

1 recently, international money transfers, sent via wire, from the plaintiffs and literally
2 thousands of other individuals who reside in the United States. Defendants have done
3 so solely on the basis that (1) the amount plaintiffs sought to transmit exceeded a
4 certain threshold chosen by defendants (such as \$500 or more), (2) the transactions
5 were initiated during extended time periods chosen by defendants and from one of
6 certain states in the United States chosen by defendants, and (3) the monies were to be
7 received anywhere in Arizona or, on information and belief, at 26 locations in Sonora,
8 Mexico. Defendants took these actions based on blanket seizure warrants and without
9 probable cause to believe that the monies were the fruits or instrumentalities of crime,
10 or otherwise subject to forfeiture; without providing adequate notice and an
11 opportunity to be heard to the senders of the money; and with improper discrimination
12 against interstate and international commerce. Defendants by these actions have
13 violated, and continue to violate, the Fourth and Fourteenth Amendments to and the
14 Commerce Clause of the United States Constitution.

15 **Jurisdiction and Venue**

16 2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and
17 1343(a)(3).

18 3. Pursuant to 28 U.S.C. § 1391(b), the District of Arizona is the proper
19 venue for this action because a substantial part of the events giving rise to plaintiffs'
20 claims occurred in this judicial district and, on information and belief, defendants
21 reside in this district.

22 **Parties**

23 4. Plaintiff Javier Torres is, and at all times pertinent hereto has been, a
24 resident of Illinois.

25 5. Plaintiff Alma Santiago is, and at all times pertinent hereto has been, a
26 resident of North Carolina.

27 6. Plaintiff Lia Rivadeneyra is, and at all times pertinent hereto has been, a
28 resident of California.

1 11. On information and belief, on approximately October 20, 2004,
2 defendants obtained and executed a criteria-based warrant authorizing the seizure of
3 all \$1,000 wire transfers sent via Western Union from any state outside of Arizona to
4 be paid to a recipient in Arizona.

5 12. In March of 2005, defendants obtained and executed a criteria-based
6 warrant was issued authorizing the “seizure of all \$2,000 transactions placed with
7 Western Union in the United States in a location other than Arizona for payment in
8 Arizona.”

9 13. On approximately September 1, 2005, defendants obtained and executed
10 a warrant which authorized the seizure of all person-to-person wire transfers of \$600
11 and \$700 designated for a recipient anywhere in Arizona and sent from any of the
12 following states: Tennessee, Georgia, Illinois, New Jersey, New York, North
13 Carolina, South Carolina, and Virginia.

14 14. On approximately February 16, 2006, defendants obtained and executed
15 a warrant which authorized the seizure of all person-to-person wire transfers of \$500
16 or more designated for a recipient anywhere in Arizona and sent from any of the
17 following states: Connecticut, Florida, New Jersey, North Carolina, South Carolina,
18 and Virginia. On approximately March 3, 2006, defendants obtained a modification
19 and extension of this warrant resulting in seizures of all person-to-person wire
20 transfers of \$500 or more designated for a recipient anywhere in Arizona and sent
21 from any of the aforementioned states as well as Delaware, Georgia, Maryland and
22 New York. On approximately March 10, 2006, defendants obtained a second
23 extension and modification resulting in seizures of all person-to-person wire transfers
24 of \$500 or more designated for a recipient anywhere in Arizona and sent from any of
25 the aforementioned states and Illinois and Indiana.

26 15. On approximately March 15, 2006, defendants obtained and executed a
27 warrant which authorized the seizure of all person-to-person wire transfers of \$500 or
28 more designated for a recipient anywhere in Arizona and sent from any of the

1 following states: Connecticut, Delaware, Florida, Georgia, Illinois, Indiana,
2 Maryland, New Jersey, New York, North Carolina, South Carolina, and Virginia.
3 Defendants obtained an extension of this warrant, which, on information and belief,
4 resulted in seizures until approximately April 14, 2006.

5 16. On information and belief, on September 22, 2006, defendants obtained
6 and executed a warrant authorizing the seizure of all person-to-person transfers over
7 \$500 from any one of 29 states to any one of 26 specific Western Union locations in
8 Sonora, Mexico. On information and belief, every transfer over \$500 from the
9 following twenty-nine (29) states were to be seized: California, Arizona, New York,
10 Florida, Illinois, Georgia, New Jersey, North Carolina, Virginia, Tennessee,
11 Maryland, Texas, Nevada, South Carolina, Ohio, Pennsylvania, Washington,
12 Alabama, Indiana, Oregon, Colorado, Minnesota, Utah, Connecticut, Michigan,
13 Massachusetts, Wisconsin, Kentucky and Delaware.³

14 17. Defendants contend in their applications to the Superior Court of the
15 State of Arizona, Maricopa County, for the criteria-based warrants, that forfeiture is
16 authorized pursuant to Ariz. Rev. Stat. §§ 23-2314 and 13-4301 *et seq.* “based on
17 conduct described in the following statutes”: money laundering, Ariz. Rev. Stat.
18 §§ 13-2317 and 6-1241; participation in or assisting a criminal syndicate, Ariz. Rev.
19 Stat. §§ 13-2308(A)(4) and (C); fraudulent schemes and practices, willful
20 concealment, Ariz. Rev. Stat. §§ 13-2311; illegally conducting or participating in the
21 conduct of an enterprise, Ariz. Rev. Stat. §§ 13-2312; tampering with a public record,
22 Ariz. Rev. Stat. §§ 13-2407; taking the identity of another, Ariz. Rev. Stat. §§ 13-
23 2008; and attempt, solicitation, conspiracy and facilitation in connection with the
24 above, Ariz. Rev. Stat. §§ 13-1001-4. Sometimes but not always, defendants have
25 also listed smuggling, Ariz. Rev. Stat. §§ 13-2319, as an additional crime upon which

26 ³ On September 25, 2006, this warrant was temporarily stayed by order of the
27 Arizona Superior Court, Maricopa County, but not before over 240 transfers totaling
28 over \$200,000 were seized.

1 the seizures and forfeitures are based.

2 18. In the two years preceding the filing of this Complaint, defendants have
3 seized over \$12 million in funds from thousands transactions attempted by plaintiffs
4 and members of the proposed plaintiff class.

5 19. As explained below, the plaintiffs have sent money in the amount of
6 \$500 or more through Western Union. The plaintiffs would like to be able to continue
7 sending money to Arizona and/or Mexico in the amount of \$500 or more through
8 Western Union, but have not done so because they fear that defendants will once
9 again seize and convert the money.

10 20. Members of the proposed plaintiff class have sent money to friends,
11 family members and others who reside or resided in Arizona or Mexico for a variety
12 of legal purposes. For example, people have sent money to pay for medication, car
13 repairs, loan repayments and help with rental payments.

14 21. Defendants have seized these funds by means of blanket warrants
15 without probable cause to believe that many, if not all, of them were the fruits or
16 instrumentalities of crime.

17 22. None of the plaintiffs have received notice from defendants regarding
18 their legal rights to contest the individual seizures. Defendants have not served
19 written notice of any sort on any members of the proposed class. On information and
20 belief, this decision not to serve notice was made by defendant Holmes and ratified by
21 defendant Goddard in knowing violation of both the provisions of Arizona law and of
22 the United States Constitution.

23 23. Several members of the proposed plaintiff class have attempted, without
24 receiving notice, to secure return of their monies. Some left telephonic messages with
25 the defendants' agents and received no response, some sent letters to the defendants'
26 agents and received no response, some were contacted by defendants' agents and
27 were interrogated and threatened.

28 24. Many members of the proposed plaintiff class were told by defendants'

1 agents if they could not prove to the defendants' agents' satisfaction that the purpose
2 of the money was legal, there was no way they could get the money returned.

3 **Plaintiff Javier Torres**

4 25. Plaintiff Javier Torres ("Torres") sent one thousand dollars (\$1,000) via
5 Western Union to Glendale, Arizona in approximately March 2006.

6 26. Torres sent the money to a friend as payment for a car he had previously
7 received and agreed to purchase.

8 27. When the intended recipient did not receive the money, Torres went to
9 Western Union regarding the transfer and was given a phone number for Western
10 Union's main office. Torres called that number, gave the Western Union staff person
11 who answered the phone his name and transaction number, and was informed that
12 Arizona law enforcement officials would contact him.

13 28. Thereafter, Torres was called, on information and belief, by Arizona law
14 enforcement agents working under direction of the defendants, and was told that the
15 State of Arizona believed the money was intended to pay a "coyote" or a drug dealer
16 and the only way to recover his money was to prove to the law enforcement officer
17 that it was sent for a lawful purpose, including by sending the title and registration to
18 the car he had bought.

19 29. Torres explained that he did not have the title and registration to the car
20 because he had already sold the car, but was told that without those documents he
21 could not get his money back.

22 30. Torres spoke by telephone several more times with Arizona law
23 enforcement officials in attempts to recover his money. He does not know the names
24 of the people with whom he spoke. On information and belief, they were all agents
25 acting under defendants' direction. He was consistently told that the only way he
26 could recover his money was if he produced the title or registration to the car.

27 31. Because the money was seized, Torres was forced to send the intended
28 recipient a \$1,000 check via the United States Postal Service.

1 32. Neither Torres nor the intended recipient ever received any written or
2 oral notice from the defendants regarding the legal process available to challenge the
3 seizure.

4 33. Torres has been and remains afraid to send money to Arizona via any
5 wire service, including but not limited to Western Union, since his transfer was
6 seized.

7 **Plaintiff Alma Santiago**

8 34. Plaintiff Alma Santiago (“Santiago”) sent two thousand dollars (\$2,000)
9 via Western Union to Phoenix, Arizona in approximately March 2005.

10 35. Santiago sent the money to her cousin who had previously lived in
11 North Carolina and had recently relocated to Arizona. Santiago sent him the money
12 so that he would be able to return to visit family in North Carolina.

13 36. When her cousin did not receive the money, Santiago called Western
14 Union and was told that her money was being held by the State of Arizona and that
15 someone would contact her. Later, someone who identified himself as a law
16 enforcement officer called Santiago and said that before any money would be returned
17 to her, the law enforcement officer would need to question Santiago’s cousin. On
18 information and belief, the caller was an agent working under defendants’ direction.
19 Because Santiago’s cousin did not have a telephone and she had no telephone number
20 for him, Santiago was unable to recover her money.

21 37. Neither Santiago nor, on information and belief, her cousin, received
22 any written or oral notice from the defendants regarding the process available to
23 challenge the seizure.

24 38. Santiago has been and remains afraid to send money to Arizona via any
25 wire service, including but not limited to Western Union, since her transfer was
26 seized.

27 **Plaintiff Lia Rivadeneyra**

28 39. Plaintiff Lia Rivadeneyra (“Rivadeneyra”) sent five hundred dollars

1 (\$500) via Western Union to Sonora, Mexico on September 23, 2006.

2 40. Rivadeneyra sent the money to her brother, who is a resident and
3 national of Peru, while he was visiting friends in Mexico.

4 41. When Rivadeneyra's brother did not receive the money, Rivadeneyra
5 contacted Western Union regarding the transfer. Later, on information and belief, a
6 law enforcement official from Arizona, working as an agent of defendants, called and
7 spoke to Rivadeneyra's sister. Without identifying himself (and apparently believing
8 he was talking to Rivadeneyra), the person began to interrogate Rivadeneyra's sister
9 regarding the transaction, accusing her of sending the money to pay a "coyote."
10 Rivadeneyra's sister asked if he was a police officer, but the person would not answer
11 her question so Rivadeneyra's sister hung up.

12 42. A day or two later, Rivadeneyra called the number Western Union had
13 given her and spoke to someone who worked for the State of Arizona and was, on
14 information and belief, an agent of the defendants. Rivadeneyra was told that the
15 money would not be returned to her until the State of Arizona was able to interview
16 her brother. Rivadeneyra explained that her brother had returned to Peru from
17 Mexico, and was living there in a house without a phone.

18 43. Neither Rivadeneyra, nor, on information and belief, her brother
19 received any written or oral notice from the defendants regarding the process
20 available to challenge the seizure.

21 44. Rivadeneyra has been afraid and remains afraid to send money via any
22 wire service, including but not limited to Western Union, since her money was seized.

23 **Class Action Allegations**

24 45. Plaintiffs Javier Torres, Alma Santiago and Lia Rivadeneyra bring this
25 lawsuit pursuant to Federal Rule of Civil Procedure 23, on behalf of themselves and
26 all persons who sent money through a wire transfer service or banking institution to
27 be received in Arizona or, on information and belief, in Sonora, Mexico, and had that
28 money seized and converted by defendants pursuant to a criteria-based warrant, where

1 such money was seized no more than two years before the filing of this lawsuit.

2 46. The class defined above satisfies the numerosity, commonality,
3 typicality, adequacy, predominance, and superiority requirements of Rule 23. It is so
4 numerous that joinder of its members is impracticable. Common questions of law and
5 fact predominate over individual issues that may exist as to the class. These common
6 questions of law and fact include, *inter alia*, the following:

7 a. whether defendants lacked probable cause to believe that the
8 monies the class members sent were the fruits or instrumentalities of crime, or
9 otherwise subject to forfeiture under Arizona law, and thus violated the Fourth
10 Amendment;

11 b. whether defendants acted on the basis of overly broad seizure
12 warrants and thus violated the Fourth Amendment;

13 c. whether defendants failed to give class members adequate and
14 timely notice that their money had been seized and of the opportunity for a
15 hearing to contest that seizure, thus violating the due process clause of the
16 Fourteenth Amendment; and

17 d. whether defendants' actions interfered with interstate and
18 international commerce, in violation of the Commerce Clause of the
19 Constitution.

20 47. Plaintiffs will fairly and adequately protect the interests of all class
21 members as they are members of the class and their claims are typical of the claims of
22 all class members. Plaintiffs' interests in obtaining injunctive and monetary relief for
23 the violations of their constitutional rights by defendant are consistent with and are
24 not antagonistic to those of any person within the class.

25 48. Defendants' wrongful conduct alleged herein has been visited generally
26 upon all members of the plaintiff class, such that common questions of fact and law
27 predominate over questions affecting only individual members.

28 49. A class action is superior to other available methods for the fair an

1 efficient adjudication of this controversy because it will:

- 2 a. avoid the heavy burden of multiple, duplicative suits;
- 3 b. avoid the virtually impossible task of getting all class members to
- 4 intervene as party-plaintiffs in this action;
- 5 c. allow the Court, upon adjudication of defendants' liability, to
- 6 determine the claims of all class members; and
- 7 d. allow the court to enter appropriate final injunctive and
- 8 declaratory relief with respect to the class as a whole.

9 **Count I: Fourth Amendment**

10 50. Plaintiffs repeat and reallege paragraphs 1-49 above.

11 51. Defendants, at the time they seized the monies belonging to plaintiffs
12 Javier Torres, Alma Santiago, Lia Rivadeneyra, and members of the proposed
13 plaintiff class, lacked probable cause to believe that those monies were the fruits or
14 instrumentalities of crime, or otherwise subject to forfeiture under Arizona law.
15 Defendants' seizure of those monies thus violated the Fourth Amendment.

16 **Count II: Fourth Amendment**

17 52. Plaintiffs repeat and reallege paragraphs 1-49 above.

18 53. Defendants, at the time they seized the monies belonging to plaintiffs
19 Javier Torres, Alma Santiago, Lia Rivadeneyra, and members of the proposed
20 plaintiff class, relied upon warrants which were grossly overbroad on their face and,
21 thus, violated the Fourth Amendment.

22 **Count III: Due Process**

23 54. Plaintiffs repeat and reallege paragraphs 1-49 above.

24 55. Defendants failed to give plaintiffs Javier Torres, Alma Santiago, Lia
25 Rivadeneyra, and members of the proposed plaintiff class, adequate and timely notice
26 that their money would be seized.

27 56. Defendants failed to demonstrate exigent circumstances permitting the
28 *ex parte* seizure of plaintiffs' money.

- 1 B. award prospective declaratory and injunctive relief to plaintiffs and
2 members of plaintiff class, declaring that defendants' seizure of monies
3 pursuant to "criteria-based warrants" to be in violation of the Fourth and
4 Fourteenth Amendments to and the Commerce Clause of the United
5 States Constitution, and preliminarily and permanently enjoining
6 defendants from seeking such warrants and seizing money on those
7 bases;
- 8 C. award restitution to plaintiffs and members of plaintiff class for the
9 monies wrongfully seized from them by defendants;
- 10 D. award damages against defendants in their individual capacities to
11 plaintiffs and members of the plaintiffs class for loss of their monies and
12 the uses and benefits thereof;
- 13 E. award plaintiffs and class members costs pursuant to 28 U.S.C. § 1920;
- 14 F. award plaintiffs and class members attorneys' fees and related
15 nontaxable expenses pursuant to 42 U.S.C. § 1988; and
- 16 G. grant such additional relief as the Court deems appropriate.

17 **Jury Demand**

18 Plaintiffs demand trial by jury on all issues as to which a jury trial is available.

19 DATED this 18th day of October, 2006.

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