

SACRAMENTO POLICE DEPARTMENT

ASSET FORFEITURE MANUAL



RM 526.03



SACRAMENTO POLICE DEPARTMENT

ASSET FORFEITURE MANUAL



REVISED 01-00

TO: ALL SWORN PERSONNEL

General Order 526.03 implements this manual and requires all officers to know its contents and follow its guidelines when seizing the assets or proceeds of illegal narcotic sales. This policy statement is an expansion of that found in the General Order.

Seizing the proceeds of illegal narcotic activity following state and federal regulations generates funds to help our Department combat narcotic activity.

Officers shall report, through the chain of command, any discrepancies they discover between the contents of this manual and current law so this manual shall remain contemporary, viable, and as useful as possible.

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ASSET FORFEITURE GUIDELINES – 11470 H&S

§ 11470 H&S is quote as follows:

"The following are subject to forfeiture:

- (a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.
- (b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.
- (c) All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for property described in subdivision (a) or (b).
- (d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.
- (e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in §36000 of the CVC, which has been used as an instrument to facilitate the manufacture of, or possession for sale or sale of 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of §11054, or substance containing 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of §11054, or 14.25 grams or more of a substance containing heroin or cocaine base as specified in paragraph (1) of subdivision (f) of §11054, or 28.5 grams or more of Schedule I controlled substances except marijuana, peyote, or psilocybin; 10 pounds dry weight or more of marijuana, peyote, or psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of §11055, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of §11055, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of §11055, or methamphetamine; or 28.5 grams or more of Schedule I controlled substances. No interest in a vehicle which may be lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in §12804 of the CVC, may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.
- (f) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of §11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or §182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.
- (g) The real property of any property owner who is convicted of violating §11366, 11366.5 or 11366.6 with respect to that property. However, property which is used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.
- (h) Subject to the requirements of §11488.5 and except as further limited by this subdivision to protect innocent parties who claim a property interest acquired from a defendant, all right, title and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of §11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves the manufacture, sale, possession for sale, offer for sale, offer to manufacture, or conspiracy to commit at least one of those offenses, in

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accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of §11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars (\$25,000), paragraph (4) of subdivision (i) of §11488.4.

The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to §11488.5, 11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision."

ASSET SEIZURE PROCEDURES

A. VEHICLES

1. Vehicles include automobiles, motorcycles, boats, bicycles, and aircraft. Vehicles must be worth at least \$3,500.00. To seize a vehicle, it must have been either:
 - a. purchased with the proceeds from drug trafficking, **or**
 - b. offered in exchange for the purchase of drugs, **or**
 - c. used to "facilitate" the manufacture of, or possession for sale of drugs or sale of drugs.
2. To seize a vehicle that has been used to "**facilitate**" the manufacture of, or possession for sale of drugs or sale of drugs, the following conditions must exist:
 - a. ownership of the vehicle must be established in at least **one** of the following criteria:
 - (1) The suspect owns the vehicle, **OR**
 - (2) all legal owners must have knowledge that the suspect was using the vehicle as a conveyance to "facilitate" the manufacture of, or possession for sale of drugs or sale of drugs, **OR**
 - (3) if the suspect is the registered owner and there is a legal owner listed by DMV, the vehicle may be seized if the outstanding balance is less than 1/3 of the wholesale value of the vehicle, **AND**
 - b. there must be a quantity of at least one controlled substances present:
 - (1) 14.25 grams (1/2 ounce) of base (rock/crack) cocaine or heroin, **OR**
 - (2) 28.5 grams (1 ounce) of cocaine hydrochloride (powder), methamphetamine, or any other Schedule I or II drug, **OR**
 - (3) 57 grams or more of a substance containing cocaine or methamphetamine, **OR**
 - (4) 10 pounds (dry) of marijuana, peyote, or psilocybin.

B. CASH

All currency is considered cash. File appropriate forms for all cash seizures greater than \$500. The DA will not file to seize cash in an amount less than \$500, however if the suspect fails to file the proper forms to claim the money, it will be forfeited through an administrative procedure.

C. OTHER ITEMS

Each seized item must have a minimum value of \$1000.00.

ASSET SEIZURE FORMS

A. Notice of Initiation of Asset Forfeiture Proceedings (DA-34/Revised 9/94).

Claim Opposing Forfeiture/Health & Safety Code § 11488.5 (MC-200) New January 1, 1989.

1. If a suspect claims to be the owner of an item that you want to seize, fill out and serve the suspect with the Notice of Initiation of Asset Forfeiture Proceedings form and the Claim Opposing Forfeiture form.
2. If the suspect refuses to sign, but claims ownership, you must write "claims ownership, but refused to sign" and serve the forms.

B. DISCLAIMER OF INTEREST IN OWNERSHIP/SEIZURE OF PROPERTY SEIZED

1. If the suspect claims "NO OWNERSHIP" of the item, serve Disclaimer of Ownership form. Have the suspect sign the form.
2. The Disclaimer of Ownership form must be **signed** by the defendant.
3. If the suspect refuses to sign this form, you must serve the defendant with an "Initiation of Asset Forfeiture Proceedings" and "Claim Opposing Forfeiture" form.

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IF IN DOUBT, ALWAYS SERVE THE "NOTICE OF INITIATION OF ASSET FORFEITURE PROCEEDINGS" FORM AND "CLAIM OPPOSING FORFEITURE FORM."

C. MONEY TALLY SHEET - SPD 662

1. A Money Tally Sheet shall be used when processing seized monies.
2. Send the **ORIGINAL** to Records with your crime report. Write the report number in the upper right hand corner on each form.
3. Location
Blank forms are maintained at the Sacramento County Main Jail, North and South Patrol, and at the Special Investigations Division (SID).
4. Send all original asset seizure forms (DA 34 & Disclaimer) to the District Attorney's Office - Attn: Asset Seizure Deputy D.A.

PROCESSING SEIZED ITEMS

A. VEHICLES

1. Contact Communications and request an ASSET SEIZURE TOW. (Asset seizure tows are not off the rotation list, there is a privately contracted tow company.)
2. The vehicle shall be towed to the WJKPF (north) garage and placed in a designated asset seizure space.
3. Place a large 8" x 11" note in plain view on the dash. On the note list the officer's name, date, that the vehicle is an ASSET SEIZURE, crime report number, and stored report number.
4. Leave the vehicle keys with the on duty garage personnel (when open). The keys shall be placed in an envelope with the vehicle license number, all pertinent case numbers, suspect's name, officer's name and badge number, and the date seized.
5. **It is the seizing officer's responsibility to remove all personal belongings from the vehicle.** Either book these items or release them (at the direction of the suspect) at the scene.
 - a. Copy all paperwork relating to the ownership, service, and repair bills pertaining to the vehicle and accessories to attach to the crime report and book the originals as evidence.
 - b. Note additional equipment such as a cellular phone or expensive stereo equipment which is permanently affixed to the vehicle (including the serial numbers if possible).

B. PROCESSING CASH SEIZURES

1. Currency shall be booked flat, not folded. Bills shall be stacked face side up and facing the same direction.
2. Bills shall be stacked by denomination, twenties, tens, etc.
3. If the suspect is in possession of separate packets of money, count each stack and make note in the crime report of the amount in each. Combine all the stacks and separate the bills by denomination. Fill out a Money Tally Sheet (SPD 662), per GO 525.01. All monies shall be placed in a heat sealed package and deposited into one evidence envelope.
4. The money will be counted three times, once by the officer who seized it (verified by another officer and noted on the Money Tally Sheet SPD 662), once by the Asset Seizure Unit, and once by the asset seizure unit and County Treasury upon deposit.

C. OTHER ITEMS

1. Seizing Other Items Over \$1,000 in Value
 - a. When filling out the DA "**Notice of Initiation of Asset Forfeiture**" form, list the item by BRAND name and DESCRIPTION, you must also list the SERIAL NUMBER.
 - b. When booking these items into evidence, list the brand name, model, and serial number on the booking form.
2. List the name of the person from whom the item was seized and the location from which it was seized.

ASSET SEIZURE EXAMPLE

EXAMPLE:

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You stop a vehicle worth \$3,500.00. You see four (4) rocks of cocaine, a telephonic pager, and \$1,500.00 in cash on the front seat between the driver and passenger. You arrest both suspects. You separate the suspects and ask them who the items belong to. Both deny ownership. You then search both suspects and the vehicle finding "pay/owe" ledgers in the driver's wallet along with the rental agreement for the pager. You find a hand written bill of sale for the vehicle dated three weeks ago, along with three repair receipts for the car in the glove box. The bill of sale and the receipts are made out to the driver. The driver claims not to own the vehicle. The DMV registration (via C.L.E.T.'s), shows a third party owns the car.

1. What do you do?

You question the driver and passenger about their employment and/or other sources of income. Document employers name, address, phone number, length of employment, hourly wage or name of welfare worker, monthly allotment, etc.

Have both suspects sign the "Disclaimer of Ownership" form, listing the money and vehicle description (make, model, and license number).

Write a paragraph or two explaining in detail the disclaimer or claim of the item(s) by the suspects.

2. What allowed you to arrest both suspects?

They were in joint or constructive possession of the narcotics. The evidence was visible to both, and both had equal control and accessibility. Charge the driver with transportation and possession for sale. Charge the passenger with possession for sale.

3. What will most likely happen?

The driver and passenger will be convicted of narcotics charges; one for possession for sales and the other for simple possession. The charges against one suspect may be dismissed if the other suspect admits ownership of the narcotics, in which case he/she will be convicted for possession for sales.

4. Why?

The driver was in possession of evidence (the rental receipt) indicating control of the pager. You made written notations of the calls received on the pager. Hopefully you called one or two of the callers and asked them what they wanted and how much. The calls most likely produced the name of the person the caller was trying to buy from (the suspect). The driver was also in possession of evidence which indicated sale of rock cocaine (the pay/owe sheets). The passenger was sitting next to the drugs, money, and pager. This means the passenger had constructive control and obvious knowledge of their presence.

5. Why were you able to seize the money under the asset seizure law?

It was with the narcotics, or in close proximity (proceeds). The money was \$1,000.00 plus. (DA requires at least \$500 in cash.)

6. Why were you able to seize the vehicle?

The value met the DA's requirements (\$3,500). We may not be able to keep the vehicle unless we can show the suspect has little or no legitimate income. We then allege he purchased the vehicle with narcotics proceeds. We can allege this as you did your job by interviewing the suspect at the scene.

The suspect denied ownership, signed the disclaimer form, and admitted to not having worked for over 6 months. We will contact the last registered owner to determine who the vehicle was sold to. It will most likely show that the last registered owner sold the car to the suspect for cash. (Suspect did not re-register the vehicle in an attempt to hide ownership.)

If the suspect admits ownership of the vehicle, ask the suspect what he/she paid for it, including in-kind services or bartered items. If the suspect claims the money to buy the vehicle came from employment, attempt to obtain the employers' phone number and confirm the suspect's employment and any other pertinent details.

Prior to booking the paperwork found on the suspect and in the vehicle, make a clear photocopy. Put the report number at the top of each page and submit the copies with the report to Records.

PROVING CRIMINAL AND ASSET SEIZURE CASES

- A. If you take the time to make a criminal case against a drug dealer, you can enhance your case by going further into the investigation to probe the asset seizure portion.

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- B. By showing that the subject's money, vehicle, toys, etc., were purchased by drug money, you have shown the suspect is a mid level to major dealer.
- C. You may catch the suspect with only a small amount of narcotics. If you can allege the suspect maintains an existence from the proceeds, you have helped to prove your possession for sale case. You have also shown that the suspect was not just a "one time" dealer. To be able to pay daily bills, eat, pay the rent, purchase a telephonic pager, cellular phone, and vehicle, the suspect must have been involved in trafficking for some period of time.
- D. You show that the suspect has been involved in trafficking by checking every piece of paper. Suspects have a habit of keeping receipts, bills of sale, monthly payment books, safe deposit receipts and keys, bank statements, repair bills, etc.

EXAMPLE #1:

One case was made which produced only 2 ounces of marijuana. The suspect had the usual drug paraphernalia which included a "triple beam scale", pager, and packaging paraphernalia. There were no "pay/owe" sheets or customer lists.

The suspect was involved in show cars. The suspect's new \$35,000.00 Corvette was seized along with over \$6,000.00 in currency. The officers collected every piece of paper they could find. The papers included past employment payroll receipts and receipts listing over \$200,000.00 worth of purchases spanning three years. The receipts were for the purchase of tools and auto parts.

The suspect received diversion on the marijuana charges, but we ended up with the car and cash. Had the officers not collected the paper sacks of receipts, the suspect would have gotten both the car and the cash back. If we had not been able to allege the car was paid for from the proceeds of marijuana sales, Franchise Tax was waiting in the wings to seize both the car and the cash based on the papers seized by the officers.

EXAMPLE #2:

Officers collected phone bills at three different residences. The telephone bills showed phone charges of \$100 to \$200 a month for each residence. The suspects who lived at these three residences were all on welfare. They allowed dealers to use their homes from which to traffic in cocaine. By comparing the bills, it was found that all three phones were used to call the same source in L.A.

It also showed the suspects could not afford the money from their welfare allotments to maintain their residences, buy food, and pay the phone bills. The women tried to claim the money and vehicles (\$16,000 cash and 4 vehicles). The phone bills helped prove not only the drug case but also allowed the seizure of the cash and vehicles.

COLLECT THE PAPER WORK!

LEGAL PROCEDURES

11471 H&S is quoted as follows:

"Property subject to forfeiture under this division may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without process may be made if any of the following situations exist:

- (a) The seizure is incident to an arrest/search under a search warrant.
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this division.
- (c) There is probable cause (P/C) to believe that the property is directly or indirectly dangerous to health or safety.
- (d) There is PC that the property was used or is intended to be used in violation of this division.
- (e) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notifying interested parties and a hearing to determine that seizure is necessary to preserve the property pending the outcome of the proceedings. At the hearing, the prosecution bears the burden of establishing probable cause exists for the forfeiture of the property and seizure is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may issue seizure orders pursuant to this section if it finds seizure is warranted or pendente lite orders pursuant to §11492 if it finds the status quo or value of the property can be preserved without seizure
- (f) Where business records are seized in conjunction with the seizure of property subject to forfeiture, the seizing agency shall, upon request, provide copies of the records to the person, persons, or business entity from whom such records were seized. "

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11468 H&S is quoted as follows:

- (a) Any peace officer of this state, subsequent to making or attempting to make an arrest for a violation of §11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6 or 11382 of this code, or §182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under subdivisions (a) to (f) , inclusive, of §11470.

The peace officer shall also notify the Franchise Tax Board of a seizure where there is reasonable cause to believe the value of the seized property exceeds five thousand dollars (\$5,000).

- (b) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized, in accordance with §1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized.
- (c) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in §11488.5."

§11488.1 is quoted as follows:

"Property seized pursuant to §11488 may, where appropriate be held for evidence. The Attorney General or the District Attorney for the jurisdiction involved shall institute and maintain the proceedings."

§11488.4 is quoted as follows:

- (a) "Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of §11470 and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or District Attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located."

A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or District Attorney of a lis pendens or other process against the property, whichever is earlier.

- (b) Physical seizure of assets shall not be necessary in order to have that particular asset alleged to be forfeitable in a petition under this section. The prosecuting attorney may seek protective orders for any asset pursuant to §11492.
- (c) The Attorney General or District Attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or District Attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized. Whenever a notice is delivered pursuant to this section it shall be accompanied by a claim for as described in §11488.5 and directions for the filing and service of a claim.
- (d) An investigation shall be made by the law enforcement agency as to any claimant to a vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the law enforcement agency finds that any person, other than the registered owner, is the legal owner thereof, and such

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ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat, or airplane it shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

- (e) When a forfeiture action is filed, the notices shall be published once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or where the property subject to forfeiture is located.
- (f) All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to §11488.5.
- (g) Nothing contained in this chapter shall preclude a person, other than a defendant, claiming an interest in property actually seized from moving for a return of property if that person can show standing by proving an interest in the property not assigned subsequent to the seizure or filing of the forfeiture petition.
- (h) If there is an underlying or related criminal action, a defendant may move for return of property -on the grounds there is no probable cause to believe the property is forfeitable pursuant to subdivisions (a)-(g), inclusive, of §11470 and not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter. The motion may be before, during, or subsequent to the preliminary examination. If subsequent to the preliminary examination, the Attorney General or District Attorney may submit the record of the preliminary hearing to establish probable cause exists to believe the underlying or related criminal violations have occurred.

Within 15 days of a defendant's motion granted, the people may file a petition for a Writ of Mandate or Prohibition seeking appellate review of the ruling.

- (i)
 - (1) With respect to property described in subdivisions (e) and (g) of §11470 for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt the property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of §11470.
 - (2) In the case of property described in subdivision (f) of §11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars (\$25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of §11470.
 - (3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of §11470 which offense occurred within five years of the seizure of property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties.
 - (4) In the case of property described in subdivision (f) of §11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars (\$25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence the property for which forfeiture is sought is such as is described in subdivision (f) of §11470. There is no requirement for forfeiture that a criminal conviction be obtained in an underlying or related criminal offense.
 - (5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of

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the superior court shall assign the action brought pursuant to this chapter for trial.

- (j) The Attorney General or the District Attorney of the county in which property is subject to forfeiture under §11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty five thousand dollars (\$25,000) in value. The Attorney General or District Attorney shall provide notice of proceedings under this subdivision per subdivisions (c), (d) , (e) , and (f) , including:
- (1) A description of the property.
 - (2) The appraised value of the property.
 - (3) The date and place of seizure or location of any property not seized but subject to forfeiture.
 - (4) The violation of law alleged with respect to forfeiture of the property.
 - (5) The instructions for filing and serving a claim with the Attorney General or the District Attorney pursuant to §11488.5 and time limits for filing a claim and claim form.

If no claims are timely filed, the Attorney General or the District Attorney shall prepare a written Declaration of Forfeiture of the subject property to the state and dispose of the property per §11489. A written Declaration of Forfeiture signed by the Attorney General or District Attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings.

If a claim is timely filed, then the Attorney General or District Attorney shall file a Petition of Forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed.

- (k) If in any underlying or related criminal action or proceeding, in which a petition for forfeiture has been filed pursuant to this section, and a criminal conviction is required before a judgment of forfeiture may be entered, the defendant willfully fails to appear as required, there shall be no requirement of a criminal conviction as a prerequisite to forfeiture. In these cases, forfeiture shall be ordered as against the defendant and judgment entered upon default, upon application of the state or local governmental entity. In its application for default, the state or local governmental entity shall be required to give notice to the defendant's attorney of record, if any, in the underlying or related criminal action, and to make a showing of due diligence to locate the defendant. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its Petition for Forfeiture."

§11488.5 is quoted as follows:

- "(a) (1) Any person claiming an interest in the property seized pursuant to §11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim verified in accordance with §446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or District Attorney, as appropriate, within 30 days of the filing of the claim. The Judicial Council shall develop and approve official forms for the verified claim that is to be filed pursuant to this section.

The official forms shall be drafted in nontechnical language, in English and in Spanish, and shall be made available through the clerk of the appropriate court.

- (2) Any person who claims the property was assigned to him or to her prior to the seizure or notification of pending forfeiture of the property under this chapter, whichever occurs first, shall file a claim with the court and prosecuting agency

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pursuant to §11488.5 declaring an interest in that property and that interest shall be adjudicated at the forfeiture hearing. The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing. Seized property shall be protected and its value shall be preserved pending the outcome of the forfeiture proceedings.

- (3) The clerk of the court shall not charge or collect a fee for the filing of a claim in any case in which the value of the respondent property as specified in the notice is five thousand dollars (\$5000) or less.
- (4) The claim of a law enforcement agency to property seized pursuant to §11488 or subject to forfeiture shall have priority over a claim to the seized or forfeitable property made by the Franchise Tax Board in a notice to withhold issued pursuant to §18817 or 26132 of the Revenue and Taxation Code.
- (b)
 - (1) If at the end of the time set forth in subdivision (a) there is no claim on file, the court, upon motion, shall declare the property seized or subject to forfeiture pursuant to subdivisions (a) to (g), inclusive, of §11470 forfeited to the state. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.
 - (2) The court shall order the forfeited property to be distributed as set forth in §11489.
- (c)
 - (1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in §11488.4 such a verified claim or a claim filed pursuant to subdivision (j) of §11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of §11488.
 - (2) The hearing shall be by jury, unless waived by consent of all parties.
 - (3) The provisions of the Code of Civil Procedure shall apply to proceedings per this chapter unless inconsistent with the provisions or procedures set in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.
- (d)
 - (1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of §11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of §11488.4.
 - (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to §11470 in accordance with the burden of proof set forth in subdivision (i) of §11488.4.
- (e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630, inclusive, of the Code of Civil Procedure if a trial by jury, and by §631 to 636, inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury finds the seized property was used for a purpose for which forfeiture is permitted the court shall order the seized property released to the person it determines is entitled thereto.

If the court or jury finds the seized property was used for a purpose for which forfeiture is permitted, but does not find the person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose

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for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant.

- (f) All seized property subjected to a contested forfeiture hearing and which was not released by the court to a claimant shall be declared by the court to be forfeited to the state, provided the burden of proof required pursuant to subdivision (i) of §11488.4 has been met. The court shall order the forfeited property to be distributed as set forth in §11489.
- (g) All seized property which was subject of the forfeiture hearing and not forfeited shall remain subject to any order to withhold issued with respect to the property by the Franchise Tax Board."

11466.6 is quoted as follows:

- "(a) If the court or jury at the forfeiture hearing finds the property forfeitable pursuant to §11470, but does not find that a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired such interest, had actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due such person is less than the appraised value of the property, such person may pay to the state or the local governmental entity which initiated the forfeiture proceeding the amount of the equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon such payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make such payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person having a valid ownership interest, which includes, but is not limited to, a valid lien mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest in accordance with the provisions of §11489.
- (b) If the amount due to a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of such sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.
- (c) The proceeds of sale pursuant to subdivision (b) shall be first distributed in accordance with the provisions of §11489."

11469 is quoted as follows:

"Notwithstanding §11502 and except as otherwise provided in §11473, in all cases where the property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

- (a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.
- (b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:
 - (1) To the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary costs of notice required by Section 11488.4, and for any necessary repairs, storage, or transportation of any property seized under this chapter.
 - (2) The remaining funds shall be distributed as follows:

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- (A) Sixty-five percent to the state, local, or state and local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.
 - (i) Fifteen percent of the funds distributed pursuant to this subparagraph shall be deposited in a special fund maintained by the county, city, or city and county of any agency making the seizure or seeking an order for forfeiture. This fund shall be used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers. Those programs that have been evaluated as successful shall be given priority. These funds shall not be used to supplant any state or local funds that would, in the absence of this clause, otherwise be made available to the programs.

It is the intent of the Legislature to cause the development and continuation of positive intervention programs for high-risk elementary and secondary school age students. Local law enforcement should work in partnership with state and local agencies and the private sector in administering these programs.

- (ii) The actual distribution of funds set aside pursuant to clause (i) is to be determined by a panel consisting of the sheriff of the county, a police chief selected by the other chiefs in the county, and the District Attorney and the Chief Probation Officer of the county.
 - (B) Ten percent to the prosecutorial agency which processes the forfeiture action.
 - (C) Twenty-four percent to the General Fund. Notwithstanding §13340 of the Government Code, the moneys are hereby continuously appropriated to the General Fund. Commencing January 1, 1995, all moneys deposited in the General Fund pursuant to this subparagraph, in an amount not to exceed ten million dollars (\$10,000,000), shall be made available for school safety and security, upon appropriation by the Legislature, and shall be disbursed pursuant to Senate Bill 1255 of the 1993-94 Regular session, as enacted.
 - (D) One percent to a private nonprofit organization composed of local prosecutors which shall use these funds for the exclusive purpose of providing a statewide program of education and training for prosecutors and law enforcement officers in ethics and the proper use of laws permitting the seizure and forfeiture of assets under this chapter.
- (c) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph (2) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund-State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to §11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for state and local law enforcement efforts pursuant to §11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

- (d) All the funds distributed to the state or local governmental entity per subparagraphs (A) and (B) of paragraph (2) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of those agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

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For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

This section shall become operative on January 1, 1994."

11492 is quoted as follows:

- "(a) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo or value of the property alleged in the petition for forfeiture.
 - (1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating, or otherwise disposing of that property.
 - (2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved.
 - (3) Order an interlocutory sale of the property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof, and the proceeds thereof shall be deposited with the court or as directed by the court pending determination of the forfeiture proceeding.
- (b) No preliminary injunction may be granted, receiver appointed, or interlocutory sale ordered without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property named in the petition, pending the outcome of the proceedings, and that there is probable cause to believe that the property is subject to forfeiture under §11470. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of §527 of the Code of Civil Procedure.
- (c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

11494 is quoted as follows:

"In the case of any property seized or forfeiture proceeding initiated before January 1, 1994, the proceeding to forfeit the property and the distribution of any forfeited property shall be subject to the provisions of this chapter in effect on December 31, 1993, as if those sections had not been repealed, replaced, or amended."

11495 is quoted as follows:

- (a) The funds received by the law enforcement agencies under §11489 shall be deposited into an account maintained by the Controller, county auditor, or city treasurer. These funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in §1040, 1041, and 1042 of the Evidence Code.
- (b) Upon request of the governing body of the jurisdiction in which the distributions are made, the Controller, auditor, or treasurer shall conduct an audit of these funds and their use. In the case of the state, the governing body shall be the Legislature.
- (c) Each year, the Attorney General shall publish a report which sets forth the following information for the state, each county, each city, and each city and county.:
 - (1) The number of forfeiture actions initiated.
 - (2) The number of cases and the administrative number or court docket number of each case for which forfeiture was ordered declared.
 - (3) The value of the assets forfeited.
 - (4) The recipients of the forfeited assets, the amounts received, and the date of the disbursement.
- (d) The Attorney General shall develop administrative guidelines for the collection and publication of the information required in subdivision (c).
- (e) The Attorney General's report shall cover the calendar year and shall be made no later than March 1 of each year beginning with the year after the enactment of this law."

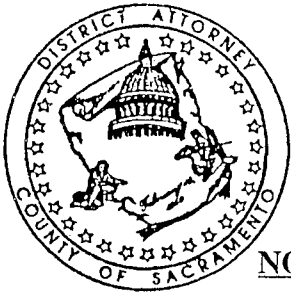
EXHIBIT A
OFFICE OF THE

DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. BESEMER
CHIEF DEPUTY



NOTICE OF INITIATION OF ASSET FORFEITURE PROCEEDINGS

TO: DOE, JOHN
NAME OF INTERESTED PARTY (PRINT LEGIBLY)

Pursuant to section 11488.4(j) of the California Health and Safety Code, procedures to forfeit the property described below without judicial proceedings are under way. If you claim an interest to this property, you must, within 30 days of actual receipt of this notice, file a claim verified per Section 446 of the Code of Civil Procedure, stating your interest in the seized property with the Clerk of the Superior Court, 720 Ninth Street, Sacramento, California, 95814. The claim may be submitted on an official court form which you will receive along with a copy of this notice. A civil case cover sheet must accompany your claim. A civil case cover sheet can be obtained from the Clerk of the Superior Court. Within 30 days of the filing an endorsed copy of the claim must be provided to the Office of the Sacramento County District Attorney, Attention: Asset Forfeiture Unit, at the address listed below. If your claim is not timely filed, the Sacramento District Attorney's Office will declare the property described in this letter to be forfeited to the state and dispose of it as provided in Health and Safety Code section 11489.

Date of seizure	<u>01-01-00</u>	Seizing Agency	<u>SPD RPT #00-003</u>
Place of seizure	<u>21st & 10th AVE</u>	Violation of Law	<u>11352 H-S</u>
Description of Item(s) seized and appraised value if non-currency	<u>\$500.00 IN U.S. CURRENCY</u> <u>1995 CHEV. LIC. # 3NEX186 VIN</u> <u>1GNER8SJ430852 VALUE \$3,500.00</u> <u>SONY COLOR TV 52" SCREEN SERIAL</u> <u># A001234 WITH REMOTE VALUE \$1,000.00</u>		

This Notice of Initiation of Asset Forfeiture Proceedings and a court claim titled Claim Opposing Forfeiture was personally served on the person whose name appears by:

BOB BADGE
NAME OF SERVER (PRINT LEGIBLY)

0123
BADGE NUMBER

Bob Badge
SIGNATURE OF SERVER

01-01-00
DATE OF SERVICE

John Doe
SIGNATURE OF INTERESTED PARTY

RECEIPT OF NOTICE AND CLAIM FORM ACKNOWLEDGED

Original to District Attorney

Copy to Interested Party

EXHIBIT B
DISTRICT ATTORNEY
Sacramento, California

Rpt # _____

**DISCLAIMER OF OWNERSHIP IN PROPERTY
SEIZED PURSUANT TO CALIFORNIA HEALTH AND
SAFETY CODE SECTIONS 11470 et. seq.**

I _____ acknowledge that
(name of person disclaiming ownership)

on _____, 19 _____, I was advised that the below listed property

was seized by _____ # _____ of the
(Name of Officer) (badge)

_____ on _____, 19 _____,
(Seizing Agency)

from _____, Sacramento County,
(Location of Seizure)

California.

DESCRIPTION OF PROPERTY SEIZED

I hereby state, under penalty of perjury, that I am not the owner of the above described property, that I have no interest, right or title to it and therefore that I have no claim for its return to me.

I have carefully read this document and understand that by signing this DISCLAIMER of OWNERSHIP, I am waiving any right to receive any notices regarding the seizure of the above described property or to be advised of any further forfeiture proceedings involving the above described property.

I DECLARE, UNDER PENALTY OF PERJURY, THE FOREGOING TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED ON _____, 19 _____, AT _____, CALIFORNIA.

(Print Name)

(Signature)

Witnessed by: _____

(Officers Name)

Badge # _____

REPORT NUMBER

**SACRAMENTO POLICE DEPARTMENT
MONEY TALLY SHEET**

VICTIM OR COMPLAINANT

LAST NAME, FIRST, MIDDLE (FIRM NAME IF CRIME IS AGAINST BUSINESS)	CRIME CODE SECTION
---	--------------------

Person/Place taken from: _____

DENOMINATIONS	NUMBER	AMOUNT
One Dollar Bills		\$
Two Dollar Bills		\$
Five Dollar Bills		\$
Ten Dollar Bills		\$
Twenty Dollar Bills		\$
Fifty Dollar Bills		\$
One Hundred Dollar Bills		\$
		\$
COINS		
Pennies		\$
Nickels		\$
Dimes		\$
Quarters		\$
Half Dollars		\$
Dollars		\$
Total \$		

Counted and Sealed By _____ Verified By _____

Booked By _____

- (1) Sort bills by denomination – face up – same direction
 - (a) Pack twenty (20) to a stack with rubber band
 - (b) Clip quantities less than twenty (20) by denomination
 - (c) Package by denomination in plastic heat seal pouch
- (2) Sort and package coins by denomination
- (3) Work in clear area free of distractions
- (4) If over \$1,000.00, use dual control – two people
- (5) Do not leave money unattended until it has been secured

REPORTED BY	BADGE	DIV	YRS OF SERVICE
ASSISTED BY	BADGE	DIV	YRS OF SERVICE

DATE
DATE

APPROVED BY		
BADGE	DATE	TIME

EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name and Address</i>): ATTORNEY FOR (<i>Name</i>):	TELEPHONE NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
THE PEOPLE OF THE STATE OF CALIFORNIA		
CLAIMED PROPERTY:		
CLAIMANT (<i>NAME</i>):		
CLAIM OPPOSING FORFEITURE (Health & Safety Code, § 11488.5) <input type="checkbox"/> In response to a judicial petition for forfeiture (<i>use existing case No.</i>) <input type="checkbox"/> In response to notice of administrative proceedings		CASE NUMBER:

1. Claimant (*name*):
 is an individual corporation other (*specify*):

2. Claimed property (*describe*):

NOTICE	AVISO
<ol style="list-style-type: none"> 1. You must file your claim within 30 days after you receive personal or mailed notice that your property may be forfeited. If you do not receive personal or mailed notice, you must file your claim within 30 days after notice is first published in a newspaper. 2. Your claim must be filed in the county where the property was seized. If the property was not seized, file your claim in the county where the property is located. If you have received a notice, you can find the address of the court on that notice. 3. Within 30 days after filing your claim, serve a copy on the district attorney or attorney general. The copy must have the court clerk's filing stamp on it. <p><i>This notice is urgent. If you do not understand it, you must seek help.</i></p>	<ol style="list-style-type: none"> 1. Usted debe presentar su demanda dentro de los 30 días siguientes a la fecha en que recibe, personalmente o por correo, el aviso de que sus bienes pueden ser confiscados. Si no recibe dicho aviso, deberá presentar su reclamo dentro de los 30 días siguientes a la fecha en que el aviso publicado por vez primera en un periódico. 2. Su demanda debe presentarse en el condado donde fueron confiscados los bienes. Si los bienes no han sido confiscados, presente su demanda en el condado donde están ubicados los bienes. Si ha recibido el aviso, busque la dirección de la corte en el aviso. 3. Dentro de los 30 días siguientes a la fecha en que presentó su demanda, envíe una copia de la notificación judicial a la oficina del Fiscal (District Attorney) o del Procurador general (Attorney General). La copia debe llevar el sello del actuario de la corte encargado de recibir las demandas. <p style="text-align: center;"><i>Esta notificación es urgente. Si usted no la entiende, debe pedir ayuda.</i></p>

(Continued on reverse)



CLAIMANT (Name):	CASE NUMBER:
CLAIMED PROPERTY:	

Claimant has an interest in the claimed property. Claimant

- a. is the owner. For vehicles (cars, boats, planes, etc.) only: registered owner legal owner
- b. has a security interest or is a lien holder has a right to possess.
- c. is the personal representative of the estate of the owner, lessee, or secured party.
- d. other (specify):

4. Claimant's interest in the right to or value of the claimed property is

- a. all part (specify nature, amount, or percentage):

b. unknown.

5. Claimant requests

- a. that the claimed property not be ordered forfeited.
- b. that claimant's interest in the claimed property not be ordered forfeited.
- c. costs of suit.
- d. other (specify):

6. Number of pages attached: _____

Date:

..... (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF CLAIMANT)

VERIFICATION

I am the claimant in this proceeding and have read this claim. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____ (SIGNATURE OF CLAIMANT)