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14 and LIA RIVADENEYRA

15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 JAVIER TORRES and LIA RIVADENEYRA
18 on behalf of themselves and others
similarly situated,

19 Plaintiffs,

20 v.

21 TERRY GODDARD, Attorney General of the
22 State of Arizona, in his individual and official
23 capacities; and CAMERON (“KIP”) HOLMES,
in his individual capacity,

24 Defendant.

No. CV 06-02482-PHX-SMM

SECOND AMENDED
COMPLAINT

(Jury Trial Demanded)

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26 Plaintiffs JAVIER TORRES and LIA RIVADENEYRA, on behalf of themselves
27 and others similarly situated, complain against defendant TERRY GODDARD and
28 CAMERON (“KIP”) HOLMES as follows:

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Nature of the Action

1. This is a legal action brought pursuant to 42 U.S.C. §§ 1983 and 1988 to redress and prevent the continuation of violations of the civil and constitutional rights of the plaintiffs arising from unconstitutional seizures of millions of dollars in money transfers. In the two years prior to the filing of this lawsuit, defendants have illegally seized more than \$9 million in interstate and international money transfers, which were intended to be sent via Western Union Financial Services, Inc. (“Western Union”) money transfers, from the plaintiffs and literally thousands of other persons throughout the United States and elsewhere. Defendants have seized this money without particularized information regarding the persons or transactions involved, and on the basis of the following blanket criteria: (1) the amounts sought to be transmitted were in or exceeding certain dollar amounts (such as in the amount of \$1,000, or in or exceeding the amount of \$500); (2) the transactions were initiated by persons outside of Arizona (ranging from anywhere in the world to large numbers of other states throughout the United States); (3) the monies were intended to be received by persons in Arizona or northern Sonora, Mexico, and (4) the transactions were initiated during certain time periods (ranging from two weeks to over a month). These seizures are referred to herein as “blanket criteria-based seizures.” Defendants engaged in these seizures by means of blanket warrants (referred to herein as “blanket criteria-based warrants”) and without any particularized probable cause to believe that the monies seized were the fruits or instrumentalities of crime or otherwise subject to forfeiture. They also did so without providing adequate notice and an opportunity to be heard to the senders of the money, in improper interference with interstate and international commerce, and without lawful jurisdiction under Arizona law over either the property seized or its owners. Defendants by these actions have violated, and continue to violate, the Fourth and Fourteenth Amendments to and the Commerce Clause of the United States Constitution.

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Jurisdiction and Venue

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

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

Parties

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

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

6. Defendant Terry Goddard ("Goddard") is, and at all times pertinent hereto has been, the Attorney General of the State of Arizona. He is sued in his individual and official capacities.

7. Defendant Cameron ("Kip") Holmes is, and at all times pertinent hereto has been, the Section Chief of, or (since February 11, 2008) a Senior Litigator in, the Financial Remedies Section of the Criminal Division of the Arizona Attorney General's Office. He is sued in his individual capacity.

8. The defendants engaged in the conduct complained of both personally and through agents or representatives working with and/or acting pursuant to the defendants' direction and authority.

Statement of Facts

9. Since September 2004, defendants have prepared and had issued by the Superior Court of the State of Arizona, Maricopa County, a series of blanket criteria-based warrants. These warrants were then served by the defendants on Western Union in order to seize thousands of money transfers intended to be sent to Arizona or Sonora Mexico, totaling over nine million dollars. These blanket criteria-based warrants do not describe or identify either the individual senders or the intended receivers of the funds,

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2 nor do they describe with particularity the property to be seized, instead basing the
3 seizures on broad, blanket criteria, as described in more detail in the following
4 paragraphs.

5 10. On or about October 12, 2004, defendants served and executed a
6 modification of a pre-existing warrant, converting it into a blanket criteria based warrant,
7 and seizing \$1000 person-to-person money transfers placed with Western Union
8 anywhere outside of Arizona and intended to be paid anywhere in Arizona between
9 October 20, 2004 and November 2, 2004.

10 11. On or about March 10, 2005, defendants served and executed a blanket
11 criteria-based warrant, seizing all \$2,000 person-to-person money transfers placed with
12 Western Union anywhere in the United States outside of Arizona to be paid anywhere in
13 Arizona beginning on March 11, 2005. The blanket criteria of this warrant were
14 thereafter, at defendants' request, modified to also include seizures of funds in the
15 amounts of \$1,000 or \$1,500, and its term was extended through April 22, 2005.
16 Approximately 3,582 transfers totaling over \$4.6 million were seized without release.

17 12. On or about September 1, 2005, defendants served and executed a blanket
18 criteria-based warrant, seizing all \$600 and \$700 person-to-person money transfers to be
19 paid anywhere in Arizona and placed with Western Union in any of the following states
20 beginning on September 2, 2005: Tennessee, Georgia, Illinois, New Jersey, New York,
21 North Carolina, South Carolina, and Virginia. The blanket criteria of this warrant were
22 thereafter modified at defendants' request to also include seizures of funds placed for
23 transmission in the states of Alabama and Florida, and its term was extended through
24 September 29, 2005.

25 13. On or about February 16, 2006, defendants served and executed a blanket
26 criteria-based warrant, seizing all person-to-person money transfers of \$500 or more to be
27 paid anywhere in Arizona and placed with Western Union in any of the following states
28 beginning on February 17, 2006: Connecticut, Florida, New Jersey, North Carolina, South

1 Carolina, and Virginia. The blanket criteria of this warrant were thereafter modified at
2 defendants request to also include the seizures of funds placed for transmission in the
3 states of Delaware, Georgia, Maryland, New York, Illinois and Indiana, and its term was
4 extended through March 16, 2006.

5 14. On or about March 15, 2006, defendants served and executed a blanket
6 criteria-based warrant, seizing all person-to-person wire transfers of \$500 or more to be
7 paid anywhere in Arizona and placed with Western Union in any of the following states
8 beginning on March 17, 2006: Connecticut, Delaware, Florida, Georgia, Illinois, Indiana,
9 Maryland, New Jersey, New York, North Carolina, South Carolina, and Virginia. This
10 blanket criteria-based warrant was thereafter extended at defendants request through
11 April 14, 2006.

12 15. On or about September 21, 2006, defendants served and executed a blanket
13 criteria-based warrant authorizing the seizure of all person-to-person money transfers in
14 the amount of \$500 or more to be paid at any of 26 locations in Sonora, Mexico and
15 placed with Western Union in any the following twenty-nine (29) states: California,
16 Arizona, New York, Florida, Illinois, Georgia, New Jersey, North Carolina, Virginia,
17 Tennessee, Maryland, Texas, Nevada, South Carolina, Ohio, Pennsylvania, Washington,
18 Alabama, Indiana, Oregon, Colorado, Minnesota, Utah, Connecticut, Michigan,
19 Massachusetts, Wisconsin, Kentucky and Delaware. On September 25, 2006, this
20 warrant was stayed by order of the Arizona Superior Court, Maricopa County, but not
21 before approximately 248 transfers totaling over \$240,000 were seized. Thereafter, on
22 January 8, 2007, the warrant was quashed by order of the Superior Court, finding that the
23 warrant and seizures violated, *inter alia*, "the Commerce Clause, Foreign Commerce
24 Clause, Due Process Clause and the Fourth Amendment of the United States
25 Constitution." *In The Matter Of: Monies Described In Appendix One To The Supporting*
26 *Affidavit*, No. SW 2006-002213 (Maricopa County Superior Court). That order has been
27 appealed by the State of Arizona, and the seized funds have not yet been returned.

28 16. Each of these warrants was obtained as part of an ongoing investigation into

1 human and drug smuggling activities and prior to a determination as to which, if any, of
2 the funds seized would ultimately be the subject of an asset forfeiture action.

3 17. Defendants contend in their applications to the Superior Court of the State
4 of Arizona, Maricopa County, for the blanket criteria-based warrants, that forfeiture is
5 authorized pursuant to Ariz. Rev. Stat. §§ 13-2314 and 13-4301 *et seq.* “based on conduct
6 described in the following statutes”: money laundering, Ariz. Rev. Stat. §§ 13-2317 and
7 6-1241; participation in or assisting a criminal syndicate, Ariz. Rev. Stat. §§ 13-
8 2308(A)(4) and (C); fraudulent schemes and practices, willful concealment, Ariz. Rev.
9 Stat. §§ 13-2311; illegally conducting or participating in the conduct of an enterprise,
10 Ariz. Rev. Stat. §§ 13-2312; tampering with a public record, Ariz. Rev. Stat. §§ 13-2407;
11 taking the identity of another, Ariz. Rev. Stat. §§ 13-2008; and attempt, solicitation,
12 conspiracy and facilitation in connection with the above, Ariz. Rev. Stat. §§ 13-1001-4.
13 Sometimes but not always, defendants have also listed smuggling, Ariz. Rev. Stat. §§ 13-
14 2319, as an additional crime upon which the seizures and forfeitures are based. However,
15 at the time of the seizures pursuant to these blanket criteria-based warrants, the
16 defendants lacked particularized probable cause to believe that any of the plaintiffs or
17 members of the proposed plaintiff class were involved in, or that their money transfers
18 were the fruits or instrumentalities of, any of the stated criminal offenses. Further, none
19 of the plaintiffs nor, on information and belief, any of the members of the proposed
20 plaintiff class, have ever been charged with, let alone convicted of, any crime related to
21 their attempted transfers of the funds seized by means of these blanket criteria-based
22 warrants.

23 18. The above described actions of the defendants have caused seizure of more
24 than \$9 million in funds owned by and/or in which property interests were held by
25 plaintiffs and members of the proposed plaintiff class.

26 19. As explained below, the plaintiffs have sent money in the amount of \$500
27 or more through Western Union. The plaintiffs would like to be able to continue sending
28 money to Arizona, Mexico and/or elsewhere in the amount of \$500 or more through

1 Western Union, but have not done so because they fear that defendants will once again
2 seize and convert the money. The defendants have refused to agree not to engage in
3 future blanket criteria-based seizures. Plaintiffs have suffered and continue to suffer
4 irreparable injury for which there is no adequate remedy at law.

5 20. Defendants have seized funds sent by members of the proposed plaintiff
6 class, including funds sent for a variety of legal purposes to friends, family members and
7 others who reside or resided in Arizona including to pay for medication, car repairs, loan
8 repayments and rental payments.

9 21. Defendants have seized these funds by means of blanket criteria-based
10 warrants, which are general warrants, without particularized probable cause to believe
11 that the funds were the fruits or instrumentalities of crime.

12 22. None of the plaintiffs, or members of the plaintiff class, have received
13 notice from defendants regarding their legal rights to contest the individual seizures.
14 Defendants have not served written notice of any sort on plaintiffs or members of the
15 proposed class, either with regard to the seizure of their funds, or with regard to the asset
16 forfeiture actions, which were initiated weeks or months after the seizures. This decision
17 not to serve notice was made by defendant Holmes and ratified by defendant Goddard in
18 knowing violation of both the provisions of Arizona law and of the United States
19 Constitution.

20 23. Several members of the proposed plaintiff class have attempted, without
21 receiving notice, to secure return of their monies. Some left telephonic messages with the
22 defendants' agents and received no response, some sent letters to the defendants' agents
23 and received no response, some were contacted by defendants' agents and were
24 interrogated, threatened, and/or lied to as part of the investigation into the transactions
25 involved in the seized funds.

26 24. Plaintiffs and members of the proposed plaintiff class were told by
27 defendants' agents if they could not prove to the defendants' agents' satisfaction that the
28 purpose of the money was legal, there was no way they could get the money returned.

Plaintiff Javier Torres

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2 25. Plaintiff Javier Torres (“Torres”) sent one thousand dollars (\$1000) via
3 Western Union to Glendale, Arizona in approximately March 2006.

4 26. Torres sent the money to a friend as payment for a car he had previously
5 received and agreed to try to sell.

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

11 28. Thereafter, Torres was called by a law enforcement agent in Arizona
12 working with and/or as an agent of the defendants, and was questioned by the agent and
13 told that the State of Arizona believed the money was intended to pay a “coyote” or a
14 drug dealer and the only way to recover his money was to prove to the law enforcement
15 officer that it was sent for a lawful purpose, including by sending the title and registration
16 to the car he had bought.

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

20 30. Torres also spoke by telephone thereafter with law enforcement officials in
21 Arizona in attempts to recover his money. These law enforcement officials were working
22 with and/or as agents or representatives of the defendants. He was consistently told that
23 the only way he could recover his money was if he produced the title or registration to the
24 car.

25 31. Because the money was seized, Torres was forced to send the intended
26 recipient a \$1000 check via the United States Postal Service.

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

1 33. Torres has been and remains afraid to send money to Arizona or elsewhere
2 via any wire service, including but not limited to Western Union, since his transfer was
3 seized.

4 **Plaintiff Lia Rivadenevra**

5 34. Plaintiff Lia Rivadenevra (“Rivadenevra”) sent five hundred dollars (\$500)
6 via Western Union to Sonora, Mexico on September 23, 2006.

7 35. Rivadenevra sent the money to her brother, who is a resident and national of
8 Peru, while he was visiting friends in Mexico.

9 36. When Rivadenevra’s brother did not receive the money, Rivadenevra
10 contacted Western Union regarding the transfer, and she was eventually informed that the
11 money had been seized by Arizona law enforcement.

12 37. Thereafter, Rivadenevra and her sister had three or four telephonic
13 conversations with law enforcement officials, working with and/or as agents or
14 representatives of the defendants. In these conversations, the law enforcement officials
15 interrogated Rivadenevra and her sister regarding the transaction, accusing Rivadenevra
16 of sending the money to pay for drug or human trafficking. Even though they explained
17 that the money was not involved in any improper activities, the law enforcement agents
18 refused to agree to return it to Rivadenevra or let it be sent to her brother. Rivadenevra
19 was told that the money would not be returned to her until law enforcement agents for the
20 State of Arizona were able to interview her brother. Rivadenevra explained that her
21 brother had no phone in Mexico, and in Peru he lived in a house without a phone.

22 38. Neither Rivadenevra, nor, on information and belief, her brother received
23 any written or oral notice from the defendant regarding the process available to challenge
24 the seizure.

25 39. Rivadenevra has been afraid and remains afraid to send money via any wire
26 service, including but not limited to Western Union, since her money was seized.

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Class Action Allegations

40. Plaintiffs Javier Torres, Alma Santiago and Lia Rivadeneyra bring this lawsuit pursuant to Federal Rule of Civil Procedure 23, on behalf of themselves and all persons who attempted to send money through a wire transfer company from a location outside of the State of Arizona and which was subjected to a blanket criteria-based seizure by defendants on or after October 18, 2004.

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

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

b. whether the blanket criteria-based seizure warrants executed by defendants are overly broad and thus violative of the Fourth Amendment;

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

d. whether defendants' actions constitute improper interference with interstate and international commerce, in violation of the Commerce Clause of the Constitution.

42. Plaintiffs will fairly and adequately protect the interests of all class members as they are members of the class and their claims are typical of the claims of all class members. Plaintiffs' interests in obtaining injunctive and monetary relief for the

1 violations of their constitutional rights by defendant are consistent with and are not
2 antagonistic to those of any person within the class.

3 43. Defendants' wrongful conduct alleged herein has been and will continue to
4 be visited generally upon all members of the plaintiff class, such that common questions
5 of fact and law predominate over questions affecting only individual members.

6 44. A class action is superior to other available methods for the fair and efficient
7 adjudication of this controversy because it will:

- 8 a. avoid the heavy burden of multiple, duplicative suits;
9 b. avoid the virtually impossible task of getting all class members to intervene
10 as party-plaintiffs in this action;
11 c. allow the Court, upon adjudication of defendants' liability, to determine the
12 claims of all class members; and
13 d. allow the Court to enter appropriate final injunctive and declaratory relief
14 with respect to the class as a whole.

15 **Count I: Fourth Amendment**

16 45. Plaintiffs repeat and reallege paragraphs 1-45 above.

17 46. Defendants' blanket criteria-based seizures of the monies owned by and/or
18 in which property interests were held by plaintiffs Javier Torres and Lia Rivadeneyra, and
19 members of the proposed plaintiff class, were done without probable cause to believe that
20 those monies were the fruits or instrumentalities of crime, or otherwise subject to
21 forfeiture under Arizona law, and in violation of the Fourth Amendment.

22 **Count II: Fourth Amendment**

23 47. Plaintiffs repeat and reallege paragraphs 1-45 above.

24 48. Defendants' use of blanket criteria-based warrants to seize the monies
25 owned by and/or in which property interests were held by plaintiffs Javier Torres and Lia
26 Rivadeneyra, and members of the proposed plaintiff class, constituted reliance upon
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1 warrants which were grossly overbroad on their face and, thus, violative of the Fourth
2 Amendment.

3 **Count III: Due Process**

4 49. Plaintiffs repeat and reallege paragraphs 1-45 above.

5 50. Defendants failed to give plaintiffs Javier Torres and Lia Rivadeneyra, and
6 members of the proposed plaintiff class, adequate and timely notice regarding the seizure
7 and forfeiture of their monies.

8 51. Defendants cannot demonstrate exigent circumstances permitting the *ex*
9 *parte* forfeiture of plaintiffs' money.

10 52. Defendants failed and continue to fail to provide plaintiffs Javier Torres and
11 Lia Rivadeneyra, and members of the proposed plaintiff class, the opportunity for a
12 prompt post-seizure hearing to contest those seizures and forfeitures.

13 53. The actions in paragraphs 50-54 violated the due process clause of the
14 Fourteenth Amendment.

15 **Count IV: Commerce Clause**

16 54. Plaintiffs repeat and reallege paragraphs 1-45 above.

17 55. Defendants' actions were directed solely at monies sent from states other
18 than Arizona for receipt in Arizona, and at monies sent from the United States to Mexico.
19 Defendants did not seize monies meeting the same general criteria that were sent via wire
20 intrastate, from one Arizona location to another.

21 56. Defendants' actions improperly interfered with interstate and international
22 commerce.

23 57. Defendants' actions discriminated against interstate and international
24 commerce and in favor of intra-state commerce within Arizona.

25 58. Defendants' above-described actions violated the rights of plaintiffs and the
26 proposed plaintiff class under the commerce clause (U.S. Const. Art. I, § 8, cl. 3).

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Prayer for Relief

WHEREFORE, plaintiffs respectfully request, on behalf of themselves and the class they seek to represent, that this Court:

- A. certify this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2), and pursuant to Fed. R. Civ. P. 23(b)(3) or 23(b)(1), on behalf of the proposed plaintiff class, and designate the named plaintiffs as representative of the class and their counsel of record as class counsel;
- B. award prospective declaratory and injunctive relief to plaintiffs and members of plaintiff class, declaring that defendants' seizure of monies pursuant to blanket criteria-based warrants to be in violation of the Fourth and Fourteenth Amendments to and the Commerce Clause of the United States Constitution, and preliminarily and permanently enjoining defendants from seeking such warrants and seizing money on those bases;
- C. award restitution to plaintiffs and members of plaintiff class for the monies wrongfully seized from them by defendants;
- D. award damages against defendants in their individual capacities to plaintiffs and members of the plaintiff class for loss of their monies and the uses and benefits thereof;
- E. award plaintiffs and class members costs pursuant to 28 U.S.C. § 1920;
- F. award plaintiffs and class members attorneys' fees and related nontaxable expenses pursuant to 42 U.S.C. § 1988; and
- G. grant such additional relief as the Court deems appropriate.

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Jury Demand

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

Respectfully submitted,

/s/Matthew J. Piers
One of the Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th of May, 2008 I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

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