

FILED
02-17-2025
Clerk of Circuit Court
Waukesha County
2025CV000335

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

JOHN ELLIOTT,
2812 Kunzer Beach Lane,
Little Suamico, WI 54141,

DARLENE ELLIOTT,
2812 Kunzer Beach Lane,
Little Suamico, WI 54141,

STEVEN SKARBAN,
11408 Highway 32,
Suring, WI 54174,

Case Code: 30301
Case Class: Money Judgment

FRANK J. HOMOLA LIVING TRUST
DATED DECEMBER 18, 2009,
490 Nash Road,
Crystal Lake, IL 60014,

CARL GEIB,
N5191 Bakertown Road,
Helenville, WI 53137,

KISMET COBAJ,
113 3rd Street,
Baraboo, WI 53913,

WESLEY TENNYSON,
W5860 Star School Road,
Fort Atkinson, WI 53538, and

DUNCAN SHANNON,
1678 Ridgewood Lane North,
Saint Paul, MN 55113,

On behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

STATE OF WISCONSIN,
2 East Main Street,
Madison, WI 53703,

ADAMS COUNTY,
401 Adams Street,
Friendship, WI 53934,

ASHLAND COUNTY,
201 Main Street West,
Ashland, WI 54806,

BARRON COUNTY,
335 East Monroe Avenue,
Barron, WI 54812,

BAYFIELD COUNTY,
117 East 5th Street,
Washburn, WI 54891,

BROWN COUNTY,
305 East Walnut Street,
Green Bay, WI 54301,

BUFFALO COUNTY,
407 South 2nd Street,
Alma, WI 54610,

BURNETT COUNTY,
7410 County Road K,
Siren, WI 54872,

CALUMET COUNTY,
206 Court Street,
Chilton, WI 53014,

CHIPPEWA COUNTY,
711 North Bridge Street,
Chippewa Falls, WI 54729,

CLARK COUNTY,
517 Court Street,
Neillsville, WI 54456,

COLUMBIA COUNTY,
112 East Edgewater Street,
Portage, WI 53901,

CRAWFORD COUNTY,
220 North Beaumont Road,

Prairie Du Chien, WI 53821,

DANE COUNTY,
210 Martin Luther King Jr. Boulevard,
Madison, WI 53703,

DODGE COUNTY,
127 East Oak Street,
Juneau, WI 53039,

DOOR COUNTY,
421 Nebraska Street,
Sturgeon Bay, WI 54235,

DOUGLAS COUNTY,
1313 Belknap Street,
Superior, WI 54880,

DUNN COUNTY,
3001 US Highway 12 East,
Menomonie, WI 54751,

EAU CLAIRE COUNTY,
721 Oxford Avenue,
Eau Claire, WI 54703,

FLORENCE COUNTY,
501 Lake Avenue,
Florence, WI 54121,

FOND DU LAC COUNTY,
160 South Macy Street,
Fond Du Lac, WI 54935,

FOREST COUNTY,
200 East Madison Street,
Crandon, WI 54520,

GRANT COUNTY,
111 South Jefferson Street,
Lancaster, WI 53813,

GREEN COUNTY,
1016 16th Avenue,
Monroe, WI 53566,

GREEN LAKE COUNTY,
571 County Road A,
Green Lake, WI 54941,

IOWA COUNTY,
222 North Iowa Street,
Dodgeville, WI 53533,

IRON COUNTY,
300 Taconite Street,
Hurley, WI 54534,

JACKSON COUNTY,
307 Main Street,
Black River Falls, WI 54615,

JEFFERSON COUNTY,
311 South Center Avenue,
Jefferson, WI 53549,

JUNEAU COUNTY,
220 East State Street,
Mauston, WI 53948,

KENOSHA COUNTY,
1010 56th Street,
Kenosha, WI 53140,

KEWAUNEE COUNTY,
810 Lincoln Street,
Kewaunee, WI 54216,

LA CROSSE COUNTY,
212 6th Street North,
La Crosse, WI 54601,

LAFAYETTE COUNTY,
626 Main Street,
Darlington, WI 53530,

LANGLADE COUNTY,
800 Clermont Street,
Antigo, WI 54409,

LINCOLN COUNTY,
801 North Sales Street,

Merrill, WI 54452,

MANITOWOC COUNTY,
1010 South 8th Street,
Manitowoc, WI 54220,

MARATHON COUNTY,
500 Forest Street,
Wausau, WI 54403,

MARINETTE COUNTY,
1926 Hall Avenue,
Marinette, WI 54143,

MARQUETTE COUNTY,
77 West Park Street,
Montello, WI 53949,

MENOMINEE COUNTY,
W3269 Courthouse Lane,
Keshena, WI 54135,

MILWAUKEE COUNTY,
901 North 9th Street,
Milwaukee, WI 53233,

MONROE COUNTY,
124 North Court Street,
Sparta, WI 54656,

OCONTO COUNTY,
301 Washington Street,
Oconto, WI 54153,

ONEIDA COUNTY,
1 South Oneida Avenue,
Rhineland, WI 54501,

OUTAGAMIE COUNTY,
320 South Walnut Street,
Appleton, WI 54911,

OZAUKEE COUNTY,
121 West Main Street,
Port Washington, WI 53074,

PEPIN COUNTY,
740 7th Avenue West,
Durand, WI 54736,

PIERCE COUNTY,
414 West Main Street,
Ellsworth, WI 54011,

POLK COUNTY,
100 Polk County Plaza,
Balsam Lake, WI 54810,

PORTAGE COUNTY,
1516 Church Street,
Stevens Point, WI 54481,

PRICE COUNTY,
126 Cherry Street,
Phillips, WI 54555,

RACINE COUNTY,
730 Wisconsin Avenue,
Racine, WI 53403,

RICHLAND COUNTY,
181 West Seminary Street,
Richland Center, WI 53581

ROCK COUNTY,
51 South Main Street,
Janesville, WI 53545,

RUSK COUNTY,
311 Miner Avenue East,
Ladysmith, WI 54848,

SAUK COUNTY,
505 Broadway Street,
Baraboo, WI 53913,

SAWYER COUNTY,
10610 Main Street,
Hayward, WI 54843,

SHAWANO COUNTY,
311 North Main Street,

Shawano, WI 54166,

SHEBOYGAN COUNTY,
508 New York Avenue,
Sheboygan, WI 53081,

ST. CROIX COUNTY,
1101 Carmichael Road,
Hudson, WI 54016,

TAYLOR COUNTY,
224 South 2nd Street,
Medford, WI 54451,

TREMPEALEAU COUNTY,
18600 Hobson Street,
Whitehall, WI 54773,

VERNON COUNTY,
400 Courthouse Square,
Viroqua, WI 54665,

VILAS COUNTY,
330 Court Street,
Eagle River, WI 54521,

WALWORTH COUNTY,
100 West Walworth Street,
Elkhorn, WI 53121,

WASHBURN COUNTY,
304 2nd Street,
Shell Lake, WI 54871,

WASHINGTON COUNTY,
432 East Washington Street,
West Bend, WI 53095,

WAUKESHA COUNTY,
515 West Moreland Boulevard,
Waukesha, WI 53188,

WAUPACA COUNTY,
811 Harding Street,
Waupaca, WI 54981,

WAUSHARA COUNTY,
380 South Townline Road,
Wautoma, WI 54982,

WINNEBAGO COUNTY,
112 Otter Avenue,
Oshkosh, WI 54901,

WOOD COUNTY,
400 Market Street,
Wisconsin Rapids, WI 54494, and

CITY OF MILWAUKEE,
200 East Wells Street,
Milwaukee, WI 53202,

Defendants.

SUMMONS

THE STATE OF WISCONSIN, To each above-named Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached and is served upon you this day, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Waukesha County Clerk of Circuit Court, 515 West Moreland Boulevard, Waukesha, Wisconsin 53188, and to Plaintiffs' attorney, Paul W. Zimmer, whose address is Zimmer & Rens LLC, 15850 West Bluemound Road, Suite 204, Brookfield, Wisconsin 53005. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for an award of money or other legal action requested in the Complaint, and

you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this February 17, 2025.

ZIMMER & RENS LLC

Electronically signed by Paul W. Zimmer

Paul W. Zimmer

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Paul.Zimmer@zrlawyers.com

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Phone: (865) 247-0080

** Pro hac vice application forthcoming*

Counsel for Plaintiffs and the Proposed Class of Plaintiffs

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2025CV000335

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

JOHN ELLIOTT,
DARLENE ELLIOTT,
STEVEN SKARBAN,
FRANK J. HOMOLA LIVING TRUST DATED DECEMBER, 18, 2009,
CARL GEIB,
KISMET COBAJ,
WESLEY TENNYSON, and
DUNCAN SHANNON,
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Case No.

STATE OF WISCONSIN,
ADAMS COUNTY,
ASHLAND COUNTY,
BARRON COUNTY,
BAYFIELD COUNTY,
BROWN COUNTY,
BUFFALO COUNTY,
BURNETT COUNTY,
CALUMET COUNTY,
CHIPPEWA COUNTY,
CLARK COUNTY,
COLUMBIA COUNTY,
CRAWFORD COUNTY,
DANE COUNTY,
DODGE COUNTY,
DOOR COUNTY,
DOUGLAS COUNTY,
DUNN COUNTY,
EAU CLAIRE COUNTY,
FLORENCE COUNTY,
FOND DU LAC COUNTY,
FOREST COUNTY,
GRANT COUNTY,
GREEN COUNTY,
GREEN LAKE COUNTY,
IOWA COUNTY,
IRON COUNTY,
JACKSON COUNTY,
JEFFERSON COUNTY,
JUNEAU COUNTY,
KENOSHA COUNTY,
KEWAUNEE COUNTY,

LA CROSSE COUNTY,
LAFAYETTE COUNTY,
LANGLADE COUNTY,
LINCOLN COUNTY,
MANITOWOC COUNTY,
MARATHON COUNTY,
MARINETTE COUNTY,
MARQUETTE COUNTY,
MENOMINEE COUNTY,
MILWAUKEE COUNTY,
MONROE COUNTY,
OCONTO COUNTY,
ONEIDA COUNTY,
OUTAGAMIE COUNTY,
OZAUKEE COUNTY,
PEPIN COUNTY,
PIERCE COUNTY,
POLK COUNTY,
PORTAGE COUNTY,
PRICE COUNTY,
RACINE COUNTY,
RICHLAND COUNTY,
ROCK COUNTY,
RUSK COUNTY,
SAUK COUNTY,
SAWYER COUNTY,
SHAWANO COUNTY,
SHEBOYGAN COUNTY,
ST. CROIX COUNTY,
TAYLOR COUNTY,
TREMPEALEAU COUNTY,
VERNON COUNTY,
VILAS COUNTY,
WALWORTH COUNTY,
WASHBURN COUNTY,
WASHINGTON COUNTY,
WAUKESHA COUNTY,
WAUPACA COUNTY,
WAUSHARA COUNTY,
WINNEBAGO COUNTY,
WOOD COUNTY, and
CITY OF MILWAUKEE,

Defendants.

COMPLAINT

Plaintiffs, individually and on behalf of the class of plaintiffs proposed below, by and through their attorneys, Zimmer & Rens LLC and Milberg Coleman Bryson Phillips Grossman, PLLC, hereby assert the following Complaint against the above-named Defendants, as follows:

NATURE OF THE ACTION

1. The laws in most states have acknowledged for a long time that when a tax foreclosed property sells for more than the amount of the debt owed, the foreclosed property owner owns the surplus sale proceeds.

2. Wisconsin, on the other hand, is among a handful of states that for decades enforced state laws allowing itself and its political subdivisions (i.e., Wisconsin's 72 counties and the City of Milwaukee) to keep most, if not all, of the surplus proceeds generated by sales of tax-foreclosed properties.

3. Recognizing the illegality of these unconstitutional takings, in 2022, Wisconsin amended its statutes to acknowledge the rights of tax-foreclosed property owners to recover the surplus proceeds generated by tax foreclosure sales. However, that legislative change was only made on a forward-looking basis.

4. In 2023, in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), the United States Supreme Court confirmed that proceeds from a government sale of tax-foreclosed property which exceed the amount of the tax debt belong to the foreclosed-owner, and that the foreclosed-owner is entitled to just compensation under the Fourth and Fifteenth Amendments to the United States Constitution where the government has retained the surplus proceeds.

5. Plaintiffs are individuals whose real properties were foreclosed upon by a Wisconsin governmental subdivision due to a tax lien, the sale of which property resulted in proceeds exceeding the amount owed in unpaid real property taxes, special assessments, special charges, special taxes, interest and penalties (collectively, “Tax Debt”), and the surplus proceeds were retained by the government.

6. In this lawsuit, Plaintiffs seek to remedy those unconstitutional takings on behalf of themselves and all others similarly situated. Specifically, Plaintiffs seek to represent a class of individuals defined as follows:

All persons or entities who had an ownership interest in real property which was seized pursuant to Chapter 75 of the Wisconsin Statutes in effect from January 1, 1989 to April 2, 2022, to satisfy Tax Debt, which property was sold for more than the amount of the Tax Debt, and which surplus proceeds from the sale of said real property was retained by one or more Defendants (the “Class”).¹

Excluded from the Class are Defendants, Defendants’ board members, legal counsel, the judges and all other court personnel to whom this case is assigned, and their immediate families.

PARTIES

7. Plaintiffs, John and Darlene Elliott, named in their individual capacities and as proposed class representatives, are adult residents of Wisconsin who reside at 2812 Kunzer Beach Lane, Little Suamico, WI 54141.

8. Plaintiff, Steven Skarban, named in his individual capacity and as a proposed class representative, is an adult resident of Wisconsin who resides at 11408 Highway 32, Suring, WI 54174.

¹ Plaintiffs reserve the right to amend or modify the Class definition, or propose different or additional sub-classes, if appropriate.

9. Plaintiff, Frank J. Homola Living Trust Dated December 18, 2009, named in its individual capacity and as a proposed class representative, is a trust that operates through its trustee, Frank J. Homola, an adult resident of Illinois who resides at 490 Nash Road, Crystal Lake, IL 60014.

10. Plaintiff, Carl Geib, named in his individual capacity and as a proposed class representative, is an adult resident of Wisconsin who resides at N5191 Bakertown Road, Helenville, WI 53137.

11. Plaintiff, Kismet Cobaj, named in her individual capacity and as a proposed class representative, is an adult resident of Wisconsin who resides at 113 3rd Street, Baraboo, WI 53913.

12. Plaintiff, Wesley (Wes) Tennyson, named in his individual capacity and as a proposed class representative, is an adult resident of Wisconsin who resides at W5860 Star School Road, Fort Atkinson, WI 53538.

13. Plaintiff, Duncan Shannon, named in his individual capacity and as a proposed class representative, is an adult resident of Minnesota who resides at 1678 Ridgewood Lane North, Saint Paul, MN 55113.

14. Defendant, State of Wisconsin, is a governmental entity with a principal place of business located at 2 East Main Street, Madison, WI 53703.

15. Defendant, Adams County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 401 Adams Street, Friendship, WI 53934.

16. Defendant, Ashland County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 201 Main Street West, Ashland, WI 54806.

17. Defendant, Barron County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 335 East Monroe Avenue, Barron, WI 54812.

18. Defendant, Bayfield County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 117 East 5th Street, Washburn, WI 54891.

19. Defendant, Brown County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 305 East Walnut Street, Green Bay, WI 54301.

20. Defendant, Buffalo County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 407 South 2nd Street, Alma, WI 54610.

21. Defendant, Burnett County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 7410 County Road K, Suite 105, Siren, WI 54872.

22. Defendant, Calumet County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 206 Court Street, Chilton, WI 53014.

23. Defendant, Chippewa County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 711 North Bridge Street, Chippewa Falls, WI 54729.

24. Defendant, Clark County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 517 Court Street, Neillsville, WI 54456.

25. Defendant, Columbia County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 112 East Edgewater Street, Portage, WI 53901.

26. Defendant, Crawford County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 220 North Beaumont Road, Prairie Du Chien, WI 53821.

27. Defendant, Dane County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 210 Martin Luther King Jr. Boulevard, Madison, WI 53703.

28. Defendant, Dodge County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 127 East Oak Street, Juneau, WI 53039.

29. Defendant, Door County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 421 Nebraska Street, Sturgeon Bay, WI 54235.

30. Defendant, Douglas County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1313 Belknap Street, Superior, WI 54880.

31. Defendant, Dunn County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 3001 US Highway 12 East, Menomonie, WI 54751.

32. Defendant, Eau Claire County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 721 Oxford Avenue, Eau Claire, WI 54703.

33. Defendant, Florence County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 501 Lake Avenue, Florence, WI 54121.

34. Defendant, Fond Du Lac County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 160 South Macy Street, Fond Du Lac, WI 54935.

35. Defendant, Forest County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 200 East Madison Street, Crandon, WI 54520.

36. Defendant, Grant County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 111 South Jefferson Street, Lancaster, WI 53813.

37. Defendant, Green County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1016 16th Avenue, Monroe, WI 53566.

38. Defendant, Green Lake County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 571 County Road A, Green Lake, WI 54941.

39. Defendant, Iowa County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 222 North Iowa Street, Dodgeville, WI 53533.

40. Defendant, Iron County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 300 Taconite Street, Hurley, WI 54534.

41. Defendant, Jackson County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 307 Main Street, Black River Falls, WI 54615.

42. Defendant, Jefferson County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 311 South Center Avenue, Jefferson, WI 53549.

43. Defendant, Juneau County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 220 East State Street, Mauston, WI 53948.

44. Defendant, Kenosha County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1010 56th Street, Kenosha, WI 53140.

45. Defendant, Kewaunee County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 810 Lincoln Street, Kewaunee, WI 54216.

46. Defendant, La Crosse County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 212 6th Street North, La Crosse, WI 54601.

47. Defendant, Lafayette County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 626 Main Street, Darlington, WI 53530.

48. Defendant, Langlade County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 800 Clermont Street, Antigo, WI 54409.

49. Defendant, Lincoln County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 801 North Sales Street, Merrill, WI 54452.

50. Defendant, Manitowoc County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1010 South 8th Street, Manitowoc, WI 54220.

51. Defendant, Marathon County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 500 Forest Street, Wausau, WI 54403.

52. Defendant, Marinette County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1926 Hall Avenue, Marinette, WI 54143.

53. Defendant, Marquette County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 77 West Park Street, Montello, WI 53949.

54. Defendant, Menominee County, is a political subdivision of the State of Wisconsin, with a principal place of business located at W3269 Courthouse Lane, Keshena, WI 54135.

55. Defendant, Milwaukee County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 901 North 9th Street, Milwaukee, WI 53233.

56. Defendant, Monroe County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 124 North Court Street, Sparta, WI 54656.

57. Defendant, Oconto County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 301 Washington Street, Oconto, WI 54153.

58. Defendant, Oneida County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1 South Oneida Avenue, Rhinelander, WI 54501.

59. Defendant, Outagamie County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 320 South Walnut Street, Appleton, WI 54911.

60. Defendant, Ozaukee County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 121 West Main Street, Port Washington, WI 53074.

61. Defendant, Pepin County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 740 7th Avenue West, Durand, WI 54736.

62. Defendant, Pierce County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 414 West Main Street, Ellsworth, WI 54011.

63. Defendant, Polk County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 100 Polk County Plaza, Balsam Lake, WI 54810.

64. Defendant, Portage County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1516 Church Street, Stevens Point, WI 54481.

65. Defendant, Price County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 126 Cherry Street, Phillips, WI 54555.

66. Defendant, Racine County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 730 Wisconsin Avenue, Racine, WI 53403.

67. Defendant, Richland County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 181 West Seminary Street, Richland Center, WI 53581.

68. Defendant, Rock County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 51 South Main Street, Janesville, WI 53545.

69. Defendant, Rusk County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 311 Miner Avenue East, Ladysmith, WI 54848.

70. Defendant, Sauk County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 505 Broadway Street, Baraboo, WI 53913.

71. Defendant, Sawyer County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 10610 Main Street, Hayward, WI 54843.

72. Defendant, Shawano County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 311 North Main Street, Shawano, WI 54166.

73. Defendant, Sheboygan County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 508 New York Avenue, Sheboygan, WI 53081.

74. Defendant, St. Croix County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 1101 Carmichael Road, Hudson, WI 54016.

75. Defendant, Taylor County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 224 South 2nd Street, Medford, WI 54451.

76. Defendant, Trempealeau County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 18600 Hobson Street, Whitehall, WI 54773.

77. Defendant, Vernon County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 400 Courthouse Square, Viroqua, WI 54665.

78. Defendant, Vilas County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 330 Court Street, Eagle River, WI 54521.

79. Defendant, Walworth County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 100 West Walworth Street, Elkhorn, WI 53121.

80. Defendant, Washburn County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 304 2nd Street, Shell Lake, WI 54871.

81. Defendant, Washington County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 432 East Washington Street, West Bend, WI 53095.

82. Defendant, Waukesha County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 515 West Moreland Boulevard, Waukesha, WI 53188.

83. Defendant, Waupaca County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 811 Harding Street, Waupaca, WI 54981.

84. Defendant, Waushara County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 380 South Townline Road, Wautoma, WI 54982.

85. Defendant, Winnebago County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 112 Otter Avenue, Oshkosh, WI 54901.

86. Defendant, Wood County, is a political subdivision of the State of Wisconsin, with a principal place of business located at 400 Market Street, Wisconsin Rapids, WI 54494.

87. Defendant, City of Milwaukee, is a political subdivision of the State of Wisconsin, with a principal place of business located at 200 East Wells Street, Milwaukee, WI 53202.

JURISDICTION, VENUE, AND IMMUNITY

88. This Court has general subject matter jurisdiction over this matter under Wis. Stat. § 801.04 (2023-24)².

89. This Court has personal jurisdiction over each of the Defendants.

90. Venue in Waukesha County is appropriate under Wis. Stat. § 801.50.

91. Defendants lack sovereign immunity from this action, because the takings clause of the Wisconsin Constitution is a self-executing waiver of sovereign immunity.

BACKGROUND FACTS

John and Darlene Elliott

92. John and Darlene Elliott owned parcel 034-42340373B1B, located at Rocky Ledge Road and Kunzer Beach Lane, in the Town of Pensaukee, Oconto County, Wisconsin, and more particularly described as follows:

Lot Three (3), Volume 16 Certified Survey Maps, Page 4 as Map No. 2654, as Document No. 454065; said map being located in Part of Government Lot Three (3), Section Thirty-four (34), Township Twenty-seven (27) North, Range Twenty-one (21) East, in the Town

² All citations to Wis. Stat. ch. 80 refer to the 2023-24 statutes.

of Pensaukee, Oconto County, Wisconsin, excepting therefrom any part thereof used for highway and/or road purposes.

93. While owning this vacant, undeveloped property, Mr. Elliott was diagnosed with multiple sclerosis. The sclerosis required the Elliots to spend approximately \$8,000 per month on his medications and became otherwise consumed with his treatments.

94. As a result, the Elliots lost track of the annual tax payments related to their property.

95. On September 4, 2019, Oconto County acquired the Elliots' property through a tax deed³ to satisfy an outstanding Tax Debt of \$4,762.54.

96. On March 22, 2021, Oconto County sold the property at auction for \$31,000.

97. After payment of the Tax Debt, Oconto County profited \$25,837.46 from the sale of the Elliots' property, after deducting the costs of sale and other amounts to be deducted from the sale proceeds under Wis. Stat. § 75.36(3).⁴

98. In fact, in response to an open records request directed to Oconto County on this subject, Oconto County produced a spreadsheet in which Oconto County calculated the exact amounts of each deduction and included the specific amount of \$25,837.46 under a column labeled "PROFIT ON SALE."

99. Thus, while the Elliots faced substantial financial, emotional, and physical hardship, Defendant Oconto County pocketed a \$25,837.46 windfall from the Elliots.

³ In this Complaint, "tax deed" has the meaning stated in Wis. Stat. 75.001(2) (1989-90) to (2021-22): "'Tax deed' means a tax deed executed under s. 75.14, a deed executed under s. 75.19, or a judgment issued under s. 75.521."

⁴ Unless otherwise noted, all citations to Wis. Stat. ch. 75 refer to the statutes in effect from January 1, 1989, to April 2, 2022.

100. Some amount of the surplus proceeds that Oconto County took from the Elliotts were remitted to the State of Wisconsin or commingled with other funds that Oconto County paid to the State of Wisconsin to satisfy Oconto County's obligation to pay the "state tax chargeable against each county" to the State of Wisconsin. *See* Wis. Stat. § 70.60(1) (1989-1990) to (2021-2022).⁵

Steven Skarban

101. Plaintiff Steven Skarban owned both parcels 026090900111 and 026090900414 located at Hickory Cemetery Road and 10936 County Road M, in the Town of Maple Valley, located in Oconto County, Wisconsin, and more particularly described as follows:

Parcel 026090900111:

The Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$), Section Nine (9), Township Twenty-nine (29) North, Range Eighteen (18) East, in the Town of Maple Valley, Oconto County, Wisconsin, EXCEPT THE FOLLOWING PARCEL more particularly described as follows: Commencing at the Northeast corner of said Section 9; thence South 01°05'23" West, along the east line of said Section 9, a distance of 587.61 feet to a 1" iron pipe; Thence North 87°06'28" West, a distance of 654.00 feet to a 1" iron pipe; Thence North 00°27'53" East, a distance of 574.89 feet to the North line of said Section 9; Thence South 88°13'53" East, along said North line, a distance of 660.00 feet to the POINT OF BEGINNING... EXCEPTING the northerly 33 feet thereof lying within the right of way of Hickory Cemetery Road.

Parcel 026090900414:

PARCEL NUMBER: ***414 The Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$), Section Nine (9), Township Twenty-nine (29) North, Range Eighteen (18) East, in the Town of Maple Valley, Oconto County, Wisconsin, EXCEPT Volume 441, Page 647, for road purposes.

102. On September 4, 2019, Oconto County acquired both parcels through a tax deed to satisfy a total outstanding Tax Debt of \$2,422.79.

⁵ All citations to Wis. Stat. ch. 70 refer to the statutes in effect from January 1, 1989, to April 1, 2022.

103. Subsequently, Oconto County sold both parcels on May 15, 2020, for a combined total sale price of \$420,500.00.

104. After payment of the Tax Debt, Oconto County profited \$417,277.21 from the sale of Mr. Skarban's properties, after deducting the costs of sale and other amounts to be deducted from the sale proceeds under Wis. Stat. § 75.36(3).

105. In fact, in response to an open records request directed to Oconto County on this subject, Oconto County produced a spreadsheet in which Oconto County calculated the exact amounts of each deduction and included the specific amounts of \$211,849.28 and \$205,427.93 under a column labeled "PROFIT ON SALE."

106. Some amount of the surplus proceeds that Oconto County took from the Mr. Skarban were remitted to the State of Wisconsin or commingled with other funds that Oconto County paid to the State of Wisconsin to satisfy Oconto County's obligation to pay the "state tax chargeable against each county" to the State of Wisconsin. *See* Wis. Stat. § 70.60(1).

Frank J. Homola Trust Dated December 18, 2009

107. Plaintiff Frank J. Homola Trust Dated December 18, 2009 (the "Homola Trust") owned parcel 010-2284-05 located at 1046 Peach Lane, in the Town of Lac Du Flambeau, in Vilas County, Wisconsin, and more particularly described as follows:

Lot 2 of Vilas County Certified Survey Map No. 4488 recorded in Volume 15CS, page 398, Government Lot 5, Section 35, Township 40 North, Range 5 East, Lac du Flambeau Township, Vilas County Wisconsin. Together with a non-exclusive easement for ingress and egress to S. Gunlock Lake Road over the existing road located approximately 400 feet from the lake.

108. On December 23, 2020, Vilas County acquired the Homola Trust's parcel through a tax deed due to an outstanding Tax Debt of approximately \$16,000.00.

109. Subsequently, Vilas County sold the Homola Trust's parcel on July 2, 2021, for a sale price of \$166,000.00.

110. After payment of the Tax Debt, Vilas County profited approximately \$150,000.00 from the sale of the Homola Trust's property, less the costs of sale and other amounts to be deducted from the sale proceeds under Wis. Stat. § 75.36(3).

111. Some amount of the surplus proceeds that Vilas County took from the Homola Trust were remitted to the State of Wisconsin or commingled with other funds that Vilas County paid to the State of Wisconsin to satisfy Vilas County's obligation to pay the "state tax chargeable against each county" to the State of Wisconsin. *See* Wis. Stat. § 70.60(1).

Carl Geib

112. Plaintiff Carl Geib owned a fifty percent interest, as a tenant in common with Patricia Wilke, in parcel PFS2 00008 located at W2405 New Deal Ave, in the Town of East Troy, in Walworth County, Wisconsin, and more particularly described as follows:

Lot 10, Freuck's 2nd Addition, according to the recorded plat thereof. Said land being in the Town of East Troy, Walworth County, Wisconsin.

113. On June 10, 2021, Walworth County acquired Mr. Geib and Ms. Wilke's parcel through a tax deed due to an outstanding Tax Debt of approximately \$15,000.

114. Subsequently, Walworth County sold Mr. Geib and Ms. Wilke's parcel on October 25, 2021, for a sale price of \$255,000.00.

115. After payment of the Tax Debt, Walworth County profited approximately \$240,000.00 from the sale of Mr. Geib and Ms. Wilke's property, less the costs of sale and other amounts to be deducted from the sale proceeds under Wis. Stat. § 75.36(3).⁶

⁶ Patricia Wilke is not a named plaintiff in this Complaint, but if the Class is certified, she will be a member of the Class with a claim to the other fifty percent of the surplus proceeds.

116. Some amount of the surplus proceeds that Walworth County took from Mr. Geib were remitted to the State of Wisconsin or commingled with other funds that Vilas County paid to the State of Wisconsin to satisfy Vilas County's obligation to pay the "state tax chargeable against each county" to the State of Wisconsin. *See* Wis. Stat. § 70.60(1).

Kismet Cobaj

117. Plaintiff Kismet Cobaj owned a fifty percent interest, as a tenant in common with Alime Cobaj, in parcel 010-0553-00000 located at S3173 Evergreen Road, in the Town of Excelsior, located in Sauk County, Wisconsin, and more particularly described as follows:

Lot 2, Certified Survey Map No. 2769, recorded in Volume 12 of Certified Survey Maps, Page 2769, as Document No. 586272 in the Town of Excelsior, County of Sauk, State of Wisconsin. AND A parcel of land described as being part of Lot 1 of Sauk County Certified Survey Map No. 2769; located in the Northwest 1/4 of the Southwest 1/4 Section 10, Township 12 North, Range 5 East, Town of Excelsior, Sauk County, Wisconsin, bounded by a line described as follows: Commencing at the West 1/4 corner of Section 10; thence South 88 degrees 28' 13" East, 1326.42 feet thence South 01 degrees 19' 40" West, 774.32 feet; thence South 85 degrees 00' 57" East, 101.50 feet along the North line of CSM No. 2769; thence South 00 degrees 10' 13" East, 231.78 feet along the East line of said survey; thence North 86 degrees 20' 3 8" West, 140.48 feet to the Northeast corner of Lot 1 of CSM No. 2769, said point being the point of beginning; thence North 85 degrees 13' 26" West, 485.97 feet along the North line of Lot 1, CSM 2769; thence South 79 degrees 49' 10" East, 487.38 feet to a point on the East line of Lot 1, CSM 2769; thence North 05 degrees 42' 58" East, 45.91 feet along said East line to the point of beginning.

118. On December 20, 2019, Sauk County acquired Ms. Cobaj and Alime Cobaj's parcel through a tax deed due to an outstanding Tax Debt of approximately \$7,735.87.

119. Subsequently, Sauk County sold Ms. Cobaj and Alime Cobaj's parcel on October 5, 2020, for a sale price of \$75,890.00.

120. After payment of the Tax Debt, Sauk County profited approximately \$68,154.13 from the sale of Ms. Cobaj and Alime Cobaj's property, less the costs of sale and other amounts to be deducted from the sale proceeds under Wis. Stat. § 75.36(3).⁷

121. Some amount of the surplus proceeds that Sauk County took from Ms. Cobaj were remitted to the State of Wisconsin or commingled with other funds that Sauk County paid to the State of Wisconsin to satisfy Sauk County's obligation to pay the "state tax chargeable against each county" to the State of Wisconsin. *See* Wis. Stat. § 70.60(1).

Wesley (Wes) Tennyson

122. Plaintiff Wesley (Wes) Tennyson owned parcel 020-0714-0432-001 located at W6394 County Road A, in the Town of Milford, located in Jefferson County, Wisconsin, and more particularly described as follows:

A strip of land 16 feet wide across the Southwesterly end of Lot 2, Block 5, according to the recorded plat of N.S. Greene's Addition to the Village of Milford, Town of Milford, Jefferson County, Wisconsin. ALSO a parcel of land, situated in and being a part of Section 4, Township 7 North, Range 14 East, bounded by a line commencing at the intersection of the center line of Milford-Watertown Highway with the East Bank of Crawfish River; thence Easterly along the center of said Highway 3 rods; thence Northwesterly in a straight line 13 1/3 rods to a point from which a line drawn parallel to the center line of said highway is 3 rods distant from the East Bank of said River; thence Westerly parallel to the centerline of said highway, 3 rods to the East bank of said River; thence Southeasterly along the East bank of said River, to the point of commencement; said parcel of land being also known and designated on the recorded plat of N.S. Greene's Addition to the Village of Milford as Lot 1, Block 5. TOGETHER WITH a strip of land 1/3 rod in width contiguous to and along the whole Northerly line of said Lot 1. EXCEPT land conveyed to Jefferson County for highway purposes on April 9, 1945 as recorded in the office of the Register of Deed for Jefferson County, Wisconsin, Volume 230 of Deeds on Page 554 as Document No. 396028.

⁷ Alime Cobaj is not a named plaintiff in this Complaint, but if the Class is certified, she will be a member of the Class with a claim to the other fifty percent of the surplus proceeds.

123. On September 1, 2020, Jefferson County acquired Mr. Tennyson's parcel through a tax deed due to an outstanding Tax Debt of approximately \$5,000.00.

124. Subsequently, Jefferson County sold Mr. Tennyson's parcel on February 25, 2021, for a sale price of \$69,600.00.

125. After payment of the Tax Debt, Jefferson County profited approximately \$64,600.00 from the sale of Mr. Tennyson's property, less the costs of sale and other amounts to be deducted from the sale proceeds under Wis. Stat. § 75.36(3).

126. Some amount of the surplus proceeds that Jefferson County took from Mr. Tennyson were remitted to the State of Wisconsin or commingled with other funds that Jefferson County paid to the State of Wisconsin to satisfy Jefferson County's obligation to pay the "state tax chargeable against each county" to the State of Wisconsin. *See* Wis. Stat. § 70.60(1).

Duncan Shannon

127. Plaintiff Duncan Shannon owned parcel 020-0714-0432-001 located at Woodland Green Lane, in the Town of Stone Lake, located in Washburn County, Wisconsin, and more particularly described as follows:

Part of the Northwest Quarter of the Southeast Quarter (NW¼ of the SE¼), Section Thirty-three (S33), Township Thirty-nine North (T39N), Range 10 West (R10W) of the Town of Stone Lake, Washburn County, Wisconsin described as Lot Nine (9) on Volume Sixteen (16) of Certified Survey Maps, Page 78 as Survey number 3414 and Document number 317115. Together with and subject to a perpetual 66 foot roadway and utility easement from the property described above to State Highway 70 as described on the Declaration of Easement for Private Road and Utilities dated April 21, 2006 and recorded May 8, 2006 as Document number 317910. Subject to all Easements, Rights of Way and Restrictions of Record. Exempt from transfer fee per Sec. 77.25(4), Wis. Stats.

128. On April 9, 2021, Washburn County acquired Mr. Shannon's parcel through a tax deed due to an outstanding Tax Debt of approximately \$3,000.00.

129. Subsequently, Washburn County sold Mr. Shannon's parcel on July 23, 2021, for a sale price of \$23,000.00.

130. After payment of the Tax Debt, Washburn County profited approximately \$20,000.00 from the sale of Mr. Shannon's property, less the costs of sale and other amounts to be deducted from the sale proceeds under Wis. Stat. § 75.36(3).

131. Some amount of the surplus proceeds that Washburn County took from Mr. Shannon were remitted to the State of Wisconsin or commingled with other funds that Washburn County paid to the State of Wisconsin to satisfy Washburn County's obligation to pay the "state tax chargeable against each county" to the State of Wisconsin. *See* Wis. Stat. § 70.60(1).

Wisconsin's Former Unconstitutional Statutory Scheme

132. Under Wisconsin's pre-2022 statutory scheme, Defendants were not allowed to distribute the surplus proceeds back to the respective property owners. *See* Wis. Stat. § 75.36. The sole exception was that owners of homestead properties, under certain circumstances, could collect approximately 50% of the surplus proceeds. *See* Wis. Stat. § 75.36(2m).

133. The County Defendants⁸ paid some amounts of the surplus sale proceeds they recovered from tax foreclosure sales to the State of Wisconsin or commingled some amounts of the surplus funds with other funds that the County Defendants paid to the State of Wisconsin to satisfy the County Defendants' tax obligations to the State of Wisconsin.

134. On April 2, 2022, the Wisconsin legislature's enactment of 2021 Wisconsin Act 216 became effective, which amended Wis. Stat. § 75.36 to require the County Defendants to

⁸ In this Complaint, the phrase "County Defendants" includes the City of Milwaukee in addition to all 72 Wisconsin counties. *See* Wis. Stat. § 75.06 ("For purposes of this chapter, 'county' includes a city authorized to proceed under s. 74.87.").

distribute surplus sale proceeds generated from future tax foreclosure sales back to the respective taxpayers from whom the properties were foreclosed upon.

CLASS ALLEGATIONS

135. Plaintiffs bring this action on behalf of themselves and as a class action under Wis. Stat. § 803.08, seeking relief on behalf of the following class:

All persons or entities who had an ownership interest in real property which was seized pursuant to Chapter 75 of the Wisconsin Statutes in effect from January 1, 1989 to April 2, 2022, to satisfy Tax Debt, which property was sold for more than the amount of the Tax Debt, and which surplus proceeds from the sale of said real property was retained by one or more Defendants (the “Class”).⁹

Excluded from the Class are Defendants, Defendants’ board members, legal counsel, the judges and all other court personnel to whom this case is assigned, and their immediate families.

136. The Class members are so numerous that joinder of all members is impracticable. Specifically, there are thousands of persons and entities whose properties were foreclosed upon by Defendants and whose surplus proceeds were retained by Defendants.

137. A common question of fact exists which impacts all Class members: whether Defendants enforced Wis. Stat. ch. 75 as written from January 1, 1989, until April 2, 2022.

138. Common questions of law also exist which relate to the claims of all Class members, including the following:

- A. Whether Defendants’ sales of properties without remitting the surplus proceeds resulting from such sale back to the property owners constitute unconstitutional takings of private property;
- B. Whether Defendants must return the surplus proceeds back to Class members;

⁹ Plaintiffs reserve the right to amend or modify the Class definition, or propose different or additional sub-classes, if appropriate.

- C. Whether Defendants must pay “just compensation” to Class members;
- D. Whether Defendants’ takings of Class members’ properties violated Article I, Section 13 of the Wisconsin Constitution, or, alternatively, violated the Fifth and Fourteenth Amendments of the United States Constitution;
- E. Whether Defendants’ actions violated the “excessive fines” clause of Article I, Section 6 of the Wisconsin Constitution, or, alternatively, violated the Eighth and Fourteenth Amendments of the United States Constitution;
- F. Whether injunctive relief should be awarded to Class members, requiring Defendants to return the surplus proceeds;
- G. Whether money damages should be awarded to Class members; and,
- H. Whether interest on the surplus proceeds should be awarded to Class members.

139. The common questions of law and fact predominate over any questions of law or fact unique to any individual member of the Class.

140. Plaintiffs’ claims are typical of the Class members’ claims—in each, one of the County Defendants foreclosed upon the subject real property, sold that property, and generated surplus proceeds which it retained and has not returned, and which it has commingled with funds paid to the State of Wisconsin.

141. Plaintiffs will fairly and adequately protect the interests of the Class.

142. Plaintiffs’ claims are exemplary of the claims held by absent Class members.

143. Plaintiffs’ claims arise out of the same common course of conduct by Defendants giving rise to the claims of the absent Class members.

144. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

145. Class members' interests in individually controlling the prosecution or defense of separate actions are minimal or non-existent.

146. The expense and burden of individual litigation would make it impracticable if not impossible for Class members to individually address the wrongs done to them.

147. Even if every Class member could afford individual litigation, the court system could not. Class treatment, on the other hand, will permit the adjudication of claims of Class members who could not individually afford to litigate their claims against Defendants and will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that individual actions would entail.

148. Prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants.

149. Prosecution of separate actions by individual Class members would create a risk of adjudications with respect to individual Class members that, as a practical matter, would be dispositive of the interests of other Class members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

150. Defendants acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief is appropriate respecting the Class as a whole.

151. It is desirable to concentrate the litigation of these claims in a single forum.

152. No difficulties are likely to overcome the manageability of this class action.

153. No superior alternative exists for the fair and efficient adjudication of this controversy.

154. For the foregoing reasons, certification of the Class is appropriate pursuant to Wis. Stat. § 803.08(2)(a) because separate actions by individual Class members, or separate actions against individual Defendants, would create a risk of inconsistent rulings that would impose incompatible standards of conduct on Defendants and would, as a practical matter, impair or impede the ability of other Class members to pursue their claims.

155. Certification is also appropriate pursuant to Wis. Stat. § 803.08(2)(b) because Defendants acted uniformly with respect to all Class members generally, such that “final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”

156. The Class is also certifiable pursuant to Wis. Stat. § 803.08(2)(c) given that, as set forth above, the questions of law or fact common to Class members predominate over any individualized questions, and a single action is superior to separate resolutions for each Class member and Defendant.

157. Additionally, particular issues under Wis. Stat. § 803.08(6) are appropriate for certification because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties’ interests therein.

158. Such particular issues include, but are not limited to, the following:

- A. Whether enforcement of Wis. Stat. ch. 75 by Defendants resulted in Defendants acquiring, under tax deeds, interests in real property.
- B. Whether surplus sale proceeds remained from the sales of any such real properties after deducting from the sale proceeds the amounts required to be deducted under Wis. Stat. § 75.36(a)-(b).

- C. Whether Defendants kept any such surplus sale proceeds.
- D. Whether the retention of any such surplus sale proceeds by Defendants constituted an unconstitutional taking.
- E. Whether and to what extent the County Defendants remitted the surplus proceeds to the State of Wisconsin.
- F. Whether and to what extent the State of Wisconsin retained the surplus proceeds.

JURIDICAL LINK ALLEGATIONS

159. While Plaintiffs were specifically damaged by Defendants Oconto County, Vilas County, Walworth County, Sauk County, Jefferson County, and Washburn County, Plaintiffs seek to bring claims on behalf of the Class against all similarly situated Defendants pursuant to Wis. Stat. § 803.08 and the juridical link doctrine.

160. The Wisconsin statutes expressly allow for classes of defendants: “One or more members of a class may sue *or be sued* as representative parties on behalf of all members. . . .” Wis. Stat. § 803.08(1) (emphasis added).

161. In addition, the juridical link doctrine allows class representative plaintiffs who have a claim against a particular defendant to sue a related class of defendants, despite the named class representative plaintiffs’ lack of direct contact with the joined class defendants. *See, e.g., Payton v. County of Kane*, 308 F.3d 673, 679–83 (7th Cir. 2002) (“given that the . . . fee is imposed pursuant to a state statute, and that count[ies] are for this purpose an arm of the state . . . it is reasonable for the putative plaintiff class to try to hold all counties accountable within one suit.”).

162. Because all Defendants took part in a similar scheme that was mandated by a uniform state rule, it is appropriate to join as Defendants even parties with whom the named Plaintiffs did not have direct contact.

163. Plaintiffs and the Class seek to hold all Defendants named herein (i.e., all of Wisconsin's 72 counties, the City of Milwaukee, and the State of Wisconsin) accountable for the systematic and repeated unconstitutional takings of their property that was enabled under Wis. Stat. § 75.36.

164. Defendants all committed the wrongful conduct described in this Complaint pursuant to a deliberate state statutory scheme common among all Defendants and by the Defendants utilizing the same means as each other with a common course of conduct.

165. Application of the juridical link doctrine is appropriate in this case and should be applied by the Court to allow the Class members to have their claims against Defendants remedied.

COUNT I
VIOLATION OF TAKINGS CLAUSE OF WISCONSIN CONSTITUTION

166. Plaintiffs incorporate all allegations above as if fully restated herein.

167. The Wisconsin state legislature implemented a statutory scheme to cause its political subdivisions, namely, the County Defendants, to systematically and repeatedly take property unconstitutionally without just compensation, as described above.

168. The Wisconsin judiciary approved of, and gave color of law to, the State of Wisconsin's unconstitutional scheme.

169. The County Defendants administered and carried out the unconstitutional takings scheme created by the State of Wisconsin's legislature and upheld by the State of Wisconsin's judiciary.

170. While Wis. Stat. ch. 75 has since been amended to prevent the unconstitutional practice of confiscating surplus proceeds on or after April 2, 2022, the State of Wisconsin has not provided any mechanism through which Plaintiffs and the Class members may recover just compensation for the surplus funds that Defendants took prior to April 2, 2022. *See* Wis. Stat. 75.36 (2023-24).

171. Article I, Section 13 of the Wisconsin Constitution states as follows: “The property of no person shall be taken for public use without just compensation therefor.”

172. Article I, Section 13 is self-executing and does not need any express statutory authority for its enforcement.

173. Article I, Section 13 is a constitutional waiver of sovereign immunity that does not require any legislative direction under Article 4, Section 27 of the Wisconsin Constitution.

174. Under the Wisconsin Constitution, a property owner whose property is acquired by the government through tax foreclosure has a property interest in the surplus proceeds generated from the sale of the property that is superior to Defendants’ interest in the surplus proceeds.

175. The only interest Defendants acquired in the surplus proceeds is the illegitimate possessory interest that Defendants asserted when they took the surplus proceeds.

176. Plaintiffs and the Class members retained, and continue to hold, all the legitimate rights, title and interest in and to their respective surplus proceeds.

177. Defendants’ holding of Plaintiffs’ and the Class members’ surplus proceeds effectively amounts to a trespass on Plaintiffs’ and the Class members’ property.

178. Defendants’ holding of Plaintiffs’ and the Class members’ surplus proceeds effectively amounts to a conversion of Plaintiffs’ and the Class members’ property.

179. Defendants took Plaintiffs' and the Class members' property without due process of law every time they took surplus proceeds.

180. Defendants' taking of the surplus proceeds constitutes a direct appropriation of property, not a regulatory taking.

181. Defendants did not appropriate Plaintiffs' or the Class members' surplus proceeds under any legitimate use of eminent domain powers.

182. Defendants did not appropriate Plaintiffs' or the Class members' surplus proceeds under any legitimate use of taxation powers.

183. Defendants directly appropriated Plaintiffs' and the Class members' surplus proceeds under the State of Wisconsin's general police powers.

184. Defendants' use of the State of Wisconsin's general police powers to confiscate Plaintiffs' and the Class members' surplus proceeds was unconstitutional, void, and of no effect.

185. Defendants never acquired any legitimate rights, title or interest in or to Plaintiffs' and the Class members' surplus proceeds.

186. Defendants have no public use to support or justify taking or keeping Plaintiffs' and the Class members' surplus proceeds.

187. Plaintiffs and the Class members have not had an adequate legal remedy to protect their property interests from the unconstitutional and unlawful conduct described herein.

188. Plaintiffs and the Class members have been injured and damaged by the taking of their property and are entitled to just compensation and other relief as a result.

189. Defendants took more than what was owed to them, and thus, Defendants' actions are a classic taking in which the government directly appropriates private property for its own use.

190. Plaintiffs and the Class members have been injured and damaged by the failure to pay just compensation for the loss of their property and are entitled to compensation and other relief as a result.

191. Defendants must return the surplus proceeds to Plaintiffs and the Class members.

192. Defendants must pay Plaintiffs and the Class members just compensation.

193. By taking the Plaintiffs' and Class members' surplus proceeds and refusing to return them, Defendants are continually violating Article I, Section 13 of the Wisconsin Constitution every day that they fail to return the surplus funds to the Plaintiffs and the Class members.

194. Plaintiffs and the Class members are entitled to injunctive relief under Article I, Section 13 of the Wisconsin Constitution ordering Defendants to return the surplus proceeds back to Plaintiffs and the Class members.

195. Defendants' violations of Article I, Section 13 of the Wisconsin Constitution have caused Plaintiffs and the Class members to be injured and damaged in an amount to be determined at trial.

196. Plaintiffs and the Class members are entitled to an award of interest upon the surplus proceeds to compensate them for the time value of money for the misappropriation of their surplus proceeds.

197. Defendants must pay interest at such rates and according to such inflation adjustments as is to be determined at trial.

COUNT II
VIOLATION OF THE EXCESSIVE FINES CLAUSE
OF THE WISCONSIN CONSTITUTION
(Alternative to Count I)

198. Plaintiffs incorporate all allegations above as if fully restated herein.

199. This claim is pled in the alternative to Count I, above.

200. Article I, Section 6 of the Wisconsin Constitution, provides as follows: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.”

201. Article I, Section 6 of the Wisconsin Constitution applies to any statutory scheme that serves in part to punish.

202. By imposing and retaining an excessive fine in the form of effectively a forfeiture of Plaintiffs’ and the Class members’ surplus proceeds, Defendants have violated Plaintiffs’ and the Class members’ rights under Article I, Section 6 of the Wisconsin Constitution.

203. Defendants’ confiscation of the surplus proceeds from sales of Plaintiffs’ and the Class members’ properties because of non-payment of Tax Debt constitute excessive fines under Article I, Section 6 of the Wisconsin Constitution.

204. Defendants’ retention of Plaintiffs’ and the Class members’ surplus proceeds, which is exclusive of the Tax Debt, is punitive, not remedial.

205. Defendants engaged in assessing and collecting prohibited excessive fines, as described herein.

206. Plaintiffs and the Class members lack an adequate legal remedy to protect their property interests from the unconstitutional and unlawful conduct described herein.

207. Plaintiffs and the Class members have been injured and damaged by the unlawful excessive fines under the Wisconsin Constitution and are entitled to awards of actual damages and interest in an amount to be determined at trial.

COUNT III
VIOLATION OF THE TAKINGS CLAUSE
OF THE UNITED STATES CONSTITUTION
(Alternative to Counts I and II)

208. Plaintiffs incorporate all allegations above as if fully restated herein.

209. This claim is pled in the alternative to Counts I and II, above.

210. It is only necessary to address this claim if the State of Wisconsin refuses to allow Plaintiffs and the Class members recourse for Defendants' unconstitutional takings or excessive fines under the Wisconsin Constitution.

211. The Fifth Amendment to the United States Constitution provides, in pertinent part, "nor shall private property be taken for public use without just compensation."

212. The Fourteenth Amendment prohibits the State of Wisconsin (and other states) from violating the Fifth Amendment.

213. This claim is a direct cause of action under the United States Constitution.

214. Plaintiffs and the Class members are entitled to the return of their surplus proceeds under the Fifth and Fourteenth Amendments of the United States Constitution.

215. Plaintiffs and the Class members are entitled to just compensation for the taking of their surplus proceeds under the Fifth and Fourteenth Amendments of the United States Constitution.

216. Defendants' violations of the Fifth and Fourteenth Amendments of the United States Constitution have caused Plaintiffs and the Class members to incur damages in an amount to be determined at trial.

217. Plaintiffs and the Class members are entitled to awards of damages and interest under the Fifth and Fourteenth Amendments of the United States Constitution.

COUNT IV
VIOLATION OF THE EXCESSIVE FINES CLAUSE
OF THE UNITED STATES CONSTITUTION
(Alternative to Counts I, II, and III)

218. Plaintiffs incorporate all allegations above as if fully restated herein.

219. This claim is pled in the alternative to Counts I, II, and III, above.

220. It is only necessary to address this claim if the State of Wisconsin refuses to allow Plaintiffs and the Class members recourse for Defendants' unconstitutional takings or excessive fines under the Wisconsin Constitution.

221. The Eighth Amendment to the United States Constitution prohibits the government from imposing excessive fines.

222. The Fourteenth Amendment makes the Eighth Amendment applicable to the states.

223. The Excessive Fines Clause applies to any statutory scheme that serves in part to punish.

224. By imposing and retaining an excessive fine in the form of effectively a forfeiture of Plaintiffs' and the Class members' surplus proceeds, Defendants violated Plaintiffs' and the Class members' Eighth Amendment rights.

225. Confiscating the entire value of Plaintiffs' and the Class members' properties including the excess or surplus equity in those properties because of nonpayment of small amounts of Tax Debt is an excessive fine under the Eight Amendment to the United States Constitution.

226. Defendants' retention of Plaintiffs' and the Class members' surplus proceeds, which is exclusive of the Tax Debt, is punitive, not remedial.

227. Defendants engaged in assessing and collecting prohibited excessive fines, as described herein.

228. Plaintiffs and the Class members lack an adequate legal remedy to protect their property interests from the unconstitutional and unlawful conduct described herein.

229. Plaintiffs and the Class members have been injured and damaged by unlawful excessive fines under the United States Constitution and are entitled to relief as a result in an amount to be determined at trial, including an award of interest.

CONCLUSION

WHEREFORE, Plaintiffs seek the following relief from the Court:

- A. The Court determine this action may be maintained as a class action, with Plaintiffs being designated as representatives of such Class, and Plaintiffs' undersigned counsel as Class Counsel;
- B. The Court find and declare that Defendants' retention of surplus proceeds from Plaintiffs and Class members violates the Wisconsin Constitution (or alternatively, the United States Constitution);
- C. The Court order Defendants to return to Plaintiffs and Class members the surplus proceeds generated from the tax-foreclosure sales of their properties;
- D. The Court award Plaintiffs and Class members their actual damages, including awards of just compensation and interest, along with inflation adjustments, in an amount to be determined at trial;
- E. The Court award Plaintiffs and Class members relief in the form of equitable restitution in such manner as to restore Defendants' unlawful gains to Plaintiffs and Class members, or to place Plaintiffs and members of the Class in the financial position they would have been in had there been no takings or other unlawful conduct;
- F. The Court award Plaintiffs and Class members their costs and disbursements of this suit, including reasonable attorneys' fees, to the greatest extent possible under the law; and,
- G. The Court grant Plaintiffs and Class members such other and further relief as the nature of this case may require or as may be deemed just and proper by the Court.

Dated this February 17, 2025.

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Electronically signed by Paul W. Zimmer

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** Pro hac vice application forthcoming*

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