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APPENDIX A

ORDER

March 20, 2025
[Case No.] 168233 & (15)

LYNETTE HATHON and AMY JO DENKINS,
Individually and on Behalf of All Others Similarly
Situated,
Plaintiffs-Appellees,

v

STATE OF MICHIGAN,
Defendant-Appellant.

SC: 168233 COA: 374332
Ct of Claims: 19-000023-MZ

By order of March 14, 2025, we stayed proceedings in the Court of Claims. On order of the Court, the application for leave to appeal the February 25, 2025 order of the Court of Appeals and the motion for peremptory reversal are again considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we grant the motion and REVERSE the Court of Claims' order denying the defendant's motion for summary disposition and granting the plaintiffs' motion for recertification, and

we REMAND this case to that court for entry of an order denying certification and dismissing the plaintiffs' claims without prejudice. The stay of proceedings in the Court of Claims is dissolved. As this Court previously held in this case, "MCL 211.78t creates a controlling and structured system for adjudication of tax-foreclosure disputes as the exclusive means of obtaining surplus proceeds." *Schafer v Kent Co*, ___ Mich ___, ___ (July 29, 2024) (Docket Nos. 164975 and 165219), slip op at 35. Indeed, the statute expressly states that "[t]his section is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state." MCL 211.78t(11). This mechanism works within the confines of existing tax-foreclosure lawsuits filed in circuit court by the foreclosing unit of government without claimants having to file a counterclaim or initiating a new lawsuit against any person or entity. Thus, the circuit court that presided over the tax-foreclosure action retains jurisdiction over post-foreclosure proceedings under MCL 211.78t. This means that the Court of Claims' exclusive jurisdiction over claims against the state of Michigan under MCL 600.6419(1)(a) is not implicated with respect to claims for remaining proceeds under MCL 211.78t. The Court of Claims lacks authority to create a new mechanism for processing claims to these proceeds or to certify a class for that purpose, and it erred by doing so.¹ For a

¹ We take no position as to the merits of the plaintiffs' assertion that they are also entitled to recover interest and

claimant to preserve their right to claim remaining proceeds under MCL 211.78t, they must initiate the statutory process by providing the foreclosing unit of government notice of their intent to seek remaining proceeds by March 31, 2025, using a form prescribed by the Department of Treasury.² See MCL 211.78t, (6); *Schafer*, ___ Mich at ___; slip op at 39-42.

We do not retain jurisdiction.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 20, 2025

/s/ Larry S. Royster
Clerk

attorney fees or their claim that the sales commission under MCL 211.78t(9) is unconstitutional. However, litigation of these claims is premature. Properly notified claimants must first utilize the statutory process provided by MCL 211.78t for recovery of remaining post-foreclosure sale proceeds before challenging the adequacy of or the application of that process as applied to them. See, e.g., *In re Petition of Muskegon Co Treasurer for Foreclosure*, ___ Mich App ___ (October 26, 2023) (Docket No. 363764), *lv den* ___ Mich ___ (2024); *Nelson v City of New York*, 352 US 103; 77 S Ct 195; 1 L Ed 2d 171 (1956).

² The Department of Treasury has made the required forms available online. See Michigan Department of Treasury, Auctions and Claimants (accessed March 20, 2025) [<https://perma.cc/J6UN-JVLM>].

APPENDIX B

Court of Appeals, State of Michigan

ORDER

LYNETTE HATHON V STATE OF MICHIGAN

Docket No. 374332
LC No. 19-000023-MZ

Kathleen A. Feeney
Presiding Judge
Christopher M. Murray

Michelle M. Rick
Judges

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED for failure to persuade the Court of the existence of manifest error requiring reversal and warranting peremptory relief without argument or formal submission. The application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

/s/ Kathleen A. Feeney
Presiding Judge

Murray, J., would grant the application for leave to appeal.

A true copy entered and certified by Jerome W.
Zimmerman, Jr., Chief Clerk, on

February 20, 2025
Date

/s/ Jerome W. Zimmerman, Jr.
Chief Clerk

APPENDIX C

STATE OF MICHIGAN
COURT OF CLAIMS

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

LYNETTE HATHON and AMY JO DENKINS,
and all those similarly situated in the Counties of
Keweenaw, Luce, Iosco, Mecosta, Clinton,
Shiawassee, Livingston, and Branch Counties,
Plaintiffs,

v.

STATE OF MICHIGAN and PATRICIA A. SIMON,
in her individual and official capacities,
Defendants

Case No.: 19-000023-MZ
Honorable Christopher P. Yates

OPINION AND ORDER DENYING
DEFENDANTS' MOTION FOR SUMMARY
DISPOSITION AND GRANTING PLAINTIFFS'
MOTION FOR RECERTIFICATION

The State of Michigan violated the constitutional rights of hundreds of Michigan property owners by foreclosing on their property and then keeping the surplus proceeds resulting from the sale of the property. Our Supreme Court unanimously said so in *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 437; 952 NW2d 434 (2020), ruling that retention of surplus proceeds from a foreclosure sale constitutes an “unconstitutional taking without just compensation under Article 10, § 2 of our 1963 Constitution.” The United States Supreme Court unanimously said so in *Tyler v Hennepin Co*, 598 US 631,639; 143 S Ct 1369; 215 L Ed 2d 564 (2023), concluding that retaining surplus proceeds “effect[s] a ‘classic taking in which the government directly appropriates private property for its own use.’” To redress the myriad constitutional transgressions, our Legislature fashioned a statutory mechanism for property owners to obtain the “just compensation” due to them under the United States and Michigan Constitutions for the takings committed by the State. Specifically, in MCL 211.78t, our Legislature prescribed a process for claimants to recover surplus proceeds that the State or any other governmental entity has unconstitutionally taken.

In MCL 211.78t(11), our Legislature mandated that the process prescribed by MCL 211.78t “is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state.” Additionally, because our Supreme Court had not expressly deemed its ruling in *Rafaeli*

retroactively applicable, our Legislature barred claims for “foreclosed property transferred or sold ... before July 18, 2020,” i.e., the date after the *Rafaeli* decision was rendered, unless “the Michigan supreme court orders that its decision in *Rafaeli* ... applies retroactively.” MCL 211.78t(1)(b)(i). That bar remained in place for approximately four years until, in 2024, our Supreme Court determined in *Schafer v Kent Co*, __ Mich __; __ NW3d __ (2024) (Docket Nos. 164975, 165219), that “*Rafaeli* has full retroactive effect.” *Id.* at __; slip op at 21. Although that decision opened the courthouse doors for claimants deprived of surplus proceeds arising from foreclosed property transferred or sold before July 18, 2020, see MCL 211.78t(1)(b)(i), it left open the question of class certification in the instant case. See *Schafer*, __ Mich at __; slip op at 42. In addition, *Schafer* did not expressly require claimants whose foreclosed property was transferred or sold before July 18, 2020, to comply with the process prescribed by MCL 211.78t. Accordingly, the Court must now decide whether those claimants must follow the process in MCL 211.78t and whether class certification is an appropriate method for pursuing those claims.

The Court must first answer the question about the status of MCL 211.78t as the exclusive method of recovery for plaintiffs in this case before addressing the propriety of class certification. As both sides appear to recognize, the argument in favor of class certification is much stronger if plaintiffs can pursue redress for the unconstitutional taking of surplus

proceeds through a process other than the one prescribed by MCL 211.78t. Indeed, if MCL 211.78t is the one and only process for seeking redress, then plaintiffs must file motions in the various circuit courts where foreclosure occurred, this Court lacks jurisdiction to hear their claims, and class certification is impossible to grant. If, on the other hand, plaintiffs may pursue redress by presenting claims separate from MCL 211.78t, such as inverse condemnation or a direct action under the Michigan Constitution of 1963, then this Court can exercise jurisdiction over the claims against the State and class certification is a viable approach for processing their claims in this Court. Hence, the Court shall first take up the question of the exclusivity of MCL 211.78t and then address class certification.

I. FACTUAL BACKGROUND

On January 26, 2019, Plaintiffs Lynette Hathon and Amy Jo Denkins filed suit in the Court of Claims on behalf of themselves “and all those similarly situated in the Counties of Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch.” Among the seven claims in their complaint were claims for inverse condemnation and unconstitutional taking against the State of Michigan. Plaintiffs alleged that they had owned real property in Shiawassee County, that their property was seized and sold to satisfy “a tax delinquency of approximately \$5,200,” that the State acted as the foreclosing governmental unit (FGU), that the sale of

their property resulted in surplus proceeds beyond the sum required to satisfy their outstanding obligation, and that the State retained the surplus proceeds.¹

On June 7, 2019, this Court issued a 15-page opinion and order granting class certification in this case. After that, the world changed on July 17, 2020, when our Supreme Court decided in *Rafaeli* “that our 1963 Constitution protects a former owner’s property right to collect the surplus proceeds following a tax-foreclosure sale under Article 10, § 2.” *Rafaeli*, 505 Mich at 473. In the wake of that momentous decision, other plaintiffs filed complaints in the Court of Claims seeking just compensation for the State’s retention of surplus proceeds.² But on December 4, 2020, in light of *Rafaeli*, this Court granted the State’s motion to revoke class certification because “numerosity is missing,” so plaintiffs were permitted to proceed, but they could do so only on their own behalf.

¹ Plaintiffs named as defendants the State and Patricia A. Simon, whom plaintiffs allege served as “the public official who authorizes, handles, and conducts tax foreclosures for opt-out counties and its treasurers, including Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch Counties[.]” Plaintiffs sued Simon “in her official and personal capacities[.]” but this Court ruled on June 3, 2019, that it lacks jurisdiction to address claims against her in her personal capacity. See *Carlton v Dep’t of Corrections*, 215 Mich App 490, 500-501; 546 NW2d 671 (1996).

² Five other cases are before this Court and, although they are not yet formally consolidated, they are proceeding along with the instant case and those plaintiffs could join a certified class.

The next move came from our Legislature. Because our Supreme Court had explained in *Rafaeli* that “[n]othing in our holding today prevents the Legislature from enacting legislation that would require former property owners to avail themselves of certain procedural avenues to recover the surplus proceeds[.]” *id.* at 473 n 108, our Legislature enacted MCL 211.78t, which established such an avenue for recovery of surplus proceeds. After the enactment of MCL 211.78t, this Court once again considered plaintiffs’ request for class certification. This Court observed in its written opinion issued on February 22, 2021, that because *Rafaeli* had not yet been given retroactive effect, plaintiffs in this action could not avail themselves of the process prescribed by MCL 211.78t, see MCL 211.78t(1)(b)(i), but plaintiffs could instead seek redress on “a valid claim under Const 1963, art 10, § 2.” Beyond that, this Court “conclude[d] that plaintiffs can state a claim under art 10, § 2, regardless of whether [2020] PA 256 [i.e., MCL 211.78t] applies or not.” Finally, this Court recertified a class under standards prescribed by MCR 3.501(A)(1).

The State appealed this Court’s decision to certify a class, but our Court of Appeals upheld this Court’s ruling. *Breiner v Michigan*, 344 Mich App 387, 411-415; 1 NW3d 336 (2022). Next, the State appealed to our Supreme Court, which “vacate[d] the decision of the Court of Appeals to affirm recertification of plaintiffs’ class” and remanded plaintiffs’ case “to the Court of Claims to reconsider plaintiffs’ motion to

recertify the class in light of our Supreme Court’s rulings “in the first instance.” *Schafer*, __ Mich at __; slip op at 42. In the course of its analysis, our Supreme Court decreed that “MCL 211.78t applies retroactively to all claims that arise from tax-foreclosure sales prior to *Rafaeli*.” *Id.* at __; slip op at 33. Further, our Supreme Court observed that “MCL 211.78t creates a controlling and structured system for the adjudication of tax-foreclosure disputes as the exclusive means of obtaining surplus proceeds.” *Id.* at __; slip op at 35. Against this legal backdrop, this Court must now consider the State’s summary disposition motion pursuant to MCR 2.116(C)(4) based on the purported lack of subject-matter jurisdiction as well as plaintiffs’ request for class recertification.

II. LEGAL ANALYSIS

As a threshold matter, the State argues that this Court lacks jurisdiction to resolve plaintiffs’ claims because MCL 211.78t provides the exclusive mechanism for seeking surplus proceeds and that statute dictates that, to claim surplus proceeds, a claimant must “file a motion in [the] circuit court in which the judgement of foreclosure was effective” *Schafer*, __ Mich at __; slip op at 32 n 99, quoting MCL 211.78t(6). Plaintiffs contend that they need not avail themselves of the process prescribed by MCL 211.78t in order to seek redress from the State. Further, plaintiffs once again ask this Court to recertify a

class. This Court shall address those issues in turn, starting with the State’s jurisdictional challenge.

A. SUBJECT-MATTER JURISDICTION

By invoking MCR 2.116(C)(4) to request summary disposition, the State has required this Court to examine its subject-matter jurisdiction. “In reviewing a motion under MCR 2.116(C)(4), it is proper to consider the pleadings and any affidavits or other documentary evidence submitted by the parties to determine if there is a genuine issue of material fact.” *Toaz v Dep’t of Treasury*, 280 Mich App 457, 459; 760 NW2d 325 (2008). This Court must decide “whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence demonstrate ... [a lack of] subject matter jurisdiction.” *Id.* (alterations in original).

Resolution of the question of jurisdiction depends on analysis of two competing legislative directives. First, MCL 211.78t(11) provides that MCL 211.78t “is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state[,]” and MCL 211.78t(6) states that surplus proceeds must be sought through “a motion in [the] circuit court in which the ‘judgement of foreclosure was effective” *Schafer*, __ Mich at __; slip op at 32 n. 99. But, second, in the Court of Claims Act, MCL 600.6401 *et seq.*, our Legislature “expressed its preference for the Court of Claims to serve as the exclusive forum for claims against the state that,

until then, parties had litigated in circuit courts.” *Christie v Wayne State Univ*, 511 Mich 39, 60; 993 NW2d 203 (2023). Indeed, 2013 PA 164 “amend[ed] MCL 600.6419(1)(a) to create exclusive jurisdiction over ‘any claim or demand, statutory or constitutional,’ in the Court of Claims ‘notwithstanding another law’ vesting jurisdiction in circuit courts[.]” *Id.* at 60 n 58. It stands to reason that one of those two directives providing for exclusive jurisdiction must give way to the other. The more logical outcome favors the preeminence of the Court of Claims Act.

By interpreting the exclusivity language of MCL 211.78t(11) to override the clear directive in the Court of Claims Act, this Court would effectively compel the State to appear in circuit courts scattered across the State of Michigan to defend against claims for surplus proceeds from the state coffers. In contrast, treating the Court of Claims Act as controlling would limit litigation against the State in surplus-proceeds cases to a single forum, i.e., the Court of Claims. More importantly, the Court of Claims Act plainly vests in the Court of Claims the “power and jurisdiction [t]o hear and determine any claim or demand, statutory or constitutional, ... against the state or any of its departments or officers ***notwithstanding another law that confers jurisdiction of the case in the circuit court.***” MCL 600.6419(1)(a) (emphasis added). To favor the exclusivity language of MCL 211.78t(11) over MCL 600.6419(1)(a) requires disregard for the language of the Court of Claims Act

meant to empower the Court of Claims to exercise exclusive jurisdiction over claims against the State.

To be sure, treating the Court of Claims Act as preeminent does not perforce bind the Court of Claims to allow plaintiffs to proceed on a claim entirely divorced from the requirements of MCL 211.78t, such as inverse condemnation. The viability of such a claim is a matter for another day, though, when the State seeks summary disposition under MCR 2.116(C)(8). For now, considering only the threshold question of subject-matter jurisdiction, this Court must deny the State's motion for summary disposition.

B. CLASS CERTIFICATION

Having decided that this Court has subject-matter jurisdiction, the Court must next evaluate plaintiffs' motion for class certification. Plaintiffs have identified the proposed class as follows:

All persons and entities who, from January 15, 2018 through December 31, 2020, had real property in the counties of Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch that was foreclosed upon by the State of Michigan under the General Property Tax Act, MCL 211.78, which was then subsequently sold at tax auction for an amount exceeding the minimum bid and who are not refunded the excess/surplus equity as described by the Michigan Supreme Court in

Rafaeli LLC v Oakland County, 505 Mich 429; 952 NW2d 434 (2020).

For purposes of this motion, plaintiffs have limited the class to people and entities that owned real property in one of the identified counties that was sold in a tax-foreclosure sale that occurred before December 22, 2020. That date comports with the date set by our Supreme Court in *Schafer*.

To maintain this suit as a class action, plaintiffs must establish the presence of the following five prerequisites identified in MCR 3.501(A)(1): numerosity; commonality; typicality; adequacy; and superiority. *Henry v Dow Chemical Co*, 484 Mich 483, 488; 772 NW2d 301 (2009). All five of the requirements must be met in order for a case to proceed as a class action. *A&M Supply Co v Microsoft Corp*, 252 Mich App 580, 597-598; 654 NW2d 572 (2002).

With respect to numerosity, plaintiffs estimate that 625 people or entities held an ownership interest in a parcel of real property between January 15, 2018, and December 31, 2020, for which the State served as the FGU in a tax-foreclosure action. That is sufficient to satisfy the numerosity requirement. No “particular number of members” is required, “and the exact number of members need not be known as long as general knowledge and common sense indicate that the class is large” enough to make it impractical to require individual lawsuits. *Zine v Chrysler Corp*, 236

Mich App 261, 287-288; 600 NW2d 384 (1999). The State's only disagreement with that conclusion arises from the purported exclusivity of the procedures prescribed in MCL 211.78t, but the Court has not yet concluded that that statute has any bearing on this case.

With respect to commonality, the question is whether “issues of fact and law common to the class ‘predominate over those issues subject only to individualized proof.’” *Duskin v Dep’t of Human Services*, 304 Mich App 645, 654; 848 NW2d 455 (2014). Plaintiffs cannot merely point to common questions. Instead, they must establish that the common question is “of such a nature that is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* In this case, the common question at issue is the legality of the State’s surplus proceeds retention. *Rafaeli* answered that question as to liability for the entire proposed class. The issues defendants raise in opposition to a finding of commonality either concern questions that can be addressed with respect to the rights of the class as a whole (e.g., the rights of lienholders), questions that relate to whether a person or entity is appropriate for the class, or damages. None of those issues predominates over the common question of the State’s obligation to refund surplus proceeds resulting from the State’s sale of real property. Thus, commonality readily exists.

Analyzing typicality and adequacy, the Court disagrees that the factors cited in the State's brief prevent class certification. Plaintiffs' attorneys have devoted years to litigating the core issue, and they are competent to represent the class. Questions concerning the rights of lienholders and how best to address co-owners are matters that will implicate most, if not all, other class members, so they are questions appropriately addressed with the class in future proceedings. Thus, typicality and adequacy have been established.

Finally, the Court agrees with plaintiffs that litigating this case as a class action is superior to requiring each person or entity for whom the State served as the FGU for a tax-foreclosure sale to file a separate suit. Liability and the method for computing damages have already been resolved by our Supreme Court in *Rafaeli*. Hence, superiority manifestly has been established. In sum, this Court concludes that plaintiffs have established each and every requirement for class certification under MCR 3.501(A)(1), so the Court shall once again grant plaintiffs request to certify a class in this case. The Court will soon confer with counsel to discuss notice to the class members.

III. CONCLUSION

For all of the reasons set forth in this opinion, IT IS ORDERED that the State's motion for summary disposition under MCR 2.116(C)(4) is denied,

plaintiffs' motion for class recertification is granted,
and proposed class counsel is reappointed.

IT IS ORDERED

This is not a final order. It does not resolve the last
pending claim or close the case.

Date: 1/15/25

/s/ Christopher P. Yates P41017
Hon. Christopher P. Yates
Judge, Court of Claims

APPENDIX D

ORDER

May 22, 2025
[Case No.] 168233 (21)

LYNETTE HATHON and AMY JO DENKINS,
Individually and on Behalf of All Others Similarly
Situated,
Plaintiffs-Appellees,

v

STATE OF MICHIGAN,
Defendant-Appellant.

SC: 168233 COA: 374332
Ct of Claims: 19-000023-MZ

On order of the Court, the motion for reconsideration of this Court's March 20, 2025 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 22, 2025

/s/ Larry S. Royster
Clerk

APPENDIX E

STATE OF MICHIGAN IN THE COURT OF CLAIMS

LYNETTE HATHON and AMY JO DENKINS,
and all those similarly situated in the Counties of
Keweenaw, Luce, Iosco, Mecosta, Clinton,
Shiawassee, Livingston, and Branch Counties,
Plaintiffs,

v.

STATE OF MICHIGAN and PATRICIA A. SIMON,
in her individual and official capacities,
Defendants

Case No.: 19-000023-MZ
Honorable Borrello [sic]

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VERIFIED CLASS ACTION COMPLAINT

NOW COMES Plaintiffs LYNETTE HATHON and AMY JO DENKINS, both individually and as class representatives, by and through counsel, and complains unto this Court as follows:

PARTIES

1. Plaintiffs LYNETTE HATHON and AMY JO DENKINS are named directly and as the proposed class representatives by being the former owners of real improved property which was foreclosed upon due to a tax delinquency but was injured by the ensuing unconstitutional acts or actions of the State of Michigan and its officials via their unconstitutional retention of surplus or excess equity.

2. Defendant STATE OF MICHIGAN is a named party as a state sovereign subject to the limitations of the State and Federal Constitutions.

3. Defendants PATRICIA A. SIMON is the public official who authorizes, handles, and conducts

tax foreclosures for opt-out counties and its treasurers, including Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch Counties; she is sued in her official and personal capacities.

JURISDICTION

4. This Court has jurisdiction pursuant to MCL 600.6419.

GENERAL ALLEGATIONS

5. Plaintiffs LYNETTE HATHON and AMY JO DENKINS was the owner of 835 Michigan Avenue in Owosso (Shiawassee County), Michigan, Exhibit A.

6. Under Michigan property tax law, the County of Shiawassee has expressly decided not to be (i.e. opted out of being) the foreclosing governmental unit (FGU) so instead Defendants STATE OF MICHIGAN and PATRICIA A. SIMON have assumed that role.

7. After having a tax delinquency of approximately \$5,200.00 (which includes the past due tax owed plus additional compounding interest, fees, penalties, and costs), Defendant PATRICIA A. SIMON, as the Treasury Department representative, seized ownership of the Michigan Avenue property via the *General Property Tax Act* in the name of the

State of Michigan, Exhibit B, and sold it at tax auction for \$28,250.00, Exhibit C.

8. The Michigan Avenue property had a state equalized value of \$33,699.00 in 2017, meaning that the government believed that said property had a fair market value of \$67,398.00 in that year, Exhibit D.

9. Defendants STATE OF MICHIGAN and PATRICIA A. SIMON, as the Treasury Department representative, destroyed \$39,148.00 in equity when selling the Michigan Avenue property at the highly reduced, non-fair market value price of \$28,250.00, and then also kept (and did not return) \$23,050.00 in equity as the difference between the tax auction price and the total tax delinquency owed for the benefit of the STATE OF MICHIGAN.

10. All told, nearly \$62,198.00 of equity was taken or destroyed by Defendants PATRICIA A. SIMON and/or STATE OF MICHIGAN.

11. No refund of the excess or surplus equity was provided by Defendants PATRICIA A. SIMON and/or STATE OF MICHIGAN.

12. No condemnation action was initiated for the amounts above the total tax delinquency.

13. This process has been called “theft,” “unconscionable” and a “manifest injustice.”

CLASS ALLEGATIONS

14. This action is brought by Plaintiff[s], individually and on behalf of individuals from the counties of Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch during the relevant statutorily-limited time period who were subject to the unconstitutional processes which resulted in the taking and/or unconstitutional forfeiture of their surplus or excess equity beyond the tax debt owe and due.

15. The proposed class consists of all property owners who, within during the relevant statutorily-limited time period, had a property seized from the counties of Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch by Defendants STATE OF MICHIGAN and PATRICIA A. SIMON, which was then sold at tax auction for more than the total tax delinquency and was not refunded the excess equity.

16. The number of injured individuals who have been constitutionally injured is sufficiently numerous to make class action status the most practical method to secure redress for injuries sustained and class wide equitable relief.

17. There are clear questions fact raised by the named Plaintiffs' claim common to, and typical of, those raised by the Class they seek to represent, including

- a. Each class member's property, prior to foreclosure, was worth and was sold for more than the total tax delinquency owed;
- b. Each class member's property had a fair market value greater than the total tax delinquency owed;
- c. The destruction of thousands of dollars of equity when selling each class member's property was disposed at a highly reduced, below fair market value price;
- d. The retention of excess sales proceeds (i.e. the difference between the tax sale price and the total tax delinquency owed); and
- e. The refusal by Defendants STATE OF MICHIGAN and PATRICIA A. SIMON to pay just compensation, the failure to initiate any form of condemnation proceedings, and the failure to have or undertake a process to return the value of surplus equity above the total tax delinquency owed.

18. There are clear questions of law raised by the named Plaintiffs' claims common to, and typical of, those raised by the Class they seeks to represent, including

- a. whether the defendants committed an inverse condemnation by destroying equity via the sale of property at a highly reduced, below fair market price and then retaining the remaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h);
- b. whether the defendants committed a self-executing constitutional violation in the form of a taking by destroying equity via the sale of property at a highly reduced, below fair market price and then retaining the remaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h); and
- c. if deemed a forfeiture, whether the defendants violated either the Excessive Fines Clause of the United States Constitution, or the Excessive Fines Clause of Michigan Constitution, Const 1963, art 1, § 16, or both, by retaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h).

19. The violations of law and resulting harms alleged by the named Plaintiffs are typical of the legal violations and harms suffered by all Class members.

20. Plaintiffs, as Class representatives, will fairly and adequately protect the interests of the Class members and will vigorously prosecute the suit on behalf of the Class; and is represented by sufficiently experienced counsel.

21. 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 members of the Class and/or one or more of the Defendants.

22. Defendants have acted, failed to act, and/or are continuing to act on grounds generally applicable to all members of the Class.

23. Under Michigan property tax law, the Counties of Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch Counties have expressed decided not to be (i.e. opted out of being) the foreclosing governmental unit (FGU) so instead Defendants STATE OF MICHIGAN and PATRICIA A. SIMON assumed that role.

COUNT I
COURT OF CLAIMS ACT – PREEMPTION
(AGAINST DEFENDANT STATE OF MICHIGAN)

24. All claims against these Defendants must be joined by operation of the Michigan Court Rules, see MCR 2.203(A).

25. Plaintiffs are initiating claims by this lawsuit pursuant to 42 USC § 1983, which state courts may hear and adjudicate, see *Maine v Thiboutot*, 448 US 1, 3 fn1 (1980); *Haywood v Drown*, 556 US 729 (2009); see also *Johnson v VanderKooi*, 502 Mich 751 (2018) (adjudicating § 1983 claims).

26. The Michigan Court of Claims requires a Notice of Intent to file such claims, MCL 600.6431.

27. The United States Supreme Court has held that such requirements for 42 USC § 1983 claims are preempted, *Felder v Casey*, 487 US 131 (1988).

28. As such, MCL 600.6431 is preempted and not applicable to claims made under 42 USC § 1983.

29. The Court is requested to strike that portion of the law, see MCL 8.5.

COUNT II
INVERSE CONDEMNATION
(AGAINST DEFENDANT STATE OF MICHIGAN)

30. The prior paragraphs are restated word for word herein.

31. Under current law, before proceeding under 42 USC § 1983, a property owner must first obtain a final decision from the particular governmental entity that is alleged to have unconstitutionally taken his property and also attempt to obtain just compensation through inverse condemnation, *Electro-Tech, Inc v HF Campbell Co*, 445 NW2d 60, 61 (Mich 1989) and *Williamson County Regional Planning Commission v Hamilton Bank*, 473 US 172 (1985).

32. Defendants have taken Plaintiffs' and the class members' constitutionally-protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated said property in the form of equity for public use without the payment of just compensation and have failed to commence appropriate condemnation proceedings.

33. Defendants have taken Plaintiffs' and the class members' state constitutionally-protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative

expenses, costs and interest owed, and have appropriated property in the form of equity for public use without using the mandatory processes outlined under the *Condemnation By State Act*, Public Act 236 of 1911, MCL 213.1 et seq and/or the *Uniform Condemnation Procedures Act*, MCL 213.51, et seq.

34. Defendants do not intend to pay or otherwise refuses to immediately pay just compensation by or via any known procedures.

35. An inverse condemnation has occurred and damages are to be awarded.

COUNT III
STATE CONSTITUTION TAKING –
ARTICLE X, SECTION 2
(AGAINST DEFENDANT STATE OF MICHIGAN)

36. The prior paragraphs are restated word for word herein.

37. Defendants have taken Plaintiffs' and the class members' constitutionally-protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated property in the form of equity for public use without the payment of just compensation in violation of Article X, Section 2 of the Michigan Constitution.

38. Defendants do not intend to pay or otherwise will immediately pay just compensation by or via any known procedures.

39. A taking pursuant to Article X, Section 2 of the Michigan Constitution has occurred and damages are to be awarded.

COUNT IV
FIFTH/FOURTEENTH TAKING
(AGAINST DEFENDANT STATE OF MICHIGAN)

40. The prior paragraphs are restated word for word herein.

41. The Fifth Amendment, made applicable to the State of Michigan via the Fourteenth Amendment, is a self-executing constitutional provision requiring the payment of just compensation upon a taking.

42. Because the Fifth Amendment, made applicable to the State of Michigan via the Fourteenth Amendment, is self-executing, this claim is brought directly under the United States Constitution and not pursuant to 42 U.S.C. § 1983.

43. Defendants have taken Plaintiffs' and the class members' constitutionally-protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated property in the form of equity for public

use without the payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

44. A taking pursuant to Fifth and Fourteenth Amendments to the United States Constitution has occurred and damages are to be awarded.

COUNT V
TAKING – FIFTH/FOURTEENTH AMENDMENT
VIOLATION
42 U.S.C. § 1983
(AGAINST DEFENDANT PATRICIA A. SIMON)

45. The prior paragraphs are restated word for word herein.

46. The Fifth Amendment, made applicable to the State of Michigan via the Fourteenth Amendment, is a self-executing constitutional provision requiring the payment of just compensation upon a taking by the State through its officials.

47. Defendants have taken Plaintiffs' and the class members' constitutionally-protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated property in the form of equity for public use without the payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

48. By Defendant PATRICIA A. SIMON refusing to take all necessary steps to start the processes for the payment of just compensation, Defendant PATRICIA A. SIMON, as person acting under the color of law, has deprived Plaintiffs and the Class of their constitutional right to just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and thus is herself in violation of 42 U.S.C. § 1983.

49. This claim does not seek a monetary damages award but rather an injunctive order directing Defendant PATRICIA A. SIMON to cease refusing to start applicable condemnation proceedings to pay just compensation to Plaintiffs and the class members as required by the Fifth and Fourteenth Amendments to the United States Constitution now and into the future.

COUNT VI
EXCESSIVE FINE - EIGHTH AMENDMENT
VIOLATION
42 U.S.C. § 1983
(AGAINST DEFENDANT PATRICIA A. SIMON)

50. The prior paragraphs are restated word for word herein.

51. The Eighth Amendment to the United States Constitution is the part of the United States Bill of Rights prohibiting the imposition of excessive

finer, which the US Supreme Court has applied to action(s) involving forfeitures.

52. By imposing and retaining an excessive fine in the form of the forfeiture of value of Plaintiff's respective equity interest in their improved property, Plaintiffs' and the class members' Eighth Amendment rights have been violated.

53. As provided for via 42 USC § 1983, Defendant PATRICIA A. SIMON is person who acted under the color of a Michigan statute who has subjected or caused to be subjected both Plaintiffs and the class to the deprivation of rights, privileges, or immunities secured by the Constitution, namely the Eighth Amendment.

54. The conduct of Defendant PATRICIA A. SIMON was reckless and undertaken with complete in indifference to Plaintiffs' and the class members' federal rights to be free from violations of the Eighth Amendment to the United States Constitution.

55. Said actions violate the Eighth Amendment to the United States Constitution, and is remedied by a money judgment against Defendants pursuant to 42 U.S.C. § 1983 and § 1988.

56. Plaintiffs further state that to extent that Eleventh Amendment immunity is asserted and/or that qualified immunity applies, Count VI is unsustainable and the appropriate claim would be against the State of Michigan pursuant to Article I, §

16 of the Michigan Constitution and *Jones v Powell*, 462 Mich 329 (2000).

COUNT VII
EXCESSIVE FINE - CONST 1963, ART I, § 16
(AGAINST THE STATE OF MICHIGAN)

57. The prior paragraphs are restated word for word herein.

58. Count VII is pled in the alternative to Count VI.

59. Count VII is pled pursuant to *Jones v Powell*, 462 Mich 329 (2000) to be a money damages cause of action against the State of Michigan because a federal remedy is not available (see paragraphs 56 and 58, *supra*).

60. Article I, Section 16 of the Michigan Constitution mandates that “excessive fines shall not be imposed.”

61. A forfeiture of equity beyond the already imposed monetary punishments under the *General Property Tax Act* is a fine subject to the limitations of Article I, Section 16 of the Michigan Constitution.

62. By imposing and retaining an excessive fine in the form of the forfeiture of value of Plaintiffs’ respective equity interest in their improved property, Plaintiffs’ and the class members’ rights under Article

I, Section 16 of the Michigan Constitution have been violated.

63. Said actions are actionable at law, and is remedied by a money judgment against Defendants.

RELIEF REQUESTED

64. WHEREFORE, Plaintiffs and the class members respectfully request this Court to—

- a. Enter an order, pursuant to MCR 3.501(B)(2) extending the deadline to file a motion to certify a class until there is a rendered outcome of *Rafaeli, LLC v Oakland County*, Michigan Supreme Court Case No. 156849;
- b. Enter an order certifying this case as a class action;
- c. Enter an order enjoining Defendant PATRICIA A. SIMON from refusing to cause the payment of just compensation as required by the Fifth and Fourteenth Amendments to the United States Constitution;
- d. Enter an order declaring the conduct of Defendants as being unconstitutional;
- e. Enter an order for damages in the amount of the surplus equity (i.e., the

difference between the tax auction price and the tax bill) or, in the event that the property is sold for less than fair market value, for the return to the delinquent taxpayer of the difference between the full market value and the tax bill;

- f. Enter an order of additional damages to reach an amount equaling 125% of the property's fair market value if deemed by this Court that private property consisting of an individual's principal residence was taken for public use;
- g. Enter an order for an award of nominal and punitive damages awardable under federal law, if applicable;
- h. Enter an order for an award of actual reasonable attorney fees and litigation expenses pursuant to all applicable laws, rules, or statutes; and
- i. Enter an order for all such other relief the court deems equitable.

Date: January 26, 2019

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison
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**Electronic signature(s) now authorized by MCR
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[VERIFICATION CERTIFICATE TRUNCATED]