

APPENDIX TABLE OF CONTENTS

	Page
Second Amended Complaint for Declaratory Relief and Damages (ECF No. 51-1), Eastern District of Michigan, <i>Sinclair v. County of Oakland</i> , filed May 28, 2021	1a

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MARION SINCLAIR,
on behalf of herself and all
those similarly situated,
Plaintiff,

Case No. 18-cv-14042

Hon. Terrence G. Berg

v.

**COUNTY OF OAKLAND,
CITY OF SOUTHFIELD,
SOUTHFIELD NON-PROFIT
HOUSING CORPORATION,
SOUTHFIELD NEIGHBOR-
HOOD REVITALIZATION
INITIATIVE, FREDERICK
ZORN, and KENNETH SIVER,**
Defendants. /

**PLAINTIFF'S SECOND AMENDED COMPLAINT
FOR DECLARATORY RELIEF AND DAMAGES**

Plaintiff Marion Sinclair, on behalf of herself and all those similarly situated, by and through counsel, and for her Second Amended Complaint, states as follows:

INTRODUCTION

1. This is an egregious case of governmental abuse that cries out for remedy, especially in light of the Michigan Supreme Court's decision in *Rafaelli, LLC v. Oakland County*, 505 Mich. 429, 470, 952 N.W.2d 434 (2020), and the Sixth Circuit's decision in

Freed v. Thomas, 976 F.3d 729 (6th Cir. 2020). Defendants and other individuals designated herein participated in a scheme to deprive Plaintiff and the putative Class Members of valuable property (substantial Equity in their real estate) without just compensation.

2. This abuse stems from the Defendants' property tax foreclosure process. Michigan law generally authorizes counties to foreclose on private properties whose owners have failed to pay all property taxes. Those properties may be sold at auction, and the proceeds used to make municipalities whole for unpaid taxes, as well as reasonable fees and expenses.

3. The instant litigation does not challenge the forfeiture and foreclosure of the subject properties. Rather, the instant litigation challenges what occurred after the properties were forfeited and foreclosed upon, and the deprivation of the Plaintiff and putative Class Members of substantial equity in their properties.

4. Furthermore, the properties owned by Plaintiff and the putative Class Members had significant equity (i.e. they were worth much more than the amount owed for unpaid taxes, plus reasonable fees and expenses.) This excess value ("equity") was not refunded to Plaintiff and putative Class Members, however. They were permanently deprived of this equity without any compensation.

5. Plaintiff and the putative Class Members all fell behind in paying their property taxes. Their properties were all forfeited and then foreclosed upon. They were then deprived of their equity by Defendants, who

all participated in a scheme whereby Oakland County transferred the foreclosed and unencumbered properties to the City of Southfield, which in turn transferred them to private entities (controlled in large part by City of Southfield officials) for a minimal fee, thus depriving Plaintiff and the putative Class Members of their entire equity. The primary purpose for the creation of the private entities—controlled by municipal officials—was to sell these properties for a significant profit.

6. The Michigan Supreme Court has recently held that “[Michigan] common law recognizes a former property owner’s property right to collect the surplus proceeds that are realized from the tax-foreclosure sale of property.” *Rafaeli, LLC v. Oakland County*, 505 Mich. 429, 470, 952 N.W.2d 434 (2020).

7. The Michigan Supreme Court also found that “[Michigan’s] 1963 Constitution protects a former owner’s property right to collect the surplus proceeds following a tax-foreclosure sale under Article 10, § 2.” *Id.* at 473.

8. Lastly, the Michigan Supreme Court held that a county’s retention of the surplus proceeds was an unconstitutional taking:

Once defendants foreclosed on plaintiffs’ properties, obtained title to those properties, and sold them to satisfy plaintiffs’ unpaid taxes, interest, penalties, and fees related to the foreclosures, any surplus resulting from those sales belonged to plaintiffs. That is, after the

sale proceeds are distributed in accordance with the GPTA's order of priority, any surplus that remains is the property of plaintiffs, and defendants were required to return that property to plaintiffs. Defendants' retention of those surplus proceeds under the GPTA amounts to a taking of vested property right requiring just compensation. To the extent the GPTA permits defendants to retain these surplus proceeds and transfer them into the county general fund, the GPTA is unconstitutional as applied to former property owners whose properties were sold at a tax-foreclosure sale for more than the amount owed in unpaid taxes, interest, penalties, and fees related to the forfeiture, foreclosure, and sale of their properties.

Id. at 461 (emphasis added.)

9. Here, the foreclosed properties were not sold at auction. Rather, the City of Southfield exercised a statutory right of first refusal, set forth in the prior version of MCL 211.78(m), which allowed it to purchase foreclosed properties for the so-called "minimum bid", i.e., the amount of unpaid taxes and fees. These properties were then transferred to a for-profit corporation for minimal value, depriving homeowners of substantial equity.

10. The exercise of the right of first refusal by the City of Southfield to purchase foreclosed properties for much less than their value operates to deprive Plaintiff and the putative Class Members of substantial equity in their homes, without just compensation.

It prevents their properties from being sold at auction and precludes any possibility of a sale creating a surplus above the amounts owed for property taxes and fees. Such surplus would be the property of Plaintiff and the Class Members under *Rafaeli*, and Defendants' actions deprive Plaintiff of that surplus and their equity in their properties.

11. The Michigan Legislature has recognized that its procedures were unlawful and has amended the General Property Tax Act to require that a city electing to purchase a tax-foreclosed property under the right of first refusal must pay "the greater of the minimum bid or the fair market value of the property." MCL 211.78m(1). However, despite the *Rafaeli* ruling and the change in law, Defendants have not disgorged the equity they have wrongfully taken from Plaintiff and Class Members without just compensation.

12. Defendants' actions constitute the improper and unconstitutional taking of the property of the Plaintiff and the putative Class Members without just compensation.

13. To the extent Defendants' actions were permitted under the previous or current version of MCL § 211.78m(8) or § 211.78(t)(2), those provisions are unconstitutional.

14. As set forth below, Defendants' actions constitute a violation of the Fifth and Fourteenth Amendments of the United States Constitution pursuant to 42 USC § 1983 and § 1988; a violation of Article X, Section 2 of the Michigan Constitution; an impermissible

inverse condemnation and unjust enrichment under Michigan law, and a civil conspiracy under 42 USC § 1983. Plaintiffs also seek a declaratory judgment against Defendants for their unlawful actions.

PARTIES

15. Plaintiff Marion Sinclair is an individually who formerly resided at, and was the former owner of, a single-family residence at 15737 New Hampshire Drive, in the City of Southfield, in the County of Oakland, and in the State of Michigan.

16. Defendant County of Oakland (“Oakland”) is a legal entity formed and/or existing under the laws of the State of Michigan and is controlled and/or operated by duly designated Boards of Commissioners. It is a political subdivision of the State of Michigan which is delegated the responsibility to collect delinquent property taxes. Unless otherwise stated, Oakland acted through the Oakland County Treasurer.

17. Defendant City of Southfield (“Southfield”) is a municipal entity formed under the laws of the State of Michigan.

18. Defendant Southfield Non-Profit Housing Corporation (“SNPHC”) is a 501(c)(3) non-profit corporation organized under the rules of the IRS, and incorporated in the State of Michigan.

19. Defendant Southfield Neighborhood Revitalization Initiative LLC (“SNRI”) is a For-Profit Limited Liability Corporation formed under the laws of the

State of Michigan. SNRI was organized on or about June 24, 2016.

20. Defendant Frederick E. Zom (“Zom”), at all relevant times, was the City Administrator for the City of Southfield, as well as simultaneously serving as a board member and manager of SNPFC and SNRI, respectively.

21. Defendant Kenson J. Siver (“Siver”), at all relevant times, was the Mayor of Southfield, as well as simultaneously serving as a board member and manager of SNPFC and SNRI, respectively.

JURISDICTION AND VENUE

22. This is a civil action brought seeking unpaid “just compensation” and other monetary damages against Defendants for violations of the Fifth and Fourteenth Amendments to the United States Constitution.

23. This Court has jurisdiction pursuant to 28 USC § 1331, which authorizes federal courts to decide cases considering federal questions; 28 USC § 1343, which authorizes federal courts to hear civil rights cases; 28 USC § 12202, which authorizes declaratory judgments via the Declaratory Judgment Act; and 28 USC § 1367, which authorizes supplemental state law claims.

24. Venue is proper in this Court as Defendants, individually and collectively, conduct or have

conducted their business in the Eastern District of Michigan.

GENERAL ALLEGATIONS

**FORFEITURE AND FORECLOSURE UNDER
THE GENERAL PROPERTY TAX ACT**

25. This case stems from the administration of Michigan’s General Property Tax Act (“GPTA”), MCL §§ 211.1-211.157, which is the statutory process enacted for the collection of unpaid and delinquent real property taxes through real property forfeiture and foreclosure.

26. The matters at the heart of this litigation concern matters *after* the taxation and forfeiture process is completed, and equity remains after counties such as Oakland are paid in full for all delinquent taxes, interest, penalties, and fees.

27. As used in this Second Amended Complaint:

- a. “Tax Delinquency” means the past due tax owed on a property plus additional compounding interest, fees, penalties, and costs; and
- b. “Equity” means the amount by which a property’s value exceeds its Tax Delinquency.

28. The GPTA permits the recovery of unpaid real-property taxes, penalties, interest, and fees through foreclosure and sale of the property on which there is a tax delinquency.

29. In so doing, a county treasurer may choose to act as the collection agent for the municipality where the property is located when taxpayers become delinquent on their property taxes or, at the election of the county, the State itself may act as the collection agent. MCL § 211.78(8).

30. Oakland opted to act as the collection agent for Southfield, also known as the Foreclosing Governmental Unit (“FGU”), pursuant to MCL § 211.78(8).

31. The GPTA requires a county to take certain enumerated steps to collect delinquent property taxes and initiate foreclosure proceedings. After notice and hearings, tax-delinquent properties are forfeited to Oakland. The tax-delinquent properties are then foreclosed after a judicial foreclosure hearing by the Circuit Court, and title to the forfeited property is transferred to the county treasurer. If the property is not timely redeemed by the March 31 after the foreclosure, fee simple title is vested absolutely in the county treasurer, without any further redemption rights available to the delinquent taxpayer. MCL § 211.78 *et seq.*

32. Prior to 2021, once title was vested in the county treasurer, the property was then disposed of as follows:

- (1) The state or municipality where the property is located has the right to claim the property in exchange for the payment to the county of unpaid taxes, interest and other costs (the “minimum bid”); or

(2) If the state or municipality does not exercise their right of first refusal, the property is put up for sale at a public auction the July after foreclosure and, if not sold, again in October.

MCL § 211.78m.

33. Oakland, through its Treasurer, administered a foreclosure process, such that in most cases, after foreclosed real property was sold (typically for more than the Tax Delinquency), the Treasurer retained the entire amount of the proceeds. At no point did Oakland or anybody with the power to do so return the Equity or otherwise provide just compensation to the former property owners whose Equity was taken.

**THE CONSPIRACY TO DEPRIVE PLAINTIFF AND
PUTATIVE CLASS MEMBERS OF THEIR EQUITY**

34. Defendants Southfield, SNRI, SNPFC, Zorn, and Siver recognized that they could utilize the statutory right of first refusal to take ownership of real property that had substantial Equity above and beyond any unpaid taxes, sell that property, and retain Equity that rightfully belongs to homeowners, and enrich themselves.

35. Zorn, the City Administrator for Southfield, recommended to the Southfield City Council that Southfield should enter in an agreement with SNPFC. The agreement would facilitate the exercise by Southfield of its right of first refusal on foreclosed properties—including the properties of Plaintiff and putative Class Members—that had been foreclosed and to

which Oakland had taken title. Southfield approved of this agreement with SNPHC.

36. In furtherance of this scheme, SNRI was organized as a for-profit corporation for the purpose of purchasing tax foreclosed and other properties, purportedly improving such properties, and then selling those properties for fair-market value.

37. Pursuant to that agreement, SNPHC would provide funds to Southfield to pay the unpaid taxes and fees required for Southfield to exercise its first right of refusal.

38. Once Southfield obtained title to the subject properties, it would transfer ownership to SNRI, a for-profit corporation wholly owned by SNPHC, for the sum of \$1.00 (one dollar).

39. SNPHC would then sell the property to a third-party purchaser at fair market value, which was tens or even hundreds of thousands of dollars more than the amount of unpaid taxes and expenses which were originally owed on the property.

40. This series of transfers would allow the Equity which should belong to the homeowner to be stripped from them by SNRI, a for-profit corporation operated in part by Defendants Zorn and Siver.

41. Upon information and belief, Defendants SNRI, SNPHC, Southfield, Zorn and Siver specifically selected properties for this scheme that had a large amount of Equity in relation to the amount of unpaid taxes and expenses, preferring properties with no

mortgages, in order to maximize the amount of Equity realized by SNRI.

42. Because of this scheme, there was never any auction for properties purchased by Southfield, paid for by SNPHC, and transferred to SNRI.

43. Defendants planned, schemed, and conspired to utilize a statutory right of first refusal, under MCL § 211.78m, to acquire the properties at minimal cost from Oakland, and then used SNPHC to fund the acquisition of these properties for Southfield, which in turn would deed the properties to SNRI for sale.

44. This scheme is even more disturbing because Defendants Zorn and Siver are elected or appointed officials of Southfield, as well as simultaneously serving as board members and/or managers of SNPHC and/or SNRI.

45. SNPHC and SNRI were used for private and political gain that allowed Zorn and Siver to benefit privately at the expense of Plaintiff and putative Class Members' Equity.

THE CONDUCT AT ISSUE HEREIN
REFLECTS COUNTY POLICY

46. The actions described herein are a voluntary policy, custom, and/or practice of Oakland, Southfield and/or their final policymaker(s).

47. This voluntary policy and/or practice of Oakland and Southfield is sufficient to impose damages

and other relief pursuant to *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), and its progeny.

48. Specifically, Oakland and Southfield made the affirmative, voluntary, and discretionary decision to select and designate the county treasurer to act as the FGU. See MCL § 211.78(3)-(6).

49. Moreover, Oakland, either through enactment of laws or regulations, official agency or governmental entity policy, and/or actions taken by an official or officials with final decision-making authority, has administered Oakland's foreclosure and auction process generally, including MCL § 211.78m(8), so that after Oakland sells a parcel at auction, it retains the entire amount of the proceeds, even if the proceeds exceed the amount of the Tax Delinquency, and never turns anything to the property owner, nor provides any mechanism by which the property owner can secure a return of his, her, or its Equity.

50. Further, Southfield, either through enactment of laws and regulations, official agency or governmental entity policy, and/or actions taken by an official or officials with final decision-making authority, has administered Southfield's foreclosure process generally, including MCL § 211.78m(8) so that Southfield is able to obtain tax-delinquent properties from Oakland at an amount below fair-market value, sell the properties through SNRI, and obtain the Equity that should belong to the property owner, without providing any

mechanism by which the property owner can secure a return of his, her or its Equity.

51. Accordingly, the actions at issue here were undertaken pursuant to an official county policy for purposes of *Monell*.

52. The GPTA, and specifically MCL § 211.78m(8) and t(2), did not require the practices of which Plaintiffs complain. Rather, the GPTA can be fairly read to provide for Equity to be returned to the previous owner of a foreclosed property before the resulting funds are allocated.

53. In the alternative, the GPTA, in particular MCL § 211.78m(8) and t(2), are inherently unconstitutional: if the act requires Oakland's conduct as set forth herein, then, the Act violates the United States and Michigan Constitutions for all of the reasons that Defendants' conduct violates them.

54. The actions of Oakland were designed to intentionally or wantonly cause harm to Plaintiffs and the putative class members due to the utter disregard of Plaintiff's and the putative Class Members' constitutionally protected rights.

55. On December 23, 2020, Michigan enacted an amendatory act which was meant to be curative of the unconstitutional former sections of the GTPA, specifically, MCL 211.78m and MCL 211.78(t)(2), which should retroactively grant Plaintiffs and putative Class Members "just compensation" equivalent to fair market value. However, despite all the new

developments in decisional law and the so-called curative amendments to GPTA, Plaintiff and the putative Class Members presently have no adequate remedy or procedure to receive “just compensation” under Michigan Law. Therefore, the Plaintiff and the putative Class Members look to this Court to provide a remedy under the U.S. Constitution, federal law and other applicable law to provide such “just compensation”.

**SPECIFIC ALLEGATIONS RELATING TO
MARION SINCLAIR**

56. After Plaintiff fell behind on her proper taxes, Oakland, through its Treasurer, initiated forfeiture and foreclosure proceedings on or about June 12, 2015 against the property owned by Plaintiff.

57. As part of the GPTA procedure, a judgment of foreclosure was entered in the Oakland County Circuit Court on February 2, 2016. Title to the Plaintiff’s property was vested in the Treasurer of Oakland.

58. At the time the judgment of foreclosure was entered, the Tax Delinquency was \$22,047.46.

59. On July 7, 2016, the property was subsequently transferred to Southfield for \$28,424.84.

60. On September 22, 2016, the property was conveyed by quit claim deed from Southfield to SNRI for \$1.00. Upon information and belief, title to the property remains in the possession of SNRI.

CLASS ALLEGATIONS

61. This action is brought by Plaintiff individually and pursuant to FED. R. CIV. P. 23 on behalf of the owners of real property in Southfield during the relevant statutorily-limited time period who were subject to the unconstitutional process which resulted in the taking and/or unconstitutional forfeiture of their Equity, but excluding those who have separately filed their own personal post-forfeiture legal actions in state or federal courts.

62. The proposed class consists of all the owners of real property in Southfield, whose real property, during the relevant time period, was seized through a real property tax foreclosure, which was worth and/or which was sold for more than the Tax Delinquency, and who was not refunded the Equity.

63. The number of persons who have been injured by the practices discussed herein is sufficiently numerous to make class action the most practical method to secure redress for the injuries sustained and to provide class wide equitable relief.

64. Plaintiffs claims are common to, and typical of, those raised by the putative Class they seek to represent, including:

- a. Whether Oakland and Southfield have been voluntarily exercising discretion to administer MCL § 211.78 in an unconstitutional or otherwise illegal manner, or whether Oakland and Southfield have been acting to voluntarily enforce an

unconstitutional statute which each has willingly assumed to undertake via MCL § 211.78;

- b. Whether each putative Class Members' property, prior to foreclosure, was worth more than the total Tax Delinquency owed to Oaldand;
- c. Whether each putative Class Members' property had Equity greater than the Tax Delinquency owed to Oaldand;
- d. Whether Defendants deprived Class Members of Equity without just compensation after foreclosing on their property;
- e. Whether Defendants kept the remaining Equity for their benefit, or caused the loss of Equity through their actions; and
- f. Whether Defendants failed to pay just compensation or failed to have or undertake a process to return the Equity.

65. There are clear questions of law raised by the named Plaintiff's claims common to, and typical of, those raised by the putative Class they seek to represent, including:

- a. Whether MCL § 211.78m forbids Defendants from returning Equity to Class Members;
- b. Whether MCL § 211.78m does entail such a prohibition, and if so, whether the statute is facially unconstitutional;

- c. Whether the decision in *Rafaeli* applies retroactively;
- d. Whether the revisions to MCL § 211.78 apply to the actions of Defendants as set forth herein;
- e. Whether the Defendants have committed an unconstitutional taking by refusing to pay just compensation when seizing Equity beyond the Tax Delinquency, and have appropriated property in the form of Equity without the payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Article X, Section 2 of the Michigan Constitution;
- f. Whether the Defendants committed an inverse condemnation by destroying Equity via the seizure process and/or the later selling the property, and then retaining the Equity;
- g. Whether the putative Class Members had a protected property interest in their property's Equity;
- h. Whether the Defendants deprived the putative Class Members of any opportunity to seek the return of their Equity after foreclosure so as to deprive the putative Class Members of their procedural due process rights;
- i. Whether the Defendants acted arbitrarily and capriciously, and/or in a manner

that shocks the conscience, in seizing the putative Class Members' Equity;

- j. Whether the Defendants violated the class members' substantive due process rights in seizing the putative Class Members' Equity; and
- k. Whether the Defendants have been unjustly enriched by their retention of putative Class Members' Equity.

66. The violations of law and resulting harms alleged by the named Plaintiff are typical of the legal violations and harms suffered by all putative Class Members.

67. Plaintiff, if appointed as Class representative, will fairly and adequately protect the interests of the putative Class Members and will vigorously prosecute the suit on behalf of the putative Class; and is represented by highly experienced counsel.

68. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice, preventing possible inconsistent or varying adjudications with respect to putative Class Members and/or one or more of the Defendants.

69. Defendants have acted, failed to act, and/or are continuing to act on grounds generally against Plaintiff and all putative Class Members in the same manner.

70. The violations of law and resulting harms alleged by the named Plaintiff are typical of the legal violations and harms suffered by all putative Class Members.

71. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice, preventing possible inconsistent or varying adjudications with respect to individual putative members of the Class and/or one or more of the Defendants

COUNT I
IMPROPER TAKING WITHOUT JUST
COMPENSATION IN VIOLATION OF
FIFTH AND FOURTEENTH AMENDMENTS
42 USC § 1983 AND § 1983
(AGAINST OAKLAND AND SOUTHFIELD)

72. Plaintiff repeats, re-alleges and incorporates herein by reference all prior paragraphs.

73. This claim for an improper taking without just compensation in violation of the Fifth and Fourteenth Amendments of the United State Constitution is being made against Oakland and Southfield pursuant to 42 USC § 1983 and § 1988.

74. The Fifth Amendment, made applicable to the states via the Fourteenth Amendment, is a constitutional provision and right requiring the payment of just compensation upon a taking by Defendants.

75. Defendants, in violation of 42 USC § 1983, have taken Plaintiff's and the putative Class Members' property interests in the form of Equity and have appropriated this property for public use without the payment of just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

76. Defendants have refused to take any action for the payments of just compensation for their seizures of Equity from the Plaintiff and putative Class Members.

77. By their refusal to take any action for the payment of just compensation at the time of the taking, Defendants have deprived Plaintiff and the putative Class Members of their constitutional right to just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution pursuant to 42 USC § 1983 and § 1988.

78. Defendants have not paid just compensation.

79. Defendants' actions were designed to intentionally or wantonly cause harm to Plaintiff and the putative class members due to the utter disregard of Plaintiff's and the putative Class Members' constitutionally protected rights.

80. Plaintiff and the putative Class Members have been injured and have suffered damages.

COUNT II
INVERSE CONDEMNATION
VIOLATION OF THE MICHIGAN
CONSTITUTION, ARTICLE X, SECTION 2
(AGAINST OAKLAND AND SOUTHFIELD)

81. Plaintiff repeats, re-alleges and incorporates herein by reference all prior paragraphs.

82. Defendants have taken Plaintiff's and the putative Class Members' property interests in the form of Equity and have appropriated this property for public use without the payment of just compensation.

83. Defendants have done so without using any direct condemnation process, including those outlined under the Uniform Condemnation Procedures Act, MCL § 213.51, et seq., and in violation of Article X, Section 2 of the Michigan Constitution.

84. The actions of the Defendants caused an unjust taking of Plaintiffs and putative Class Members' entire equity in their property.

85. The Defendants took affirmative actions that directly targeted those properties with substantial Equity, through an illegal enterprise and scheme.

86. As direct and proximate result of Defendants' unconstitutional taking of Plaintiffs' properties, Plaintiff and putative Class Members have experienced substantial loss of value and ordinary use and enjoyment of their properties.

87. The injury to the Plaintiff and putative Class Member property owners is unique or special because this group of Plaintiff had substantial Equity in their property.

88. Defendants have not and will not provide Plaintiff and the putative Class Members any opportunity to claim their Equity after the seizure and/or later sale of their respective properties, nor do Defendants provide or have a process to claim compensation at the time the Defendants seized title to their property interests.

89. Defendants have not paid just compensation.

90. Defendants' actions were designed to intentionally or wantonly cause harm to Plaintiff and the putative class members due to the utter disregard of Plaintiff's and the putative Class Members' constitutionally protected rights.

91. The Plaintiff and putative Class Members whose Equity was taken are entitled to compensation under Article X, Section 2 of the Michigan Constitution.

92. Plaintiff and the putative Class Members have been injured and have suffered damages.

COUNT III
VIOLATION OF PROCEDURAL DUE PROCESS
42 USC § 1983 AND § 1988
(AGAINST OAKLAND AND SOUTHFIELD)

93. Plaintiff repeats, re-alleges and incorporates herein by reference all prior paragraphs.

94. The Fourteenth Amendment guarantees procedural due process to Plaintiffs and the putative Class Members.

95. Plaintiff and the putative Class Members have a constitutionally protected property interest in the Equity of their respective properties.

96. Defendants have denied Plaintiff and the putative Class Members these rights by failing to provide for any procedure at all for Plaintiff and the putative Class Members to secure the return of their Equity after their properties' sale or transfer.

97. As a direct and proximate result of the Defendants' failure to provide adequate procedural due process, Plaintiff and the putative Class Members have been injured and have suffered damages.

98. Neither Plaintiff nor any putative Class Member has an adequate remedy at law except as set forth in this Second Amended Complaint.

COUNT IV
UNJUST ENRICHMENT
(AGAINST ALL DEFENDANTS)

99. Plaintiff repeats, re-alleges and incorporates herein by reference all prior paragraphs.

100. Defendants have received the benefit of substantial Equity from Plaintiffs and the putative Class Members.

101. Under these circumstances, it would be inequitable for Defendants to retain the Equity which they have received from Plaintiffs and the putative Class Members.

COUNT V
CIVIL CONSPIRACY
42 USC § 1983
(AGAINST ALL DEFENDANTS)

102. Plaintiff repeats, re-alleges and incorporates herein by reference all prior paragraphs.

103. The GPTA granted Southfield the first right of refusal to purchase the tax-foreclosed properties of Plaintiff and the putative Class Members. 23

104. In June of 2016, SNPHC formed SNRI to purchase, rehabilitate and sell foreclosed properties to private purchasers.

105. Upon information and belief, at all times relevant, Zorn was an officer of SNPHC, the managing

member of SNRI, and the Southfield City Administrator.

106. Upon information and belief, at all times relevant, Siver was the president of SNPHC and the Mayor of Southfield.

107. Following the statutory tax-foreclosure date of March 31, a list of tax-foreclosed properties is generated and distributed by Oakland.

108. SNPHC obtained and reviewed these lists to determine which properties to purchase.

109. SNPHC convinced Southfield to utilize its statutory first right of refusal for those properties desired by SNPHC, and pay the minimum bid. Otherwise, SNPHC would have to obtain those properties at auction, which would likely cost more than the minimum bid. After the recent amendment to the GPTA, SNPHC would have to pay the greater of the minimum bid or the fair market value.

110. SNPHC and SNRI agreed to provide Southfield with the funds to allow Southfield to exercise its right of first refusal. Additionally, SNRI agreed to pay any outstanding summer and winter taxes and other related tax charges.

111. After Southfield purchased the properties and obtained title from Oakland, Southfield transferred title of those same properties to SNRI for \$1.00.

112. SNRI would then and sell those homes for fair-market value, reaping a significant profit which includes Plaintiff's and Class Members' equity.

113. Zorn and Siver used their positions as Mayor and City Administrator of Southfield in furtherance of this scheme, from which they benefitted personally and professionally.

114. As set forth above, SNPHC and SNRI conspired with Southfield to act under color of law to obtain Plaintiff's and Class Members' Equity.

115. The exercise of Southfield's right of first refusal to obtain Plaintiff's and Class Members' Equity was the product of a corrupt conspiracy.

116. Any alleged "public purpose" from Southfield, SNPHC and SNRI is pretextual to the real purpose—personal profit.

117. As set forth above, the conduct of Southfield, SNPHC, SNRI, Zorn and Siver caused the deprivation of the Plaintiff's and putative Class Members' right to their Equity.

118. Plaintiff's and the putative Class Members' rights to their Equity are well established.

119. As a direct and proximate result, Plaintiff and the putative Class Members have been injured and have suffered damages.

120. Plaintiff and the putative Class Members do not have an adequate remedy at law except as asserted in this Second Amended Complaint.

COUNT VI
DECLARATORY RELIEF
(AGAINST ALL DEFENDANTS)

121. Plaintiff repeats, re-alleges and incorporates herein by reference all prior paragraphs.

122. An actual controversy exists between Plaintiff and putative Class Members and Defendants regarding the administration of the GPTA tax foreclosure.

123. Plaintiff and putative Class Members are entitled to a declaration that the failure of the GPTA and Michigan law to provide delinquent taxpayers a basis for and a method to recover the Equity in their homes after they are taken is a violation of their rights to just compensation and equal protection.

124. Plaintiff and putative Class Members are entitled to declaratory judgment that Southfield cannot exercise its right of first refusal without paying fair-market value for the property and reimbursing the property owners for their Equity above any Tax Delinquency owed.

125. Plaintiff and putative Class Members seek a declaratory judgment that Southfield cannot treat property owners who face tax foreclosure in 2021 more favorably than the similarly situated property owners who were foreclosed in earlier years before recent changes to MCL 211.78m.

RELIEF REQUESTED

Wherefore, Plaintiff and the putative Class Members respectfully that this Court:

- a. Enter an order certifying this case as a class action;
- b. Enter an order declaring the conduct of Defendants as unconstitutional under the United States and Michigan Constitutions;
- c. Enter an order for an award of full compensatory damages for those injuries and damages sustained by Plaintiffs and putative Class Members, including disgorgement of Equity for each respective property;
- d. Enter an order for additional damages and/or compensation to reach an amount equaling 125% of the property's fair market value if this Court determines that private property consisting of an individual's Equity was taken for public use pursuant to Article X, Section 2 of the Michigan Constitution;
- e. Enter and order for damages pursuant to 42 USC §§ 1983 and 1988;
- f. Enter an order for an award of interest as provided for in *Knick v. Twp. of Scott*;
- g. Enter an order for an award of reasonable attorneys' fees and litigation expenses pursuant to 42 USC § 1988, and any and all other applicable laws, rules and statutes;

- h. Enter an award for exemplary and punitive damages;
- i. Enter an order for declaratory judgment that Defendants' conduct is unlawful under the GPTA;
- j. Enter orders that, pursuant to USC § 1403 and FED. R. CIV. P. 5.1, invite the Attorney General of Michigan to intervene, as the Plaintiff seeks to declare MCL §§ 211.78m & 211.78(t) unconstitutional, and if the Court deems it necessary certify the question to the Supreme Court of Michigan;
- k. Enter order that, pursuant to USC § 1403 and FED. R. CIV. P. 5.1, invite the Attorney General of Michigan to intervene, as the Plaintiff seeks to declare that the 2021 revisions to the GPTA are retroactive, and if the Court deems such necessary, to certify the question to the Michigan Supreme Court; and
- l. Enter an order for all other such legal and equitable relief that this Court deems proper and just.

JURY DEMAND

For all triable issues, a jury is hereby demanded.

Respectfully submitted,

/s/ Scott F. Smith

Scott F. Smith (P28472)

Smith Law Group, PLLC

30833 Northwestern Hwy,

Suite 200

Farmington Hills, MI

48334

(248) 626-1962

Co-Counsel for Plaintiffs

/s/ Mark L. McAlpine

Mark L. McAlpine (P35583)

Jayson E. Blake (P56128)

Adam T. Schnatz (P72049)

McAlpine PC

3201 University Drive,

Suite 200

Auburn Hills, MI 48326

(248) 373-3700

Co-Counsel for Plaintiffs

Date: May 28, 2021
