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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Christine M. Searle,

Plaintiff,

v.

John M. Allen (“Allen”), in his official capacity as The Treasurer of Maricopa County; Arapaho LLC; American Pride Properties, LLC; Maricopa County, John Doe, Jane Doe, Black Corporations, White Partnerships, and Green Limited Liability Companies,

Defendants

Case No. CV-24-00025-PHX-JJT

Assigned Judge: John J. Tuchi

Plaintiff’s Opposition to Maricopa County’s Motion to Dismiss. See ECF No. 51.

1 Plaintiff Christine M. Searle (“Plaintiff”) files this Opposition to Maricopa County’s
2 Joinder to Defendant AMPP’s Motion to Dismiss filed on May 6, 2024, by Maricopa
3 County (“the County”). *See* ECF 51.

4 The County does not contest that Ms. Searle’s home was transferred to Defendants
5 Arapaho and American Pride on February 1, 2022, that Defendant Allen—in his role as
6 Treasurer for Maricopa County—facilitated that transfer, or that Ms. Searle is on the verge
7 of being evicted from the home, pending the outcome of this litigation. Nor does the County
8 assert any brand of mootness with respect to the change in Arizona’s state law. And, to
9 their credit, the County does not actually contest the underlying merits of Ms. Searle’s
10 claims—that she has in fact been deprived of her home for a non-public use, and without
11 just compensation, and that the deprivation constitutes an excessive fine, *inter alia*.
12 Instead, the County relies on the same faulty arguments raised by Defendants Arapaho and
13 American Pride, and advances the position that the stipulations that the Attorney General
14 entered into in this case—which essentially concede the merits of Ms. Searle’s takings
15 claim—in fact *immunizes* the County from liability.

16 None of this works. As detailed in the Second Amended Complaint (hereinafter,
17 “Complaint”), Arizona’s prior tax lien scheme resulted in an unconstitutional taking of Ms.
18 Searle’s property without just compensation, was for a non-public purpose, and constituted
19 an excessive fine, violating her rights under both the U.S. and Arizona Constitutions. *See*
20 ECF 45. The U.S. Supreme Court’s recent decision in *Tyler* confirms that the retention of
21 surplus equity from the sale of property to satisfy a tax debt—which no party contests took
22 place less than 2 years ago, and which is ongoing—is an unconstitutional taking. That is
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1 precisely what happened to Ms. Searle. None of the procedural or substantive arguments
2 raised by the County undermine the viability of these claims.

3 **Standard of Review**

4 On a motion to dismiss under Rule 12(b)(6), courts accept all factual allegations in
5 the plaintiff's complaint as true, and draw all reasonable inferences in favor of the plaintiff.
6 *See Ass'n for Los Angeles Deputy Sheriffs v. Cnty. of Los Angeles*, 648 F.3d 986, 991 (9th
7 Cir. 2011). Inferences in favor of the defendant are never permitted at this stage. Dismissal
8 is proper only if it appears beyond doubt that no set of facts can support the claims. *Id.*

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10 Like Defendants Arapaho and American Pride, the County fails to grapple with the
11 light burden placed on plaintiffs at the motion to dismiss stage after the Supreme Court's
12 decision in *Tyler*. *See Tyler v. Hennepin Cnty.*, 598 U.S. 631, 637 ("At this initial stage of
13 the case, Tyler need not definitively prove her injury or disprove the County's defenses.
14 She has plausibly pleaded on the face of her complaint that she suffered financial harm
15 from the County's action, *and that is enough for now.*") (emphasis added).

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17 Even if dismissal is granted, the Ninth Circuit emphasizes the policy of freely
18 granting leave to amend with "extreme liberality." *City of Fernley v. Conant*, No. 22-
19 15400, 2023 WL 2549792A, *2 (9th Cir. Mar. 17, 2023). Dismissal without leave to amend
20 is only proper if a complaint's deficiencies cannot conceivably be cured by amendment.
21 *Id.* That is certainly not the case here, as Ms. Searle has stated viable constitutional claims.

22 **Argument**

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24 **I. The County's Invocation of *Rooker-Feldman* Fares No Better Than The Private**
25 **Plaintiffs.**
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1 Ms. Searle hereby incorporates by reference her previous arguments raised in her
2 Opposition to Defendants’ Motion to Dismiss. *See* ECF 37 at 3-6. Like the Private Party
3 Defendants, the County never identifies which of Ms. Searle’s claims it thinks is subject to
4 the *Rooker-Feldman* doctrine, or how the doctrine applies to each and every theory of
5 recovery. In any event, the asserted defense universally fails.
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7 Most notably, as Ms. Searle has stated previously, she is not appealing the state
8 court foreclosure judgment itself. She does not allege that the state court made any error of
9 law, or that this Court must review the reasoning of any state court opinion. *See In re*
10 *Philadelphia Entm’t & Dev. Partners*, 879 F.3d 492, 500 (3rd Cir. 2018) (“[T]he *Rooker-*
11 *Feldman* doctrine would not apply because the plaintiff is not complaining of legal injury
12 caused by a state court judgment because of a legal error committed by the state court.”)
13 (internal quotation marks omitted).
14

15 Rather, Ms. Searle sues the County because it gave a third-party the right to deprive
16 her of property without just compensation, among other things. Such a claim falls squarely
17 outside of the *Rooker-Feldman* doctrine. *See, e.g., Pell v. Nuñez*, 99 F.4th 1128, 1135 n.3
18 (9th Cir. 2024) (“Complaint[s] [that] challenge[] the interpretation and application of a
19 statute ... do not implicate the *Rooker-Feldman* doctrine.”); *cf. McCormick v. Braverman*,
20 451 F.3d 382, 393 (6th Cir. 2006) (rejecting *Rooker-Feldman* where the plaintiff
21 challenged a vague and overbroad state statute, and stating “these claims do not assert
22 injuries from the state court judgments.”); *Vuyanich v. Smithton Borough*, 5 F.4th 379, 387
23 (3rd Cir. 2021) (“[W]ithout reviewing or rejecting the state court order, that Court could
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1 have held unconstitutional the ordinance of the Borough ostensibly authorizing it to seize
2 the Vuyaniches' property.”).

3 Indeed, one Connecticut District Court recently confirmed this reading of the
4 *Rooker-Feldman* doctrine with respect to post-*Tyler* suits:

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6 But Traylor's claims against the town under the Takings
7 Clause, Excessive Fines Clause, and the Connecticut
8 Constitution were not raised and decided in state court prior to
9 the initiation of this case. Indeed, these claims appear to be
10 modeled on the United States Supreme Court's recent decision
11 in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), which was
12 decided in May 2023 after Traylor filed this lawsuit.
13 Accordingly, the *Rooker-Feldman* doctrine does not bar those
14 claims against the town.

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16 *Traylor v. Pacciuco, LLC*, No. 3:23-cv-00329 (JAM), 2024 WL 839523, *5 (D. Conn. Feb.
17 28, 2024); accord *In re Philadelphia Entm'r & Dev. Partners*, 879 F.3d at 500 (“When the
18 plaintiff attempts to litigate previously litigated matters, the federal court has jurisdiction
19 as long as the federal plaintiff presents some independent claim, even if that claim denies
20 a legal conclusion reached by the state court.”); *Unknown Party v. Arizona Bd. of Regents*,
21 No. CV-18-01623-PHX-DWL, 2019 WL 7282027, *7 (D. Ariz. Dec. 27, 2019) (“[T]his is
22 not the sort of case that triggers *Rooker-Feldman*. Doe isn't suing the Maricopa County
23 Superior Court, isn't asking this Court to directly overturn any aspect of that court's
24 October 29, 2018 decision, and is fundamentally complaining of injuries caused by adverse
25 parties..., not by the Maricopa County Superior Court...”); *Rosier v. Strobel*, No. CV-14-
26 01399-PHX-JJT, 2014 WL 11515026 (D. Ariz. Dec. 23, 2014) (“[W]hile *Rooker-Feldman*
27 bars federal district court review of injuries caused by state court judgments, it does not
preclude review of injuries caused by another party.”).

1 The Ninth Circuit’s decision in *Henrichs v. Valley View Dev.*, 474 F.3d 609 (9th
2 Cir. 2007), is not to the contrary. There, the Court merely held that a claim was barred by
3 *Rooker-Feldman* when the plaintiff alleged that it suffered an injury “from the state court’s
4 purportedly erroneous judgment.” *Id.* at 616. By contrast, Ms. Searle has never alleged that
5 the foreclosure action was erroneous, or that the court misapplied the law.
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7 **II. The County Cannot Rely on Res Judicata.**

8 Plaintiff hereby incorporates by reference her previous arguments raised in her
9 Opposition to Defendants’ Motion to Dismiss. *See* ECF 37 at 6-9.

10 The County’s res judicata argument is fundamentally flawed, as it is premised on
11 the incorrect assumption that Ms. Searle’s constitutional claims could have been raised
12 during the foreclosure action—an action for which the County was not even a party.
13 However, Ms. Searle’s claims only arose when the Treasurer’s Deed was issued without
14 any compensation for Mr. Searle. As the Supreme Court recognized in *Knick v. Twp. of*
15 *Scott, Pa.*, 588 U.S. 180 (2019), a Taking does not occur until the government actually
16 deprives an owner of property without just compensation. *Id.* at 185 (“A property owner
17 has an actionable Fifth Amendment takings claim when the government takes his property
18 without paying for it.”) (emphasis added). The foreclosure judgment here merely
19 authorized a future transfer of title, but it was the actual transfer via the Treasurer’s Deed—
20 and the lack of compensation therefor—that gave rise to Ms. Searle’s constitutional claims.
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22 Moreover, res judicata only bars claims that could have been raised in the prior
23 action, not new claims arising from the defendant’s subsequent conduct. *See Whole*
24 *Woman’s Health v. Hellerstedt*, 579 U.S. 582, 599 (2016) (“The doctrine of claim
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1 preclusion (the here-relevant aspect of res judicata) prohibits ‘successive litigation of the
2 very same claim’ by the same parties.”) (citation omitted, emphasis added) (abrogated on
3 other grounds). Here, not only was the County not a party to the earlier action, but Ms.
4 Searle’s claims are distinct, arising from the post-judgment deprivation of her property
5 without just compensation. They could not have been raised in the prior state court action.
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7 Moreover, Arizona differentiates between res judicata, which bars successive suits
8 based on the same cause of action, and collateral estoppel, which prevents re-litigation of
9 issues actually litigated in a prior action. *See Fuller v. Hartford Acc. and Indem. Co.*, 124
10 Ariz. 76, 78 (Ariz. Ct. App. 1979). Here, Defendants incorrectly invoke res judicata instead
11 of collateral estoppel. And the elements required for collateral estoppel are not met.
12 Collateral estoppel applies only when an issue was actually litigated in a previous suit, a
13 final judgment was entered, and the party against whom the doctrine is invoked had a full
14 opportunity to litigate the matter. *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 573
15 (Ariz. 1986). The state court default judgment did not involve the litigation of the
16 constitutional issues presented here, as it was a narrow in rem tax foreclosure action. The
17 recent Supreme Court decision in *Tyler*, further underscores the distinction between the
18 foreclosure judgment and the subsequent unconstitutional taking of Ms. Searle’s property.
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22 **III. The Assertion That Ms. Searle’s Claims Are Time-Barred Fails.**

23 **a. Ms. Searle’s Federal Claims Are Not Time-Barred.**

24 Plaintiff hereby incorporates by reference her previous arguments raised in her
25 Opposition to Defendants’ Motion to Dismiss. *See* ECF 37 at 9-14.
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1 First, the County does not dispute that Ms. Searle still maintains “use” of the
2 property in question. *See* ECF 10, at 4 (“Defendant Arapaho has stipulated to the relief
3 requested in Searle’s motion, such that eviction proceedings shall not occur for at least 12
4 months.”) (paragraph 7); *id.* at 6 (“Undersigned counsel certifies that this Motion was
5 circulated to counsel for Defendant Arapaho, and that Defendant Arapaho’s counsel has
6 conveyed agreement with paragraphs 7-10 above). Without more, there is no statute of
7 limitations issue with Ms. Searle’s claims. *See Wyss v. City of Hoquiam*, 111 Fed. Appx.
8 449, 451 (2004) (“An unconstitutional taking occurs when a property owner is deprived of
9 all reasonable use of a property, including any use that may be less profitable or beneficial
10 than desired.”) (emphasis added); *Transwestern Pipeline Co., LLC v. 17.19 acres, more or*
11 *less, of permanent easement located in Maricopa Cnty.*, 2:08-cv-00033 JWS, 2008 WL
12 11394318, *3 (D. Ariz. Dec. 15, 2008) (“Under federal law, a taking occurs when payment
13 is tendered and title is acquired in the usual course.”) (emphasis added); *id.* at *3
14 (“Similarly, under Arizona law, a taking occurs when a possessor exercises dominion over
15 the property and a condemnor, be it a municipality or private corporation thereafter denies
16 the owner of its usage, its rental value, and its enjoyment.”) (emphasis added).

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21 Second, Ms. Searle’s claims are timely because the “illegal appropriation” of the
22 equity in her house—her injury under Article III—occurred no earlier than February 1,
23 2022, the date on which Defendant Allen issued the Treasurer’s Deed to Ms. Searle’s home.
24 *See Tyler*, 598 U.S. at 636 (an “illegal appropriation” is a classic “pocketbook injury” that
25 gives rise to standing) (emphasis added). Notwithstanding any Ninth Circuit case law to
26 the contrary, under *Tyler*, until Ms. Searle’s property was taken, and taken without
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1 attendant just compensation, her “pocketbook injury” was not yet complete in this context.
2 *Cf. Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016) (“A ‘concrete’ injury ... must actually
3 exist.”).

4 Third, it is not correct that Ms. Searle’s claims began to run before February 1, 2022.
5 Arguments to the contrary, based on the Treasurer’s Deed automatically issuing upon the
6 foreclosure, are factually incorrect. At least one additional thing had to occur. Under A.R.S.
7 § 42-18205(A), the treasurer’s deed issues only after the lienholder pays a \$50 fee.
8 (referring to “a fee of fifty dollars per parcel”). This hurdle—however minor it may seem—
9 is etched in state law, such that the taking is only consummated when the lienholder takes
10 the affirmative step of paying the fee and obtaining the Treasurer’s Deed. Until that act
11 occurs, there is no finality to the process. In other words, the Treasurer’s Deed is not the
12 “inevitable consequence” of the foreclosure action. *Compare contra RK Ventures, Inc. v.*
13 *City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002) (merely holding that an abatement
14 hearing was not “separately actionable” from a decision to hold an abatement hearing); *but*
15 *see id.* at 1060, n. 10 (“[A] particular decision will not be the ‘operative decision’ where it
16 is not a final one.”) (emphasis added). Put another way, if Ms. Searle had brought her
17 claims prior to the payment of the \$50, they would not yet have been ripe.

18 Fourth, the County does not mention or address the fact that Ms. Searle repeatedly
19 invokes the doctrine of equitable tolling. *See* ECF at 45 ¶¶ 111, 120, 128, 137, 145, 152,
20 159, 169, 179. That doctrine permits a plaintiff to bring claims outside of the applicable
21 statute of limitations where (1) the plaintiff has exercised reasonable diligence and (2)
22 extraordinary circumstances put filing within the statute of limitations period beyond the
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1 plaintiff's control. Here, Ms. Searle promptly filed her claims less than a year after *Tyler*,
2 which was decided only in May 2023. She therefore meets this test. *Cf. Padilla v. Keane*,
3 No. 03 Civ. 357(VM), 2003 WL 22462004, *3 (S.D.N.Y. Oct. 29, 2023) (detrimental
4 reliance on old controlling law, combined with unforeseeable Supreme Court decision,
5 constituted extraordinary circumstances justifying equitable tolling). In other words, Ms.
6 Searle contends that all of her claims meet the applicable statute of limitations; but to the
7 extent that the Court disagrees, it should nevertheless reject the County's motion to dismiss,
8 and let the parties litigate the issue of equitable tolling on summary judgment.
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11 In the same vein, a court may dismiss a claim as untimely under Rule 12(b)(6) "only
12 when the running of the statute [of limitations] is apparent on the face of the complaint."
13 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010)
14 (citation and internal quotation marks omitted). From the face of the Complaint, the earliest
15 point at which Ms. Searle was aware of the constitutional violations was when she received
16 the Treasurer's Deed. Therefore, the statute of limitations should be tolled to reflect the
17 date when Ms. Searle received the Treasurer's Deed, as this was when she first became
18 aware of the facts constituting the basis of her claim.
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21 Fifth, Ms. Searle contends that under the circumstances of this case, where a
22 Supreme Court decision effectively invalidates state law and local binding precedent, and
23 triggers the duty to fairly compensate a plaintiff, that Ms. Searle's injury was "ongoing" at
24 the time that she filed the Complaint. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 608-
25 609 (2001) ("A State would be allowed, in effect, to put an expiration date on the Takings
26 Clause. This ought not to be the rule."). As the Court stated in *DeVillier v. Texas*, 601 U.S.
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1 285, 285 (2024), “[A] property owner acquires an irrevocable right to just compensation.”
2 Whatever “irrevocable” means, surely it encompasses bringing a suit within 8 months of a
3 watershed Supreme Court case establishing a constitutional right.

4 **b. The County’s Assertion That Ms. Searle’s State Law Claims Are Time-**
5 **Barred Should Be Rejected.**

6 Ms. Searle incorporates the arguments above relating to her ongoing “use” of her
7 property, and the doctrine of equitable tolling, which the County does not address.
8 Equitable tolling of the state law claims is appropriate because “it would effectuate: (1) the
9 policies underlying the statute, and (2) the purposes underlying the statute of limitations.”
10 *Hosogai v. Kadota*, 145 Ariz. 227, 231 (1985) (superseded by statute on other grounds).
11

12 Here, the primary purpose of the statute of limitations is to protect the courts and
13 the defendant from stale claims where Plaintiff have slept on their rights and evidence may
14 be unavailable. *See Brooks v. S. Pac. Co.*, 105 Ariz. 442 (1970). But “this policy may be
15 outweighed ‘where the interests of justice require vindication of the plaintiff’s rights.’” *Id.*
16 (citing *Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 427 (1965)). Here, the facts
17 surrounding the foreclosure and the unconstitutional retention of her property’s equity are
18 well-documented and recent. The defendants will not be prejudiced, as all of the necessary
19 evidence is readily available. Thus, allowing her claim does not undermine the purpose of
20 the statute of limitations, but rather promotes justice and fairness.
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23 Further, the Arizona and United States Constitutions would also be served by
24 applying equitable tolling. Equitable tolling is necessary to prevent the injustice of evicting
25 Ms. Searle from her home. The constitutional principles at stake and the remedial nature
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1 of her claims align with the policies and purposes of equitable tolling, as recognized by
2 Arizona courts and the U.S. Supreme Court. This Court should therefore allow Ms. Searle’s
3 state law claims to proceed to ensure that her rights are fully protected.

4 **IV. Ms. Searle Has Adequately Stated Her § 1983 Claim Against the County.**

5 **a. Ms. Searle’s Claims Satisfy The *Twombly* Standard.**

6 Ms. Searle has properly alleged a claim arising under § 1983. *See* ECF 45, at 31
7 (“Given these violations, Ms. Searle seeks redress under 42 U.S.C. § 1983, which entitles
8 her to seek relief for the deprivation of her constitutional rights. This includes a rejection
9 of the private-use taking, or in the alternative just compensation for the property taken, as
10 well as any additional relief deemed appropriate by the Court, such as nominal damages,
11 compensatory damages, punitive damages, attorney fees, and costs.”). Nevertheless, the
12 County contends that the Complaint does not adequately state a claim under *Bell Atl. Corp.*
13 *v. Twombly*, 550 U.S. 544 (2007). Specifically, the County contends that Ms. Searle has
14 not pled that the County—a state actor who indisputably facilitated the transfer of Ms.
15 Searle’s home pursuant to state law—was actually acting under “color of state law.”
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19 This is quite an aggressive argument, given that the County *itself* states that it was
20 acting pursuant to state statute. ECF 51, at 3 (“[T]he Arizona Supreme Court reviewed this
21 statute twice and the Court of Appeals once more – never did it find any
22 unconstitutionality.”). And courts generally hold that entities acting pursuant to statute are
23 acting under color of law. *See U.S. v. Classic*, 313 U.S. 299, 326 (1941) (“Misuse of power,
24 possessed by virtue of state law and made possible only because the wrongdoer is clothed
25 with the authority of state law, is action taken ‘under color of’ state law.”); *see also Health*
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1 *and Hospital Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 171 (2023) (nursing
2 facilities receiving Medicaid funding acted under color of law for § 1983 purposes).

3 In any event, Ms. Searle’s well-pled allegations are perfectly adequate to state a
4 claim. She specifically alleged that Maricopa County, through its Treasurer, transferred her
5 property to a private party without just compensation pursuant to Arizona’s statutory tax
6 lien scheme. *See, e.g.*, ECF 45 at ¶¶ 15, 29, 49, 98, 100, 105, 113-116, 123, 133. The
7 statutorily-authorized transfer of property by the County plainly qualifies as conduct under
8 color of state law. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 n.18 (1982) (“[S]tate
9 employment is generally sufficient to render the defendant a state actor”). At the motion to
10 dismiss stage, these allegations are more than sufficient to plead that the County acted
11 under color of state law for purposes of § 1983.

12 Moreover, Ms. Searle has provided ample factual allegations to support each of her
13 federal and state law claims. Her 46-page detailed Complaint goes well beyond “mere
14 recitations of the elements,” and provides a robust factual basis for her causes of action.

15 For instance, with respect to her federal takings claim, Ms. Searle has alleged that
16 the County, acting pursuant to Arizona’s tax lien scheme, deprived her of property far in
17 excess of the tax debt owed, without providing just compensation. *See* ECF 45 ¶¶ 4-7, 14,
18 45-49, 98-105, 112-120. These facts establish a plausible unconstitutional taking under
19 *Tyler*. Ms. Searle has also alleged that this taking was not for a valid public use, as the
20 County transferred her property to a private party that kept the excess equity. *Id.* ¶¶ 99-
21 101, 121-128. These allegations adequately state a claim under the Public Use Clause.
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1 On her federal excessive fines claim, Ms. Searle has alleged that the County's
2 facilitation of a private party's effort to retain of hundreds of thousands of dollars in equity
3 from her home, for a \$1,607.68 tax debt, is a grossly disproportionate penalty that violates
4 the Eighth Amendment. *Id.* ¶¶ 14, 56, 129-137. She has provided detailed facts about the
5 amount of the fine imposed and its lack of proportionality to her underlying tax
6 delinquency. No more is required at the pleading stage to state an excessive fines claim.
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8 Ms. Searle's state law claims are equally well-pled. On her Arizona constitutional
9 claim for a taking without public use, she has alleged that the County's transfer of her home
10 to a private party to satisfy a small tax debt does not serve a public purpose, and is not one
11 of the specifically enumerated private uses permitted by the Arizona Constitution. *Id.* ¶¶
12 138-145. She has also asserted that the County has failed to provide her with just
13 compensation under the Arizona Constitution when it facilitated the transfer of her home,
14 and that the disproportionate fine imposed violates the Arizona Constitution's Excessive
15 Fines Clause. *Id.* ¶¶ 146-152, 153-159.
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18 Finally, on her state law claim for a gift clause violation, Ms. Searle has alleged that
19 the County's transfer of her property to a private party for a small fraction of its actual
20 value constitutes an unconstitutional subsidy. *Id.* at ¶¶ 162-168. She has provided detailed
21 facts showing the disparity between the small tax debt owed and the large amount of equity
22 transferred by the County to a private entity, supporting a plausible gift clause claim under
23 Arizona law. Specifically, she contends that the transfer of her home worth over \$400,000
24 over a mere \$1607.68 tax lien lacks a valid public purpose and, even if a public purpose
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1 exists, the value received the public is grossly disproportional to the benefit conferred to
2 the private party. These facts are more than sufficient to state a plausible gift clause claim.

3 In short, Ms. Searle has provided extensive factual allegations supporting each of
4 her federal and state law claims. The County’s argument that she relies on “mere recitations
5 of the elements” borders on comical, given the clear and detailed facts set forth in the
6 Complaint. The County’s attempts to impose a heightened pleading requirement or demand
7 additional granularity at this stage are baseless.
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9 **b. Ms. Searle’s Claims Relate to a Policy, Practice, And Custom Of The**
10 **County Under *Monell*.**

11 Separately, the County awkwardly splices together arguments related to liability
12 under *Monell v. Dep’t of Soc. Serv. of City of New York*, 436 U.S. 658 (1978), with other
13 arguments apparently related to a now-dismissed individual claim against a different
14 defendant, John Allen, for which qualified immunity might have been a defense. ECF 51,
15 at 3-4 (“The fact that the County Treasurer was aware that some states—with different
16 procedures—were facing litigation over excess funds is insufficient to demonstrate a
17 clearly established precedent.”) (emphasis added).¹ But because Ms. Searle does not seek
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25 ¹ The County also cites to *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), which, although
26 the plaintiff initially pursued a *Monell* claim, is not a decision about *Monell*, but rather
27 qualified immunity. *Id.* at 3 (“At issue here is whether Rivas-Villegas is entitled to qualified
immunity because he did not violate clearly established law.”).

1 damages against John Allen, she responds only to the arguments regarding the County's
2 *Monell* liability under § 1983.²

3 The County's contends that Ms. Searle has not alleged a specific policy, practice, or
4 custom that caused a constitutional violation, as *Monell* requires for municipal liability.
5 But once again, that is quite aggressive, given that the County itself acknowledges that it
6 was following state statute as a matter of policy. Indeed, a "policy" under *Monell* includes
7 official legislative acts, such as the state statutory scheme at issue here. *Clouthier v. County*
8 *of Contra Costa*, 591 F.3d 1232, 1249 (9th Cir. 2010) ("[A] local government may be held
9 liable when implementation of its official policies or established customs inflicts the
10 constitutional injury.") (overruled on other grounds); *Simmons v. Uintah Health Care*
11 *Special Dist.*, 506 F.3d 1281 (10th Cir. 2007) ("[A]ctions taken by employees in
12 compliance with official policy or custom are one way to establish liability on the part of
13 a municipality.") (Gorsuch, J.). Ms. Searle has thus alleged a direct link between the
14 County's transfer of her property pursuant to Arizona's tax lien statutes, and the
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19 ² To be clear, *Monell* liability does not generally require that a Plaintiff point to a clearly
20 established precedent. See *Udd v. City of Phoenix*, No. CV-18-01616-PHX-DWL, 2020
21 WL 1536326, *16 (D. Ariz. Mar. 31, 2020) ("Qualified immunity analysis is irrelevant to
22 the issue of *Monell* liability."); see also *Mendiola–Martinez v. Arpaio*, 836 F.3d 1239, 1250
23 (9th Cir. 2016) ("The proper question regarding the County Defendants was not whether
24 they are entitled to qualified immunity, but whether a reasonable jury could find that
25 MCSO policies caused a violation of Mendiola–Martinez's constitutional rights."); cf.
26 *Cortosluna v. Leon*, 22 F.4th 866 (Mem) (9th Cir. 2022) (remanding issue of *Monell*
27 liability back to district court even after noting that clearly established law was not
violated); *Reyes v. City of Santa Ana*, 832 Fed. Appx. 487, 492 (9th Cir. 2020) ("[A] *Monell*
claim filed by way of 42 U.S.C. § 1983 will withstand a motion to dismiss even if the claim
is based on nothing more than a bare allegation that the individual officers' conduct
conformed to official policy, custom, or practice.") (internal quotation marks omitted).

1 unconstitutional taking of her property without just compensation. No additional
2 allegations of a specific “policy” are necessary.

3 Ms. Searle’s claim is especially strong here because the County has actual notice of
4 *Tyler*—it was decided over a year ago. And Defendant Allen testified in favor of a
5 legislative fix to state law, given *Tyler*. Yet the County has not acted—even in the face of
6 this lawsuit—to remedy the taking that occurred pursuant to the County’s actions.
7

8 **V. Ms. Searle’s Stipulations Do Not Weaken Her Claims Against The County**
9 **Under Section 1983.**

10 In one paragraph of its Motion, the County contends that Ms. Searle’s claims for
11 damages are foreclosed by her stipulations with the Arizona Attorney General. *See* ECF 51
12 at 4. Specifically, the County points to the stipulations that “[t]he State does not presently
13 possess any property or funds that belong to Plaintiff” and “Plaintiff has thus received all
14 the relief from the Attorney General to which she is entitled and that the Attorney General
15 can give with respect to Plaintiff’s claims.” *Id.* (quoting ECF No. 32 ¶ 6). Without
16 explanation, the County then contends that these are “judicial admissions” that
17 “conclusively” preclude Ms. Searle from seeking damages because the County “can be no
18 more liable than the State of Arizona.” *Id.*
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21 But this is a gross misreading of the language agreed upon by Ms. Searle and the
22 Attorney General, which the County played no part in crafting. The stipulations, by their
23 plain terms, address Ms. Searle’s status *Vis-à-vis* the Attorney General on March 20, 2024.
24 With respect to relief, they do not purport to describe the full panoply of what Ms. Searle
25 could, hypothetically, obtain against the Attorney General at some distant point in the
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1 future—if the Court affirmatively entered judgment. Rather, they describe what Ms. Searle
2 was “entitled to” in March 2024, given *Tyler* and the Attorney General’s view of the law.

3 As just one example of this obvious point, if Ms. Searle had obtained a judgment
4 against the Attorney General, she could have sought relief in the form of attorney fees
5 under 42 U.S.C. § 1988. And, hypothetically, the Attorney General, if judgment had been
6 entered, could have agreed to a consent decree with the Court. Yet both of these were items
7 to which Ms. Searle was not “entitled,” on March 20. But the fact that Ms. Searle was not
8 “entitled to” this relief from the Attorney General on March 20 says nothing about her right
9 to damages against the County, at the end of this case. *Accord* ECF 32, at 3 (reserving all
10 claims, arguments, and rights against other defendants in the First Amended Complaint).

13 Separately, the County does not grapple with the fact that the Takings Clause is
14 “self-executing,” and requires payment of just compensation whenever a taking occurs,
15 regardless of whether the government still possesses the property. *See First English*
16 *Evangelical Lutheran Church v. Los Angeles Cnty.*, 482 U.S. 304, 315 (1987) (“[A]
17 landowner is entitled to bring an action in inverse condemnation as a result of the self-
18 executing character of the constitutional provision with respect to compensation.”)
19 (internal quotations omitted). The County facilitated a taking, and it is thus liable for its
20 conduct, regardless of whether it currently holds any property or funds of Plaintiff’s.
21

23 Most notably, it would be an odd result if Ms. Searle, in accomplishing the rare feat
24 of getting an Attorney General to stipulate to the unconstitutionality of state law,
25 accidentally set up a self-inflicted “gotcha” on all of her damages claims against other
26 defendants who participated in the unconstitutional acts at issue. By contrast, the intuitive
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1 conclusion is that she remains free to seek just compensation and damages from the County
2 for the unconstitutional taking of her property.

3 **VI. The County’s Assertion Of A Notice-of-Claim Defense Is Unavailing Because**
4 **No Claim Solely Requests Damages.**

5 The County is also wrong to half-heartedly assert that Arizona’s notice of claim
6 statute provides an “independent basis” for dismissal of all of Ms. Searle’s state law claims.
7 ECF 51 at 4-5. Indeed, the County does not even make an effort to describe how its
8 assertion interacts with Ms. Searle’s separate claims or prayer for relief.
9

10 For instance, Ms. Searle alleges four state law claims against the County: the taking
11 of private property without valid public use (ECF 45 at 35); the taking of private property
12 without just compensation (ECF 45 at 38); the violation of the Excessive Fines (ECF 45 at
13 39); and the violation of the Gift Clause (ECF 45 at 40). While true that the first three of
14 these claims seek damages, they also seek other appropriate relief based on the
15 constitutional violations at play. *See, e.g.*, ECF 45 at 38, 39, 40, 42 (referring to “other
16 appropriate relief,” “other relief,” “other relief,” and a *per se* violation of the Gift Clause,
17 with no request for damages, respectively); *cf.* ECF at 44-45 (prayer for relief seeking
18 declaratory and injunctive relief, among other items).
19
20

21 At a minimum, all of Ms. Searle’s state law claims above may go forward to the
22 extent that she seeks declaratory and injunctive relief—including a claim that she has
23 unlawfully suffered a taking without just compensation. The Arizona Supreme Court and
24 its Court of Appeals have held that the notice of claim statute does not apply to claims for
25 declaratory or injunctive relief regarding the validity of a statute. For instance, in *State v.*
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1 *Mabery Ranch, Co.*, 216 Ariz. 233 (2007), the Court of Appeals of Arizona held that
2 “section 12–821.01 does not apply to a claim such as this, in which a private party seeks
3 an injunction restraining conduct by a public entity.” *Id.* at 245 ¶ 56. Here, Ms. Searle’s
4 state law claims seek declarations that Arizona’s prior tax lien statutes violated the Arizona
5 Constitution, and must therefore be declared invalid and enjoined in their application to
6 Ms. Searle. Such claims for equitable relief regarding the validity of the statutes are not
7 subject to the notice of claim requirements under Arizona precedent. As such, the County’s
8 passing reference to the notice of claim statute does not merit Rule 12(b)(6) dismissal of
9 any, much less all, of Ms. Searle’s state law claims.
10

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12 **VII. At A Minimum, Ms. Searle’s Claims Can Proceed Against Treasurer Allen In
13 His Official Capacity.**

14 Defendant Allen has not responded to the Complaint. And he is not immune from
15 suit for declaratory relief, separate and apart from the County. Under the well-established
16 principle of *Ex Parte Young*, a public official who enforces state law may be named as a
17 defendant in order to obtain prospective relief under 42 U.S.C. § 1983. *See Koala v. Khosla*,
18 931 F.3d 887, 894-95 (9th Cir. 2019) (“Under the principle established in *Ex parte Young*,
19 private individuals may sue state officials in federal court for prospective relief from
20 ongoing violations of federal law, as opposed to money damages, without running afoul of
21 the doctrine of sovereign immunity.”).
22

23
24 Here, Ms. Searle has properly named Treasurer Allen in his official capacity to
25 obtain prospective relief from the ongoing unconstitutional taking of her property without
26 just compensation, among other items. In other words, prospective relief to strike down the
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1 deprivation of her property, or at least comply with the Constitution’s just-compensation
2 clause, are fully available to Ms. Searle against Defendant Allen.

3 Similarly, public officials may not authorize others, including private parties, to
4 commit constitutional violations. *See Norwood v. Harrison*, 413 U.S. 455, 464 (1973) (“It
5 is also axiomatic that a state may not induce, encourage or promote private persons to
6 accomplish what it is constitutionally forbidden to accomplish.”); ECF 32, at 3 (“And
7 because the State cannot authorize others to do that which the State is not empowered to
8 do, county treasurers cannot sell to private parties more of a property interest than the State
9 itself could be assigned and retain.”). The County offers no reason—and advances no
10 request, even—for Defendant Allen to be dismissed from this suit.

13 **VIII. If The Court Grants Any Motion To Dismiss, It Should Afford Leave To**
14 **Amend.**

15 It is not the case that Ms. Searle’s claims are futile, even if the Court determines that
16 the facts pled in the Complaint are insufficient to state a claim. As just one example, the
17 United States recently took the position in *DeVillier*, 601 U.S. 285 (2024), that a Plaintiff
18 is entitled to bring an equitable claim for relief if a past deprivation of property rights has
19 occurred, but the Plaintiff never subsequently obtains just compensation.³ In other words,
20 a state actor may be “put to a choice” between compensating a plaintiff or undoing its
21 deprivation of her property. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 639 n.1 (2001)

24
25 ³ *See* Brief of United States in *DeVillier v. Texas*, 601 U.S. 285 (2024), at 4 (December
26 2023) (“If compensation has not been made available for a taking of property, a property
27 owner may obtain equitable relief to enjoin the taking.”), *see*
https://www.supremecourt.gov/DocketPDF/22/22-913/293160/20231212155157672_22-913bsacUnited%20States.pdf

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, I caused a true and correct copy of the foregoing **Opposition to Defendants’ Motion to Dismiss** to be electronically filed with the Clerk of the Court using the Court’s CM/ECF system which sent notification of such filing to the following counsel of record in this matter:

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/s/ William E. Trachman

William E. Trachman