

Exhibit A5

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WAYSIDE CHURCH, an Illinois Not-For-Profit (Ecclesiastical) Corporation; HENDERSON HODGENS (Van Buren Co.); JOHN G. RIECKMAN (Alger Co.); RICHARD E. JONES (Allegan Co.); RONALD DUBOIS & CAROL DUBOIS (Antrim Co.); DIANE KAY SPEAS (Baraga Co.); RANDY MARTIN (Barry Co.); ARLENE M. SCHULTZ, as Personal Representative of the Estate of Abraham Olshansky (Benzie Co.); MICHAEL J. CAP (Berrien Co.); JEREMY T. DESHONG & BONITA HIGHTOWER (Calhoun Co.); CHAD A. PENCE, as Personal Representative of the Estate of Debra Jean Pence (Cass Co.); CAROL V. BALLWEG (Chippewa Co.); FRANCINE K. BAKER (Delta Co.); CARL WAITE (Dickinson Co.); BRANDY LEE MARTIN (Eaton Co.); CHARLES G. PARKS (Emmet Co.); CRYSTAL A. RAATZ WUETHRICH (Gogebic Co.); RONALD HARDMAN & JULIE HARDMAN (Grand Traverse Co.); DIANE L. BAKER (Hillsdale Co.); DUSTIN BURDETT (Houghton Co.); DANNY BUTLER (Ingham Co.); COLLENE C. NORTHRUP (Ionia Co.); RANDALL BECKER (Iron Co.); CRAIG SLOAN (Kalamazoo Co.); MAX TRACEY (Kalkaska Co.); JUSTIN BURIAG (Kent Co.); PAUL BINIAK (Lake Co.); WILLIAM R. MOORE (Leelanau Co.); PHYLLIS A. PEMBERTON-MILLER, as Personal Representative of the Estate of Barbara Pemberton (Mackinac Co.); IRENE DUNHAM-THAYER (Manistee Co.); JAMES P. HAGLUND (Marquette Co.); BARBARA BAY (Mason Co.); DIANE M MEZA (Menominee Co.); ESTER M. BURRUSS (Missaukee Co.); MATTHEW ATKINSON & ARLENE ATKINSON (Montcalm Co.); JAELYN W. BALASKAOVITZ (Muskegon Co.); ROYCE D. COVELL (Newaygo Co.); DARRELL COLE (Oceana Co.); RUTH A. FORS, as Personal Representative of the Estate of Ned J. Fors (Ontonagon Co.); JASON GIBSON (Osceola Co.); MELANIE LYN BOERMAN, as Personal Representative of the Estate of Tommy Wayne VanDyke (Ottawa Co.); JOHN DEROSHIA (Schoolcraft Co.); RICK MITCHEM, as Personal Representative of the Estate of Spanward Mitchem (St. Joseph Co.); and LORI CARLSON (Wexford Co.), individually and on behalf of a class of all others similarly situated in each of the aforesaid Counties,

Case No. 1:14-cv-01274-PLM

Hon. Paul L. Maloney

Plaintiffs,

v.

VAN BUREN COUNTY, ALGER COUNTY,
ALLEGAN COUNTY, ANTRIM COUNTY,
BARAGA COUNTY, BARRY COUNTY,
BENZIE COUNTY, BERRIEN COUNTY,
CALHOUN COUNTY, CASS COUNTY, CHIPPEWA
COUNTY, DELTA COUNTY, DICKINSON
COUNTY, EATON COUNTY, EMMET
COUNTY, GOGEBIC COUNTY, GRAND
TRAVERSE COUNTY, HILLSDALE COUNTY,
HOUGHTON COUNTY, INGHAM COUNTY,
IONIA COUNTY, IRON COUNTY,
KALAMAZOO COUNTY, KALKASKA
COUNTY, KENT COUNTY, LAKE COUNTY,
LEELANAU COUNTY, MACKINAC COUNTY,
MANISTEE COUNTY, MARQUETTE COUNTY,
MASON COUNTY, MENOMINEE COUNTY,
MISSAUKEE COUNTY, MONTCALM COUNTY,
MUSKEGON COUNTY, NEWAYGO COUNTY,
OCEANA COUNTY, ONTONAGON COUNTY,
OSCEOLA COUNTY, OTTAWA COUNTY,
ST. JOSEPH COUNTY, SCHOOLCRAFT COUNTY,
and WEXFORD COUNTY,

Defendants.

PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

THE PARTIES

1. Plaintiff WAYSIDE CHURCH, an Illinois Not-For-Profit (Ecclesiastical) Corporation, owned real property that was foreclosed upon by Defendant Van Buren County as a result of delinquent real property taxes pursuant to the applicable provisions of Michigan's General Property Tax Act, MCL 211.78, 211.78a – 211.78p, ("GPTA"), existing in the year of foreclosure. Wayside Church owned a legal interest in the real property at 68578 County Road 381, Hartford, MI, which was foreclosed upon and sold by Van Buren County at a public foreclosure auction in calendar year 2014 for \$189,250.00 in excess of the minimum bid,¹ and that amount has been retained by, and is the possession of, Van Buren County (the "Surplus Proceeds").

¹ "Minimum Bid" is defined in the GPTA as "all delinquent taxes, interest, penalties and fees due on the property . . . [and] expenses of administering the sale, including all preparations for the sale."

2. Plaintiff HENDERSON HODGENS owned a legal interest in the real property identified in Tax Parcel I.D. No. 80-09-012-001-00, Geneva Township, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Van Buren County at a public foreclosure auction in calendar year 2014, resulting in Surplus Proceeds of \$41,850.00

3. Plaintiff JOHN G. RIECKMAN owned a legal interest in the real property at N-6029 Percy Rd., Shingleton, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Alger County at a public foreclosure auction in calendar year 2018, resulting in Surplus Proceeds of \$16,300.00.

4. Plaintiff RICHARD E. JONES owned a legal interest in the real property at 5971 Baseline Rd., Grand Junction, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Allegan County at a public foreclosure auction in calendar year 2014, resulting in Surplus Proceeds of \$29,250.00.

5. Plaintiffs RONALD DUBOIS and CAROL DUBOIS owned a legal interest in the real property at 4956 Six Mile Lake Rd., East Jordan, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Antrim County at a public foreclosure auction in calendar year 2015, resulting in Surplus Proceeds of \$37,307.27.

6. Plaintiff DIANE KAY SPEAS owned a legal interest in the real property at Hyry Road, Michigamme, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Baraga County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$2,643.45.

7. Plaintiff RANDY MARTIN owned a legal interest in the real property at 4772 Torsten Dr., Shelbyville, MI, which was foreclosed upon as a result of delinquent real property

taxes and sold by Barry County at a public foreclosure auction in calendar year 2017, resulting in Surplus Proceeds of \$6,600.00.

8. Plaintiff ARLENE M SCHULTZ, as Personal Representative of the Estate of Abraham Olshansky, owned a legal interest in the real property at Honor Highway, Interlochen, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Benzie County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$29,100.00.

9. Plaintiff MICHAEL J. CAP owned a legal interest in the real property at 627 S. Sul Lago, Benton Harbor, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Berrien County at a public foreclosure auction in calendar year 2019, resulting in Surplus Proceeds of \$73,060.00.

10. Plaintiffs JEREMY T. DESHONG and BONITA HIGHTOWER owned a legal interest in the real property at 69 Hanover, Battle Creek, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Calhoun County at a public foreclosure auction in calendar year 2019, resulting in Surplus Proceeds of \$29,809.60.

11. Plaintiff CHAD A. PENCE, as Personal Representative of the Estate of Debra Jean Pence, owned a legal interest in the real property at 434 E. Division St., Dowagiac, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Cass County at a public foreclosure auction in calendar year 2017, resulting in Surplus Proceeds of \$15,801.38.

12. Plaintiff CAROL A. BALLWEG owned a legal interest in the real property at 911 Lizzie St., Sault Sainte Marie, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Chippewa County at a public foreclosure auction in calendar year 2019, resulting in Surplus Proceeds of \$19,790.65.

13. Plaintiff FRANCINE K. BAKER owned a legal interest in the real property at 10016 15.25 Road, Rapid River, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Delta County at a public foreclosure auction in calendar year 2015, resulting in Surplus Proceeds of \$8,775.69.

14. Plaintiff CARL WAITE owned a legal interest in the real property at 2300 S. Carpenter Ave., Kingsford, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Dickinson County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$32,953.36.

15. Plaintiff BRANDY LEE MARTIN owned a legal interest in the real property at 2910 Green Acres Dr., Mulliken, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Eaton County at a public foreclosure auction in calendar year 2019, resulting in Surplus Proceeds of \$15,508.00.

16. Plaintiff CHARLES G. PARKS, JR. owned a legal interest in the real property at 10295 Lakeview Rd., Carp Lake, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Emmett County at a public foreclosure auction in calendar year 2014, resulting in Surplus Proceeds of \$4,180.66.

17. Plaintiff CRYSTAL A. RAATZ WUETHRICH owned a legal interest in the real property at E6125 Edelweiss Ln., Bessemer, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Gogebic County at a public foreclosure auction in calendar year 2017, resulting in Surplus Proceeds of \$21,100.00.

18. Plaintiffs RONALD HARDMAN and JULIE HARDMAN owned a legal interest in the real property at 940 West Blue Star Drive, Traverse City, MI, which was foreclosed upon

as a result of delinquent real property taxes and sold by Grand Traverse County at a public foreclosure auction in calendar year 2015, resulting in Surplus Proceeds of \$56,749.00.

19. Plaintiff DIANE L. BAKER owned a legal interest in the real property at 6591 Weston Rd., Allen, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Hillsdale County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$32,213.89.

20. Plaintiff DUSTIN BURDETT owned a legal interest in the real property at Blue Rd., Nisula, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Houghton County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$7,944.91.

21. Plaintiff DANNY BUTLER owned a legal interest in the real property at 1105 Orchard St., Lansing MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Ingham County at a public foreclosure auction in calendar year 2019, resulting in Surplus Proceeds of \$14,443.75.

22. Plaintiff COLLENE C. NORTHRUP owned a legal interest in the real property at 8071 Judevine Rd., Fenwick, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Ionia County at a public foreclosure auction in calendar year 2017, resulting in Surplus Proceeds of \$8,250.00.

23. Plaintiff RANDALL BECKER owned a legal interest in the real property at Old Beechwood Rd., Iron River, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Iron County at a public foreclosure auction in calendar year 2018, resulting in Surplus Proceeds of \$9,419.19.

24. Plaintiff CRAIG SLOAN owned a legal interest in the real property at 10207 Cricklewood Ct., Portage, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Kalamazoo County at a public foreclosure auction in 2019, resulting in Surplus Proceeds of \$6,750.00.

25. Plaintiff MAX TRACEY owned a legal interest in the real property at 5612 Madison St. NW, Rapids City, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Kalkaska County at a public foreclosure auction in calendar year 2019, resulting in Surplus Proceeds of \$4,987.83.

26. Plaintiff JUSTIN BURIAN owned a legal interest in the real property at 1615 Hamilton Ave., NW, Grand Rapids, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Kent County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$94,995.19.

27. Plaintiff PAUL BINIAK owned a legal interest in the real property at 5506 E 88th St., Baldwin, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Lake County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$24,950.00.

28. Plaintiff WILIAM R. MOORE owned a legal interest in the real property at Stowline Rd., Cedar, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Leelanau County at a public foreclosure auction in calendar year 2015, resulting in Surplus Proceeds of \$4,064.24.

29. Plaintiff PHYLLIS A. PEMBERTON-MILLER, as Personal Representative of the Estate of Barbara Pemberton, owned a legal interest in the real property at 1167 Pte La Barbe Rd., Saint Ignace, MI, which was foreclosed upon as a result of delinquent real property taxes and sold

by Mackinac County at a public foreclosure auction in calendar year 2016, resulting in Surplus Proceeds of \$123,000.00.

30. Plaintiff IRENE DUNHAM-THAYER owned a legal interest in the real property at 13769 Viaduct Rd., Copemish, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Manistee County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$23,355.36.

31. Plaintiff JAMES P. HAGLUND owned a legal interest in the real property at 1400 Altamont St., Marquette, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Marquette County at a public foreclosure auction in calendar year 2018, resulting in Surplus Proceeds of \$13,940.00.

32. Plaintiff BARBARA BAY owned a legal interest in that real property at 7878 Shoshone Trail, Branch, MI, that was also so foreclosed upon as a result of delinquent real property taxes and sold by Mason County in calendar year 2016, resulting in Surplus Proceeds of \$24,413.00.

33. Plaintiff DIANE M. MEZA owned a legal interest in the real property at W709 Samuel St., Stephenson, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Menominee County at a public foreclosure auction in calendar year 2013, resulting in Surplus Proceeds of \$7,566.00.

34. Plaintiff ESTER BURRUSS owned a legal interest in the real property at 2188 W. Jennings Rd., Lake City, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Missaukee County at a public foreclosure auction in calendar year 2017, resulting in Surplus Proceeds of \$10,665.74.

35. Plaintiffs MATTHEW ATKINSON and JOLENE ATKINSON owned a legal interest in the real property at 2637 Lansing St., Crystal, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Montcalm County at a public foreclosure auction in calendar year 2014, resulting in Surplus Proceeds of \$13,786.00.

36. Plaintiff JAELYN W. BALASKOVITZ owned a legal interest in the real property at 1186 E. Forest Ave., Muskegon, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Muskegon County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$28,650.00.

37. Plaintiff ROYCE D. COVELL owned a legal interest in the real property at 7434 16th St., White Cloud, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Newaygo County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$39,500.00.

38. Plaintiff DARRELL COLE owned a legal interest in the real property at 6929 E Van Buren Rd., Walkerville, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Oceana County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$5,796.39.

39. Plaintiff RUTH A. FORS, as Personal Representative of the Estate of Ned J. Fors, owned a legal interest in the real property at 14546 M-28, Bruce Crossing, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Ontonagon County at a public foreclosure auction in calendar year 2013, resulting in Surplus Proceeds of \$30,300.00.

40. Plaintiff JASON GIBSON owned a legal interest in the real property at 9795 5 Mile Rd., Evart, MI, which was foreclosed upon as a result of delinquent real property taxes and sold

by Osceola County at a public foreclosure auction in calendar year 2019, resulting in Surplus Proceeds of \$12,050.00.

41. Plaintiff MELANIE LYN BOERMAN, as Personal Representative of the Estate of Tommy Wayne VanDyke, owned a legal interest in the real property at 125 W. Garfield, Zeeland, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Ottawa County at a public foreclosure auction in calendar year 2013, resulting in Surplus Proceeds of \$30,950.00.

42. Plaintiff RICK MITCHEM, as Personal Representative of the Estate of Spanward Mitchem, owned a legal interest in the real property at 67942 Thunderbird Dr., Sturgis, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by St. Joseph County at a public foreclosure auction in calendar year 2018, resulting in Surplus Proceeds of \$49,737.39.

43. Plaintiff JOHN DEROSHIA owned a legal interest in the real property at 8188 W. Arrowhead Rd., Manistique, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Schoolcraft County at a public foreclosure auction in calendar year 2013, resulting in Surplus Proceeds of \$105,500.00.

44. Plaintiff LORI CARLSON owned a legal interest in the real property at 302 E. Main St., Manton, MI, which was foreclosed upon as a result of delinquent real property taxes and sold by Wexford County at a public foreclosure auction in calendar year 2020, resulting in Surplus Proceeds of \$29,170.34.

45. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated in each named Defendant County pursuant to Federal Rule of Civil Procedure 23, as representatives of a class, defined herein below.

46. Defendant VAN BUREN COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

47. Defendant ALGER COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

48. Defendant ALLEGAN COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

49. Defendant ANTRIM COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

50. Defendant BARAGA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes

of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

51. Defendant BARRY COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

52. Defendant BENZIE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

53. Defendant BERRIEN COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

54. Defendant CALHOUN COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

55. Defendant CASS COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

56. Defendant CHIPPEWA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

57. Defendant DELTA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

58. Defendant DICKINSON COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

59. Defendant EATON COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes

of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

60. Defendant EMMET COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

61. Defendant GOGEBIC COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

62. Defendant GRAND TRAVERSE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

63. Defendant HILLSDALE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

64. Defendant HOUGHTON COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

65. Defendant INGHAM COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

66. Defendant IONIA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

67. Defendant IRON COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

68. Defendant KALAMAZOO COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes

of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

69. Defendant KALKASKA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

70. Defendant KENT COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

71. Defendant LAKE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

72. Defendant LEELANAU COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

73. Defendant MACKINAC COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

74. Defendant MANISTEE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

75. Defendant MARQUETTE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

76. Defendant MASON COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

77. Defendant MENOMINEE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes

of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

78. Defendant MISSAUKEE COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

79. Defendant MONTCALM COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

80. Defendant MUSKEGON COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

81. Defendant NEWAYGO COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

82. Defendant OCEANA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

83. Defendant ONTONAGON COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

84. Defendant OSCEOLA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

85. Defendant OTTAWA COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

86. Defendant ST. JOSEPH COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes

of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

87. Defendant SCHOOLCRAFT COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

88. Defendant WEXFORD COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan, which is designated within M.C.L. 211.78 as a “foreclosing governmental unit” through its Treasurer for the purposes of implementing the statutory scheme set forth therein to foreclose upon and sell real property for non-payment of real property taxes.

THE SUBJECT MATTER

89. Plaintiffs repeat, reallege and incorporate by reference all preceding paragraphs.

90. The general subject matter of this action is the Michigan statutory scheme for the collection of unpaid and delinquent real property taxes through the real property forfeiture and foreclosure statutory process set forth within those amendments to the Michigan General Property Tax Act originally contained within Act No. 123, of 1999, being M.C.L. 211.78 - 211.78a-p, as amended (the “Tax Collection Statute”).

91. The specific subject matter of this action includes, but may not be limited to, the following statutory provisions set forth therein:

(i) M.C.L. 211.78k, which, inter alia, requires that a property tax foreclosure judgment provide that fee simple title to property foreclosed vests absolutely in the foreclosing governmental unit unless redemption is effected, but does not require that Surplus Proceeds after sale by the foreclosing governmental unit be paid to Plaintiff property owners; and,

(ii) M.C.L. 211.78m, which allows a foreclosing governmental unit to sell foreclosed real property at auction in the manner(s) set forth therein and allows it also retain for its own use, and ultimately place within the Defendant County general fund all surplus money obtained on sale in excess of the “minimum bid” after satisfying all delinquent taxes, interest, penalties, fees due and pro-rata estimated expense of administering the sale of the property at auction.

92. Defendants have foreclosed on and retained money from real property tax foreclosure auctions conducted pursuant to the Tax Collection Statute in excess of the amount owed for delinquent taxes, interest, penalties, fees and the estimated pro-rata expenses of administering the sale with respect to thousands of properties.

93. In July 2020, the Michigan Supreme Court vindicated the arguments made by Plaintiffs’ counsel in this matter, ruling that the retention of Surplus Proceeds constituted an unconstitutional taking. *See Rafaeli, LLC v. Oakland Co*, 505 Mich. 429; 952 N.W.2d 434 (Mich. 2020). The *Rafaeli* Court held:

As the foreclosing governmental unit under the GPTA, defendants [Oakland County and Oakland County Treasurer] were entitled to seize plaintiffs’ properties to satisfy the unpaid delinquent real-property taxes as well as any interest, penalties, and fees associated with the foreclosure and sale of plaintiffs’ properties. But defendants could only collect the amount plaintiffs owed and nothing more. 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. *Id.* 952 N.W.2d at 474-475.

94. Plaintiffs have constitutional and prudential standing under Article III of the United States Constitution to pursue the claims set forth herein.

95. Upon demand made, Defendant Counties have refused to surrender and deliver to Plaintiffs the Surplus Proceeds they have retained.

96. Said injury can be remedied and redressed by this Court by its granting of the relief hereinafter requested.

97. As to each Plaintiff, their legal interest[s] owned in their real property commonly described herein was divested by the County identified herein, and ownership thereof became vested in that County pursuant to judgments of property tax foreclosure entered pursuant to said applicable provisions of the GPTA in calendar years 2013-2020.

98. Thereafter, under the auspices of MCL 211.78m, at public auctions occurring in calendar years 2013-2020 during the year the judgment of foreclosure was entered, the so identified Defendant Counties sold the respective property at a price in excess of the minimum bid resulting in the specific Surplus Proceeds set forth herein.

99. Said Surplus Proceeds so arising are personalty, constituting the individually named Plaintiffs' equity in their former tax foreclosed real property, reflecting their original and ongoing investments therein, in fact, law and equity owned by said Plaintiffs.

100. Notwithstanding the same, the Defendant Counties identified herein have retained said Surplus Proceeds without disgorgement to the respective owner Plaintiff without just compensation therefore in violation of the 5th Amendment of the United States Constitution and Article 10, Section 2 of the Michigan Constitution of 1963.

101. Said constitutional injuries can be remedied and redressed by this Court by its granting of the relief hereinafter requested.

JURISDICTION AND VENUE

102. Plaintiffs repeat, reallege and incorporate herein by reference all preceding paragraphs.

103. This Honorable Court has subject matter jurisdiction of this action as the federal claims in this Complaint arise under the Fifth Amendment to the United States Constitution and, as a result thereof, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331.

104. This Honorable Court has supplemental jurisdiction over the claims in this Complaint arising under the Michigan Constitution of 1963 pursuant to 28 U.S.C. § 1367 since those claims arise out of a common nucleus of operative facts with the federal claims that are within this court's original jurisdiction.

105. Venue of this action is properly laid in the United States District Court for the Western District of Michigan, as, among other things, Defendants are within its geographical jurisdiction and conduct business within same.

CLASS ACTION ALLEGATIONS

106. Plaintiffs repeat, reallege and incorporate herein by reference all preceding paragraphs.

107. Plaintiffs respectfully request that this Honorable Court enter an Order certifying this action as a Class Action pursuant to Federal Rule of Civil Procedure 23, providing therein, inter alia, that counsel for the named Plaintiffs be appointed Class counsel, and counsel for each Sub-Class identified herein.

108. The definition of the Class requested to be certified is:

All Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by a Defendant County and which was sold during the Class Period by that County;

where "Eligible Property" means

a parcel of real property foreclosed by a Defendant County for the non-payment of real property taxes, and which was sold during the Class Period by a Defendant County for an amount in excess of the Minimum Sale Price; and,

where “Class Period” means

the time for each Defendant County during which that County acted as a foreclosing governmental unit, beginning no earlier than January 1, 2013 and ending on December 31, 2020, inclusive.

Excluded from the Class are Defendants, the presiding Judge and Court staff assigned to this case, the U.S. Department of Treasury, the Internal Revenue Service, the State of Michigan, and the Michigan Department of Treasury. Plaintiffs reserve the right to modify or amend the Class Definition, as appropriate, during the course of this litigation.

109. The definitions of the Sub-Classes requested to be certified are:

- a) *Alger County*: The Alger County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Alger County and which was sold during the Class Period by Alger County.
- b) *Allegan County*: The Allegan County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Allegan County and which was sold during the Class Period by Allegan County.
- c) *Antrim County*: The Antrim County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Antrim County and which was sold during the Class Period by Antrim County.
- d) *Baraga County*: The Baraga County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Baraga County and which was sold during the Class Period by Baraga County.
- e) *Barry County*: The Barry County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Barry County and which was sold during the Class Period by Barry County.
- f) *Benzie County*: The Benzie County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Benzie County and which was sold during the Class Period by Benzie County.

- g) *Berrien County*: The Berrien County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Berrien County and which was sold during the Class Period by Berrien County.
- h) *Calhoun County*: The Calhoun County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Calhoun County and which was sold during the Class Period by Calhoun County.
- i) *Cass County*: The Cass County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Cass County and which was sold during the Class Period by Cass County.
- j) *Chippewa County*: The Chippewa County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Chippewa County and which was sold during the Class Period by Chippewa County.
- k) *Delta County*: The Delta County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Delta County and which was sold during the Class Period by Delta County.
- l) *Dickinson County*: The Dickinson County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Dickinson County and which was sold during the Class Period by Dickinson County.
- m) *Eaton County*: The Eaton County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Eaton County and which was sold during the Class Period by Eaton County.
- n) *Emmet County*: The Emmet County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Emmet County and which was sold during the Class Period by Emmet County.
- o) *Gogebic County*: The Gogebic County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Gogebic County and which was sold during the Class Period by Gogebic County.
- p) *Grand Traverse County*: The Grand Traverse County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an

Eligible Property at the time that property was foreclosed by Grand Traverse County and which was sold during the Class Period by Grand Traverse County.

- q) *Hillsdale County*: The Hillsdale County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Hillsdale County and which was sold during the Class Period by Hillsdale County.
- r) *Houghton County*: The Houghton County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Houghton County and which was sold during the Class Period by Houghton County.
- s) *Ingham County*: The Ingham County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Ingham County and which was sold during the Class Period by Ingham County.
- t) *Ionia County*: The Ionia County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Ionia County and which was sold during the Class Period by Ionia County.
- u) *Iron County*: The Iron County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Iron County and which was sold during the Class Period by Iron County.
- v) *Kalamazoo County*: The Kalamazoo County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Kalamazoo County and which was sold during the Class Period by Kalamazoo County.
- w) *Kalkaska County*: The Kalkaska County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Kalkaska County and which was sold during the Class Period by Kalkaska County.
- x) *Kent County*: The Kent County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Kent County and which was sold during the Class Period by Kent County.
- y) *Lake County*: The Lake County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Lake County and which was sold during the Class Period by Lake County.

- z) *Leelanau County*: The Leelanau County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Leelanau County and which was sold during the Class Period by Leelanau County.
- aa) *Mackinac County*: The Mackinac County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Mackinac County and which was sold during the Class Period by Mackinac County.
- bb) *Manistee County*: The Manistee County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Manistee County and which was sold during the Class Period by Manistee County.
- cc) *Marquette County*: The Marquette County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Marquette County and which was sold during the Class Period by Marquette County.
- dd) *Mason County*: The Mason County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Mason County and which was sold during the Class Period by Mason County.
- ee) *Menominee County*: The Menominee County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Menominee County and which was sold during the Class Period by Menominee County.
- ff) *Missaukee County*: The Missaukee County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Missaukee County and which was sold during the Class Period by Missaukee County.
- gg) *Montcalm County*: The Montcalm County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Montcalm County and which was sold during the Class Period by Montcalm County.
- hh) *Muskegon County*: The Muskegon County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Muskegon County and which was sold during the Class Period by Muskegon County.
- ii) *Newaygo County*: The Newaygo County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property

at the time that property was foreclosed by Newaygo County and which was sold during the Class Period by Newaygo County.

- jj) *Oceana County*: The Oceana County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Oceana County and which was sold during the Class Period by Oceana County.
- kk) *Ontonagon County*: The Ontonagon County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Ontonagon County and which was sold during the Class Period by Ontonagon County.
- ll) *Osceola County*: The Osceola County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Osceola County and which was sold during the Class Period by Osceola County.
- mm) *Ottawa County*: The Ottawa County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Ottawa County and which was sold during the Class Period by Ottawa County.
- nn) *Saint Joseph County*: The St. Joseph County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Saint Joseph County and which was sold during the Class Period by Saint Joseph County.
- oo) *Schoolcraft County*: The Schoolcraft County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Schoolcraft County and which was sold during the Class Period by Schoolcraft County.
- pp) *Van Buren County*: The Van Buren County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Van Buren County and which was sold during the Class Period by Van Buren County.
- qq) *Wexford County*: The Wexford County Sub-Class means all Persons, their heirs and successors, who held a non-contingent interest in an Eligible Property at the time that property was foreclosed by Wexford County and which was sold during the Class Period by Wexford County.

110. The Class is so numerous that joinder of all members is impracticable as there are thousands of class members.

111. Plaintiffs' claims are typical, excepting the actual amount of Surplus Proceeds taken, of the claims of the Class.

112. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel competent and experienced.

113. There are questions of law and fact common to the Class.

114. Defendants have acted and refused to act on grounds that apply generally to the Class as a whole.

115. An adjudication as to the constitutional Takings Clause issues asserted herein with respect to the named Plaintiffs only would, as a practical matter, be dispositive of the common interests of other members of the putative class not just named parties in this action.

116. The questions of law or fact common to the named Plaintiffs and Plaintiff Class Members predominate over any questions affecting only individual members, the latter which would primarily, or only, consist of the amount of the individual Surplus Proceeds taken from them and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

COUNT I
VIOLATION OF THE UNITED STATES CONSTITUTION'S FIFTH AMENDMENT
PROHIBITION ON TAKINGS WITHOUT JUST COMPENSATION AND
GUARANTEE OF DUE PROCESS
42 U.S.C. § 1983

117. Plaintiffs repeat, reallege, and incorporate herein by reference all preceding paragraphs.

118. The Fifth Amendment to the United States Constitution provides, in part material hereto, that "nor shall private property be taken for public use, without just compensation," U.S.

Const., Amend. V, said constitutional prohibition being known in colloquial vernacular and jurisprudentially as the “Takings Clause” of the United States Constitution.

119. The Takings Clause is applicable to all States of the United States of America, and by extension their subdivisions, instrumentalities, and departments, including the Defendants. *See, e.g., Chicago, B&Q R. Co. v. Chicago*, 166 U.S. 226 (1897) and *Palazzolo v. Rhode Island*, 553 U.S. 606 (2001).

120. “[T]he purpose of the Takings Clause is to prevent the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Palazzolo*, 533 U.S. at 618.

121. Defendants’ retention of the Surplus Proceeds amounts to a taking of private property for public use without just compensation.

122. A legislature cannot constitutionally enact a law which effects a taking of private property without just compensation. *See, e.g., Acker v. Commissioner of Internal Revenue*, 258 F. 2d 568 (6th Cir., 1958), *aff’d* 361 U.S. 87 (1959).

123. The common law of the State of Michigan recognizes that any Surplus Proceeds arising from a mortgage foreclosure sale are personalty and a person with an ownership interest in, or who succeeds to an ownership interest in the foreclosed real property, has a right to claim ownership of the personalty. *See, e.g., Smith v. Smith*, 13 Mich. 258 (1865); *also see Rossman v. Marsh*, 287 Mich. 720 (1939) (proceeds from the sale of lands are personal property and not real property).

124. The judicial and non-judicial mortgage (and land contract) foreclosure statutes of the State of Michigan recognize that any Surplus Proceeds arising from a mortgage foreclosure sale of real property are, unless subject to subordinate secured creditors, owned by the former

owner of the real property. M.C.L. 600.3125 (judicial foreclosure); M.C.L. 600.3257 (foreclosure by advertisement).

125. By requiring that Surplus Proceeds arising from the sale of tax foreclosed real property be delivered to the former owners, other States within the United States, including, but not limited to, the States of Idaho, California, Alabama, Florida, Georgia and Indiana, impliedly recognize that to do otherwise would result in a violation of the Takings Clause of the Fifth Amendment to the United States Constitution.

126. Plaintiffs and Plaintiff Class Members had a cognizable property interest in their respective parcels and have a cognizable property interest in said Surplus Proceeds protected by the Fifth Amendment to the United States Constitution and its Takings Clause.

127. Defendants physically took Plaintiffs' and Plaintiff Class Members' real property and physically took, now possess, and refuse to tender and deliver to Plaintiffs and the Plaintiff Class Members, their Surplus Proceeds.

128. The Surplus Proceeds from the auction of real property belonging to Plaintiffs and Plaintiff Class Members, have been or will be expended by Defendants for specific and general public uses, forcing Plaintiffs and Plaintiff Class Members to bear alone public burdens which in all fairness and justice should be borne by the public as a whole.

129. Defendants did not offer to pay in advance of the said taking(s), nor contemporaneously therewith, nor at any time thereafter just compensation for said taking(s).

130. Neither Plaintiffs, nor the Plaintiff Class Members, have been provided by Defendants any procedure whatsoever, and therefore no adequate procedure whatsoever, to seek just compensation for said taking(s), and accordingly Plaintiffs' rights to Due Process guaranteed by the Fifth Amendment have been violated.

131. Plaintiffs' and Plaintiff Class Members' claims asserted herein before this Honorable Court are mature and ripe.

132. By means of the premises described herein Plaintiffs and Plaintiff Class Members have suffered great and material damages and The Takings Clause requires Defendants to pay Plaintiffs and Plaintiff Class Members money damages tantamount to and consisting of just compensation for the taking(s) of their private property for public use.

133. Plaintiffs' and Plaintiff Class Members' constitutional right to just compensation for government seizure of their property for public purposes is a fundamental right deeply rooted in this country's legal traditions and central to the concept of ordered liberty.

134. By taking Plaintiffs' and Plaintiff Class Members' private property for public purposes without just compensation, Defendants have deprived Plaintiffs and Plaintiff Class Members of that fundamental right.

135. 42 U.S.C. § 1983 provides that,

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. §1979; Pub. L. 96-170, §1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, §309(c), Oct. 19, 1996, 110 Stat. 3853.)

136. It is the policy and custom of Defendants to use for public purposes and not deliver or tender to Plaintiffs or Plaintiff Class Members their private property, being said Surplus Proceeds, taken from them without just compensation by Defendants.

137. Defendants are persons under 42 U.S.C. § 1983.

138. By means of the premises described herein, Plaintiffs and Plaintiff Class Members have suffered great and material damages and pursuant to 42 U.S.C. § 1983. Defendants are liable to pay Plaintiffs and Plaintiff Class Members money damages for their injuries so suffered.

139. In material part 28 U.S.C. § 2201 (a) provides, that “[i]n a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

WHEREFORE, Plaintiffs respectfully request that this Honorable Court issue a declaratory judgment declaring and adjudging that the Defendants’ use and takings of the Surplus Proceeds constitute a taking of private property for public use without just compensation in violation of the Fifth Amendment to the United States Constitution; and that Defendants’ failure to provide any procedure whatsoever, and therefore no adequate procedure whatsoever, to seek just compensation for said taking(s), violated Plaintiffs’ rights to Due Process guaranteed by the Fifth Amendment; and further, Plaintiffs, individually, and on behalf of the Plaintiff Class Members, demand judgment against Defendants in that amount to which they are found entitled to compensate them for their injuries, together with costs, interest, reasonable attorney fees and any other relief available in law and equity.

COUNT II
VIOLATION OF THE TAKINGS CLAUSE OF THE MICHIGAN CONSTITUTION
OF 1963, ARTICLE 10, § 2 – INVERSE CONDEMNATION

140. Plaintiffs repeat, reallege and incorporate herein by reference all preceding paragraphs.

141. Under Article 10, § 2, of the Michigan Constitution of 1963, the government may not take private property for public use without just compensation therefore being first made or secured in a manner prescribed by law.

142. This state constitutional provision protects intangible property, including equity in homes and land.

143. Plaintiffs and Plaintiff Class Members owned equity in their respective properties that exceeded the value of their respective debts to the Defendants.

144. The State of Michigan “recognizes a cause of action, often referred to as an inverse or reverse condemnation suit, for a *de facto* taking when the State fails to utilize the appropriate legal mechanisms to condemn property for public use.” *Peterman v DNR*, 446 Mich. 177, 187-188 (1994). An inverse condemnation may also occur even if there is not a physical taking of the property where a governmental regulation effectively prevents use of a landowner's property for any profitable purpose. *Id.* Stated differently, “In the regulatory context, a compensable taking occurs when the government uses its power to so restrict the use of property that its owner has been deprived of all economically viable use.” *Miller Brothers v DNR*, 203 Mich. App. 674, 679 (1994), citing *Electrotec, Inc. v H.F. Campbell Co.*, 433 Mich. 57, 68-69 (1989).

145. By taking absolute title to Plaintiffs’ and Plaintiff Class Members’ properties and retaining profits from the auction of their properties, over and above the amount of unpaid taxes and administrative expenses, costs, and interest owed by each debtor, Defendants violated the Michigan Constitution’s Takings Clause and deprived Plaintiffs of the economic value of their interest in the foreclosed-upon real property.

146. Defendants have refused to acknowledge that their actions caused a compensable loss to Plaintiffs.

147. Defendants have appropriated this protected property interest without using the mandatory process outlined under the Uniform Condemnation Procedures Act, MCL 213.51, *et seq.*

WHEREFORE, Plaintiffs respectfully request that this Honorable Court issue a declaratory judgment declaring and adjudging that the Defendants' use and takings of the Surplus Proceeds constitute a taking of private property for public use without just compensation in violation of the Takings Clause of the Michigan Constitution; and that Defendants must compensate Plaintiffs for their loss of economic value in the foreclosed-upon properties; and further, Plaintiffs, individually, and on behalf of the Plaintiff Class Members, demand judgment against Defendants in that amount to which they are found entitled to compensate them for their injuries, together with costs, interest, reasonable attorney fees and any other relief available in law and equity.

Dated: January 10, 2023

Respectfully submitted,

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