40. On August 16, 2018, your Affiant received verbal confirmation from Christina Anderson, US Bank Legal Process, (612) 303-7854 regarding the subpoena. Your affiant was advised the account in question where the victim's funds were traced to at US Bank was opened June 22, 2018, and is held in the name of "Charles Ford" DOB: [REDACTED] 1982, No US Social Security Number given. The identification used to open the account was a Ghana Passport # [REDACTED], and the local address of [REDACTED],

California, 925 [REDACTED] was verbally provided. A citizen of Ghana would not have a US Social Security Number. Cellular contact number given was [REDACTED] 9650. Stated employment was at [REDACTED]. The account is currently locked down by US Bank action. The full account number is # [REDACTED]. The account was opened with \$40,000.00 that day followed by another deposit that day of \$40.00. Since the opening of the account the amount of \$122,062.15 has been deposited into the account, and withdrawals have been made from the account totaling \$66,450.00.

41. On August 17, 2018, US Bank provided additional documents of the financial transactions involved with [REDACTED] monies sent to account holder Charles Ford and surveillance photographs of the suspect "Charles Ford" opening the account and making transactions for the Charles Ford account.

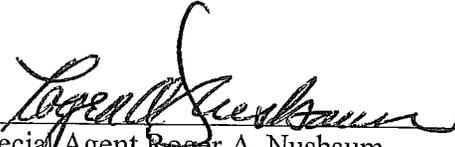
CONCLUSION

42. From the totality of the facts and circumstances learned during your Affiant's investigation summarized in this Affidavit, your Affiant submits that probable cause exists that racketeering offenses in violation of the Arizona Racketeering Act (AZRAC) have been committed by the SUBJECT(s) described above, including "Charles Ford" and others, whether those names are true names or aka/pseudonym/straw/nominee names; the offenses include theft, fraud, participating in or assisting a criminal syndicate, and money laundering; this has resulted in the loss of not less than \$28,000.00 by [REDACTED]; and the funds in the Charles Ford account(s) at US Bank contain the \$28,000.00 stolen and defrauded from [REDACTED] or are funds derived from the racketeering crimes against [REDACTED]. Therefore, not less than \$28,000.00 of the funds in the Charles Ford account(s) are subject to seizure for forfeiture and forfeiture, and a Seizure Warrant

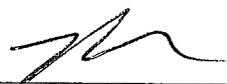
ordering the seizure for forfeiture of the property listed on Appendix One hereto, *in rem* and *in personam* and as substitute assets, should be issued.

43. I ask that this Affidavit be incorporated into the Seizure Warrant.

44. Further Affiant sayeth not.


Special Agent Roger A. Nusbaum
Arizona Attorney General's Office-Tucson
Badge # 
AFFIANT

SUBSCRIBED AND SWORN to before me this 21st day of August, 2018.


KENNETH LEE
JUDGE OF THE PIMA COUNTY SUPERIOR COURT

STATE OF ARIZONA }
COUNTY OF PIMA } ss.

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Attested AUG 21 2018
TONI L. HELLON, Clerk
By R. Horn Deputy

APPENDIX ONE

18SW1300

1. In Personam:

All real and personal property and interests in property having a value up to \$28,000.00 (less liens and encumbrances), including but not limited to all: business equipment and inventory; pre-paid accounts or deposits; contractual rights; vehicles; boats; aircraft; escrow accounts; safe deposit box contents; investment accounts; financial institution accounts; estates, including marital and decedent; trusts, including living, irrevocable and revocable; commercial paper; livestock; beneficial interests; survivorship agreements; insurance policies; currency, U.S. and foreign; bank accounts, foreign and domestic, including but not limited to bank, credit union and savings and loan associations and thrift associations; retirement benefits or accounts, defined contribution plans or benefits and profit sharing plans; causes in action; precious metals, gems and jewelry; leaseholds; and fraudulent transfers; and substitute assets, including but not limited to the property described below, owned by, belonging to, or held for the benefit of any of the following persons, their businesses or enterprises, and their spouses or marital communities:

CHARLES FORD

Social Security Number: NONE

DOB: [REDACTED] 1982

Ghana Passport # [REDACTED]

Last known address: [REDACTED], California, 925 [REDACTED]

Phone: (951) 419-9650

\$28,000.00 in funds in US Bank account # [REDACTED] 0070

2. Financial Institution Accounts:

All bank or financial accounts and the balance of funds therein of any kind; business accounts, checking accounts, savings accounts, safe deposit boxes contents, investment, equity or securities accounts owned by, belonging to or held on behalf of any of the persons and entities named and described in Section 1. above, including the specific account(s) listed in this Section, in an amount up to, but not exceeding, \$28,000.00 (less liens and encumbrances), including in the following specific account(s):

\$28,000.00 in funds in US Bank account # [REDACTED] 0070

Subscriber Name(s): CHARLES FORD

Social Security Number: NONE

DOB: [REDACTED] 1982

Ghana Passport # [REDACTED]

Account Address: [REDACTED], California, 925 [REDACTED]

Phone: [REDACTED] 9650

-Nothing Follows-

FILED
TOM L. HELLON
CLERK, SUPERIOR COURT

2018 AUG 21 AM 10:22

D. WANDELL, DEPUTY

1 MARK BRNOVICH
Attorney General
Firm Bar No. 14000
2 THOMAS J. RANKIN
Assistant Attorney General
3 400 West Congress Street, Suite S-315
Tucson, Arizona 85701
4 Telephone No. (520) 209-4316
Facsimile No. (520) 209-4326
5 Pima County Bar No. 64518
AZ State Bar No: 012554
6 TucsonFRS@azag.gov

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF PIMA

9
10 IN THE MATTER OF:

11 CHARLES FORD

12 AND

13 \$28,000.00 IN FUNDS IN
14 US BANK ACCOUNT

15 DESCRIBED IN APPENDIX ONE
16
17

18SW1300

No. _____

APPLICATION FOR
SEIZURE WARRANT
IN PERSONAM AND IN REM
AND AS SUBSTITUTE ASSETS

18
19 This Application and the accompanying Affidavit and Seizure Warrant seek the seizure for
20 forfeiture of up to \$28,000.00 from the account(s) in the name of "Charles Ford" at US Bank N.A.
21 in order to secure and recover funds paid by a vulnerable adult named [REDACTED]
22 due to theft, fraud, and other racketeering crimes committed against her by the SUBJECT(S), as set
23 forth in this Affidavit.

24
25 The State of Arizona, *ex rel.* Mark Brnovich, Attorney General, applies to this Court to
26 consider the issuance of a Seizure Warrant for the property described in Appendix One hereto based
27
28

1 upon the Affidavit supporting the Seizure Warrant and any further facts sworn to the Court
2 demonstrating that there is probable cause to believe the following:

3 (1) The Affidavit supporting the Seizure Warrant sets forth conduct giving rise
4 to forfeiture committed by the person(s) named in the Affidavit supporting the
5 Seizure Warrant, those acting on their behalf or in concert therewith, and any other
6 persons or entities known or unknown, in violation of one or more of the following
7 statutes:

- 8 A.R.S. § 13-1802 [Theft]
- 9 A.R.S. § 13-2308 [Participating in or Assisting a Criminal Syndicate]
- 10 A.R.S. § 13-2310 [Fraudulent Scheme and Artifact]
- 11 A.R.S. § 13-2317 [Money Laundering]
- 12 A.R.S. § 13-1001 [Attempt to Commit the Above Offenses]
- 13 A.R.S. § 13-1003 [Conspiracy to Commit the Above Offenses]

14 (2) The conduct occurred, at least in part, in Pima County, Arizona, is chargeable
15 in Pima County, and can be complained against criminally and/or civilly in Pima
16 County. The property is on deposit with a financial institution located in, that does
17 business in, and that operates in Pima County, Arizona.

18 (3) All property described in Appendix One is subject to seizure for forfeiture
19 and forfeiture pursuant to A.R.S. §§ 2301(D)(4), 13-2314, 13-2314(G), and 13-4301
20 *et seq.*, including 13-4304, 13-4305, 13-4309, 13-4310, 13-4311, 13-4312, and 13-
21 4313. Pursuant to these statutes the State is entitled to seize and forfeit property and
22 interests in property *in personam*, *in rem* and as substitute assets in order to prevent,
23 restrain and remedy racketeering conduct; to compensate victims and injured persons
24 suffering economic loss from racketeering; and to remedy injury to the State
25 resulting from that conduct. These statutes authorize the seizure for forfeiture and
26 forfeiture of property: used or intended to be used to commit or facilitate the
27 commission of acts and offenses in violation of the Racketeering and Forfeitures
28

1 chapters of A.R.S. Title 13, including the offenses listed above; instrumentalities of
2 such conduct; property representing the gain or proceeds of such conduct, in
3 whatever form; property of persons liable for such conduct up to the extent of their *in*
4 *personam* liability; and substitute assets to satisfy *in personam* or *in rem* liability
5 when other property is not available or as otherwise invoked under the terms and
6 conditions set forth in the substitute assets provisions of A.R.S. § 13-4313.

7 (4) Issuance of a seizure warrant ordering the seizure for forfeiture of the
8 property and interests in property is authorized by A.R.S. §§ 13-2314(C), 13-
9 4305(A)(1), 13-4306 and 13-4310(A), based upon the illegal conduct described in
10 the Affidavit supporting the Seizure Warrant.

11 (5) This application requests the issuance of a Seizure Warrant ordering the
12 seizure for forfeiture of the property described in Appendix One *in personam*, *in rem*
13 and as substitute assets.

14 Therefore, the State of Arizona asks the Court to make a determination regarding
15 reasonable and probable cause for the *in personam*, *in rem* and substitute asset seizure for
16 forfeiture and forfeiture of the property and interests in property contemplated by this Application,
17 the Affidavit supporting the Seizure Warrant, and the Seizure Warrant, and asks the Court to
18 consider the issuance of the Seizure Warrant ordering the Affiant and any law enforcement officer
19 and agency assisting him or her to seize for forfeiture *in personam*, *in rem* and as substitute assets
20 the property described in Appendix One hereto, place it in the jurisdiction and custody of this
21 Court, and retain it in the actual or constructive custody of the law enforcement agency making the
22 seizure for forfeiture and/or the Arizona Attorney General's Office, pursuant to A.R.S. §§ 13-
23 2314(C), 13-4305(A)(1), 13-4306, and 13-4310(A) and according to the terms of the Seizure
24 Warrant.
25
26
27
28

1 Under A.R.S. § 13-4310(F), title, ownership and/or control to such property vested in the
2 State on the commission of the conduct giving rise to forfeiture, together with the proceeds of the
3 property after such time, subject to forfeiture proceedings and order of the Court. Under A.R.S. §
4 13-2314(F) a person or enterprise that acquires property through racketeering or illegal enterprise
5 is an involuntary trustee of the property and holds the property, its proceeds and its fruits in
6 constructive trust for the benefit of persons entitled to remedies under A.R.S. § 13-2314, including
7 the State. Therefore, any such property or proceeds that have been or subsequently are transferred
8 to any person are subject to seizure for forfeiture and forfeiture and may be ordered forfeited unless
9 a claimant or claimants complies with A.R.S. § 13-4311 and makes the proof required by A.R.S. §
10 13-4304. Injured persons may also enter any forfeiture proceedings pursuant to A.R.S. §§ 13-
11 4301(3) and 13-4311(I) and the property may be used to compensate injured persons for economic
12 loss from the racketeering conduct.
13

14 Any forfeiture proceedings initiated and commenced by the State will be conducted with
15 full and primary consideration of any persons who qualify as and enter proceedings as injured
16 persons pursuant to A.R.S. §§ 13-4301(3) and 13-4311(I).
17

18 The State asks that the supporting Affidavit be incorporated into the Seizure Warrant.

19 DATED this 20th day of August, 2018.
20

21 MARK BRNOVICH
22 Attorney General

23 

24 THOMAS J. RANKIN
25 Assistant Attorney General
26 Attorney for the State
27 Thomas.Rankin@azag.gov
28

18SW1300

APPENDIX ONE

1
2
3 1. In Personam:

4 All real and personal property and interests in property having a value up to \$28,000.00 (less liens
5 and encumbrances), including but not limited to all: business equipment and inventory; pre-paid
6 accounts or deposits; contractual rights; vehicles; boats; aircraft; escrow accounts; safe deposit box
7 contents; investment accounts; financial institution accounts; estates, including marital and
8 decedent; trusts, including living, irrevocable and revocable; commercial paper; livestock;
9 beneficial interests; survivorship agreements; insurance policies; currency, U.S. and foreign; bank
10 accounts, foreign and domestic, including but not limited to bank, credit union and savings and loan
11 associations and thrift associations; retirement benefits or accounts, defined contribution plans or
12 benefits and profit sharing plans; causes in action; precious metals, gems and jewelry; leaseholds;
13 and fraudulent transfers; and substitute assets, including but not limited to the property described
14 below, owned by, belonging to, or held for the benefit of any of the following persons, their
15 businesses or enterprises, and their spouses or marital communities:

12 CHARLES FORD

13 Social Security Number: NONE

14 DOB: [REDACTED] 1982

15 Ghana Passport # [REDACTED]

16 Last known address: [REDACTED], California 925[REDACTED]

17 Phone: [REDACTED]-9650

18 \$28,000.00 in funds in US Bank account # [REDACTED] 0070

17 2. Financial Institution Accounts:

18 All bank or financial accounts and the balance of funds therein of any kind, business accounts,
19 checking accounts, savings accounts, safe deposit boxes contents, investment, equity or securities
20 accounts owned by, belonging to or held on behalf of any of the persons and entities named and
21 described in Section 1 above, including the specific account(s) listed in this Section, in an amount up
22 to, but not exceeding, \$28,000.00 (less liens and encumbrances), including in the following specific
23 account(s):

22 \$28,000.00 in funds in US Bank account # [REDACTED] 0070

23 Subscriber Name(s): CHARLES FORD

24 Social Security Number: NONE

25 DOB: [REDACTED] 1982

26 Ghana Passport # [REDACTED]

27 Account Address: [REDACTED], California 92551

28 Phone: [REDACTED] 9650

-Nothing Follows-

FILED
TOM L. HELLON
CLERK, SUPERIOR COURT

2018 AUG 21 AM 10:22

D. WANDELL, DEPUTY

1 MARK BRNOVICH
Attorney General
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2 THOMAS J. RANKIN
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4 Telephone No. (520) 209-4316
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5 Pima County Bar No. 64518
AZ State Bar No: 012554
6 TucsonFRS@azag.gov

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF PIMA

9
10 IN THE MATTER OF:

11 CHARLES FORD

12 AND

13 \$28,000.00 IN FUNDS IN
14 US BANK ACCOUNT

15 DESCRIBED IN APPENDIX ONE
16
17

18SW1300

No. _____

APPLICATION FOR
SEIZURE WARRANT
IN PERSONAM AND IN REM
AND AS SUBSTITUTE ASSETS

18
19 This Application and the accompanying Affidavit and Seizure Warrant seek the seizure for
20 forfeiture of up to \$28,000.00 from the account(s) in the name of "Charles Ford" at US Bank N.A.
21 in order to secure and recover funds paid by a vulnerable adult named [REDACTED]
22 due to theft, fraud, and other racketeering crimes committed against her by the SUBJECT(S), as set
23 forth in this Affidavit.

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25 The State of Arizona, *ex rel.* Mark Brnovich, Attorney General, applies to this Court to
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1 upon the Affidavit supporting the Seizure Warrant and any further facts sworn to the Court
2 demonstrating that there is probable cause to believe the following:

3 (1) The Affidavit supporting the Seizure Warrant sets forth conduct giving rise
4 to forfeiture committed by the person(s) named in the Affidavit supporting the
5 Seizure Warrant, those acting on their behalf or in concert therewith, and any other
6 persons or entities known or unknown, in violation of one or more of the following
7 statutes:

- 8 A.R.S. § 13-1802 [Theft]
- 9 A.R.S. § 13-2308 [Participating in or Assisting a Criminal Syndicate]
- 10 A.R.S. § 13-2310 [Fraudulent Scheme and Artifact]
- 11 A.R.S. § 13-2317 [Money Laundering]
- 12 A.R.S. § 13-1001 [Attempt to Commit the Above Offenses]
- 13 A.R.S. § 13-1003 [Conspiracy to Commit the Above Offenses]

14 (2) The conduct occurred, at least in part, in Pima County, Arizona, is chargeable
15 in Pima County, and can be complained against criminally and/or civilly in Pima
16 County. The property is on deposit with a financial institution located in, that does
17 business in, and that operates in Pima County, Arizona.

18 (3) All property described in Appendix One is subject to seizure for forfeiture
19 and forfeiture pursuant to A.R.S. §§ 2301(D)(4), 13-2314, 13-2314(G), and 13-4301
20 *et seq.*, including 13-4304, 13-4305, 13-4309, 13-4310, 13-4311, 13-4312, and 13-
21 4313. Pursuant to these statutes the State is entitled to seize and forfeit property and
22 interests in property *in personam*, *in rem* and as substitute assets in order to prevent,
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24 suffering economic loss from racketeering; and to remedy injury to the State
25 resulting from that conduct. These statutes authorize the seizure for forfeiture and
26 forfeiture of property: used or intended to be used to commit or facilitate the
27 commission of acts and offenses in violation of the Racketeering and Forfeitures
28

1 chapters of A.R.S. Title 13, including the offenses listed above; instrumentalities of
2 such conduct; property representing the gain or proceeds of such conduct, in
3 whatever form; property of persons liable for such conduct up to the extent of their *in*
4 *personam* liability; and substitute assets to satisfy *in personam* or *in rem* liability
5 when other property is not available or as otherwise invoked under the terms and
6 conditions set forth in the substitute assets provisions of A.R.S. § 13-4313.

7 (4) Issuance of a seizure warrant ordering the seizure for forfeiture of the
8 property and interests in property is authorized by A.R.S. §§ 13-2314(C), 13-
9 4305(A)(1), 13-4306 and 13-4310(A), based upon the illegal conduct described in
10 the Affidavit supporting the Seizure Warrant.

11 (5) This application requests the issuance of a Seizure Warrant ordering the
12 seizure for forfeiture of the property described in Appendix One *in personam*, *in rem*
13 and as substitute assets.

14 Therefore, the State of Arizona asks the Court to make a determination regarding
15 reasonable and probable cause for the *in personam*, *in rem* and substitute asset seizure for
16 forfeiture and forfeiture of the property and interests in property contemplated by this Application,
17 the Affidavit supporting the Seizure Warrant, and the Seizure Warrant, and asks the Court to
18 consider the issuance of the Seizure Warrant ordering the Affiant and any law enforcement officer
19 and agency assisting him or her to seize for forfeiture *in personam*, *in rem* and as substitute assets
20 the property described in Appendix One hereto, place it in the jurisdiction and custody of this
21 Court, and retain it in the actual or constructive custody of the law enforcement agency making the
22 seizure for forfeiture and/or the Arizona Attorney General's Office, pursuant to A.R.S. §§ 13-
23 2314(C), 13-4305(A)(1), 13-4306, and 13-4310(A) and according to the terms of the Seizure
24 Warrant.
25
26
27
28

1 Under A.R.S. § 13-4310(F), title, ownership and/or control to such property vested in the
2 State on the commission of the conduct giving rise to forfeiture, together with the proceeds of the
3 property after such time, subject to forfeiture proceedings and order of the Court. Under A.R.S. §
4 13-2314(F) a person or enterprise that acquires property through racketeering or illegal enterprise
5 is an involuntary trustee of the property and holds the property, its proceeds and its fruits in
6 constructive trust for the benefit of persons entitled to remedies under A.R.S. § 13-2314, including
7 the State. Therefore, any such property or proceeds that have been or subsequently are transferred
8 to any person are subject to seizure for forfeiture and forfeiture and may be ordered forfeited unless
9 a claimant or claimants complies with A.R.S. § 13-4311 and makes the proof required by A.R.S. §
10 13-4304. Injured persons may also enter any forfeiture proceedings pursuant to A.R.S. §§ 13-
11 4301(3) and 13-4311(I) and the property may be used to compensate injured persons for economic
12 loss from the racketeering conduct.
13

14 Any forfeiture proceedings initiated and commenced by the State will be conducted with
15 full and primary consideration of any persons who qualify as and enter proceedings as injured
16 persons pursuant to A.R.S. §§ 13-4301(3) and 13-4311(I).
17

18 The State asks that the supporting Affidavit be incorporated into the Seizure Warrant.

19 DATED this 20th day of August, 2018.
20

21 MARK BRNOVICH
22 Attorney General

23 

24 THOMAS J. RANKIN
25 Assistant Attorney General
26 Attorney for the State
27 Thomas.Rankin@azag.gov
28

18SW1300

APPENDIX ONE

1
2
3 1. In Personam:

4 All real and personal property and interests in property having a value up to \$28,000.00 (less liens
5 and encumbrances), including but not limited to all: business equipment and inventory; pre-paid
6 accounts or deposits; contractual rights; vehicles; boats; aircraft; escrow accounts; safe deposit box
7 contents; investment accounts; financial institution accounts; estates, including marital and
8 decedent; trusts, including living, irrevocable and revocable; commercial paper; livestock;
9 beneficial interests; survivorship agreements; insurance policies; currency, U.S. and foreign; bank
10 accounts, foreign and domestic, including but not limited to bank, credit union and savings and loan
11 associations and thrift associations; retirement benefits or accounts, defined contribution plans or
12 benefits and profit sharing plans; causes in action; precious metals, gems and jewelry; leaseholds;
13 and fraudulent transfers; and substitute assets, including but not limited to the property described
14 below, owned by, belonging to, or held for the benefit of any of the following persons, their
15 businesses or enterprises, and their spouses or marital communities:

12 CHARLES FORD

13 Social Security Number: NONE

14 DOB: [REDACTED] 1982

15 Ghana Passport # [REDACTED]

16 Last known address: [REDACTED], California 925[REDACTED]

17 Phone: [REDACTED]-9650

18 \$28,000.00 in funds in US Bank account # [REDACTED] 0070

17 2. Financial Institution Accounts:

18 All bank or financial accounts and the balance of funds therein of any kind, business accounts,
19 checking accounts, savings accounts, safe deposit boxes contents, investment, equity or securities
20 accounts owned by, belonging to or held on behalf of any of the persons and entities named and
21 described in Section 1 above, including the specific account(s) listed in this Section, in an amount up
22 to, but not exceeding, \$28,000.00 (less liens and encumbrances), including in the following specific
23 account(s):

22 \$28,000.00 in funds in US Bank account # [REDACTED] 0070

23 Subscriber Name(s): CHARLES FORD

24 Social Security Number: NONE

25 DOB: [REDACTED] 1982

26 Ghana Passport # [REDACTED]

27 Account Address: [REDACTED], California 92551

28 Phone: [REDACTED] 9650

-Nothing Follows-

FILED
TONI L. HELLON
CLERK, SUPERIOR COURT

2018 AUG 21 AM 10:22

D. WANDELL, DEPUTY

1 MARK BRNOVICH
Attorney General
Firm Bar No. 14000
2 THOMAS J. RANKIN
Assistant Attorney General
3 400 West Congress Street, Suite S-315
Tucson, Arizona 85701
4 Telephone No. (520) 209-4316
Facsimile No. (520) 209-4326
5 Pima County Bar No. 64518
AZ State Bar No: 012554
6 TucsonFRS@azag.gov

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF PIMA

9
10 IN THE MATTER OF:

11 CHARLES FORD

12 AND

13 \$28,000.00 IN FUNDS IN
14 US BANK ACCOUNT

15 DESCRIBED IN APPENDIX ONE
16

No. **18SW1300**

SEIZURE WARRANT
IN PERSONAM AND IN REM
AND AS SUBSTITUTE ASSETS

17
18
19 Based upon the Application by the State pursuant to A.R.S. §§ 2301(D)(4), 13-2314, 13-
20 2314(G), and 13-4301 *et seq.*, including 13-4304, 13-4305, 13-4309, 13-4310, 13-4311, 13-4312,
21 and 13-4313; based upon A.R.S. §§ 13-4306 and 13-4310(A); and based upon the accompanying
22 and supporting Affidavit and any further facts sworn to before me this day, and good cause
23 appearing, the Court hereby finds reasonable and probable cause for the seizure for forfeiture
24 authorized by this Seizure Warrant, and reasonable and probable cause to enter the following
25 Findings and Orders.
26
27
28

FINDINGS

1
2 (1) Based upon the illegal conduct described in the Affidavit supporting the Seizure
3 Warrant, conduct giving rise to seizure for forfeiture and forfeiture has been committed in violation
4 of one or more of the statutes listed in Paragraph (6) below;

5 (2) The conduct occurred, at least in part, in Pima County, Arizona, is chargeable in
6 Pima County, and can be complained against criminally and/or civilly in Pima County. The
7 property is on deposit with a financial institution located in, that does business in, and that operates
8 in Pima County, Arizona.

9 (3) The property described in Appendix One is subject to seizure for forfeiture and
10 forfeiture pursuant to A.R.S. §§ 2301(D)(4), 13-2314, 13-2314(G), and 13-4301 *et seq.*, including
11 13-4304, 13-4305, 13-4309, 13-4310, 13-4311, 13-4312, and 13-4313, and by these statutes the
12 State is authorized to seize and forfeit the property *in personam*, *in rem* and as substitute assets in
13 order to prevent, restrain and remedy racketeering conduct; to compensate victims and injured
14 persons suffering economic loss from racketeering; and to remedy injury to the State resulting from
15 that conduct. The property described in Appendix One represents property: used or intended to be
16 used to commit or facilitate the commission of acts and offenses in violation of the Racketeering
17 and Forfeitures chapters of A.R.S. Title 13, including the offenses listed in Paragraph (6) below;
18 instrumentalities of such conduct; property representing the gain or proceeds of such conduct, in
19 whatever form; property of persons liable for such conduct up to the extent of their *in personam*
20 liability; and substitute assets to satisfy *in personam* or *in rem* liability when other property is not
21 available or as otherwise invoked under the terms and conditions set forth in the substitute assets
22 provisions of A.R.S. § 13-4313.

23
24 (4) The issuance of a seizure warrant ordering the seizure for forfeiture of the property is
25 authorized by A.R.S. §§ 13-2314(C), 13-4305(A)(1), 13-4306 and 13-4310(A), based upon the
26 illegal conduct described in the Affidavit supporting the Seizure Warrant.
27
28

1 (5) Such probable cause exists as of this date and existed as of the time of the
2 commission of the acts constituting the conduct giving rise to seizure for forfeiture and forfeiture, as
3 set forth in the Affidavit supporting this Warrant.

4 (6) Issuance of a seizure warrant ordering the seizure for forfeiture of that property is
5 authorized by A.R.S. §§ 13-2314(C), 13-4305(A)(1), 13-4306 and 13-4310(A), based upon
6 violation of one or more of the following statutes:

7 A.R.S. § 13-1802 [Theft]

8 A.R.S. § 13-2308 [Participating in or Assisting a Criminal Syndicate]

9 A.R.S. § 13-2310 [Fraudulent Scheme and Artiface]

10 A.R.S. § 13-2317 [Money Laundering]

11 A.R.S. § 13-1001 [Attempt to Commit the Above Offenses]

12 A.R.S. § 13-1003 [Conspiracy to Commit the Above Offenses]

13 (7) Under A.R.S. § 13-4310(F), title, ownership and/or control to such property vested in
14 the State on the commission of the conduct giving rise to forfeiture, together with the proceeds of
15 the property after such time, subject to further order of the Court as set forth below. Under A.R.S. §
16 13-2314(F) a person or enterprise that acquires property through racketeering or illegal enterprise is
17 an involuntary trustee of the property and holds the property, its proceeds and its fruits in
18 constructive trust for the benefit of persons entitled to remedies under A.R.S. § 13-2314, including
19 the State. Any of the property in Appendix One that has been or subsequently is transferred to any
20 person is subject to seizure for forfeiture and forfeiture and may be ordered forfeited unless a
21 claimant or claimants complies with A.R.S. § 13-4311 and makes the proof required by A.R.S. §
22 13-4304. Injured persons may also enter any forfeiture proceedings pursuant to A.R.S. §§ 13-
23 4301(3) and 13-4311(I) and the property may be used to compensate injured persons for economic
24 loss from the racketeering conduct.
25

26 ...

27 ...

ORDERS

18SW1300

1
2 IT IS THEREFORE ORDERED THAT:

3 1. Any peace officer in the State of Arizona is authorized to seize the property and
4 interests in property described in Appendix One for forfeiture pursuant to A.R.S. §§ 13-2314
5 [Racketeering; civil remedies by this State] and 13-4301 *et seq.* [Forfeiture] by any means provided
6 in A.R.S. § 13-4306 [Powers and duties of peace officers and agencies].

7 2. As soon as practicable after seizure for forfeiture, which shall be no longer than 20
8 days, the seizing agency shall conduct an inventory of the property seized, estimate the value of the
9 property seized, and submit that information to the Attorney for the State, who shall provide a
10 description of the seized property to each person upon whom any Notice of Seizure for Forfeiture
11 and any Notice of Pending Forfeiture are provided.

12 3. All seized property and its proceeds are under the jurisdiction, custody and control of
13 the Court, and shall remain subject to orders of the Court pursuant to A.R.S. §§ 13-4301 *et seq.*

14 4. Pursuant to and if eligible under A.R.S. § 13-4306(G), an owner of property seized
15 for forfeiture under this Seizure Warrant may obtain the release of the seized property by posting
16 with the Attorney for the State a bond, by surety or cash, in an amount equal to the full fair market
17 value of the property, as determined by the Attorney for the State. The bond, including interest, will
18 be substituted for the property in all respects as applicable.

19 5. Property seized under this Seizure Warrant may be seized by constructive seizure at
20 the election of the seizing agency if the seizing agency determines that constructive seizure is
21 reasonably certain to preserve the property for forfeiture.

22 6. The property is now under the jurisdiction, custody and control of the Court. Any
23 person in possession or control of any of the property described in Appendix One shall immediately
24 allow the peace officer serving this Seizure Warrant to take possession or control of said property.

25 7. If any of the property is a negotiable instrument, a debt, an account, or funds in an
26 account, any person or financial institution in possession or control of such property shall prepare a
27

1 cashier's check or like instrument in the amount set forth in Appendix One at the time of service
2 upon them of this Seizure Warrant, and shall make it payable to the Arizona Attorney General's
3 Office, with reference to this Seizure Warrant number. In the event that a check cannot be prepared
4 immediately and turned over to the presenting peace officer forthwith, it shall be prepared and
5 delivered as soon as possible to the Arizona Attorney General's Office, Special Investigations
6 Section, 400 West Congress Street, Suite S-315, Tucson, Arizona 85701. A separate check shall be
7 prepared for each amount. In the interim, and as of the time of service of this Seizure Warrant, the
8 amount of funds in the account in the amount set forth in Appendix One shall be locked, frozen, or
9 otherwise restricted from being removed from the account until such time as the funds are provided
10 to and transacted by the Arizona Attorney General's Office.

11 8. Pursuant to A.R.S. §13-4306(D), a person or financial institution who acts in good
12 faith and in a reasonable manner to comply with this order or with a request of a peace officer
13 serving this Seizure Warrant is not liable to any person for acts done in compliance with this
14 Seizure Warrant or with the peace officer's request.

15 9. The Affidavit in support of this Seizure Warrant and the Appendix One to the
16 Affidavit, Seizure Warrant, and Application for Seizure Warrant contain redacted biographical and
17 financial institution account numbers. The Seizing Agency or the Attorney General's Office may
18 provide full biographical information and financial account numbers to financial institutions in
19 order to identify to the financial institutions the specific persons, subscribers, accounts, and property
20 subject to this Seizure Warrant.

21 10. If property seized under this Seizure Warrant consists of cash or a negotiable
22 instrument, including check, cashier's check, money order or other like instrument, the seizing
23 agency or the Attorney General's Office shall deposit the funds in an interest-bearing account
24 unless needed as evidence. The deposit may be at any financial institution account or internal
25 agency account selected by the seizing agency or the Attorney General's Office.
26
27
28

1 11. Any person in possession of records or information relating to the source, use, or
2 ownership of any of the property described in Appendix One shall, at no cost to themselves,
3 produce such records or information for inspection or copying by the peace officer executing this
4 Seizure Warrant.

5 12. If properties described in Appendix One are now contained within a safe deposit box
6 or vault box, the financial institution or commercial vault company is directed that no person may
7 access the safe deposit box/vault box except for the seizing agency pursuant to this Seizure Warrant.
8 The institution/company is further directed to drill the safe deposit box/vault box if necessary to
9 allow immediate access and release the contents to the officer serving this Seizure Warrant. The
10 officer shall inventory the contents of each safe deposit box/vault box, shall permit a representative
11 of the institution/company to be present for the inventory, and shall leave a written Notice of
12 Seizure for Forfeiture as a receipt in each safe deposit box and with the institution / company.

13 13. The Seizing Agency and the Attorney General's Office shall identify all funds seized
14 pursuant to this Seizure Warrant as being associated with this Seizure Warrant number, and shall
15 maintain such funds in interest-bearing accounts/subaccounts or investments, as though in the
16 custody of this Court, and retain them in the constructive custody of the Seizing Agency or Attorney
17 General's Office by keeping both principal and interest identifiable and available for further order
18 of this Court.

19 14. The persons named in the Affidavit supporting this Seizure Warrant, the owners and
20 interest holders of property seized, and all persons who receive notice or actual knowledge of the
21 seizure of property pursuant to this Seizure Warrant or a Notice of Pending Forfeiture or who
22 receive this Seizure Warrant or a Notice of Pending Forfeiture are immediately ordered not to
23 convey, alienate, encumber, dispose of, remove from the State of Arizona, conceal, or otherwise,
24 render any property described in Appendix One unavailable for forfeiture, and are prohibited from
25 doing so pursuant to the mandatory terms of A.R.S. § 13-4306(A).
26
27
28

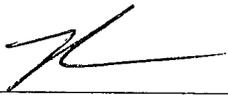
18SW1300

1 15. Any person who wants to receive future notice regarding any seized property shall
2 provide to the agency serving this Seizure Warrant at the time of the service of the Seizure Warrant
3 and shall subsequently notify the State's attorney in writing of their preferred address at which they
4 want to receive such notice by sending that address via certified mail, return receipt requested, to
5 the address of the attorney for the State set forth on the first page of this Seizure Warrant.

6 16. The seizing agency may make return of this Seizure Warrant by reporting to this
7 Court within twenty (20) days after seizure. Alternatively, a return may be completed upon filing
8 with the Clerk of the Court a Notice of Pending Forfeiture if said instrument includes a complete list
9 of all items seized pursuant to this Seizure Warrant. The Return(s) shall include the seizing
10 agency's description and estimate of the value of the property seized.

11 17. The supporting Affidavit is incorporated into this Seizure Warrant.

12
13 DATED this 21st day of August, 2018.

14
15
16 
17 _____
18 KENNETH LEE
19 JUDGE OF THE PIMA COUNTY SUPERIOR COURT

20 STATE OF ARIZONA }
21 COUNTY OF PIMA }
22

23 The foregoing instrument is a
24 full, true, and correct copy of the
25 original on file in this office.

26 Attested AUG 21 2018
27 TONI L. HELLON, Clerk
28 By R. Storm Deputy

APPENDIX ONE1. In Personam:

All real and personal property and interests in property having a value up to \$28,000.00 (less liens and encumbrances), including but not limited to all: business equipment and inventory; pre-paid accounts or deposits; contractual rights; vehicles; boats; aircraft; escrow accounts; safe deposit box contents; investment accounts; financial institution accounts; estates, including marital and decedent; trusts, including living, irrevocable and revocable; commercial paper; livestock; beneficial interests; survivorship agreements; insurance policies; currency, U.S. and foreign; bank accounts, foreign and domestic, including but not limited to bank, credit union and savings and loan associations and thrift associations; retirement benefits or accounts, defined contribution plans or benefits and profit sharing plans; causes in action; precious metals, gems and jewelry; leaseholds; and fraudulent transfers; and substitute assets, including but not limited to the property described below, owned by, belonging to, or held for the benefit of any of the following persons, their businesses or enterprises, and their spouses or marital communities:

CHARLES FORD

Social Security Number: NONE

DOB: [REDACTED] 1982

Ghana Passport # [REDACTED]

Last known address: [REDACTED], California 925 [REDACTED]

Phone: [REDACTED]-9650

\$28,000.00 in funds in US Bank account # [REDACTED] 0070

2. Financial Institution Accounts:

All bank or financial accounts and the balance of funds therein of any kind, business accounts, checking accounts, savings accounts, safe deposit boxes contents, investment, equity or securities accounts owned by, belonging to or held on behalf of any of the persons and entities named and described in Section 1 above, including the specific account(s) listed in this Section, in an amount up to, but not exceeding, \$28,000.00 (less liens and encumbrances), including in the following specific account(s):

\$28,000.00 in funds in US Bank account # [REDACTED] 0070

Subscriber Name(s): CHARLES FORD

Social Security Number: NONE

DOB: [REDACTED] 1982

Ghana Passport # [REDACTED]

Account Address: [REDACTED], California 925 [REDACTED]

Phone: [REDACTED]-9650

-Nothing Follows-

Put AG Header

State v. _____, CR-_____
Restitution Lien

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF _____

STATE OF ARIZONA,)	CR-_____
)	
Plaintiff,)	RESTITUTION LIEN
)	
vs.)	(Assigned to: _____)
)	
_____,)	
)	
Defendant.)	
_____)	

COME NOW THE STATE OF ARIZONA, through the Arizona Attorney General, Mark Brnovich, through the undersigned Assistant Attorney General, and hereby imposes, files and records this Restitution Lien pursuant to A.R.S. § 13-806.

1. The name and date of birth and Social Security Number of the Defendant whose property or other interests are subject to the lien are as follows:

Date of Birth: [REDACTED] 19_____
Social Security Number: [REDACTED] - _____

2. The present residence and principal place of business of the foregoing named Defendant is:

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3. Defendant's previous last known address was:

4. This restitution lien is being filed in connection with a criminal proceeding filed in _____ County Superior Court, _____ County, Arizona, under case number CR-_____, entitled *State of Arizona v.*_____

5. The name and address of the attorney representing the State in the proceeding pursuant to which the lien is filed is Mark Brnovich, Arizona Attorney General, through the undersigned Assistant Attorney General, PUT ADDRESS.

6. This lien is being filed pursuant to the provisions of A.R.S. § 13-806.
PURSUANT TO A.R.S. § 13-806(A), NO FILING FEE OR ANY OTHER CHARGE IS REQUIRED FOR FILING OR RECORDING THIS LIEN.

7. The Defendant has not yet been ordered to pay restitution. The estimated amount of economic loss caused by the offense(s) alleged in this proceeding is:

\$ _____ .

1 8. The names, current or last known addresses, and estimated amount of
2 restitution to be ordered and due to the persons/entities entitled to restitution in this
3 proceeding are:

4 Name and Address	Restitution Amount/Estimate
5 _____ 6 _____	\$ _____
7 _____ 8 _____	
9 _____ 10 _____	
11 _____ 12 _____	
13 _____ 14 _____	\$ _____
15 _____ 16 _____	
17 _____ 18 _____	
19 _____	

20 9. It is expected that the amount of restitution owed will change due to the
21 amount of restitution actually ordered by the Court, because of accruing economic
22 expenses, and due to payments made. The Clerk of the _____ County Superior
23 Court will have and maintain a record of the outstanding balance of restitution owing.

24
25

1 10. The State asks that a Criminal Restitution Order/Judgment be entered
2 as to the Restitution amount actually ordered by the Court in this action, pursuant to
3 A.R.S. 13-805.

4 DATED this ____ day of _____, 2016.

7 MARK BRNOVICH
8 ARIZONA ATTORNEY GENERAL

11 _____
12 Name
13 Assistant Attorney General

17 Original filed with Clerk of _____ County Superior Court

19 Conformed copy delivered to Assigned Judge

21 Conformed copy mailed/delivered to:

23 Victim(s)
24 Arizona Attorney General's Office, assigned prosecutor
25 Defendant
26 Defendant's attorney

28 Certified copies recorded with:

30 _____ County Recorder's Office
31 Arizona MVD
32 Arizona Secretary of State
33 Arizona Department of Revenue
34 Arizona Game and Fish Department
35 FAA
36

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2
3 IN AND FOR THE COUNTY OF _____

4
5
STATE OF ARIZONA,) CR _____
)
Plaintiff,) RESTITUTION LIEN
)
vs.) (Assigned to Hon. _____,
) Division ____)
)
_____,)
)
Defendant.)
_____)

6 COMES NOW _____ Victim _____ and hereby give notice of the imposition,
7 filing and recording of a Restitution Lien pursuant to A.R.S. § 13-806.

8
9 1. The name and date of birth of the Defendant whose property or other interests
10 are subject to the lien are as follows:

11 Defendant
12 Date of Birth: ___ / ___ / _____

13
14 2. The present residence and principal place of business of the foregoing named
15 Defendant is:

16 Address

17
18 Defendant's previous last known address was:

19 Address
20
21
22
23
24

**Victim or Victim Attorney
Name, address, phone
State v. Defendant, CR _____
Restitution Lien**

1 3. This restitution lien is being filed and recorded in connection with a criminal
2 proceeding filed in _____ County Superior Court, _____ County, Arizona, under case number
3 CR _____, entitled *State of Arizona v. Defendant*.

4
5 4. The name and address of the attorney representing the State in the
6 proceeding pursuant to which the lien is filed is Name of elected County Attorney,
7 _____ County Attorney, through the undersigned Deputy County Attorney,
8 Address.

9
10 5. This lien is being filed pursuant to the provisions of A.R.S. § 13-806.
11 **PURSUANT TO A.R.S. § 13-806(A), NO FILING FEE OR ANY OTHER CHARGE IS**
12 **REQUIRED FOR FILING OR RECORDING THIS LIEN.**

13
14 6. The sub-paragraph below has been completed and reflects the actual amount
15 of restitution ordered in this proceeding as to the victim filing and recording this Restitution
16 Lien:

17 A. The Defendant has been convicted and ordered to pay restitution. The amount
18 of restitution ordered paid to the victim filing and recording this Restitution Lien
19 is:

20 1. Victim
21 \$ _____

Victim or Victim Attorney
Name, address, phone
State v. Defendant, CR _____
Restitution Lien

1

2

Victim or Victim Attorney
Name, address, phone
State v. Defendant, CR _____
Restitution Lien

1 7. A final Restitution Order/Judgment was entered on Date . Pursuant to
2 A.R.S. § 804(F), the restitution liability and obligation of Defendant is joint and
3 several with any co-defendants in the case. A copy of the Restitution Order/Judgment entered on
4 Date is attached hereto and incorporated herein.

5
6 8. The name, current or last known address for payment of restitution, and amount of
7 restitution ordered to the victim filing and recording this Restitution Lien, who is entitled to
8 restitution in this proceeding pursuant to the Order/Judgment are:

<u>Name and Address</u>	<u>Restitution Ordered</u>
<u> Victim </u>	\$ <u> </u>
To be paid to the Clerk of the <u> </u> County Superior Court <u> Address of Clerk of Court </u>	

9
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17
18 9. As of Date , Defendant has paid the amount of \$, all of which has
19 been applied to the Restitution owed to the victims incurring economic loss. As of
20 Date , the co-defendant in this case has paid the amount of \$, all of
21 which has been applied to the Restitution owed to the victims incurring economic loss. As of
22 Date , the total amount of Restitution paid to the victims incurring economic loss is \$
23 .

Victim or Victim Attorney
Name, address, phone
State v. Defendant, CR _____
Restitution Lien

1 Certified copies to be recorded with:
2
3 _____ County Recorder's Office
4 Arizona MVD
5 Arizona Secretary of State
6 Arizona Department of Revenue

Victim or Victim Attorney
Name, address, phone
State v. Defendant, CR _____
Restitution Lien

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,)

Plaintiff,)

vs.)

_____,)

Defendant.)

CR

NOTICE OF
RESTITUTION LIEN

(Assigned to Hon. _____,
Division __)

1 COMES NOW Victim, and hereby give notice that a Restitution Lien
2 pursuant to A.R.S. § 13-806 has been imposed, filed and recorded against the Defendant and
3 property and interests of the Defendant by the victim filing and recording the Restitution Lien for
4 the amount set forth in the Restitution Lien.

5
6 DATED this _____ day of _____, 20__.

7
8 _____
9 Victim or Victim attorney

10
11
12 Original filed with Clerk of _____ County Superior Court

13
14 Copy delivered to:

15
16 Hon. _____, Division ____

17
18 Copies mailed to:

19
20 Defendant

21 Address
22

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Defendant's Attorney
Address
Deputy County Attorney
Address

Certified copies to be recorded with:

- _____ County Recorder's Office
- Arizona MVD
- Arizona Secretary of State
- Arizona Department of Revenue

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3. Defendant's previous last known address was:

4. This restitution lien is being filed in connection with a criminal proceeding filed in _____ County Superior Court, _____ County, Arizona, under case number CR-_____, entitled *State of Arizona v.*_____

5. The name and address of the attorney representing the State in the proceeding pursuant to which the lien is filed is Mark Brnovich, Arizona Attorney General, through the undersigned Assistant Attorney General, PUT ADDRESS.

6. This lien is being filed pursuant to the provisions of A.R.S. § 13-806.
PURSUANT TO A.R.S. § 13-806(A), NO FILING FEE OR ANY OTHER CHARGE IS REQUIRED FOR FILING OR RECORDING THIS LIEN.

7. The Defendant has not yet been ordered to pay restitution. The estimated amount of economic loss caused by the offense(s) alleged in this proceeding is:
\$ _____ .

1 8. The names, current or last known addresses, and estimated amount of
2 restitution to be ordered and due to the persons/entities entitled to restitution in this
3 proceeding are:

4 Name and Address	Restitution Amount/Estimate
5 _____ 6 _____	\$ _____
7 _____ 8 _____	
9 _____ 10 _____	
11 _____ 12 _____	
13 _____ 14 _____	\$ _____
15 _____ 16 _____	
17 _____ 18 _____	
19 _____	

20 9. It is expected that the amount of restitution owed will change due to the
21 amount of restitution actually ordered by the Court, because of accruing economic
22 expenses, and due to payments made. The Clerk of the _____ County Superior
23 Court will have and maintain a record of the outstanding balance of restitution owing.

24
25

1 10. The State asks that a Criminal Restitution Order/Judgment be entered
2 as to the Restitution amount actually ordered by the Court in this action, pursuant to
3 A.R.S. 13-805.

4 DATED this ____ day of _____, 2016.

7 MARK BRNOVICH
8 ARIZONA ATTORNEY GENERAL

11 _____
12 Name
13 Assistant Attorney General

17 Original filed with Clerk of _____ County Superior Court

19 Conformed copy delivered to Assigned Judge

21 Conformed copy mailed/delivered to:

23 Victim(s)
24 Arizona Attorney General's Office, assigned prosecutor
25 Defendant
26 Defendant's attorney

28 Certified copies recorded with:

30 _____ County Recorder's Office
31 Arizona MVD
32 Arizona Secretary of State
33 Arizona Department of Revenue

Put AG Header

State v. _____, CR-_____
Notice of Restitution Lien

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF _____

STATE OF ARIZONA,)	CR-_____
)	
Plaintiff,)	NOTICE OF
)	RESTITUTION LIEN
vs.)	
)	(Assigned to: _____)
_____,)	
)	
Defendant.)	
_____)	

COME NOW THE STATE OF ARIZONA, through the Arizona Attorney General, Mark Brnovich, through the undersigned Assistant Attorney General, and hereby give notice that a Restitution Lien pursuant to A.R.S. § 13-806 has been imposed, filed and recorded against the Defendant and property and interests of the Defendant for the amounts set forth in the Restitution Lien.

DATED this ____ day of _____, 2016.

MARK BRNOVICH
ARIZONA ATTORNEY GENERAL

Name
Assistant Attorney General

Original filed with Clerk of _____ County Superior Court

Conformed copy delivered to Assigned Judge

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Conformed copy mailed/delivered to:

Victim(s)
Arizona Attorney General's Office, assigned prosecutor
Defendant
Defendant's attorney

Certified copies recorded with:

_____ County Recorder's Office
Arizona MVD
Arizona Secretary of State
Arizona Department of Revenue

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF _____

STATE OF ARIZONA,)	CR _____
)	
Plaintiff,)	RESTITUTION LIEN
)	
vs.)	(Assigned to Hon. _____,
)	Division ____)
_____,)	
)	
Defendant.)	
_____)	

COMES NOW _____ Victim or State Attorney _____ and hereby gives notice of the imposition, filing and recording of a Restitution Lien pursuant to A.R.S. § 13-806.

1. The name and date of birth of the Defendant whose property or other interests are subject to the lien are as follows:

Defendant
Date of Birth: __/__/____

2. The present residence and principal place of business of the foregoing named Defendant is:
Address

Defendant's previous last known address was:
Address

Header info

1 3. This restitution lien is being filed and recorded in connection with a criminal
2 proceeding filed in _____ County Superior Court, _____ County, Arizona, under case number
3 CR _____, entitled *State of Arizona v. Defendant*.

4
5 4. The name and address of the attorney representing the State in the
6 proceeding pursuant to which the lien is filed is Name of elected County Attorney or
7 AG, through the undersigned Deputy County Attorney/Asst AG,
8 Address.

9
10 5. This lien is being filed pursuant to the provisions of A.R.S. § 13-806.
11 **PURSUANT TO A.R.S. § 13-806(A), NO FILING FEE OR ANY OTHER CHARGE IS**
12 **REQUIRED FOR FILING OR RECORDING THIS LIEN.**

13
14 6. The sub-paragraph below has been completed and reflects the actual amount
15 of restitution ordered in this proceeding as to the victim filing and recording this Restitution
16 Lien:

17 A. The Defendant has been convicted and ordered to pay restitution. The amount
18 of restitution ordered paid to the victim is:

- 19 1. Victim
20 \$ _____

Header info

1 7. A final Restitution Order/Judgment was entered on Date . Pursuant to
2 A.R.S. § 804(F), the restitution liability and obligation of Defendant is joint and
3 several with any co-defendants in the case. A copy of the Restitution Order/Judgment entered on
4 Date is attached hereto and incorporated herein.

5
6 8. The name, current or last known address for payment of restitution, and amount of
7 restitution ordered to the victim entitled to restitution in this proceeding pursuant to the
8 Order/Judgment are: **[NOTE: use the address of the clerk of court here and do not put**
9 **victim's address]**

<u>Name and Address</u>	<u>Restitution Ordered</u>
<u>Victim Name</u>	\$ <u> </u>

10
11
12
13 To be paid to the
14 Clerk of the County Superior Court
15 Address of Clerk of Court
16
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19 9. As of Date , Defendant has paid the amount of \$, all of which has
20 been applied to the Restitution owed to the victims incurring economic loss. As of
21 Date , the co-defendant in this case has paid the amount of \$, all of
22 which has been applied to the Restitution owed to the victims incurring economic loss. As of
23 Date , the total amount of Restitution paid to the victims incurring economic loss is \$
24 .

Header info

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2 _____ County Recorder's Office
3 Arizona MVD
4 Arizona Secretary of State
5 Arizona Department of Revenue

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Defendant's Attorney
Address
Deputy County Attorney/Asst AG
Address

Certified copies to be recorded with:

- ____ County Recorder's Office
- Arizona MVD
- Arizona Secretary of State
- Arizona Department of Revenue