

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL BELL, MICHELLE KIDD,
DOLLY JANIS, and GOYCE H. RATES,
individually and on behalf of all others
similarly situated; SOUTHWEST
ORGANIZING PROJECT and PALENQUE
LSNA, individually,

Plaintiffs,

v.

MARIA PAPPAS, in her capacity as
Treasurer of Cook County, Illinois, and
Trustee of the Indemnity Fund; and COOK
COUNTY, ILLINOIS,

Defendants.

Case No. 1:22-cv-7061

Judge Matthew F. Kennelly

**SECOND AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

**DEFENDANT COOK COUNTY'S PARTIAL ANSWER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT**

Defendant Cook County, by her attorney, Kimberly M. Foxx, State's Attorney of Cook County, through Kathleen A. Murphy, Assistant State's Attorney, for its Partial Answer to Plaintiffs' Second Amended Complaint states as follows:

INTRODUCTION

1. Plaintiffs Michael Bell, Michelle Kidd, Dolly Janis and Goyce H. Rates ("Individual Plaintiffs") are Cook County homeowners who seek redress on their own behalf and on behalf of classes of similarly situated persons, for the actual and threatened loss of the value of their homes due to the actions of Defendant Maria Pappas, as the Cook County Treasurer, Defendant Karen A. Yarbrough, as Cook County Clerk, and Defendant Cook County, through their administration of property tax sales. Plaintiffs Southwest Organizing Project ("SWOP") and Palenque LSNA ("PLSNA") ("Organizational Plaintiffs") are non-profit

community-based organizations whose members and missions are threatened and undermined by the same unconstitutional failure to compensate homeowners of which the Individual Plaintiffs complain, and whose members are impacted and whose resources have been diverted from other purposes to address Defendants' unlawful actions.

ANSWER: Defendant denies any unconstitutional act. Defendant lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

2. The United States Constitution permits counties to collect overdue taxes but prohibits using “the toehold of the tax debt to confiscate more property than was due.” *Tyler v. Hennepin County*, 598 U.S. 631, 2023 WL 3632574 at*[] (2023). “The taxpayer must render unto Caesar what is Caesar’s, but no more.” *Id.* at *14.

ANSWER: Defendant admits *Tyler v. Hennepin County*, 143 S. Ct. 1369 (2023), contains the quoted portions as alleged in this paragraph. *Id.* at 1376, 1380. Defendant denies any legal conclusion asserted in this paragraph.

3. The Cook County property tax sale system, which implements the Illinois Property Tax Code, 35 ILCS 200/1-1 *et seq.*, unconstitutionally deprives a homeowner who fails to pay overdue property taxes of not just their home, but of all of the market value of the home over and above what the homeowner owes in overdue taxes, penalties, interest and costs. (hereafter “equity”).¹ Defendants sell the delinquent taxes to an investor-called a “tax buyer”—who pays the past due taxes and, in exchange, secures the right to take ownership of the home if the homeowner does not pay the tax buyer the amount of the taxes, plus substantial penalties and a high rate of interest by a fixed deadline. If the homeowner does not “redeem” the taxes and related charges by the deadline, the tax buyer may obtain a deed to the property, who then owns the property free and clear, no matter

¹ See also *Crane v. Comm’r*, 331 U.S. 1, 7 (1947) (equity is the value of property that exceeds encumbering liens); *Hall v. Meisner*, 51 F. 4th 185, 187 (6th Cir. 2022).

how much it was worth in excess of the unredeemed taxes and related charges.

ANSWER: Defendant admits 35 ILCS 200/1-1, et seq. (“Illinois Property Tax Code”) establishes the property tax sale system in Illinois, including Cook County. Defendant admits a homeowner may ultimately be divested of property and risk the loss of equity exceeding the delinquent taxes, including penalties, costs, and any other liens or encumbrances on the property. Defendant admits that, at an annual tax sale, the Treasurer sells delinquent taxes to an investor (or tax buyer) who pays the past due taxes. Defendant denies that it conducts the annual tax sale. Defendant denies that the homeowner’s failure to timely redeem alone secures the tax buyer’s right to take ownership of the home. Defendant denies the remaining self-serving and argumentative allegations in this paragraph.

4. Neither the tax buyer nor the County reimburses the homeowner for their lost equity. Therefore, unlike a bank mortgage foreclosure sale, where amounts realized in excess of the debt owed on the property are returned to the owner, a property tax sale can ultimately result in a total loss to the homeowner of not just the home *but also the entire value of the home over and above the taxes and related charges*.

ANSWER: Defendant denies the allegation that no property owners are reimbursed for their lost equity. Defendant admits a property tax sale can ultimately result in a loss of property and its value. Defendant lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

5. Recognizing homeowners’ protected property rights to their equity, Illinois law creates what is called the Indemnity Fund, 35 ILCS 200/21-305, which purports to enable those select few homeowners who can qualify to make a claim and prove lack of fault to seek a limited monetary award from a fund maintained by the County. Effectively hidden from public view and subject to strict eligibility requirements that rule out many homeowners, the Indemnity Fund

requires a formal court filing and ultimately a trial, and in practice fails to provide homeowners with timely, meaningful, certain or legally sufficient compensatory or other relief, as even destitute and blameless homeowners can be denied compensation. Compounding these problems, the indemnity fund is never adequately or sufficiently funded, and even successful homeowner petitioners must wait many years to be paid. In the end, vanishingly few homeowners ever receive indemnity in an amount close to the true and reasonable value of the homeowner's lost equity and the indemnity fund does nothing to help homeowners access their home equity soon enough to help them secure new housing.

ANSWER: Defendant admits Illinois law creates a process by which a homeowner who has been divested of property through the issuance of a tax deed can seek recoupment of the equity in the property via filing suit against the Cook County Treasurer as trustee of the Indemnity Fund. 35 ILCS 200/22-295 through 35 ILCS 200/22-305. Defendant admits that petitioning for an award from the Indemnity Fund includes a court filing and may include a trial. Defendant admits some homeowners may not be eligible for recoupment of the equity in their homes. Defendant denies the remaining self-serving and argumentative allegations in this paragraph.

6. Cook County's tax buyer program has especially pernicious and disproportionate effects on communities of color. For example, more than 75% of the Cook County parcels included in the 2021 tax sale were in majority-Black and -Latino neighborhoods, even though only 52% of County residents identify as Latino, Black, or as being of two or more races.² A disproportionate number of Black and Latino residents' homes, including those of Plaintiffs Kidd, Janis and Rates, end up being lost to tax buyers, without the homeowners receiving any

² Cf Samantha Chatman, "Cook Co. Treasurer Wants to Help Black Homeowners Who Could Lose Houses to Unpaid Property Taxes," ABC7 (Nov. 9, 2020), <https://abc7chicago.com/cook-county-property-taxes-tax-illinois-treasurer/6878804/> (last visited November 10, 2023); U.S. Census Bureau, QuickFacts: Cook County, Illinois, <https://www.census.gov/quickfacts/fact/table/cookcountyillinois/PST045221> (last visited Nov. 9, 2023).

compensation for the difference between the taxes, fees and interest owed and the equity they owned in their homes.

ANSWER: Defendant denies the sources cited contain the statement that 75% of Cook County parcels on the tax sale list were in “Latino and Black neighborhoods.” Defendant admits the sources cited support the allegation that approximately 52% of County residents identify as Latino, Black or being of two or more races. Defendant denies the remaining allegations in this paragraph.

7. Communities of color in Cook County have long endured housing discrimination, and the disproportionately low rates of homeownership in these communities have exacerbated the racial wealth gap in Cook County and around the country. Defendants’ actions aggravate these racial inequities by driving Black and Latino homeowners out of their homes while depriving them of the value of this key financial asset - the home’s equity in excess of unredeemed taxes and related charges - impairing their ability to continue to be adequately housed.

ANSWER: Defendant denies their actions create or aggravate any racial inequities by driving Black and Latino homeowners out of their homes while depriving them of the value of their home’s equity. Defendant lacks knowledge sufficient to admit or deny the vague and self-serving allegations in this paragraph.

8. Depriving homeowners of the equity in their homes is an unconstitutional taking of private property without just compensation and an unconstitutional excessive fine. Defendants’ inadequate indemnity fund policy and process provides no meaningful or sufficient redress or compensation and effectively deprives them of property rights under common law and recognized and established by the Illinois General Assembly. Finally, Plaintiffs and a subclass of homeowners who are Black or Latino are deprived of the equity in their homes at a disproportionate as rate compared to other homeowners, with the result being that Defendants have violated their civil rights,

as well.

ANSWER: Defendant denies the allegations in this paragraph.

9. The Individual Plaintiffs bring this action on behalf of themselves and a class and a subclass of similarly situated individuals pursuant to 42 U.S.C. §1983, the United States Constitution, the federal Fair Housing Act, 42 U.S.C. §3601, *et seq.*, and the Illinois Civil Rights Act of 2003, 740 ILCS 23/1 *et seq.* (“ICRA”). Jurisdiction is proper under 28 U.S.C. § 1331, 1343, and 1367, and 42 U.S.C. § 3613. Plaintiffs and putative class members, and the Organizational Plaintiffs, seek all available remedies, including damages, and declaratory and injunctive relief.

ANSWER: Defendant admits the allegations in this paragraph and denies Plaintiffs are entitled to any relief under the claims asserted.

PARTIES

Plaintiff Michael Bell

10. Plaintiff Michael Bell is a natural person and citizen and resident of Illinois.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

11. Mr. Bell is Black and his neighborhood is predominantly Black.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

12. Mr. Bell owned the residential property located on East 100th Street, in Chicago, Illinois. As of December 7, 2022, the property has, on information and belief, an estimated market value of approximately \$115,000.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

13. He acquired sole ownership of this property, which had been in his family for more

than 40 years, after his mother, Helen McKinnon, died in March 2017, and he used \$25,000 of his inheritance to buy out his brothers' interests in the property.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

14. Mr. Bell lives in the home. He previously worked part-time at Buddy Bear Car Wash, where he earned the minimum wage. However, Mr. Bell is no longer working there due to an ongoing health condition.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

15. Mr. Bell was unemployed from 2018-19 and failed to pay his property taxes for 2018 due to his personal challenges and economic circumstances. He wanted to pay the taxes but could not do so. He did not abandon or intend to abandon his property and did not do so.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

16. On May 17, 2019, Cook County sold the 2018 taxes on Mr. Bell's property to Lien Group LLC. The total amount of the sale was \$1,649.67.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

17. Mr. Bell was not able to redeem due to his ongoing hardships. On November 9, 2021, Lien Group LLC petitioned for the issuance of a tax deed, which would have given it ownership of Mr. Bell's property. However, Lien Group LLC later moved for a "sale in error," which would have the effect of vacating the original tax sale. The latter motion was granted.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

18. Nevertheless, Mr. Bell's taxes on his home for 2017 remain delinquent and subject to re-sale at a future tax sale, including the tax sale Defendant Pappas plans to hold in 2024. Mr. Bell has also accrued a larger unpaid property tax bill amounting to approximately \$6,945.00, inclusive of unpaid 2017, 2018, 2019, 2020 property taxes. These taxes are also subject to sale at a future tax sale, as soon as 2024.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

19. By all indications and available information, Mr. Bell cannot and will not earn enough to pay off his past-due taxes for 2017-2020, or otherwise. His income remains precariously low and he has no realistic hope of increasing it, including because of his ongoing health conditions.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

20. Mr. Bell's taxes will invariably be sold again, and his home (with its excess equity) will be seized, as evidenced by County policy, Illinois tax laws, and the fact that his property taxes were already sold once, with no indication Defendants would do anything but seize his home's excess equity value without prompt, just compensation.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

21. As a direct, proximate and foreseeable result of Defendants' actions, Mr. Bell will inevitably lose all rights in his property, including the right to use, live in and dispose of it.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

22. Mr. Bell's home is and was at all relevant times worth a large multiple of the sum of all taxes, interest, penalties and other associated charges against the property.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

23. Mr. Bell will receive no compensation for his equity, the difference between the unpaid taxes and related charges and the value of the home, after a deed is issued to a tax buyer and he loses ownership of his home. Defendants' inevitable failure to fairly and promptly compensate Mr. Bell upon the loss of his rights in his home and the equity in it will impede his ability to secure new, future housing.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

24. Mr. Bell still has every need to plan for his personal and financial future, especially given his current health status, and thus is in significant, urgent need of ascertaining his rights and liabilities in relation to the equity in his home.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

Plaintiff Michelle Kidd

25. Plaintiff Michelle Kidd is a natural person and citizen and resident of Illinois.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

26. Ms. Kidd owned the residential property located on South 12th Avenue, Maywood, Illinois. As of December 7, 2022, the property has, on information and belief, an estimated market value of approximately \$230,000.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

27. At the time she purchased the property in August 2011, Ms. Kidd was employed full-

time as a bus driver.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

28. Ms. Kidd paid the full purchase price for the property. She did not have a mortgage.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

29. In the mid-2010s, Ms. Kidd became disabled—she suffers from chronic obstructive pulmonary disease and asthma—and fell behind on her property taxes.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

30. On April 4, 2017, Cook County sold the 2015 taxes on Ms. Kidd’s property to an entity known as “High Five Group, LLC,” later correctly identified as “High 5 Group, LLC”. Due to Ms. Kidd’s disability, she was unable to earn sufficient income to redeem the taxes.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

31. Ms. Kidd did not redeem and the redemption period expired on October 10, 2019.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

32. She did not abandon or intend to abandon her property and did not do so. She wanted to pay the taxes but could not do so. On November 2, 2021, the Circuit Court of Cook County ordered the issuance of a tax deed for Ms. Kidd’s property to High 5 Group, and Defendant Yarbrough issued the deed.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

33. On January 3, 2022, High 5 Group moved for an order of possession.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

34. On January 26, 2022, the Circuit Court of Cook County entered an eviction order awarding High 5 Group possession of the premises.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

35. Ms. Kidd started paying rent to High 5 Group, but vacated the premises in May 2022, moving with her husband and four children to an apartment.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

36. As a direct, proximate and foreseeable result of Defendants' actions, Ms. Kidd lost all rights in her property, including the right to use, live in and dispose of it.

ANSWER: Defendant denies the allegations in this paragraph.

37. Ms. Kidd's home is and was at all relevant times worth a large multiple of the sum of all taxes, interest, penalties and other associated charges against the property.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

38. Ms. Kidd received no compensation for her equity, the difference between the unpaid taxes and related charges and the value of the home. Defendants' failure to fairly and promptly compensate Ms. Kidd for the loss of her rights in her home and the equity in it has impeded her ability to secure new, future housing.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

39. Ms. Kidd is Black and her neighborhood is predominantly Black.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

Plaintiff Dolly Janis

40. Plaintiff Dolly Janis is a natural person and a citizen and resident of Illinois.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

41. Ms. Janis owned the residential property on N. Kildare in Chicago, Illinois.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

42. On information and belief, as of September 7, 2022, the house was worth approximately \$260,000.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

43. Janis is 70 years old and has lived in the home since she was 3 years old.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

44. Janis acquired the home from her parents and there was no mortgage.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

45. Janis fell behind on her property taxes.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

46. On May 3, 2018, Defendants sold the taxes on the property to an entity known

as Sabre Investments, LLC.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

47. Janis was unable to redeem the property by paying the taxes, interest and charges to Sabre Investments, and the redemption period expired on April 16, 2021.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

48. Sabre Investments petitioned the Circuit Court of Cook County for a tax deed, and on September 7, 2022, the court ordered Defendant Yarbrough to issue a tax deed, and Defendant Yarbrough issued the deed.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

49. Plaintiff Janis continues to live in the house but is facing eviction.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

50. At all times Janis's family home has been worth substantially more than the entire amount of taxes, interest and fees the Plaintiff Janis owed.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

51. Ms. Janis received no compensation for the value of her home over and above what she owed for taxes and related charges.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

Plaintiff Goyce H. Rates

52. Plaintiff Goyce H. Rates is a natural person and citizen and resident of Illinois.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

53. Ms. Rates lives with two adult nieces and an adult nephew in a single-family home located on Cleveland St., Evanston, Illinois. On information and belief, at the times relevant to the issuance of tax deeds on the home, it was worth over \$200,000.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

54. Ms. Rates was joint owner of the home with her mother, and upon the death of her mother in 2014 became the sole owner of the home. There was no mortgage.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

55. The home sits on two parcels of land, each with its own tax identification number.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

56. Ms. Rates fell behind in her property taxes on both parcels.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

57. Taxes on one parcel were sold to Newline Holdings on May 3, 2019. Ms. Rates was unable to redeem the property by paying the taxes and related charges in the amount of \$4,501.51. Newline Holdings assigned its rights to Blue Ocean 21-1, LLC, which sought a tax deed, and the Circuit Court of Cook County ordered issuance of the deed on May 16, 2023, after which Defendant Yarbrough issued the deed.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this

paragraph.

58. Taxes on the other parcel were sold to Corona Investments, LLC, on May 3, 2019. Ms. Rates was unable to redeem the property by paying the taxes and related charges in the amount of \$4,523.94. Corona Investments sought a tax deed, and the Circuit Court of Cook County ordered issuance of the deed on June 5, 2023, after which Defendant Yarbrough issued the deed.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

59. Both tax buyers have sought and obtained eviction orders, which have been issued but not yet executed. Ms. Rates and her nieces and nephew remain in the home for the moment.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

60. At all times Rates' home has been worth substantially more than the entire amount of taxes, interest and fees the Plaintiff Rates owed to the tax buyers on both parcels combined.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

61. Ms. Rates received no compensation for the value of her home over and above what she owed for taxes and related charges. Defendants failure to compensate Ms. Rates for the loss of her home and the amount of its value above what she owed for taxes and related charges has impeded her ability to find new, future housing.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

62. Ms. Rates and her nieces and nephew are Black.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

Plaintiff Southwest Organizing Project

63. Southwest Organizing Project (SWOP) is a community-based nonprofit corporation incorporated in Illinois that has its principal place of business in Chicago. It is a citizen of Illinois.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

64. SWOP formed in 1996 as a response to the legacy of structural racism that has severely damaged the quality of life for many Chicago residents. SWOP's offices are located on the Southwest side of Chicago, where it serves forty-five member institutions including churches, and represents approximately 40,000 people in Chicago Lawn, Gage Park, West Lawn, West Elsdon, and Ashburn-some of the communities most impacted by Defendants' unlawful conduct.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

65. The population SWOP serves is almost entirely Black and Latino. The communities it serves include low- and moderate-income neighborhoods where over half of households-and in some areas nearly 70 percent of households, such as in Chicago Lawn- have annual incomes below \$50,000.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

66. SWOP's mission is to build multi-racial, multi-religious, intergenerational coalitions and to improve the lives of those living in the neighborhoods it serves. Ensuring that its community members have and maintain housing they can afford is part of and critical to this mission-as is helping people transition to new housing, when they can no longer remain in their current residence.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

67. For example, SWOP works with partner organizations that provide certified housing

counseling as part of its day-to-day activities, and trains its staff members to direct community members to these counselors when they have housing issues, including issues related to property taxes and tax sales. SWOP's housing-related work accounts for approximately one-third of SWOP's overall budget, as well as approximately one third of its personnel costs.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

68. Community members come to SWOP for assistance with concerns about missed property taxes and SWOP provides it. They also seek SWOP's assistance-and SWOP will provide or direct them to proper resources-prior to or after losing a home to a tax sale.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

69. SWOP also collects information about property tax sales as part of its research to support ongoing advocacy efforts around housing and housing discrimination. This includes regularly reviewing the published lists of those subject to the tax sale to identify community members who may lose their homes without compensation and are in need of assistance. If a person is on the list who is living in the listed property, SWOP will try to help them stay in the home. If they cannot stay, because they cannot afford to pay the taxes (plus fees and interest), SWOP will try to connect them to resources to locate new housing.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

70. Tax sales can affect SWOP's member organizations and in turn their members in other ways, too. For example, several of SWOP's members are schools, who are affected by property tax sales whenever they require a student to move out of a neighborhood and change schools. Thus, the inability to quickly obtain compensation for lost equity can immediately impact local school enrollment by limiting a family's ability to stay in their chosen home community.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

71. Because of Defendants' unlawful conduct, SWOP is forced to do work it otherwise would not have to do and expend resources that could be put towards other efforts. Every dollar and minute that SWOP expends assisting individuals who have suffered or risk uncompensated loss of their homes is money and time that SWOP would spend on its other projects and efforts. This includes efforts to fill vacant buildings, prevent non-tax-related foreclosures, improve parent involvement in their children's education, and more.

ANSWER: Defendant denies any of its conduct was unlawful. Defendant lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

Plaintiff PLSNA

72. Plaintiff PLSNA (formerly known as the Logan Square Neighborhood Association, or LSNA) is a community-based non-profit corporation that is incorporated in Illinois and has its principal place of business in Chicago. It is a citizen of Illinois.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

73. PLSA was founded in 1962 as an organization dedicating to improving economic conditions in the Logan Square neighborhood of Chicago, eventually combining economic, political, social, cultural, and educational programming into a broad strategy for positively impacting the neighborhood. Today, PLSNA continues pursuing its goal of community improvement and has an expanded footprint, now serving more than 6,500 residents annually across Logan Square and its adjacent neighborhoods. Most of these residents are non-white.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

74. While PLSNA's work touches on many issues key to maintaining a healthy, prosperous community, housing is one of the most significant issues. PLSNA's work is focused on an area of Chicago that is primarily Latino and, in the past two decades, has undergone a significant increase in property values. As property taxes have continued to increase in turn, PLSNA has worked to avoid some of the negative effects of these increases-including through litigation. *See Grotto, An Unfair Burden, infra* , ¶112.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

75. Because of its community members' high property tax burdens and support for homeownership and economic opportunity on the Northwest Side, PLSNA has dedicated significant resources to assisting residents with property tax-related issues, including those related to the tax sale.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

76. PLSNA maintains an outreach team of three individuals who spend 45-50 hours per month, each, on assisting individuals with property tax issues. Each year, when the tax sale list is published, PLSNA works to locate property owners in their area and provide them with information-in English and Spanish-about their options, and to offer assistance before the home is lost to a tax sale.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

77. In providing this outreach and support, PLSNA focuses its limited resources on owner-occupied properties because of its highly hands-on approach, which includes visiting the homes and trying to talk to the owners directly. While this is more time consuming than just sending a letter, PLSNA believes it to be more effective. PLSNA also focuses on the owner- occupied

properties because, in its experience, many of these homes are owned by senior citizens, or mom-and-pop property owners, whose only source of income or other wealth-building is their property.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

78. If PLSNA did not have to worry about families losing their homes and livelihoods, and did not have to worry about homeowners not receiving fair, speedy compensation for the lost equity in their homes, PLSNA would divert time, energy, and resources towards other efforts, such as strengthening the Here to Stay Community Land Trust, doing more outreach about obtaining weatherization through the Chicago Bungalow Association, or connecting more senior residents to resources at the Center for Elder and Disability Law.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

Defendants

79. Defendant Maria Pappas is sued in her official capacity. She is and has been the duly elected and acting Treasurer of Cook County, Illinois from 1998 to the present, in charge of the Office of Treasurer for Cook County. Acting with the discretion vested in her in that position, she supervises and administers Cook County's tax sales and forfeitures at issue herein, as did her predecessors and as will her successors. Defendant Pappas also serves as Trustee of the indemnity fund. *See* 30 ILCS 200/21-295(b). In these official capacities, Defendant Pappas is a "person" within the meaning of 42 U.S.C. § 1983, a unit of state, county, or local government within the meaning of the Illinois Civil Rights Act and subject to the provisions of the Fair Housing Act.

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

80. Defendant Karen A. Yarbrough is sued in her official capacity. She is and has been

the duly elected and acting Cook County Clerk since December 2018. She supervises and administers her office's role in the tax sales and issuance of tax deeds at issue herein, as did her predecessors and will her successors. Her role, among other things, is to officially transfer ownership of homes from the original home owner to the tax buyer. In her official capacity, Defendant Yarbrough is a "person" within the meaning of 42 U.S.C. 1983, a unit of state, count, or local government with the meaning of the Illinois Civil Rights Act and subject to the provisions of the Fair Housing Act.

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

81. Defendant Cook County, Illinois, is a political entity and includes its agents, including Defendants Pappas and Yarbrough. Cook County is a unit of county government subject to the FHA and ICRA. Cook County is a party defendant, including for purposes of indemnification of Defendants Pappas and Yarbrough as to any monetary amounts recovered by Plaintiffs through this action. *See Carver v. Sheriff of LaSalle County*, 203 Ill.2d 497 (2003), and *Carver v. Sheriff of LaSalle County*, 324 F.3d 947 (7th Cir. 2003).

ANSWER: Defendant admits Plaintiffs purport to sue Cook County for indemnification purposes. Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6), as well as a Motion to Dismiss Defendant Karen Yarbrough pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V Defendant Karen Yarbrough until such time as required by the Court or federal rules. Defendant denies the remaining allegations in this paragraph.

82. Acting under color of state law and through their policies and customs, Defendants have violated, and continue to violate, Plaintiffs' and the putative Classes' rights by, among other things, seizing the equity in their homes without adequate or just compensation.

ANSWER: Defendant denies the allegations in this paragraph.

FACTUAL ALLEGATIONS

Overview of Equity Seizure in Cook County

83. Under Illinois's Property Tax Code, Cook County may sell delinquent property taxes to a third party investor-a tax buyer. On information and belief, Defendants exercise discretion to include properties in the tax sale pursuant to an unwritten internal policy. The tax buyer pays the county for the delinquent taxes, and in return receives, among other things, the right to collect those back taxes from the homeowner, plus interest.³ See 35 ILCS 200/21-215; 35 ILCS 200/21-240.

ANSWER: Defendant denies conducting or directing the administration of the tax sale. Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph and footnote 3.

84. Upon paying the unpaid property taxes, the Clerk, here Defendant Yarbrough, certifies the tax buyer's purchase, and the tax buyer receives a lien on the homeowner's property. If the owner does not timely reimburse the tax buyer for the taxes paid, plus penalties and interest, the tax buyer may take ownership of the property and retain all value of the property, even if this amount exceeds the debt for taxes and applicable penalties and interest. 35 ILCS 200/21-250; 35 ILCS 200/22-40.

ANSWER: The allegations in this paragraph contain statutory analysis to which no response is required. To the extent a response is required, Defendant admits that after a tax buyer successfully bids on a delinquent property's taxes, the tax buyer receives a lien on the property. Defendant denies that if the homeowner does not timely reimburse the tax buyer for taxes, penalties, and interest, the tax buyer may take ownership of the property. Defendant admits if the homeowner does not timely redeem the taxes, penalties, and interest by the end of the

³ The tax sale involves a "reverse bidding" process. Investors bid a percentage representing the penalty the buyer will charge the taxpayer above the taxes and interest they owe, with penalties ranging from 9% to 0% every six months. The lowest bid wins. 35 ILCS 200/21-215; 35 ILCS 200/21-355(b).

redemption period, the tax buyer may petition the Circuit Court for a tax deed in compliance with the provisions of the Illinois Property Tax Code. *See, e.g.*, 35 ILCS 200/22-5 through 35 ILCS 200/22-50. Defendant admits that a tax deed confers all ownership of the property including the entirety of its value. Defendant contemporaneously with this answer files a Motion to Dismiss Defendant Karen Yarbrough pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Defendant Karen Yarbrough until such time as required by the Court or federal rules.

85. Absent an extension, residential property owners have 30 months from the date of the tax sale to redeem their property by paying off the taxes and related charges. 35 ILCS 200/21-350(b).

ANSWER: Defendant admits the allegations in this paragraph.

86. Unlike many taxing authorities, Cook County offers no payment plans for redemption. As a recent study by Defendant Pappas’s office explains, “To redeem their taxes, property owners must pay the entire tab—all unpaid taxes, interest penalties and fees—with no option for a payment plan.”⁴

ANSWER: Defendant admits the quoted material is from the Cook County Treasurer’s Report, “Maps of Inequality: From Redlining to Urban Decay and the Black Exodus” (July 2022) at page 36. Defendant admits property owners are not able to redeem their property through a payment plan. Defendant admits the Cook County Clerk’s Office publication, A Guide to Tax Redemption Process, states payment must be made in full prior to the scheduled tax sale. Defendant lacks knowledge sufficient to admit or deny the allegations whether “many taxing authorities” offer payment plans for redemption.

87. If the property owner does not redeem in full and on time, the tax buyer may

⁴ Cook County Treasurer, Maps of Inequality: From Redlining to Urban Decay and the Black Exodus, at 46 (July 2022), <http://www.cookcountytreasurer.com/pdfs/scavengersalestudy/2022scavengersalestudy.pdf> (last visited November 10, 2022); *see also* Cook County Clerk’s Office, A Guide to the Tax Redemption Process, <https://www.cookcountyclerk.gov/sites/default/files/pdfs/Brochure%20-%20Tax%20Redemption%20Process%20-%202021.pdf> (last visited November 10, 2023).

petition the court to become the legal owner of the property and evict the owner and any family members or other residents. 35 ILCS 200/22-40.

ANSWER: The allegations in this paragraph contain statutory analysis to which no response is required. To the extent a response is required, Defendant admits that Section 22-40(c) permits a court to enter an order to place the tax deed grantee or the grantee's successor in interest in possession of the property and may enter orders and grant relief as may be necessary or desirable to maintain the grantee or the grantee's successor in interest in possession. 35 ILCS 200/22-40.

88. The court grants the tax buyer's petition and orders the issuance of a tax deed, at which point the Clerk, Defendant Yarbrough, issues and certifies the deed. 35 ILCS 200/22-65. As the new owner, the tax buyer may then petition the court to evict the former owner, if he or she remains in residence on the property.

ANSWER: Defendant admits that if a court grants a tax buyer's petition for tax deed and orders the issuance of a tax deed, then the county clerk issues and certifies the deed, pursuant to the court order. Defendant further admits that as the new owner, the tax buyer may petition to the court to evict the former owner if they are still residing at the property. The remaining allegations in this paragraph contain statutory analysis to which no response is required. To the extent a response is required, Defendant admits that Section 22-65 states that a tax deed executed by the county clerk under the official seal of the county shall be recorded in the same manner as other conveyances of property, and vests in the grantee, his or her heirs and assigns, the title of the property therein described without further acknowledgment or evidence of the conveyance.

89. Recognizing the loss of property rights established under both state law and federal common law suffered by homeowners whose homes are seized without compensation, state law requires counties to maintain "indemnity funds" for some property owners who suffer

losses as a result of a tax sale and subsequent deed issuance. 35 ILCS 200/21-295. But this is an inadequate remedy for lost equity as many owners are not eligible, and all others must petition for this relief in court. The indemnity fund process is expensive and time-consuming. Even if the owner prevails, they may wait years to be paid, and is not guaranteed to receive the full value of their lost equity, or indeed any of the value of the equity lost, in part due to extreme and chronic failure and refusal to fund the indemnity fund which at present has an eight-year delay in payments, which has steadily grown over the years and is still growing. 35 ILCS 200/21-305.

ANSWER: Defendant admits state law requires counties to maintain an indemnity fund from which property owners who have been divested of their properties after issuance of a tax deed can receive reimbursement for the fair cash value of their property by filing a petition in the circuit court. Defendant admits not every property owner is entitled to receive the full value of their property from the indemnity fund. Defendant denies that payouts from the Indemnity Fund have an eight-year delay. Defendant denies the remaining self-serving and argumentative allegations in this paragraph.

Cook County Deprives Homeowners of the Property Right in Equity in their Homes and Does Not Compensate Them

90. In 1976, an Illinois Legislative-Investigative Commission deemed Illinois' practice of "total forfeiture" to be needlessly harsh and recommended replacing it with a "sale-surplus system" that would preserve home equity. This was in large part because, the Commission determined, there was "no relation between the threat of total forfeiture and the rate of tax collection." Replacing the existing tax buyer system with a sale-surplus system would, the Commission concluded, "remove the unduly harsh penalty of total forfeiture to the homeowner, and at the same time [] would prevent the tax buyer from reaping unearned windfalls."⁵

⁵ See Illinois-Legislative Investigating Commission, Annual Report of 1976: Delinquent Tax Sales: A Report to the Illinois General Assembly, at 36, 52 (1976).

ANSWER: Defendant admits the cited source contains the quoted portion of this paragraph. Defendant lacks knowledge sufficient to admit or deny any remaining allegations in this paragraph.

91. Despite this recognition that a fairer system was needed, one not involving “unearned windfalls at the expense of those [homeowners] who can least afford it[,]” nothing was ever done and Cook County continues to strip homeowners of their equity.

ANSWER: Defendant denies the allegations in this paragraph.

92. Each annual tax sale involves thousands of properties. At the annual tax sale held in 2019 (for tax year 2017), Cook County auctioned nearly 57,000 properties’ delinquent property taxes.⁶ The tax sale held in 2022 (for tax year 2019; delayed by COVID) involved delinquent property taxes due on 37,176 properties.⁷ The November 15-18, 2022 sale of 2020 taxes involved more than 55,000 properties, almost half of which owed less than \$1,000.⁸

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

93. As noted, the delinquent property taxes are often relatively low. For tax year 2017, nearly 4,000 of the roughly 14,000 Chicago residential properties listed for the tax sale owed \$1,000 or less in unpaid taxes. The median unpaid tax amount was \$1,696.89, and the smallest tax amount due was \$100.56.⁹ The average effective property tax rate in Cook County is approximately 2.19

⁶ Cook County Treasurer’s Office, Pappas: 57,000 Property Owners Are Running Out of Time to Pay Nearly \$190 Million in Delinquent Taxes to Avoid Sale, (Mar. 13, 2019), <https://www.cookcountytreasurer.com/newsarticle.aspx?articleid=759> (last visited November 10, 2023).

⁷ ABC7, Cook County Treasurer Begins Holding Delinquent Property Tax Sale, (May 12, 2022), <https://abc7chicago.com/cook-county-property-tax-sale-bill/11840970/> (last visited Nov. 9, 2023).

⁸ Pappas: More than 55,000 Properties are in Cook County’s Tax Sale and 21,000 Owe Under \$1,000 (Oct. 5, 2022); <https://www.prnewswire.com/news-releases/pappas-more-than-55-000-properties-are-in-cook-countys-tax-sale-and-21-000-owe-under-1-000--301641108.html> (last visited Nov. 9, 2023).

⁹ Odette Yousef, *Cook County Makes Millions By Selling Property Tax Debt—But At What Cost?*, WBEZ Chicago (May 3, 2019), <https://web.archive.org/web/20230518035720/https://www.wbez.org/shows/wbez-news/cook-county-makes-millions-by-selling-property-tax-debt-but-at-what-cost/69272607-aa91-4d1b-abfa-1aef57ea0a33> (“Cook County Makes Millions”) (last visited Nov. 10, 2023). The Oc median sales price of a Cook County home in October 2023 was

% of the home's value.¹⁰

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

94. According to a report from Housing Action Illinois, “When a tax deed is issued, the investor typically acquires the property at a fraction of the value, creating very large profits for the investor and a huge loss of equity for the property owner.” Housing Action Illinois, *Racial Disparities and Cook County Tax Sale Evictions* (hereafter “Housing Action IL Report”) at 5 (Nov. 2021), <https://housingactionil.org/downloads/Policy/Racial-Disparities-and-Cook-County-Tax-Sale-Evictions.pdf> (last visited Nov. 9, 2023); *see also* Yousef, Cook County Makes Millions, *supra*, par. 92 (citing advocates for the proposition that “it’s elderly African American or Latino homeowners living on fixed incomes who fall behind and who lose their only source of wealth for a fraction of its true value” and describing a Chicago resident who nearly lost his \$400,000 home over \$20,000 in property taxes and costs); Michael Sallah, Debra Cenziper, Steven Rich, “Left With Nothing,” Wash. Post (Sept. 8, 2013), <https://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/> (last visited Nov. 9, 2023) (of close to 200 Washington, D.C. residents who lost their properties, one in three had liens worth less than \$1,000).

ANSWER: Defendant admits the Housing Action Illinois Report reads in part as quoted. Defendant admits the cited article “Cook County Makes Millions” cited unidentified “advocates” for the quoted portion in this paragraph and discussed a resident who paid \$20,000 in unpaid taxes on a \$400,000 house through a loan from his mortgage lender in order to avoid a tax sale. Defendant admits “Left with Nothing” contains the referenced material.

approximately \$305,000. Realtor.com, “Cook County, IL Real Estate Market,” https://www.realtor.com/realestateandhomes-search/Cook-County_IL/overview (last visited Nov. 10, 2023).

¹⁰ SmartAsset, Overview of Cook County, IL Taxes <https://smartasset.com/taxes/cook-county-illinois-property-tax-calculator#:~:text=Overview%20of%20Cook%20County%2C%20IL%20Taxes&text=The%20state%20of%20Illinois%20is,than%20double%20the%20national%20average> (last visited Nov. 10, 2023).

Defendant denies this paragraph contains complete or accurate summaries of those articles.

Defendant denies any remaining allegation in this paragraph.

95. Nearly all properties listed for sale are, like those of the individual Plaintiffs, mortgage-free, because when properties have mortgages there is typically an interested third-party (*e.g.*, the mortgage lender) who will step in to pay delinquent property taxes and protect the property from sale. *See generally* 35 ILCS 200/20-10 (describing process when copies of tax bill are mailed to mortgage lender). Properties most affected by the tax sale are thus those in which the owners have accumulated significant equity.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

96. Once a homeowner's taxes are sold, the tax buyer gets the right to collect high rates of penalty interest on the back taxes-historically, up to 18% every six months, or 36% per year, though the General Assembly capped the penalty interest rates at a still-high rate of 9% per six months, or 18% per year, beginning in 2022. *See* Housing Action IL Report, *supra*, ¶94 at 5; 35 ILCS 200/21-215.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

97. Partly as a result of these high interest rates, property owners face unreasonable and sometimes insurmountable obstacles when trying to meet the redemption deadline. A 2019 WBEZ analysis found that property owners who were able to redeem after their properties were sold at the tax sale paid, on average, nearly three times what *tax buyers* had paid for the property owners' unpaid taxes. Yousef, *Cook County Makes Millions*, *supra*, 94.

ANSWER: Defendant admits the cited WBEZ article asserts that in the tax year 2016 sale, the residential property owners who cleared their debt after the sale paid on average "nearly three times" the amount the tax buyer paid for their taxes. Defendant lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

98. Every year, many homeowners are unable to redeem their properties. These individuals lose all the equity they have built up in their homes.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

99. Homeowners fail to redeem their properties for reasons including lack of notice, mental illness, hospitalization, or confusion about the redemption process. *See Apex Tax Invs., Inc. v. Lowe (In re Cty. Collector)*, 225 Ill. 2d 208, 217 (2007) (property owner hospitalized with mental illness); *Giordano v. Trzaska*, 2014 IL App (2d) 130778-U (lack of notice and confusion about instructions from Treasurer’s office in Boone County); *see also* Andrew W. Kahrl, *Investing in Distress: Tax Delinquency and Predatory Tax Buying in Urban America* 43(2) Critical Socio. 199 (2017) (“Investing in Distress”) (citing reporting from Washington, D.C. that most residents who lost homes to tax buyers “were black, elderly, sick or suffering some form of mental illness, and living in neighborhoods where real estate values were appreciating rapidly”).

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

100. Defendant Pappas has herself acknowledged that the annual tax sale “usually affects those who are most vulnerable-senior citizens.” Marc Vitali, Delinquent Tax Deadline Looms for 45K Property Owners in Cook County, WTTW (May 2, 2019), <https://news.wttw.com/2019/05/02/delinquent-tax-deadline-looms-45k-property-owners-cook-county> (last visited Nov. 9, 2023).

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

101. Homeowners also fail to redeem due to inadequate funds and inability to secure a loan against the equity in their home. *See* Robyn A. Friedman, *Why Home Equity Loans Are Still So Hard*

to Come By, Wall Street Journal (Apr. 29, 2021), <https://www.wsj.com/articles/why-home-equity-loans-are-still-so-hard-to-come-by-11619699464> (last visited Nov. 9, 2023). Lenders generally do not make mortgage or home equity loans on home equity alone. Key eligibility determinants also include income, credit history or score, liquid assets such as bank deposits, payment history and other factors. Lenders typically do not loan money to persons in default on taxes.

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

102. The net result, for example, is that if a homeowner's failure to pay taxes results in \$10,000 in tax-related debt on a property worth \$100,000, and the homeowner is unable to pay the full past due amount during the redemption period, the tax buyer can get title to the home. The owner receives nothing and loses as much as \$90,000 in equity, while the tax buyer receives the windfall of a property worth \$100,000 for which they paid \$10,000. One recent report suggests homeowners often lose more than \$135,000 in equity. See Sidnee King, *Tax Sale Process Hits Black Homeowners Hardest*, Illinois Answers Project (Nov. 17, 2022), <https://illinoisanswers.org/2022/11/17/tax-sale-process-hits-black-homeowners-hardest/> (last visited Nov. 9, 2023) ("the average home equity lost after eviction [for non-payment of taxes] was at least \$135,000, while the median cost for tax purchasers to get a lien on their properties was just over \$2,000.").

ANSWER: Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

Defendants Disproportionately Harm Homeowners of Color

103. Plaintiffs are not challenging Defendants' assessment or collection of taxes. Instead, they are challenging Defendants' failure to compensate homeowners, thus depriving homeowners of the value of the difference between the market value of their residential properties and the amounts they owe in delinquent taxes, penalties and interest, which we have

referred to, and which is commonly referred to, as equity. This significant harm disproportionately affects communities of color, a fact that Defendant Pappas has repeatedly acknowledged.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

104. Just last year, for instance, Pappas stated that the “majority of the taxes offered” at the tax sale held in May of 2022 “are for properties in minority communities.” ABC7, *Cook County Treasurer Begins Holding Delinquent Property Tax Sale*, <https://abc7chicago.com/cook-county-property-tax-sale-bill/11840970/> (last visited Nov. 9, 2023). According to Treasurer Pappas, “Year after year, a disproportionate number of properties on the list are in majority Black and Latino communities,” Pappas said. “Ultimately, there’s nothing about this system that works.” Sidnee King, *Tax Sale Process Hits Black Homeowners Hardest* (Nov. 17, 2022), <https://illinoisanswers.org/2022/11/17/tax-sale-process-hits-black-homeowners-hardest/> (last visited Nov. 9, 2023).

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

105. Almost 24% of Cook County residents identify as Black. About 26% identify as Latino, and about 41% identify as White. U.S. Census Bureau, QuickFacts: Cook County, Illinois, <https://www.census.gov/quickfacts/fact/table/cookcountyillinois/PST045222> (last visited Nov. 9, 2023). However, Black and Latino homeownership rates (38% and 46% respectively) lag far behind the county’s White homeownership rate of 70%. Zachary Leiter,

Wealth Inequality and the Racial Wealth Gap, Chi. Reporter (Apr. 6, 2023), <https://www.chicagoreporter.com/wealth-inequality-and-the-racial-wealth-gap-new-study-shows-cook-county-residents-wealth-disparity-and-the-problem-is-far-worse-for-the-black-and-latinx-population/> (last visited Nov. 9, 2023).¹¹

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

106. In 2021, more than 75% of the parcels set for sale at the annual tax sale were in majority-Black and -Latino neighborhoods, and this is typically the case with each year's tax sale.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

107. Given this high rate of tax sales in Black and Latino neighborhoods, Cook County's long and well-documented history of residential housing segregation, studies of tax sales, and upon information and belief, while they comprise a minority of homeowners in Cook County, the vast majority of homeowners who failed to redeem their taxes-and consequently in all likelihood had a tax deed issued to a tax buyer-were Black and Latino, as has been the case throughout the tax sale's history.¹²

¹¹ Collectively these statistics suggest that approximately 50% of homeowners in Cook County are White, 16% Black, and 21% Latino, assuming a countywide homeownership rate of approximately 56.8%. *See* Institute for Housing Studies, *2021 State of Rental Housing in Cook County* (Sept. 30, 2021), <https://www.housingstudies.org/releases/state-rental-2021/> (last visited Nov. 9, 2023) (43.2% of Cook County households are renters).

¹² *See, e.g.,* Housing Action Illinois, *Racial Disparities and Cook County Tax Sale Evictions* (Nov. 2021), <https://housingactionil.org/downloads/Policy/Racial-Disparities-and-Cook-County-Tax-Sale-Evictions.pdf> (last visited Nov. 9, 2023).

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

108. As a result, and upon information and belief, those who suffer a loss of the equity owned in their property after a tax deed is issued are predominately and disproportionately Black and Latino.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

109. Depriving homeowners, especially minority homeowners, of the market value of their residential properties in excess of the amounts they owe in delinquent taxes, penalties, and interest prevents them from passing on their most valuable asset to future generations, thereby widening the racial wealth gap.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal

Nov. 9, 2023) (showing statistical disparities in tax sale evictions between majority-Black and -Latino communities in Cook County versus majority-White communities); Marisa Novara and Amy Khare, Two Extremes of Residential Segregation, Metropolitan Planning Council, at 202 (last visited Nov. 9, 2023), available at https://www.jchs.harvard.edu/sites/default/files/a_shared_future_two_extremes_residential_segregation.pdf (“[T]he Chicago region is also known for its patterns of racial and economic segregation.”); Daniel Cooper and Shehara Waas, *Segregation and Inequality Make the Chicago Region More Vulnerable*, Metropolitan Planning Council (Mar. 25, 2020), <https://www.metroplanning.org/news/8835/Segregation-and-Inequality-Make-the-Chicago-Region-More-Vulnerable> (last visited Nov. 9, 2023); Cameron LaPoint, *Property Tax Sales, Private Capital, and Gentrification in the U.S.*, Yale School of Management, at 35 (last revised Sept. 7, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4219360 (last visited Nov. 9, 2023) (study documenting that “tax sale properties are more likely to be owned by black or Hispanic taxpayers than the general population of single family homes”).

rules.

110. Furthermore, it compromises and interferes with their ability to find new housing. A person's home equity is typically the key asset they rely on to secure new housing when they move away from a home that they own. This is especially true for Black and Latino homeowners: at the end of 2019, about 28% of Latino families' wealth and 20% of Black families' wealth came from home equity, compared to about 16% for white families.¹³

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

111. Thus, when a person loses their home to foreclosure after a tax sale and does not receive immediate, fair compensation for their equity, that prevents them-as it prevents the Individual Plaintiffs and the Organizational Plaintiffs' community members-from obtaining new housing, and further harms the local community. In a 2016 paper for *Regional Science and Urban Economics*, several economists found that property tax delinquency sales have a significant effect on the sales of the surrounding properties in Chicago.¹⁴

ANSWER: Defendant lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

112. Depriving minority homeowners of the equity in their homes is yet another example of a long-running pattern in Cook County. From the enforcement of racially restrictive covenants and Federal Housing Administration redlining policies, to unfairly high property tax assessments

¹³ Federal Reserve Bank of St. Louis, "Housing Wealth Climbs for Latinos and Blacks, Yet Racial Wealth Gaps Persist," On the Economy Blog (Apr. 1, 2020), <https://www.stlouisfed.org/on-the-economy/2020/april/housing-wealth-climbs-hispanics-blacks-racial-wealth-gaps-persist> (last visited Nov. 9, 2023).

¹⁴ See generally James Alm et al., *Property Tax Delinquency and Its Spillover Effects on Nearby Properties*, 58 *Regional Sci. & Urban Econ.* 71 (2016) (in study focusing on Chicago, researchers find a "negative spillover of 5.1% (\$12,872) on surrounding properties"), available at <https://www.sciencedirect.com/science/article/abs/pii/S0166046216000119>.

in Black neighborhoods, the discriminatory impacts of local officials’ decisions have undermined Black and Latino families’ wealth and stability. *See, e.g., How the ‘Black Tax’ Destroyed African-American Homeownership in Chicago*, Bloomberg (June 11, 2015) (“For decades, racist property assessments and predatory tax-debt sales went hand-in-hand in Chicago. The system came to be known as the ‘Black Tax.’”), <https://www.bloomberg.com/news/articles/2015-06-11/how-predatory-tax-lien-sales-destroyed-homeownership-for-african-americans-in-chicago> (last visited Nov. 10, 2023); Jason Grotto, *An Unfair Burden*, Chi. Trib. (June 10, 2017), <https://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/assessments.html> (last visited Nov. 9, 2023). It is no surprise that tax sale evictions in the County are concentrated on the south and west sides of Chicago, and that the individuals who are entitled to indemnity for their losses are disproportionately Black and Latino. Housing Action IL Report, *supra*, ¶94 at 1-2.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

113. Even Cook County’s indemnity fund, which is supposed to compensate some of these homeowners for this loss in equity value, completely fails to provide just compensation to these homeowners.

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

114. The indemnity fund is ineffectual in a way that completely undermines its purpose, including because of Defendants’ deliberate acts and omissions. Defendants fail to provide affected homeowners with any type of notice about the fund and their rights, including on websites Defendant Pappas maintains. Defendants fail to provide any type of support for affected

homeowners to apply for funds. Rather than administering a program that automatically provides the just compensation to which the affected homeowners are entitled, Defendants make it the affected homeowners' burden to figure out how to seek compensation. And then, even if homeowners somehow learn about the fund, and can afford to hire an attorney to petition for funds, the fund provides relief to only a small handful of homeowners each year, in an amount less than they are actually owed as just compensation for their lost equity value, and only after substantial expense, effort, and years of delay. The indemnity fund is not designed to, does not, never was intended to, and by its very implementation cannot provide just compensation.

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

115. The indemnity fund has not remedied the widespread problem of homeowners being evicted from homes and losing all of the equity in them, and thus the key asset needed to secure new housing. And the backlog of indemnity fund claims is growing, meaning persons who receive an award now will likely have to wait more than eight years.

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

116. As a result, even homeowners who receive a judgment entitling them to payment from the fund must wait an unreasonable and arbitrary amount of time to receive any money. According to the Cook County Treasurer's response to Plaintiffs' counsel's FOIA request, as of March 29, 2022, Cook County had 270 outstanding indemnity fund judgments waiting to be paid. These judgments totaled over \$25 million and are due on judgments stretching back to 2014. Twenty-five unpaid judgments date back to 2015.

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no

answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph.

117. The net result is that only a few dozen homeowners receive payouts from the Cook County Indemnity fund per year—a fraction of those who have lost the equity in their homes. According to Cook County’s responses to Plaintiffs’ FOIA requests, from 2009 to 2014, the County averaged only 27.5 payouts per year to property owners through the indemnity fund. (*See* Figure 2, below.)

YEAR	NUMBER OF PAYOUTS THROUGH INDEMNITY FUND	TOTAL AMOUNT PAID OUT OF INDEMNITY FUND
2009	39	\$5,298,758
2010	23	\$2,812,100
2011	43	\$3,760,487
2012	46	\$3,120,471
2013	33	\$2,224,500
2014	35	\$2,532,650
2015	15	\$1,222,361
2016	36	\$4,795,998
2017	8	\$714,500
2018	20	\$1,499,000
2019	29	\$1,726,550
2020	4	\$300,000
2021	26	\$1,093,700

(Figure 2)

ANSWER: The allegations in this paragraph are not directed at Defendant, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge sufficient

to admit or deny the allegations in this paragraph.

CLASS ALLEGATIONS

118. The Individual Plaintiffs bring this action individually and on behalf of all others similarly situated pursuant to Fed. R. Civ. P. 23, including Rule 23(b)(1), (2) and (3), in the following classes and subclass (collectively, “the Classes”).

ANSWER: Defendant admits Plaintiffs purport to bring this action individually and as representatives of a proposed class and subclass.

119. Plaintiffs Kidd, Janis and Rates sue individually and as representative of Class A defined as follows:

All persons who meet the following criteria: (1) they owned or were the beneficial owners of residential real property in Cook County, Illinois; (2) the taxes on such property were sold by Defendants; and (3) a tax deed was issued to the purchaser of such taxes and not withdrawn.

ANSWER: Defendant denies this paragraph properly sets forth a definition of a group that could properly be deemed a class and denies that Plaintiffs can establish the prerequisites to maintain a class action under F.R.C.P. 23.

120. Plaintiffs Kidd, Janis and Rates also seeks to represent a subclass of Class A, referred to hereafter as the FHA/ICRA Subclass A, and defined as follows: All persons who are members of Class A and who are Black or Latino.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

121. Additionally, Plaintiff Bell sues individually and as representative of Class B defined as follows:

All persons who meet the following criteria: (1) they own or are or were the beneficial owners of residential real property in Cook County, Illinois; and (2) the taxes on such property were not timely paid.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

122. Plaintiff Bell also seeks to represent a subclass of Class B, hereafter referred to as the FHA/ICRA Subclass B, and defined as follows: All persons who are members of Class B who are Black or Latino.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph relevant to Counts IV and V until such time as required by the Court or federal rules.

123. Excluded from all Classes are (i) any judge or magistrate presiding over this case and their family members; (ii) Defendants and their subsidiaries, successors, predecessors, and any entity in which Defendants have a controlling interest; (iii) anyone who properly executes and files a timely request to be excluded from any Classes from which exclusion is permitted; (iv) anyone whose claims have been finally adjudicated on the merits or otherwise released; (v) Defendants' counsel and Plaintiffs' counsel; and (vi) legal representatives, successors, and assigns of any such excluded persons.

ANSWER: Defendant denies Plaintiffs can establish the prerequisites to maintain a class action under F.R.C.P. 23.

124. **Numerosity.** Upon information and belief and based on the data cited elsewhere in this Complaint well over forty persons are members of the Classes and Subclasses. Between

2018 and spring of 2022, more than 200 people were evicted by the Sheriff for taxes, and this does not count owners who left voluntarily before being evicted, and there was a moratorium on evictions during COVID. Joining them all would be impracticable, but the individuals in question can be identified through Defendants' data. On information and belief based on FOIA requests, approximately 4,000 properties were not redeemed from the 2015 tax sale. Thousands more, the members of Class B and Subclass B, had unpaid taxes, subjecting them to the tax sale and exposing them to the potential loss of their home equity if they were to be unable to redeem their properties.

ANSWER: Defendant denies Plaintiffs have identified a proper class or subclass. Defendant denies Plaintiffs satisfy the numerosity requirement to establish a class action under F.R.C.P. 23. Defendant lacks sufficient knowledge to admit or deny the remaining allegations in this paragraph.

125. **Commonality / Predominance.** Common questions of law and fact exist as to the members of the Classes and Subclasses that predominate over any questions affecting individual Class members. These questions include, without limitation:

- (1) Whether the involuntary transfer of Plaintiffs' and the Classes' properties to tax buyers or others without promptly remitting to Plaintiffs or compensating them for the equity in their home constitutes an uncompensated taking of private property, a violation of due process of law, and/or an excessive fine under the United States Constitution;
- (2) Whether Defendants "make unavailable or deny[] a dwelling" to individuals "because of race, color,...or national origin" in violation of the Fair Housing Act;
- (3) Whether Defendants' conduct violates the Illinois Civil Rights Act by causing a disparate impact on Black and Latino homeowners;

(4) Whether class members whose homes are taken through the property tax sale process were entitled to receive adequate, prompt, and just compensation for their equity;

(5) Whether declaratory and injunctive relief is appropriate.

ANSWER: Defendant denies Plaintiffs have identified a proper class or subclass. Defendant denies Plaintiffs satisfy the commonality and predominance requirements to establish a class action under F.R.C.P. 23. Defendant denies all allegations in this paragraph and subparagraphs (1) through (5).

126. **Typicality.** The named Plaintiffs' claims are typical of those of the Classes and the Subclasses. All of the named Plaintiffs' claims arise from the same challenged policies and practices. The proposed representatives of the Subclasses assert claims that are typical of Subclass members. No Plaintiff presents claims that are unique to themselves.

ANSWER: Defendant denies Plaintiffs have identified a proper class or subclass. Defendant denies Michael Bell's alleged claims are typical of those in any of the proposed classes or subclasses. Defendant denies Plaintiffs satisfy the typicality requirement to establish a class action under F.R.C.P. 23.

127. **Adequacy.** Individual Plaintiffs will fairly and adequately protect the interests of the Classes and Subclasses. Plaintiffs have no interests adverse to the interests of the Classes or Subclasses. Individual Plaintiffs are committed to prosecuting this action and have retained competent, experienced counsel who have had substantial success prosecuting complex class action cases and claims based on constitutional law.

ANSWER: Defendant denies Plaintiffs have identified a proper class or subclass. Defendant denies Plaintiffs satisfy the adequacy requirement to establish a class action under F.R.C.P. 23. Defendant lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

128. **Superiority.** A class action is an appropriate method for the fair and efficient adjudication of this controversy and superior to other methods. Pursuing individual litigation would be unduly burdensome to class members, especially given that many of those class members are impoverished and in no position to hire hourly counsel to sue Defendants. Class treatment is also preferable because of the time and expense required for courts to address each individual case and the risks of having inconsistent adjudications on the important issues raised herein. Overall, a class action would present far fewer management difficulties than a slew of individual lawsuits, as well as the benefits of a single adjudication and comprehensive supervision by a single court.

ANSWER: Defendant denies Plaintiffs have identified a proper class or subclass. Defendant denies Plaintiffs satisfy the superiority requirement to establish a class action under F.R.C.P.

23. Defendant denies the remaining allegations in this paragraph.

129. The Defendants have acted or refused to act on grounds that apply generally to the classes.

ANSWER: Defendant denies Plaintiffs have identified a proper class or subclass. Defendant denies Plaintiffs satisfy the superiority requirement to establish a class action under F.R.C.P.

23. Defendant denies the remaining allegations in this paragraph.

CAUSES OF ACTION

130. All causes of action herein are pleaded in the alternative.

ANSWER: Defendant admits Plaintiffs purport to plead all causes of action in the alternative.

131. Individual Plaintiffs Kidd, Janis and Rates bring Counts I, II, III, IV and V in their individual capacity and also as class representative of Class A and Subclass A, and seek compensatory monetary relief, and all other available relief relating to the Defendants' failure to provide compensation to persons who lose their equity as alleged herein.

ANSWER: Defendant admits Plaintiffs Kidd, Janis and Rates bring Counts I, II, III, IV, and V in their individual capacities and as class representatives seeking monetary and other relief. Defendant denies Plaintiff Kidd is entitled to bring her claims as representative of the class alleged in paragraphs 119-120 and denies Plaintiffs Kidd, Janis and Rates are entitled to any monetary or other relief in their individual capacity or as class representatives.

132. Organizational Plaintiffs and Plaintiff Bell bring Counts I, II, III, IV and V in their individual capacities, and Plaintiff Bell brings those Counts as class representative of Class B and Subclass B, and they seek injunctive and declaratory relief relating to Defendants' failure to provide compensation to persons who lose their equity.

ANSWER: Defendant admits Organizational Plaintiffs and Plaintiff Bell bring Counts I, II, III, IV, and V in their individual capacities seeking injunctive and declaratory relief. Defendant denies Organizational Plaintiffs and Plaintiff Bell are entitled to any relief.

COUNT I
TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION
U.S. CONST. AM. V, XIV and 42 U.S.C. § 1983

133. The allegations contained in paragraphs 1-129 hereof are incorporated and repeated in this paragraph and this Count is brought individually by Individual Plaintiffs and on behalf of their respective Classes, and by the Organizational Plaintiffs individually.

ANSWER: Defendant incorporates its answers to paragraphs 1-132 as if fully stated herein. Defendant denies this claim is properly brought on behalf of the classes alleged in paragraphs 118-129.

134. The Fifth Amendment to the United States Constitution provides that private property shall not "be taken for public use, without just compensation." The Fourteenth Amendment prohibits state and local governments from violating the right to just compensation.

ANSWER: Defendant admits the Fifth Amendment to the United States Constitution prohibits private property from being taken for public use without just compensation. Defendant admits

the Fourteenth Amendment incorporates the Fifth Amendment's "Takings Clause" to the states. Defendant denies this paragraph alleges a complete or accurate characterization of the Fifth and Fourteenth Amendments.

135. Defendants' uniform policies and practices of failing to adequately and promptly compensate Plaintiffs for the equity in properties which Defendants have confiscated or caused homeowners to cease to own is an actionable taking of private property for public use without just compensation, and a deprivation of Plaintiffs' rights secured under, *inter alia*, the Fifth and Fourteenth Amendments to the United States Constitution.

ANSWER: Defendant denies the allegations in this paragraph.

136. Defendants' actions in failing to pay just compensation are *ultra vires*, as takings of property are only permitted when just compensation promptly follows.

ANSWER: Defendant denies the allegations in this paragraph.

137. Defendants' violations of rights secured by the Fifth and Fourteenth Amendments are actionable pursuant to 42 U.S.C. §1983, *and* as direct claims brought under those Amendments. Plaintiffs' claims are brought directly and under §1983.

ANSWER: Defendant denies the allegations in this paragraph.

138. As a direct, proximate and foreseeable result of Defendants' unconstitutional failure to compensate Plaintiffs and the Class A as alleged, Plaintiffs and Class A members whose property value has been taken from them have been injured and damaged and are entitled to just compensation and appropriate post-foreclosure injunctive relief.

ANSWER: Defendant denies the allegations in this paragraph.

139. Organizational Plaintiffs and their members have personally suffered and now suffer injury. They and Plaintiff Bell and the members of Class B continue to be threatened with and are in immediate danger of future injury likely to be redressed by a favorable decision. No adequate remedy at law is available and violations of Constitutional rights *per se* cause and threaten irreparable harm.

They are entitled to an injunction requiring Defendants to, among other things, cease and refrain from future seizures of equity without prompt, just compensation.

ANSWER: Defendant denies the allegations in this paragraph.

**COUNT II
DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS
U.S. CONST. AM. XIV and 42 U.S.C. § 1983**

140. The allegations contained in paragraphs 1-129 hereof are incorporated and repeated in this paragraph and this Count is brought individually by Individual Plaintiffs and on behalf of their respective Classes, and by Organizational Plaintiffs individually.

ANSWER: Defendant incorporates its answers to paragraphs 1-132 as if fully stated herein. Defendant denies this claim is properly brought on behalf of the classes alleged in paragraphs 118-129.

141. The Due Process Clause of the Fourteenth Amendment prohibits the government from depriving “any person of life, liberty, or property, without due process of law” U.S. Const. amend. XIV, § 1.

ANSWER: Defendant admits the Fourteenth Amendment to the United States Constitution prohibits the government from depriving “any person of life, liberty, or property, without due process of law.” Defendant denies this paragraph alleges a complete or accurate characterization of the Fourteenth Amendment rights.

142. Defendants’ actions as alleged herein deprive Plaintiffs of due process and of a fundamental property interest without due process of law.

ANSWER: Defendant denies the allegations in this paragraph.

143. Plaintiffs and Class members have a protected property interest in the equity in their

home.

ANSWER: Defendant denies the allegations in this paragraph and denies taking any actions that violate Plaintiffs' property interests.

144. Plaintiffs and Class members have a protected property interest existing by reason of federal and state common law, as well as an interest created by the Illinois General Assembly in creating the indemnity fund.

ANSWER: Defendant denies the allegations in this paragraph and denies taking any actions that violate Plaintiffs' property interests.

145. Defendants have created, implemented and administered procedures for administering the program for indemnifying homeowners' losses in a way that fails to provide Plaintiffs and Class members with a fair, timely, and adequate means of securing compensation for taking the entire value of a property over and above any liability for taxes, interest and fees.

ANSWER: Defendant denies the allegations in this paragraph.

146. As a direct, proximate and foreseeable result of Defendants' unconstitutional failure to indemnify Plaintiffs and the members of Class A and failure to provide fair, timely and adequate redress as alleged, Plaintiffs and Class A members have been injured and damaged and are entitled to compensation and appropriate post-foreclosure injunctive relief.

ANSWER: Defendant denies the allegations in this paragraph.

147. Organizational Plaintiffs and their members have personally suffered and now suffer injury, and they and Plaintiff Bell and the members of Class B continue to be threatened with and are in immediate danger of future injury likely to be redressed by a favorable decision. No adequate remedy at law is available and violations of Constitutional rights *per se* cause and threaten irreparable harm. They are entitled to an injunction requiring Defendants to, among other things,

cease and refrain from future seizures of equity without prompt, just compensation.

ANSWER: Defendant denies the allegations in this paragraph.

**COUNT III
EXCESSIVE FINES
U.S. CONST. AM. VIII, XIV and 42 U.S.C. § 1983**

148. The allegations contained in the foregoing paragraphs 1-129 hereof are incorporated and repeated in this paragraph and this Count is brought by Individual Plaintiffs individually and on behalf of their respective Classes, and by Organizational Plaintiffs individually.

ANSWER: Defendant incorporates its answers to paragraphs 1-132 as if fully stated herein. Defendant denies this claim is properly brought on behalf of the classes alleged in paragraphs 118-129.

149. The Eighth Amendment to the United States Constitution prohibits the imposition of excessive fines. The Eighth Amendment is applicable to the State of Illinois and the governmental entities within it by operation of the Fourteenth Amendment to the United States Constitution.

ANSWER: Defendant admits the Eighth Amendment to the United States Constitution prohibits the imposition of excessive fines and admits the Eighth Amendment is incorporated to the states. Defendant denies this paragraph alleges a complete or accurate characterization of the Eighth Amendment rights. Defendant denies it is a governmental entity of the State of Illinois.

150. Taking the entire value of a property over and above any liability for taxes, interest and fees without providing just compensation is purely punitive and an excessive fine under the Eighth Amendment to the United States Constitution.

ANSWER: Defendant denies the allegations in this paragraph.

151. Defendants are engaged in assessing and collecting prohibited excessive fines.

ANSWER: Defendant denies the allegations in this paragraph.

152. As a direct, proximate and foreseeable result of Defendants' unconstitutional failure to compensate Plaintiffs and the members of Class A as alleged, Plaintiffs and Class A members whose property value has been taken from them have been injured and damaged and are entitled to compensation and appropriate post-foreclosure injunctive relief.

ANSWER: Defendant denies the allegations in this paragraph.

153. Organizational Plaintiffs and their members have personally suffered and now suffer injury, and they and Plaintiff Bell and the members of Class B continue to be threatened with and are in immediate danger of future injury likely to be redressed by a favorable decision. No adequate remedy at law is available and violations of Constitutional rights *per se* cause and threaten irreparable harm. They are entitled to an injunction requiring Defendants to, among other things, cease and refrain from future seizures of equity without prompt, just compensation.

ANSWER: Defendant denies the allegations in this paragraph.

**COUNT IV
VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3604
(Disparate Impact and Disparate Treatment)**

154. The allegations contained in the paragraphs 1-129 hereof are incorporated and repeated in this paragraph and this Count is brought on behalf of Individual Plaintiffs individually and on behalf of their respective FHA/ICRA Subclasses, and by Organizational Plaintiffs individually.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

155. The federal Fair Housing Act makes it unlawful "[t]o ... make unavailable or deny a dwelling to any person because of race, color, or national origin." 42 U.S.C. § 3604(a).

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts

IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

156. Disparate impact claims are cognizable under the Fair Housing Act. *See Texas Dep't of Hous. & Cmty. Affs. V Inclusive Communities Project, Inc.*, 576 U.S. 519, 546-57 (2015). Defendants have publicly acknowledged that their policies and practices related to the tax sale have disproportionately impacted minority communities. On information and belief, these policies have been carried out for many years with Defendants' knowledge of their disproportionate impact. This has included knowledge that Defendants' policies result in a disproportionate failure to provide prompt and just compensation for the taking of equity, and that such equity deprivation is not only harsh but unnecessary to the collection of taxes, as evidenced by, among other things, the fact that many governments successfully collect taxes without employing such policies. Their failure to take action to address this known disparate impact has become disparate treatment, a direct violation of the FHA. Plaintiffs bring their Fair Housing Act claims under both theories of disparate impact and disparate treatment.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

157. Plaintiffs and members of the FHA/ICRA Subclasses are "aggrieved persons" within the meaning of 42 U.S.C. § 3613(a).

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

158. Black and Latino property owners are disproportionately represented in the tax sale population, disproportionately have tax deeds issued for their homes, and are disproportionately

victimized by the uncompensated loss of equity described herein.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

159. The uncompensated confiscation of these homeowners' equity over and above liability for taxes, interest and fees through the tax sale process thus especially burdens Black and Latino property owners in Cook County, making housing unavailable or significantly less available to these property owners because of their race or color, in violation of the Fair Housing Act. Defendants' failure to adequately and promptly compensate these homeowners for their lost equity deprives Plaintiff and the Subclasses of the primary asset they would otherwise rely on to secure new housing.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

160. Defendants' failings also include their failure to provide adequate notice of the indemnity fund's existence and assist affected homeowners in making claims, which could theoretically provide a pathway-albeit a severely delayed and obstructed pathway-to receiving partial compensation. However, Defendants' failings also render this pathway inadequate because of their refusal to direct funding to the indemnity fund to cover all filed claims, not to mention claims that go unfiled because of their willful decision to not inform affected homeowners of the fund's existence.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

161. As a direct, proximate and foreseeable result of Defendants' unconstitutional failure to fully and promptly compensate Plaintiffs and the Subclass A as alleged herein, Plaintiffs and Subclass A members whose property value has been taken from them have been injured and damaged and are entitled to compensation, attorneys' fees and costs and appropriate post-foreclosure injunctive relief. *See* 42 U.S.C. § 3613(c).

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

162. Organizational Plaintiffs and their members have personally suffered and now suffer injury, and they and Plaintiff Bell and the members of Subclass B continue to be threatened with and are in immediate danger of future injury likely to be redressed by a favorable decision. No adequate remedy at law is available and violations of Constitutional rights *per se* cause and threaten irreparable harm. They are entitled to an injunction requiring Defendants to, among other things, cease and refrain from future seizures of equity without prompt, just compensation.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

COUNT V
VIOLATION OF THE ILLINOIS CIVIL RIGHTS ACT, 740 ILCS 23/5
(Disparate Impact and Disparate Treatment)

163. The allegations contained in paragraphs 1-129 hereof are incorporated and repeated in this paragraph, as well as those alleged in Count IV of this pleading, and this Count is brought by Individual Plaintiffs individually and on behalf of their respective FHA/ICRA Subclasses, and by Organizational Plaintiffs individually.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in

this paragraph until such time as required by the Court or federal rules.

164. The Illinois Civil Rights Act (“ICRA”) provides that “[n]o unit of State, county, or local government in Illinois shall ... utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.” 740 Ill. Comp. Stat. Ann. 23/5.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

165. Disparate impact claims are cognizable under ICRA. *See Cent. Austin Neighborhood Ass’n v. City of Chicago*, 2013 IL App (1st) 123041, par. 28. Defendants have publicly acknowledged that their policies and practices related to the tax sale have disproportionately impacted minority communities. On information and belief, these policies have been carried out for many years with Defendants’ knowledge of their disproportionate impact. This has included knowledge that Defendants’ policies result in a disproportionate failure to provide prompt and just compensation for the taking of equity, and that such equity deprivation is not only harsh but unnecessary to the collection of taxes, as evidenced by, among other things, the fact that many governments successfully collect taxes without employing such policies. Their failure to take action to address this known disparate impact has become disparate treatment, a direct violation of the ICRA. Plaintiffs bring their ICRA claims under both theories of disparate impact and disparate treatment.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

166. Defendants are units of state, county, or local government in Illinois.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts

IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

167. Defendants' failure to compensate persons whose equity was seized via issuance of a tax deed—who are disproportionately Black and Latino, in Cook County—subjects persons to discrimination, and specifically, Defendants' method of failing to compensate taxpayers whose equity or surplus value is seized has the effect of subjecting individuals to discrimination because of their race or color.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

168. As a direct, proximate and foreseeable result of Defendants' unconstitutional failure to compensate Plaintiffs and the Subclass B as alleged, Plaintiffs and Subclass B members whose property value has been taken from them have been injured and damaged and are entitled to compensation, attorneys' fees and costs and appropriate post-foreclosure injunctive relief. See 740 Ill. Comp. Stat. Ann. 23/5(a).

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

169. Organizational Plaintiffs and their members have personally suffered and now suffer injury, and they and Plaintiff Bell and the members of Subclass B continue to be threatened with and are in immediate danger of future injury likely to be redressed by a favorable decision. No adequate remedy at law is available and violations of Constitutional rights *per se* cause and threaten irreparable harm. They are entitled to an injunction requiring Defendants to, among other things, cease and refrain from future seizures of equity without prompt, just compensation.

ANSWER: Defendant contemporaneously with this answer files a Motion to Dismiss Counts

IV and V pursuant to F.R.C.P. 12(b)(6). Defendant reserves its answer to the allegations in this paragraph until such time as required by the Court or federal rules.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Certify this action as a class action pursuant to Fed. R. Civ. P. 23, with Plaintiffs designated, as appropriate, as representatives of the Classes and Subclasses described herein and Plaintiffs' undersigned counsel designated as Class/Subclass Counsel;
- b. Award Plaintiffs and the members of Class A and/or Subclass A just compensation and/or damages, including prejudgment interest, in an amount determined at trial;
- c. Award Plaintiffs and the Classes and/or Subclasses reasonable attorney's fees and costs, as provided by law;
- d. Declare that the inadequately or non-compensated seizure of equity as alleged herein is unlawful and discriminatory under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution, the Fair Housing Act, and the Illinois Civil Rights Act;
- e. Enjoin Defendants from seizing or causing to be seized the equity in homes without promptly and adequately providing compensation, and access to compensation, as described herein; and
- f. Grant the Plaintiffs and the Classes and/or Subclasses such further relief as may be deemed just and proper to secure and protect their right to just compensation, and protection from the violations of the U.S. Constitution and federal and state law described herein.

ANSWER: Defendant denies Plaintiffs are entitled to any of the relief sought in paragraphs (a) through (f).

JURY DEMAND

Defendant demands a trial by jury as to all issues so triable.

GENERAL DENIAL

All allegations that have not been specifically admitted are hereby denied. Furthermore, Defendant denies that Plaintiffs are entitled to the relief sought.

FIRST AFFIRMATIVE DEFENSE

Plaintiff Michael Bell and the members of proposed Class B and Subclass B lack standing to bring this action.

SECOND AFFIRMATIVE DEFENSE

The organizational Plaintiffs may lack standing to bring this action.

THIRD AFFIRMATIVE DEFENSE

The claims asserted by Plaintiffs and by some members of the proposed class may be barred partially or completely by laches.

FOURTH AFFIRMATIVE DEFENSE

The claims asserted by Plaintiffs on behalf of some members of the proposed classes may be barred partially or completely by the relevant statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs Kidd, Janis and Rates and their proposed class members may lack standing.

Respectfully submitted,

KIMBERLY M. FOXX
State's Attorney of Cook County

By: /s/ Kathleen A. Murphy
Kathleen A. Murphy
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602
Kathleen.murphy@cookcountysao.org
(312) 603-1064