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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Rhonda Cox,

Plaintiff,

v.

Lando Voyles, et al.,

Defendants.

No. CV-15-01386-PHX-DJH
ORDER

Pending before the Court are three motions to dismiss: Defendants Voyles, Babeu¹, Cameron, and Hunt’s Motion to Dismiss (Doc. 24), Defendant Amanda Stanford’s Motion to Dismiss (Doc. 27), and Intervenor-Defendant State of Arizona’s Motion to Dismiss Under Rule 12(b), Fed. R. Civ. P. (Doc. 32)². For the following reasons, the Court grants the motions in part and denies the motions in part.

I. BACKGROUND

Arizona law enforcement agencies directly benefit economically from property seized pursuant to Arizona’s forfeiture statutes. Specifically, ARS §13-4315(A) and

¹ Defendants Voyles and Babeu were elected officials who were named in this action only in their official capacities – capacities in which they no longer serve. Mark Lamb has been substituted for defendant Paul Babeu and Kent Volkmer has been substituted for defendant Voyles. (Doc. 64). For ease of reference, this Order will continue to reference defendants Voyles and Babeu as they were named in the complaint and the motions to dismiss.

² Plaintiff has requested oral argument. The Court denies the request because the issues have been fully briefed and oral argument will not aid the Court’s decision. *See* Fed.R.Civ.P. 78(b) (court may decide motions without oral hearings); LRCiv 7.2(f) (same).

1 (B)(2) provide that “[a]ny property, including all interests in property, forfeited to the
2 state under this title shall be transferred as requested by the attorney for the state to the
3 seizing agency or to the agency or political subdivision employing the attorney for the
4 state...” and “[i]f the property declared forfeited is an interest in a vehicle, the court shall
5 order it forfeited to the local, state, or other law enforcement agency seizing the vehicle
6 for forfeiture or to the seizing agency.” In other words, all the proceeds from Arizona
7 state forfeitures go to the law enforcement agencies involved in seizing and prosecuting
8 the case. These agencies, as a result, are able to supplement their budgets through the
9 seizure and forfeiture of property.

10 Many state agency departments are entirely funded through forfeiture money. For
11 instance, the Arizona Department of Public Safety’s bomb squad, S.W.A.T. team, and
12 hazardous materials unit rely entirely on forfeiture money. Other agencies use their
13 forfeiture money to pay overtime, retirement contributions of employees, and department
14 vehicles to name a few. Department heads also use the money to fund “pet projects”
15 including the Pinal County Sheriff’s Office Justice Foundation, Inc. (Doc. 1 at 18 ¶ 112).

16 It is under this unique statutory scheme that this case arises.

17 Plaintiff Rhonda Cox owned a truck, which she occasionally let her son borrow.
18 On August 1, 2013, Plaintiff’s son drove the truck to a parking lot, where he was
19 “contacted” by deputies of the Pinal County Sheriff’s Department. (Doc. 1 at 8 ¶ 47).
20 The deputies were investigating the earlier theft of a truck hood and cover. They
21 eventually concluded that the cover and hood attached to Plaintiff’s truck had been
22 stolen. They arrested Plaintiff’s son and began forfeiture proceedings for the truck.

23 The first step in Arizona’s forfeiture proceeding is issuing a “Notice of Property
24 Seizure & Pending Uncontested Forfeiture” (“NOPS”) for the property at issue. The
25 issuance of the NOPS is statutorily required to bring the case against the property. In this
26 instance, defendant Samuel Hunt, a deputy of the Pinal County Sheriff’s Office, in
27 consultation with defendant Craig Cameron, Deputy Pinal County Attorney, issued a
28 NOPS for the truck. The NOPS contained numerous errors including identifying the

1 wrong seizing agency, alleging the forfeiture was authorized under statutes that pertain to
2 racketeering and narcotics, stating that the forfeiture was particularly authorized by the
3 burglary in the third degree statute, which does not allow for forfeiture, and finally the
4 NOPS contained a blank affidavit of service on which the name of the person allegedly
5 served was blank.

6 On August 28, 2013, defendant Lando Voyles, Pinal County Attorney, through
7 defendant Cameron, sent Plaintiff a “Notice of Pending Uncontested Forfeiture”
8 (“NOPUF”) by mail letting her know, as the interest holder of the property, that her truck
9 had been seized. The Notice of Pending Uncontested Forfeiture contained similar errors
10 as the NOPS.

11 Under the forfeiture statutes, after an owner is notified of the seizure, the owner
12 has two options: she can either file a claim with the Arizona Superior Court within thirty
13 days after the notice or she can file a Petition for Remission or Mitigation of Forfeiture
14 (“Petition”) with the attorney for the state. *See* ARS §13-4309. Plaintiff elected to file a
15 Petition with defendant Voyles, which required her to detail the reasons her property
16 should not be forfeited. She noted in her petition that she was an innocent owner of the
17 truck and did not know about any illegal acts involving the truck. Defendant Voyles was
18 then required to inquire into whether the property was subject to forfeiture and the facts
19 and circumstances surrounding her Petition. He determined that the truck was subject to
20 forfeiture because the truck was purchased for “family use.” (Doc. 1 at 11 ¶ 68).

21 Plaintiff alleges that defendant Voyles was biased in his determination of her
22 Petition because he stood to directly benefit from any assets forfeited. In fact, Plaintiff
23 alleges that defendant Voyles’s personal home security system was paid for by forfeiture
24 money. He also paid the personnel costs of his employees in his Office with forfeiture
25 money. And finally, he used forfeiture funds to donate to causes he supports such as the
26 Pinal County Sheriff’s Office Justice Foundation, Inc. Plaintiff alleges that the direct
27 monetary benefit from forfeiture money “incentivize[s]” law enforcement to deny all
28 Petitions. (Doc. 1 at 15 ¶ 94).

1 Once the attorney for the state denies a Petition, the attorney must then seek
2 forfeiture in Arizona Superior Court. Upon defendant Voyles's denial of Plaintiff's
3 petition, defendant Cameron filed a Complaint in Arizona Superior Court seeking
4 forfeiture of her truck. Plaintiff filed an Answer, again challenging the State's claims for
5 forfeiture. In order to file her Answer, she was required to pay a \$304 filing fee to the
6 Pinal County Clerk of Court.³ After the initiation of the case, Plaintiff and defendant
7 Cameron participated in limited discovery. After defendant Cameron served Plaintiff
8 with Requests for Admission, however, Plaintiff wrote defendant Cameron notifying him
9 that she was unable to proceed as she had no chance to prevail over someone like
10 defendant Cameron "who [did] this every day." (Doc. 1 at 12 ¶ 77). He responded stating
11 that she should consider filing a motion to withdrawal so that she would not have to pay
12 attorneys' fees under the now amended ARS §13-4314(G).⁴ Fearing further financial
13 hardship, Plaintiff filed a "Motion to Withdrawal Claim" in order to avoid having to pay
14 attorneys' fees in the event she lost.

15 After Plaintiff's withdrawal, the State applied for and received an order forfeiting
16 the truck to the State. The truck and its contents were forfeited and awarded to the Pinal
17 County Sheriff's Department. This lawsuit was filed shortly thereafter.

18 Plaintiff asserts a series of claims against defendants Voyles, Babeu, Stanford,
19 Cameron and Hunt under 42 U.S.C. §1983. (Doc. 1 at 21-28). The claims focus on
20 Defendants' involvement with the initial seizure, notice of seizure, the uncontested
21

22 ³ On August 7, 2017, the Arizona forfeiture statutes were revised. Under these
23 revisions, an owner or interest holder is not required to pay a filing fee to contest
24 forfeiture. A.R.S. §13-4311.

25 ⁴ Under the revised statute "the court may award reasonable attorney fees,
26 expenses and damages for the loss of the use of the property to any claimant who
27 substantially prevails by an adjudication on the merits of the claim." A.R.S. §13-4314.
28 Plaintiff's claim three alleges that the one-way attorneys' fee statute "imposed an
unconstitutional burden, disincentive, and tax upon [Plaintiff's] right to petition the State
to redress her grievances and return her Truck." (Doc. 1 at 24 ¶ 154). Because that statute
is no longer in effect, Plaintiff's claim three against defendant Cameron is moot.
See Smith v. Univ. of Washington, 233 F.3d 1188, 1195 (9th Cir. 2000) ("if a challenged
law is repealed or expires, the case becomes moot."). The other claims against defendant
Voyles remain.

1 forfeiture proceedings, and the Arizona Superior Court forfeiture proceedings.
2 Defendants argue that the Court does not have subject matter jurisdiction to hear
3 Plaintiff's claims and her claims are barred by res judicata. Defendants Cameron and
4 Stanford argue they are entitled to absolute immunity, and defendant Hunt argues he is
5 entitled to qualified immunity. Finally, all Defendants argue that Plaintiff fails to state a
6 claim upon which relief may be granted.

7 **II. DISCUSSION**

8 ***A. Rule 12 Dismissal Motions***

9 Defendants are moving for dismissal pursuant to Fed. R. Civ. P. 12(b)(1) for lack
10 of subject matter jurisdiction arguing that Plaintiff has no standing to bring this action
11 and that the action is barred by the *Rooker-Feldman* doctrine. (Docs. 24, 27, 32).
12 Defendants are also urging dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a
13 claim. *Id.* But, because federal courts must have jurisdiction to hear any challenges on the
14 merits, the Court will first address the subject matter jurisdiction arguments.

15 ***i. Subject Matter Jurisdiction***

16 “Presumptively, federal courts are without jurisdiction over civil actions [.]”
17 *Harrison v. Howmedica Osteonics Corp.*, 2008 WL 615886, at *1 (D.Ariz. Mar. 3, 2008)
18 (citing *Kokken v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1989)). Additionally, it is
19 well-settled that “[t]he burden of establishing subject matter jurisdiction rests on the party
20 asserting that the court has jurisdiction.” *In re Wilshire Courtyard*, 729 F.3d 1279, 1284
21 (9th Cir.2013) (citing *McNurt v. GM Acceptance Corp.*, 298 U.S. 178, 182–83 (1936)).
22 Therefore, where, as here, Defendants are challenging subject matter jurisdiction, the
23 burden is on Plaintiff to prove the existence of such jurisdiction. *See Miller v. Wright*,
24 705 F.3d 919, 923 (9th Cir.2013) (internal quotations and citation omitted) (“Once
25 challenged, the party asserting subject matter jurisdiction has the burden of proving its
26 existence.”)

27 ***a. Rooker-Feldman***

28 Among these varied asserted bases for dismissal, the Court will first consider

1 whether Plaintiff’s complaint is barred by the *Rooker-Feldman* doctrine. “The *Rooker-*
2 *Feldman* doctrine instructs that federal district courts are without jurisdiction to hear
3 direct appeals from the judgments of state courts.” *Cooper v. Ramos*, 704 F.3d 772, 777
4 (9th Cir. 2012). Federal district courts lack subject matter jurisdiction over such appeals
5 because “Congress, in 28 U.S.C. §1257, vests the United States Supreme Court, not the
6 lower federal courts, with appellate jurisdiction over state court judgments.” *Id.* (citing
7 *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (per curiam)).

8 The *Rooker-Feldman* “doctrine forbids a losing party in state court from filing suit
9 in federal district court complaining of an injury caused by a state court judgment, and
10 seeking federal court review and rejection of that judgment.” *Bell v. City of Boise*, 709
11 F.3d 890, 897 (9th Cir.2013) (citing *Skinner v. Switzer*, 562 U.S. 521, 531 (2011)). “To
12 determine whether the *Rooker-Feldman* bar is applicable, a district court first must
13 determine whether the action contains a forbidden de facto appeal of a state court
14 decision.” *Id.* (citation and footnote omitted). “A de facto appeal exists when ‘a federal
15 plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and
16 seeks relief from a state court judgment based on that decision.’” *Id.* (quoting *Noel v.*
17 *Hall*, 341 F.3d 1148, 1164 (9th Cir.2003)). If however, the plaintiff “asserts as a legal
18 wrong an allegedly illegal act or omission by an adverse party, *Rooker -Feldman* does
19 not bar jurisdiction.” *Noel*, 341 F.3d at 1164. If the cause of action does “not contain a
20 forbidden de facto appeal, the *Rooker-Feldman* inquiry ends.” *Bell*, 709 F.3d at 897.

21 “[R]ecognizing that the Supreme Court has been very sparing in its invocation of
22 the [*Rooker-Feldman*] doctrine,” the Ninth Circuit has been, as must this Court, “careful
23 not to sweep too broadly[]” in applying that doctrine. *See Cooper*, 704 F.3d at 778
24 (citation omitted). As a result, that “doctrine does not preclude a plaintiff from bringing
25 an ‘independent claim’ that, though similar or even identical to issues aired in state court,
26 was not the subject of a previous judgment by the state court.” *Id.* (quoting *Skinner*, 562
27 U.S. at 531).

28 Applying these principles to the facts of this case, it is clear that the *Rooker-*

1 *Feldman* doctrine does not save the day for Defendants. The legal wrong asserted in
2 Plaintiff's complaint is not that the state court erroneously determined her truck was
3 subject to forfeiture, but rather, the continued enforcement of the forfeiture statutes
4 Plaintiff alleges are unconstitutional. Moreover, Plaintiff's "as applied" claims assert "an
5 allegedly illegal act" by an adverse party. Specifically, her complaint alleges that
6 Defendants unlawfully seized Plaintiff's truck prior to even instituting a state court
7 action. Thus, *Rooker-Feldman* does not apply.

8 Defendants' alternative argument, that the relief requested by Plaintiff acts as a de
9 facto appeal, is similarly without merit. Defendants contend that Plaintiff is making a de
10 facto appeal of her state court judgment by asking the court to disgorge the forfeiture sale
11 proceeds and enjoin enforcement of the statutes. Defendants argue that by asking for
12 such relief, Plaintiff is undercutting the state ruling. Yet, as the Ninth Circuit has
13 expressed, in order for *Rooker-Feldman* to apply, "a plaintiff must seek not only to set
14 aside a state court judgment; he or she must also allege a legal error by the state court as
15 the basis for that relief." *Maldonado v. Harris*, 370 F.3d 945, 950 (9th Cir. 2004) (citing
16 *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir.2004)). As noted above, Plaintiff
17 has not alleged a legal error in the prior state court proceeding. Because both elements
18 are not met, Plaintiff's federal action is not a de facto appeal and the *Rooker-Feldman*
19 doctrine does not apply.

20 Finally, the Court does not have to reach the issue of whether Plaintiff's general
21 constitutional challenges are "inextricably intertwined" with claims asserted in the state
22 court action because Plaintiff's federal court action is not a de facto appeal. *See*
23 *Maldonado*, 370 F.3d at 950.

24 ***b. Standing (Defendants Voyles, Babeu, Hunt and Cameron)***

25 "Article III of the United States Constitution 'requires a litigant to have standing
26 to invoke the power of a federal court.'" *Williams v. Boeing Co.*, 517 F.3d 1120, 1126-27
27 (9th Cir. 2008) (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)) (other quotation
28 marks and citation omitted). "To have standing, a 'plaintiff must allege personal injury

1 fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed
2 by the requested relief.” *Id.* (quoting *Allen*, 468 U.S. at 751). Succinctly put, Article III
3 standing comprises three elements: (1) injury in fact; (2) causation; and (3) redressability.
4 *See Barnum Timber Co. v. U.S. Environmental Protection Agency*, 633 F.3d 894, 897
5 (9th Cir. 2011). The plaintiff bears the burden of establishing the existence of a
6 justiciable case or controversy, and “‘must demonstrate standing for each claim he seeks
7 to press’ and ‘for each form of relief’ that is sought.” *Davis v. Federal Election Comm’n*,
8 554 U.S. 724, 734 (2008) (quoting *Daimler Chrysler Corp. v. Cuno*, 547 U.S. 332, 352
9 (2006)).

10 Defendants allege that Plaintiff is lacking standing due to the “injury in-fact”
11 prong, thus the Court will primarily focus on that prong. To have standing, “the plaintiff
12 must have suffered an injury in fact—an invasion of a legally protected interest.” *Lujan v.*
13 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “An injury sufficient to satisfy Article
14 III must be ‘concrete and particularized’ and ‘actual or imminent,’ not ‘conjectural’ or
15 ‘hypothetical.’ ” *Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334, 2341
16 (2014) (quoting *Lujan*, 504 U.S. at 560). A plaintiff seeking equitable relief must further
17 demonstrate a likelihood of future injury. *See Hodgers–Durgin v. De La Vina*, 199 F.3d
18 1037, 1039 (9th Cir.1999). This requires a showing that plaintiff is “ ‘realistically
19 threatened by a *repetition* of the violation.’ ” *Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th
20 Cir. 2006) (quoting *Armstrong v. Davis*, 275 F.3d 849, 860–61 (9th Cir. 2001) (emphasis
21 in original)).

22 Defendants allege that Plaintiff does not have standing to seek injunctive and
23 equitable relief. Defendants contend that Plaintiff has not established that she is likely to
24 suffer future injury from being involved in another civil *in rem* forfeiture proceeding.
25 Relying almost exclusively on the Supreme Court decision in *City of Los Angeles v.*
26 *Lyons*, 461 U.S. 95 (1983), Defendants argue that Plaintiff has not demonstrated the
27 likelihood that she will suffer future harm *again* because her argument that she might be
28 subjected to Arizona’s forfeiture laws in the future is too tenuous. Defendants argue that

1 merely being subjected to a statute is not enough to show that she is likely to suffer the
2 same harm again. However, that is inconsistent with Ninth Circuit precedent promulgated
3 in the aftermath of *Lyons*.

4 After the *Lyons* decision, the Ninth Circuit “enumerated two ways in which a
5 plaintiff can demonstrate that [the alleged threatened] injury is likely to recur.” *Mayfield*
6 *v. United States*, 599 F.3d 964, 971 (9th Cir. 2010) (quoting *Armstrong*, 275 F.3d at 861.
7 “First, a plaintiff may show that the defendant had, at the time of the injury, a written
8 policy, and that the injury ‘stems from’ that policy. Second, the plaintiff may
9 demonstrate that the harm is part of a ‘pattern of officially sanctioned ... behavior,
10 violative of the plaintiffs’ [federal] rights.’” *Id.*

11 Here, Plaintiff asserts that her injury stems from the enforcement of ARS §13-
12 4301 to §13-4315 by defendants Voyles, Babeu, Hunt and Cameron. Specifically, she
13 states that because the forfeiture statutes act as a written policy, her property might be
14 seized and subject to a forfeiture proceeding in the future anytime she loans her car to a
15 friend or family member. These statutes were in effect at the time of Plaintiff’s alleged
16 injury and continue to be in effect. She also points to a practice of law enforcement
17 defendants using the forfeiture laws to enrich themselves and their departments. Coupled
18 together, Plaintiff has shown a likelihood that her alleged injury is likely to recur under
19 the Ninth Circuit’s test.⁵ Accordingly, she has standing to assert her claims against
20 defendants Voyles, Babeu, Hunt, and Cameron.

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27 ⁵ Defendants state a separate argument that Plaintiff does not have standing for
28 Declaratory relief. However, the same legal standard applies to injunctive and declaratory
forms of equitable relief. *Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th Cir. 2006). Thus,
the declaratory standing arguments were not addressed as they were repetitive and
subsumed in the injunctive relief arguments.

1 ***c. Standing (Defendant Stanford)***

2 Plaintiff separately alleges a First Amendment and Due Process challenge against
3 the Clerk of the Superior Court, Defendant Stanford, for imposition of a filing fee in
4 order to contest the seizure. On August 9, 2017, an amendment of Arizona’s Forfeiture
5 Statutes went into effect. One of the changes to the statute is dispensing with the filing
6 fee requirement. *See* ARS §13-4311 (“An owner or interest holder may not be charged a
7 filing fee or any other charge for filing the claim”). In supplemental briefing, defendant
8 Stanford argued that “this statutory change erases any possibility of future harm.” (Doc.
9 58 at 2). Thus, her alleged injury is unlikely to recur. Plaintiff agrees that this statutory
10 change “will moot [her] claim for prospective injunctive relief.” (Doc. 60 at 2).
11 Accordingly, the claims against Defendant Stanford will be dismissed.

12 ***d. Claim Preclusion***

13 “To determine the preclusive effect of a state court judgment, federal courts look
14 to state law.” *Intri-Plex Techs., Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th
15 Cir.2007) (citation omitted). “Under Arizona law, a claim is barred by res judicata if a
16 court previously issued a final judgment on the merits involving the same cause of action
17 with the same parties.” *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 716 P.2d 28,
18 30 (1986). Arizona is one of the few states that use the “same evidence” test for
19 determining whether an earlier action is the same as the current action. *See Phoenix*
20 *Newspapers, Inc. v. Dep’t of Corrections, State of Ariz.*, 188 Ariz. 237, 934 P.2d 801, 804
21 (Ariz. Ct. App. 1997). Under this test, “[i]f no additional evidence is needed to prevail in
22 the second action than that needed in the first, then the second action is barred.” *Id.*; *see*
23 *also Rousselle v. Jewett*, 101 Ariz. 510, 421 P.2d 529, 531 (1966). Because the “same
24 evidence” test is quite liberal, it allows a plaintiff to avoid preclusion “merely by
25 posturing the same claim as a new legal theory,” even if both theories rely on the same
26 underlying occurrence. *Phoenix Newspapers, Inc.*, 934 P.2d at 805.

27 Applying the “same evidence” test to the case at issue, it is clear that res judicata
28 does not bar Plaintiff’s claims. Although the claim asserted in the state court action

1 arises under the same underlying dispute and relies upon many of the same facts as
2 Plaintiff's federal action, Plaintiff's claims in this case are legally and factually distinct.
3 In the prior state court action, Plaintiff was required to prove a so-called "innocent owner
4 defense." This required her to offer evidence establishing:

5 (a) She acquired the interest before or during the conduct giving rise to forfeiture.

6 (b) She did not empower any person whose act or omission gives rise to forfeiture
7 with legal or equitable power to convey the interest, as to a bona fide purchaser for
8 value, and she was not married to any such person or if married to such person,
9 held the property as separate property.

10 (c) She did not know and could not reasonably have known of the act or omission
11 or that it was likely to occur.

12 A.R.S. §13-4304(4).

13 Plaintiff confined her evidence to establish those elements. (*See* Doc. 1 Ex 1 at 4-
14 5). In the current case, Plaintiff must offer evidence demonstrating that Defendants' acts
15 *during* the initial seizure and forfeiture proceedings violated her First Amendment,
16 Fourth Amendment, and Due Process rights under the U.S. Constitution. This requires
17 her to prove much more than that she was an innocent owner.

18 Defendants argue that Plaintiff has not shown the additional evidence necessary to
19 maintain this federal action. However, a reading of the Complaint reveals multiple pieces
20 of evidence that were not necessary for her innocent owner defense. Specifically,
21 Plaintiff's complaint contains considerable information on the financial motivation that
22 "incentivize[s]" Defendants to zealously pursue forfeiture. (Doc. 1 at 15 ¶ 94).
23 Additionally, Plaintiff provides evidence of a defective NOPS to prove her "as applied"
24 Fourth Amendment challenges. This evidence supports new legal theories and therefore,
25 fails the "same evidence" test. Because Plaintiff is not relying on the same legal theories
26 or the same evidence, her claims are not barred by *res judicata*.

27 ***e. Absolute Immunity***

28 Section § 1983 provides that every "person who acts under color of state law to

1 deprive another of a constitutional right shall be answerable to that person in a suit for
2 damages.” *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976). Although the statute does not
3 expressly contain immunities for certain functions of public officials, courts have
4 recognized that § 1983 does maintain common law “immunities ‘well grounded in history
5 and reason.’ ” *Id.* at 418 (quoting *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)). Most
6 public officials are presumed to have qualified immunity, which protects them from
7 liability for discretionary functions they perform with reasonable care. *See Buckley v.*
8 *Fitzsimmons*, 509 U.S. 259, 268 (1993). Prosecutors, however, are absolutely immune
9 from liability for conduct that is “intimately associated with the judicial phase of the
10 criminal process” such as initiating a prosecution or presenting the state's case. *Burns v.*
11 *Reed*, 500 U.S. 478, 486 (1991) (citing *Imbler*, 424 U.S. at 430).

12 Courts use a functional approach “which looks to ‘the nature of the function
13 performed, not the identity of the actor who performed it’ ” to determine whether a
14 prosecutor is entitled to absolute or qualified immunity in a particular case. *Buckley*, 509
15 U.S. at 269 (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)). “[A]cts undertaken
16 by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and
17 which occur in the course of his role as an advocate for the State, are entitled to the
18 protections of absolute immunity.” *Buckley*, 509 U.S. at 273. But “[a] prosecutor's
19 administrative duties and those investigatory functions that do not relate to an advocate's
20 preparation for the initiation of a prosecution or for judicial proceedings are not entitled
21 to absolute immunity.” *Id.*

22 “[T]he official seeking absolute immunity bears the burden of showing that such
23 immunity is justified for the function in question.” *Burns*, 500 U.S. at 486. Absolute
24 immunity, when applicable, may be invoked in actions filed under § 1983 and the
25 common law. *Id.*, at 478.

26 The Ninth Circuit recently affirmed that absolute immunity applies to prosecutors
27 in civil forfeiture actions. *Torres v. Goddard*, 793 F.3d 1046, 1052 (9th Cir. 2015). It
28 reasoned that “[i]n rem proceedings seeking the forfeiture of property connected to

1 criminal activity are functionally analogous to criminal proceedings.” *Id.*

2 Defendant Cameron argues he is entitled to absolute immunity in Plaintiff’s
3 Fourth Amendment claim because all his actions undertaken during the forfeiture
4 proceeding were done in his prosecutorial capacity. Plaintiff argues that his initial
5 seizure of her truck without a warrant was the function of a police officer, and he is not
6 entitled to absolute immunity for that action. Because the Court is required to evaluate
7 immunity step-by-step, the Court will look at defendant Cameron’s first act in the seizure
8 and forfeiture of the truck.

9 Defendant Cameron was contacted from the scene of the seizure and approved the
10 seizure, as noted by defendant Hunt signing the NOPS on his behalf. Under ARS §13-
11 4301 it is the role of a peace officer to actually seize the item. Plaintiff argues that
12 because Defendant Cameron participated in the seizure, he was performing a function
13 analogous to a police officer and therefore does not have absolute immunity. Defendant
14 Cameron points out that he was not actually seizing the truck, but merely signing the
15 NOPS. The NOPS essentially states that it is probable that the property is subject to
16 forfeiture and the statutory basis for forfeiture, which under ARS §13-4308(A) is a
17 function for the state’s attorney. Further bolstering defendant Cameron’s argument that
18 he was acting in a prosecutorial capacity, Plaintiff’s complaint states that the NOPS is
19 “legally required to begin the case against the Truck and without which the State would
20 have no case.” (Doc. 1 at 8 ¶49). Because this document is a procedural step that begins
21 the forfeiture proceedings, defendant Cameron’s signature on the NOPS was done in his
22 prosecutorial capacity, and he therefore has absolute immunity for this action.

23 Plaintiff does not argue that defendant Cameron is not absolutely immune from
24 any act after the signing of the NOPS. Accordingly, defendant Cameron is absolutely
25 immune and the claim against defendant Cameron is dismissed.

26 ***f. Qualified Immunity***

27 “The doctrine of qualified immunity protects government officials ‘from liability
28 for civil damages insofar as their conduct does not violate clearly established statutory or

1 constitutional rights of which a reasonable person would have known.” *Pearson v.*
2 *Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818
3 (1982)). Before a government official can be subject to liability for civil damages,
4 both prongs of the qualified immunity analysis must be satisfied: (1) whether the official
5 violated the plaintiff's constitutional rights, and if so, (2) whether the right violated was
6 clearly established at the time of the official's conduct. *Pearson*, 555 U.S. at 232.

7 Defendant Hunt argues that he is entitled to qualified immunity. Turning first to
8 the constitutional violation prong, Plaintiff argues that the seizure of her truck without a
9 warrant was *per se* unreasonable within the meaning of the Fourth Amendment unless
10 defendant Hunt could establish an exception to the warrant requirement. For his part,
11 defendant Hunt identified three such exceptions that authorized the warrantless seizure of
12 Plaintiff’s truck: the incident to arrest exception, the automobile exception, and the plain
13 view exception. It is undisputed that the deputies had probable cause to arrest Plaintiff’s
14 son and to believe that the truck contained evidence of a crime, as the stolen cover and
15 hood were attached to the truck. Thus, the Court is satisfied that any one of the three
16 exceptions apply to the warrantless seizure of Plaintiff’s truck.

17 Plaintiff also asserts that her truck was seized unlawfully. In the NOPS and the
18 NOPUF, defendants Hunt and Cameron specifically identify that Plaintiff’s truck was
19 seized “particularly” under A.R.S. §13-1506(A)(1). (Doc. 1 at Ex. 2). The provision
20 pertains to burglary in the third degree and does not authorize forfeiture. Plaintiff alleges
21 that because her truck was taken pursuant to a state statute that does not authorize
22 forfeiture, it was taken unlawfully. Defendant Hunt points out that even if this were true,
23 it does not amount to a Fourth Amendment violation. *See Kraushaar v. Flanigan*, 45
24 F.3d 1040, 1048 (7th Cir.1995) (“a violation of a state statute is not a *per se* violation of
25 the federal Constitution.”) Indeed, the Court previously found the truck was properly
26 seized pursuant to any one of the three enumerated warrant requirement exceptions.
27 Thus, the truck was seized pursuant to a lawful basis, and defendant Hunt is entitled to
28 qualified immunity.

1 **ii. *Failure to State a Claim***

2 Finally, the Court turns to the merits. Defendants allege that Plaintiffs' claims one
3 two, and five do not state a cognizable due process claim.⁶ Plaintiff disagrees. A motion
4 to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a complaint. *Ileto*
5 *v. Glock, Inc.*, 349 F.3d 1191, 1199–1200 (9th Cir. 2003). A complaint must contain a
6 “short and plain statement showing that the pleader is entitled to relief.” Fed. R. Civ. P.
7 8(a)(2). Rule 8, however, requires “more than an unadorned, the-defendant-unlawfully-
8 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic*
9 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

10 A complaint need not contain detailed factual allegations to avoid a Rule 12(b)(6)
11 dismissal; it simply must plead “enough facts to state a claim to relief that is plausible on
12 its face.” *Twombly*, 550 U.S. at 570. “A complaint has facial plausibility when the
13 plaintiff pleads factual content that allows the court to draw the reasonable inference that
14 the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing
15 *Twombly*, 550 U.S. at 556).

16 “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for
17 more than a sheer possibility that defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 677
18 (citation omitted). “Where a complaint pleads facts that are ‘merely consistent with’
19 a defendant's liability, it ‘stops short of the line between possibility and plausibility of
20 entitlement to relief.’” *Id.* (citation omitted). In addition, the Court must interpret the
21 facts alleged in the complaint in the light most favorable to the plaintiff, while also
22 accepting all well-pleaded factual allegations as true. *Shwarz v. United States*, 234 F.3d
23 428, 435 (9th Cir. 2000). That rule does not apply, however, to legal conclusions. *Iqbal*,
24 556 U.S. at 677. A complaint that provides “labels and conclusions” or “a formulaic
25 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.
26 Nor will a complaint suffice if it presents nothing more than “naked assertions” without

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28 ⁶ Defendants also state that claims three and four do not state cognizable due
process claims, but because of the change in Arizona's forfeiture statutes, Plaintiff's
claims three and four are moot, as already explained.

1 “further factual enhancement.” *Id.* at 557.

2 ***a. Count One***

3 Plaintiff’s count one alleges that she was denied her due process procedural rights
4 because A.R.S. §13-4315⁷ financially “incentivize[s]” defendants Voyles and Babeu to
5 seize and forfeit as much property as they can from whomever they can. (Doc. 1 at 15 ¶
6 94). Count one does not address any failings in the uncontested forfeiture proceedings or
7 the judicial forfeiture proceedings. Defendants argue even if they have a financial interest
8 in the outcome of forfeiture proceedings, Plaintiff’s due process rights are not violated
9 because a disinterested court adjudicates *in rem* forfeiture proceedings, therefore negating
10 any potential bias. Plaintiff contends that even in forfeiture proceedings that are decided
11 by the Arizona Superior Court, her due process rights are violated by the impermissible
12 risk of bias in the statute’s enforcement and administration.

13 Plaintiff primarily relies on the Supreme Court’s decision in *Marshall v. Jerrico,*
14 Inc., 446 U.S. 238 (1980), to argue that financial incentives that effect the enforcement of
15 a statute violate due process even if the violation is ultimately decided by a neutral
16 adjudicator. In *Marshall*, the Supreme Court found that regional Department of Labor
17 administrators serving in a prosecutorial function did not have a sufficient financial
18 interest in enforcement of child labor laws to violate due process because no government
19 official stood to profit economically from vigorous enforcement of the Act, the penalties
20 collected constituted only 1% of the agencies annual budget, and the agencies national
21 office determined the amount of funds to be distributed to regional agencies. Plaintiff
22 argues that these same factors are not present in the enforcement of Arizona’s forfeiture
23 statutes.

24
25 ⁷ A.R.S. §13-4315 states in pertinent part “Any property, including all interests in
26 property, forfeited to the state under this title shall be transferred as requested by the
27 attorney for the state to the seizing agency or to the agency or political subdivision
28 employing the attorney for the state, which may do any of the following: Sell, lease, lend
or transfer the property to any local or state government entity or agency or political
subdivision, law enforcement agency or prosecutorial agency or any federal law
enforcement agency which operates within this state for official federal, state or political
subdivision use within this state, with expenses for keeping and transferring such
property to be paid by the recipient.”

1 Plaintiff's complaint contains allegations that law enforcement agencies rely on
2 forfeiture money for a variety of expenses, including funding entire departments. Thus,
3 Defendants are "incentivized" to rigorously enforce forfeiture laws. (Doc. 1 at 15 ¶ 94).
4 Bolstering this argument, Plaintiff's complaint contains an excerpt from a forfeiture
5 training stating "when your bosses can't find any money in their budget they get
6 depressed. When they get depressed they tell you to start doing forfeiture cases...When
7 you feel like a winner you go back to your jurisdiction and just start seizing everything in
8 sight." (Doc. 1 at Ex. 11 pg. 47). Finally, unlike the regional agencies in *Marshall*,
9 individual law enforcement agencies get to keep all proceeds from their forfeiture
10 enforcement efforts.

11 While the *Marshall* court did not "say with precision what limits there may be on a
12 financial or personal interest of one who performs a prosecutorial function" it implied
13 that there is a limit. *Marshall*, 446 U.S. at 250. At this stage in the proceedings, the Court
14 finds that Plaintiff's complaint sets out a plausible claim for violation of her due process
15 rights in the enforcement of the Arizona forfeiture statutes because Defendants have a
16 financial incentive to zealously enforce the forfeiture laws.

17 ***b. Count Two***

18 Count two alleges that Plaintiff was denied procedural due process in the
19 uncontested forfeiture proceeding. She contends that defendant Voyles acts as "the
20 prosecutor, the adjudicator, and the profiteer" in uncontested forfeiture proceedings,
21 which violates Plaintiff's right to a fair hearing. (Doc. 34 at 25). Defendant Voyles
22 asserts that Plaintiff's financial motivation theory underlying Claim two fails because
23 every Arizona *in rem* forfeiture proceeding receives judicial review and adjudication.
24 (Doc. 32 at 11).

25 Courts have recognized two types of financial bias as violations of procedural due
26 process: (1) Where decision-makers gain personal financial benefits from their decision
27 (*Tumey v. Ohio*, 273 U.S. 510 (1927)); and (2) where decision-makers have an
28 institutional financial interest that may lead them to make biased decisions

1 (*Ward v. Village of Monroe*, 409 U.S. 57 (1972)).

2 Plaintiff alleges that both types of bias occur under the Arizona forfeiture statutes.
3 Under the *Tumey* prong, Plaintiff has asserted facts that show agencies heads are able to
4 use forfeiture money for personal use. For instance, Plaintiff’s complaint states that
5 defendant Voyles received a direct pecuniary gain from the forfeiture of property as
6 evidenced by his home security system, which was paid for with forfeiture proceeds.
7 (Doc. 1 at 19 ¶115).

8 Under the *Ward* prong, Plaintiff has alleged numerous ways defendant Voyles has
9 potentially had an institutional financial interest in the outcome of the forfeiture
10 proceedings.⁸ Of note are Plaintiff’s allegations that the “Arizona Department of Public
11 Safety relies entirely on forfeiture monies to fund its bomb squad, S.W.A.T. team, and
12 hazardous materials unit.” (Doc. 1 at 17 ¶104). Plaintiff also alleges that law enforcement
13 agencies “are dependent on forfeiture moneys for their continuing operations, paying for
14 everything from traditional law enforcement equipment to office supplies, furniture,
15 office refreshments, and even toilets.” (Doc. 1 at 16 ¶101). Finally, Plaintiff contends that
16 defendant Voyles pays personnel costs of employees and retirement contributions of
17 employees in his Office with forfeiture monies. (Doc. 1 at 19 ¶116-17).

18 Taken as true, these allegations allow the Court to make a reasonable inference
19 that defendant Voyles could be biased in adjudicating uncontested forfeitures and
20 therefore violate Plaintiff’s procedural due process rights.

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26 ⁸ Although sued only in his official capacity, Plaintiff alleged a number of
27 allegations that specifically identified how defendant Voyles used the forfeiture proceeds.
28 Defendant Voyles “used the profits of forfeitures to fund ‘pet projects,’ including many
that provide favorable exposure to” him amongst his constituents. (Doc. 1 at 18 ¶112).
Defendant Voyles issued a press release on September 4, 2013, touting the community
groups to which his Office had given \$188,000 in forfeiture monies. (Doc. 1 at 18 ¶113).

1 *c. Count Five*

2 Plaintiff's claim five alleges a due process violation based on the "cumulative
3 combination of failures" of defendants Voyles, Babeu, and Stanford. (Doc. 1 at 25-26).
4 She specifically alleges that defendants Voyles's and Babeu's financial incentive to
5 aggressively pursue seizures and forfeitures coupled with a filing fee and threat of
6 attorneys' fees to contest the forfeiture violate Plaintiff's procedural due process rights.
7 As noted above, however, Arizona revised its forfeiture statutes and now does not require
8 a filing fee to contest forfeiture and a petitioner does not have to pay the State's
9 attorneys' fees even if he or she loses.

10 In supplemental briefing, Defendants argue that because two out of the three bases
11 for this claim are moot, Plaintiff's cumulative effects claim fails. Because the only
12 element of the "cumulative combination of failures" claim that still remains has already
13 been plead in claims one and two, the Court dismisses claim five.

14 ***B. Amendment***

15 When granting a motion to dismiss, the court is generally required to grant the
16 plaintiff leave to amend, even if no request to amend the pleading was made,
17 unless amendment would be futile. *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection*
18 *Serv. Inc.*, 911 F.2d 242, 246-47 (9th Cir.1990). In determining
19 whether amendment would be futile, the court examines whether the complaint could be
20 amended to cure the defect requiring dismissal "without contradicting any of the
21 allegations of [the] original complaint." *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296
22 (9th Cir.1990). Here, Counts Three, Four, and Five cannot be saved by amendment
23 because they rely on statutes that have been amended rendering the claims moot. Count
24 Six cannot be saved by amendment because defendants Cameron and Hunt are immune
25 from suit. Plaintiff will therefore not be granted leave to amend Counts three through six.

26 **III. CONCLUSION**

27 For the reasons discussed herein, **IT IS ORDERED** that the Court hereby

28 (1) **GRANTS** Defendants Voyles, Babeu, Cameron, and Hunt's Motion to

1 Dismiss (Doc. 24) in part and **DENIES** Defendants Voyles, Babeu, Cameron, and Hunt's
2 Motion to Dismiss in part.

3 (2) **GRANTS** Defendant Amanda Stanford's Motion to Dismiss (Doc. 27).

4 (3) **GRANTS** Intervenor Defendant's Motion to Dismiss (Doc. 32) in part and
5 **DENIES** Intervenor Defendant's Motion to Dismiss in part.

6 **Dated** this 18th day of August, 2017.

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8 _____
9 Honorable Diane J. Humetewa
United States District Judge

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