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19 *Attorneys for Plaintiff*

20 **IN THE SUPERIOR COURT OF THE STATE ARIZONA**  
21 **IN AND FOR THE COUNTY OF MARICOPA**

22 Christine M. Searle, an individual,

23 Plaintiff,

24 v.

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

Defendants.

**CASE NO: CV2024-022530**

**Opposition to Defendants Arapaho  
LLC and American Pride LLC’s  
Motion to Dismiss**

1 Plaintiff Christine M. Searle was deprived of her home by way of Arizona’s now-  
2 repealed tax lien foreclosure system, which allowed private investors to seize properties  
3 for minuscule tax debts and retain the entire value of the home’s equity without  
4 compensating the homeowner. That system operated for years, stripping vulnerable  
5 homeowners like Ms. Searle of everything, while handing massive windfalls to private  
6 parties like Defendants Arapaho LLC and American Pride LLC (the Private Defendants).  
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9 Ms. Searle purchased her home in Gilbert, Arizona, in 2005. Unfortunately, she  
10 accrued a delinquency of \$1,607.68 in her property taxes. As a result, Arizona law  
11 permitted Defendant Arapaho LLC, a private tax lien investor, to purchase the lien,  
12 foreclose, and acquire full title to her home. In February 2022, Defendant John Allen  
13 issued a Treasurer’s Deed transferring the property to Arapaho, completely extinguishing  
14 Ms. Searle’s ownership interest. Thereafter, Arapaho transferred the home to Defendant  
15 American Pride Properties LLC, which continues to hold title today. The home was worth  
16 several hundred thousand dollars—far exceeding the tax debt at issue.  
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19 The U.S. Supreme Court declared this sordid process unconstitutional in *Tyler v.*  
20 *Hennepin County*, 598 U.S. 631 (2023). In *Tyler*, the Court held that a government’s  
21 retention of surplus equity after a tax foreclosure constitutes a *per se* taking under the Fifth  
22 Amendment’s Takings Clause. Two Justices at opposite sides of the ideological  
23 spectrum—Gorsuch and Jackson—also recognized the fundamental principle that seizing  
24 property far in excess of a tax debt constitutes an excessive fine under the Eighth  
25 Amendment. The Arizona Attorney General has acknowledged that Arizona’s prior tax  
26 lien system violated these constitutional protections, and the Arizona Legislature has since  
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1 amended the law in response to *Tyler*. However, the new law is not retroactive, meaning  
2 that Ms. Searle and others like her remain without recourse under the new statute.

3         Despite the clear unconstitutionality of their actions, and failing to confer before  
4 filing, Defendants move to dismiss Ms. Searle’s claims by raising a series of procedural  
5 defenses. They argue that her claims are barred by *res judicata* and collateral estoppel  
6 even though Ms. Searle’s constitutional claims were never litigated in the prior foreclosure  
7 action. They claim that her lawsuit is time-barred, ignoring that a Takings claim does not  
8 accrue until just compensation is denied and that equitable tolling applies given the  
9 intervening change in law brought about by *Tyler*. They assert that they are private actors  
10 and not subject to constitutional scrutiny despite exercising state-conferred foreclosure  
11 powers that made them state actors under *Lugar v. Edmondson Oil Co.*, 457 U.S. 922  
12 (1982). They argue that the State of Arizona is an indispensable party though the state  
13 neither gave away nor possesses Ms. Searle’s home. And they contend that Ms. Searle  
14 was required to file a notice of claim under Arizona law even though state procedural  
15 requirements cannot be used to block federal constitutional claims, and no such  
16 requirement exists for declaratory relief.  
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22         At its core, this case is not about procedural technicalities—it is about the  
23 Defendants’ ongoing refusal to comply with the U.S. Constitution. This Court should thus  
24 deny the Private Defendants’ Motion to Dismiss in its entirety and allow Ms. Searle’s  
25 claims to proceed. *Searle v. Allen*, No. CV-24-00025-PHX-JJT, 2024 WL 3427163, \*4  
26 (D. Ariz.) (“If Plaintiff’s claims have merit...she may pursue them in state court.”).  
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**Legal Standard**

1 A motion to dismiss under Arizona Rule of Civil Procedure 12(b)(6) is disfavored  
2 and should only be granted if “as a matter of law [] plaintiffs would not be entitled to relief  
3 under any interpretation of the facts susceptible of proof.” *Fid. Sec. Life Ins. Co. v. State*  
4 *Dep’t of Ins.*, 191 Ariz. 222, 224 ¶ 4 (1998). When reviewing a motion to dismiss for  
5 failure to state a claim, the Court must accept as true all well-pleaded factual allegations  
6 and must resolve all reasonable inferences in Ms. Searle’s favor. *See Cullen v. Auto-*  
7 *Owners Ins. Co.*, 218 Ariz. 417, 419 (2008).

10 In evaluating a motion to dismiss, the Court must not resolve factual disputes or  
11 weigh the sufficiency of evidence. *See Strategic Dev. & Constr., Inc. v. 7th & Roosevelt*  
12 *Partners, LLC*, 224 Ariz. 60, 63 (App. 2010). This is particularly important where, as here,  
13 Defendants raise affirmative defenses that require factual determinations inappropriate for  
14 resolution on a motion to dismiss.

16 Finally, with respect to seeking dismissal under Rule 12(b)(7) for lack of an  
17 indispensable party, the Private Defendants bear the burden of establishing that complete  
18 relief cannot be afforded against the current defendants.

### 21 **Argument**

#### 22 **I. The Private Defendants’ Motion Should Be Denied for the Independent** 23 **Reason that They Failed to Confer.**

24 Before filing their motion, the Private Defendants had a duty to confer. *See Arizona*  
25 *Rule of Civil Procedure 7.1(h)*. Defendants instead tentatively agreed to jointly seek a stay  
26 of this case, offered revisions on a draft joint motion for stay, and then ghosted  
27 undersigned counsel before abruptly reversing course and deciding to file their motion.  
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1 As part of their motion, the Private Defendants incorrectly stated that they conferred with  
2 Ms. Searle, apparently on the basis of a November 18, 2024, Settlement Conference that  
3 predated the agreement to stay the case entirely.<sup>1</sup> Despite certifying to the contrary to the  
4 Court, Defendants made no effort to discuss their intent to seek dismissal with undersigned  
5 counsel before filing.  
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7         The Court has the discretion to deny the motion based solely on the failure to confer  
8 and on the certification that misrepresents the communications of the parties. *See Davis v.*  
9 *City of Glendale*, No. CV-23-00016-PHX-DWL, 2023 WL 5333259, \*2 (D. Ariz. Aug.  
10 18, 2023) (describing separate proceeding where Arizona state court denied motion to  
11 dismiss for failure to confer). In this instance, Ms. Searle urges the Court to exercise that  
12 discretion, in tandem with granting the motion to stay the case, so as to effectuate the  
13 parties' original joint intent to let Ms. Searle's federal claims proceed. Moreover, a denial  
14 without prejudice preserves the importance of maintaining the Arizona judiciary's strict  
15 conferral rules without preventing the Private Defendants from defending the action  
16 before any judgment is entered.  
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21 **II. Neither *Res Judicata* nor Collateral Estoppel Bars Ms. Searle's Claims.**  
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26 <sup>1</sup> *See* Exhibit 1 (calendar entry for November 18 settlement conference). This exhibit does  
27 not describe the terms of the settlement proposals between the parties and is not used to  
28 establish liability, contrary to Ariz. R. Evid. 408. Instead, it is offered merely to establish  
that the November 18 meeting was not truly a conferral about the Private Defendants' motion to dismiss in this case.

1           The Private Defendants argue that Ms. Searle’s claims are barred by the doctrines  
2 of *res judicata* and collateral estoppel because of the prior state court foreclosure  
3 proceedings. These arguments fail for several reasons.  
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5           First, Arizona law makes clear that *res judicata* applies only where a party could  
6 have raised a claim in a prior proceeding and had a full and fair opportunity to litigate it.  
7 The doctrine bars a claim only if it arises from the same cause of action and was or could  
8 have been adjudicated in the prior case. *See Industrial Park Corp. v. U.S.I.F. Palo Verde*  
9 *Corp.*, 26 Ariz. App. 204, 206 (1976). Here, *Tyler* made clear for the first time that the  
10 retention of surplus equity in a tax foreclosure constitutes a taking under the Fifth  
11 Amendment. Before *Tyler*, Arizona law and similar legal frameworks nationwide operated  
12 under the assumption that such a practice was lawful. Ms. Searle could not have  
13 meaningfully asserted a Takings claim in the foreclosure action because, at the time,  
14 relevant precedent did not recognize such a claim. *See Automatic Art, L.L.C v. Maricopa*  
15 *County*, No. CV 08-1484-PHX-SRB, 2010 WL 11515708, \*7 (D. Ariz. Mar. 18, 2010)  
16 (“The Arizona statutes implemented by Defendants are constitutional.”); *see also Ray v.*  
17 *Frye*, 119 P.2d 941, 943 (Ariz. 1941).  
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22           In a similar context, an Oregon District Court recently rejected a defendant’s  
23 argument that a post-*Tyler* Takings claim was precluded. *See Lynch v. Multnomah County*,  
24 Case Nos. 3:23-cv-01502-IM, 2024 WL 5238284, \*8 (D. Or. Dec. 27, 2024) (“Plaintiffs’  
25 claims are not precluded. Under the previous foreclosure scheme, Plaintiffs did not have  
26 an opportunity to challenge the retention of the surplus or recover the surplus.”). Indeed,  
27 Geraldine Tyler herself would have had her claim barred by *res judicata* if a prior  
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1 foreclosure action barred a future Takings claim. *See Tyler v. Hennepin County*, 505 F.  
2 Supp. 3d 879, 885 (D. Minn. 2020) (“Pursuant to this statutorily-prescribed process, the  
3 County obtained a judgment against Tyler’s condo in April 2012 after she received notice  
4 of the foreclosure action and failed to file an answer.”). Apparently, the Private  
5 Defendants’ position is that not a single Supreme Court Justice—or any of the parties  
6 before it—noticed that the Takings claim before them was barred by *res judicata*.  
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9 Collateral estoppel similarly does not apply. The doctrine of collateral estoppel  
10 prevents re-litigation of specific issues that were “actually litigated” and decided in a prior  
11 case. *See Campbell v. SZL Properties, Ltd.*, 204 Ariz. 221, 223 ¶ 9 (App. 2003). Thus, an  
12 issue is only precluded if it was “actually litigated” and necessarily determined in the prior  
13 action. Here, Ms. Searle’s Takings and Excessive Fines claims were never litigated in the  
14 foreclosure case, nor were they necessary to the court’s determination of whether the  
15 Treasurer’s Deed was valid. Ms. Searle’s claims in this case turn on constitutional  
16 principles that were not before the foreclosure court and were not addressed or decided in  
17 that proceeding.  
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21 A recent post-*Tyler* District Court of Massachusetts opinion agrees. *See*  
22 *Woodbridge v. City of Greenfield*, No. 23-30093-TSH, 2024 WL 2785052, \*7 (D. Mass.  
23 May 29, 2024) (“A lengthy discussion of the City’s claim preclusion argument is not  
24 warranted. I agree with the Plaintiffs that their claims in this suit: (1) do not share a  
25 common ‘identity of the cause of action’ which was before the Land Court, *i.e.*, the  
26 foreclosure of their properties (which are not being challenged in this Court), and (2) the  
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1 claims in this action seeking the surplus proceeds from the foreclosure sales are based on  
2 facts which arose after the conclusion of the Land Court proceedings.”).

3           Simply put, the U.S. Supreme Court’s decision in *Tyler* represents a fundamental  
4 shift in Takings jurisprudence that could not have been raised in prior litigation. The  
5 foreclosure proceeding at issue here addressed only issues of procedural compliance and  
6 title transfer and did not adjudicate or decide the constitutional claims Ms. Searle now  
7 asserts. So even if the prior case had some bearing on these claims, a default judgment  
8 does not carry the same preclusive effect as a fully litigated case on the merits, particularly  
9 where fundamental constitutional rights are at stake.  
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12           For all these reasons, Defendants’ argument that *res judicata* and collateral  
13 estoppel bar Plaintiff’s claims is without merit. The constitutional claims presented in this  
14 case are distinct from the prior foreclosure action, they are based on a change in law that  
15 could not have been raised earlier, and they were not litigated or decided in the prior  
16 proceeding. Additionally, because the prior judgment was obtained by default rather than  
17 through a fully litigated decision on the merits, it does not have preclusive effect.  
18 Defendants’ Motion to Dismiss on the basis of *res judicata* and collateral estoppel should  
19 be denied.  
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24 **III. Ms. Searle’s Claims Are Timely.**

25           Ms. Searle brought suit in federal court on January 5, 2024, less than two years  
26 after the relevant Treasurer’s Deed was issued in February 2022. After the federal court  
27 dismissed the case on July 16, 2024, she brought suit in this court within 30 days, on  
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1 August 15, 2024.<sup>2</sup> Yet Defendants argue that Ms. Searle’s claims are time-barred under  
2 A.R.S. § 12-542, which generally provides for a two-year statute of limitations for  
3 personal injury claims, including constitutional torts. This argument fails for multiple  
4 reasons.  
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6 First, a Takings claim generally does not accrue until just compensation has been  
7 denied, meaning that the claim could not have been brought at any moment before that  
8 point. Second, the statute of limitations was equitably tolled due to the significant change  
9 in law created by *Tyler*, which held that the retention of surplus equity in a tax foreclosure  
10 is an unconstitutional Taking. Third, a denial of just compensation is an ongoing  
11 “irrevocable” injury, the remedy for which is, at a minimum, the return of the deprived  
12 property. *See DeVillier v. Texas*, 601 U.S. 285, 291 (2024) (“We have explained that a  
13 property owner acquires an irrevocable right to just compensation...” (internal quotation  
14 marks omitted); *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015)  
15 (“The ability to sue to enjoin unconstitutional actions by state and federal officers is the  
16 creation of courts of equity, and reflects a long history of judicial review of illegal  
17 executive action, tracing back to England.”). Fourth, Ms. Searle’s excessive fines claim is  
18 likewise timely because it is based on an ongoing deprivation that continued past the  
19 issuance of the Treasurer’s Deed. Finally, to the extent that any claim is deemed untimely,  
20 Defendants’ failure to provide notice or a mechanism for recovering surplus equity  
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28 <sup>2</sup> The complaint was initially filed on August 15, 2024, but had to be refiled on August  
19 due to a technicality.

1 prevented Ms. Searle from asserting her rights within the statutory period, further  
2 justifying equitable tolling.

3 Under *Knick v. Township of Scott*, 588 U.S. 180 (2019), a Takings claim is not ripe  
4 until the government has denied compensation. In *Knick*, the Supreme Court expressly  
5 rejected the prior requirement that a plaintiff must exhaust state remedies before pursuing  
6 a federal Takings claim, holding that the constitutional violation occurs “at the time of the  
7 taking, regardless of post-taking remedies.” *Id.* at 190. In the post-*Tyler* context, a recent  
8 Massachusetts District Court reached this exact conclusion: “His claim instead is premised  
9 on the Town divesting him of his interest in the ‘money remaining’ after satisfaction of  
10 his tax debt—an interest which, under *Tyler*, remains even after a municipality obtains  
11 absolute title to property—without due process of law.” *Davenport v. Town of Reading*,  
12 NO. 22-12239-RGS, 2024 WL 4495105, \*2 (D. Mass. Oct. 15, 2024).<sup>3</sup>

13 Because Defendants never compensated Ms. Searle for her surplus equity and have  
14 continued to retain it, the statute of limitations did not begin to run until that time at the  
15 earliest. *Cf. id.* (“[The] deprivation only occurred in January of 2023, when, having sold  
16 the Property, the Town refused to convey any surplus funds to Davenport.”). Moreover,  
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24 <sup>3</sup> Other courts have applied stricter rules. But even in these contexts, the relevant Taking  
25 does not occur until at least a different entity—generally a county or private party—  
26 maintains complete and total ownership of the property. *See Lynch*, 2024 WL 5238284,  
27 \*8 (the Taking occurred no earlier than when “the property owners’ rights were  
28 completely extinguished.”); *id.* at \*11 (“[T]he excessive fines alleged by the Lynch and  
Sawyer Plaintiffs was imposed when the title to the properties, with values exceeding the  
tax obligation, *vested in the Defendant Counties* following the expiration of the  
redemption period.”) (emphasis added).

1 the Arizona Attorney General has acknowledged that A.R.S. § 42-18204(B) was  
2 unconstitutional under *Tyler*, which held that Defendants’ actions constituted an  
3 uncompensated taking. Given that *Tyler* was decided in May 2023, Ms. Searle timely filed  
4 suit within one year of that decision—well within the permissible timeframe once her  
5 claim became legally viable.

7         Additionally, equitable tolling applies because Ms. Searle was reasonably unaware  
8 of her right to bring a Takings claim before *Tyler*. Before *Tyler*, Arizona courts  
9 consistently rejected surplus equity claims under the Takings Clause. *See, e.g., Automatic*  
10 *Art, LLC*, 2010 WL 11515708, at \*6 (finding no constitutional violation where a  
11 treasurer’s deed extinguished a homeowner’s interest in the property). This legal  
12 landscape prevented Ms. Searle from asserting her claims earlier because they were not  
13 recognized under existing precedent. The decision in *Tyler* fundamentally changed this,  
14 establishing that surplus retention constitutes a Taking, meaning that Ms. Searle’s claims  
15 became viable only after *Tyler* was decided. Because she filed within one year of that  
16 decision, she is entitled to equitable tolling under Arizona law.

17         Equitable tolling is particularly warranted where, as here, the Defendants actively  
18 concealed or failed to provide notice of Ms. Searle’s rights. The Arizona tax lien system  
19 did not provide property owners with an opportunity to claim surplus equity, nor did it  
20 notify them that their equity was at risk. Courts have recognized that equitable tolling  
21 applies where a defendant’s actions prevent a plaintiff from asserting their rights within  
22 the statutory period. *See Seitzinger v. Reading Hosp. & Med. Ctr.*, 165 F.3d 236, 240 (3d  
23 Cir. 1999) (“Under equitable tolling, plaintiffs may sue after the statutory time period for  
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1 filing a complaint has expired if they have been prevented from filing in a timely manner  
2 due to sufficiently inequitable circumstances.”); *see also McCloud v. State, Ariz. Dep't of*  
3 *Pub. Safety*, 217 Ariz. 82, 87 ¶ 12 (App. 2007) (“Arizona courts have recognized and  
4 applied the equitable tolling doctrine.”). Here, the Private Defendants foreclosed on Ms.  
5 Searle’s home under a scheme that foreclosed a challenge to the deprivation of her equity,  
6 further justifying the application of equitable tolling.  
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9 Moreover, Ms. Searle’s excessive fines claim under the Eighth Amendment  
10 remains timely because it is based on an ongoing deprivation. The U.S. Supreme Court  
11 has held that an excessive fine occurs when a government-imposed penalty is grossly  
12 disproportionate to the offense. *United States v. Bajakajian*, 524 U.S. 321, 334 (1998).  
13 The taking of Ms. Searle’s home—worth over \$400,000—to satisfy a mere \$1,600 tax  
14 debt constitutes a grossly excessive penalty. Because Defendants continue to retain Ms.  
15 Searle’s home and any surplus equity, the harm is ongoing, and her excessive fines claim  
16 remains timely under the continuing violations doctrine.  
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19 For these reasons, the Private Defendants’ statute of limitations argument fails, and  
20 their motion to dismiss should be denied.  
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#### 22 **IV. Defendants Are Liable Because They Acted Under Color of State Law.**

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24 The Private Defendants argue that they are merely private entities and thus aren’t  
25 liable for violations of the Takings and Excessive Fines Clauses. But private parties who  
26 exercise powers traditionally and exclusively performed by the state are subject to  
27 constitutional scrutiny. *See Lugar*, 457 U.S. 922; *cf. Cont’l Res. v. Fair*, 317 Neb. 391,  
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1 407 (Neb. 2024) (“[W]e find that the party that is potentially liable to pay just  
2 compensation for a taking is [the private party] Continental.”); *Nieveen v. TAX 106*, 317  
3 Neb. 425, 433 (Neb. 2024) (“Nieveen alleged a plausible takings claim against [the private  
4 party] Vintage. According to Nieveen’s complaint, Vintage requested and obtained the  
5 tax deed that deprived Nieveen of the equity in her property.”).<sup>4</sup>

7           Here, the Private Defendants exercised authority delegated by the State of Arizona  
8 through its statutory tax lien and foreclosure scheme. The *Lugar* Court directly spoke to  
9 the issue of creditors using state-delegated authority by saying “If the creditor-plaintiff  
10 violates the debtor-defendant’s due process rights by seizing his property in accordance  
11 with statutory procedures, there is little or no reason to deny to the latter a cause of action  
12 under the federal statute, § 1983, designed to provide judicial redress for just such  
13 constitutional violations.” 457 U.S. at 934. Because Defendants wielded state-conferred  
14 power to seize Ms. Searle’s home without providing just compensation, they qualify as  
15 state actors under *Lugar* and can be held liable for constitutional violations. *See Cont’l*  
16 *Res.*, 317 Neb. at 408 (“In this case, Nebraska’s statutory system gives tax certificate  
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23 <sup>4</sup> There is actually a split of authority as to which entity pays just compensation. *See*  
24 *Sharritt v. Henry*, No. 23 C 15838, 2024 WL 4524501, \*16 (N.D. Ill. Oct. 18, 2024)  
25 (holding that a county was liable for a post-*Tyler* Takings action even when a third-party  
26 held the relevant property); *accord Grady v. Wood County, WV*, NO. 2:24-cv-00214, 2025  
27 WL 72160, \*4 (Jan. 10, 2025) (Takings and Excessive Fines claims against county could  
28 proceed when third-party owned property). That dispute is largely irrelevant at the Motion  
to Dismiss stage. And Ms. Searle takes no position here. When defendants each point  
fingers at each other, it is up to them to litigate their comparative liability, not the plaintiff.  
*See Summers v. Tice*, 33 Cal.2d 80, 87 (1948) (“They are both wrongdoers both negligent  
toward plaintiff.”).

1 purchasers like Continental a power that would seem to be ‘traditionally associated with  
2 sovereignty’: the power to seize property from owners for their failure to pay taxes to the  
3 sovereign.”); *257-261 20th Ave., Realty, LLC v. Roberto*, 259 N.J. 417, 437-38, 327 A.3d  
4 1177 (N.J. 2025) (“We also conclude that because private lienholders act jointly with local  
5 governments under the TSL to perform a traditional public function—the collection of  
6 taxes—they may be considered state actors.”).

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9 In *Lugar*, the Supreme Court established a two-part test for determining whether a  
10 private party’s actions constitute state action under the Fourteenth Amendment: (1)  
11 whether the alleged constitutional deprivation was caused by the exercise of a right or  
12 privilege created by state law and (2) whether the private party’s actions were attributable  
13 to the state because they were undertaken in conjunction with or with significant assistance  
14 from state officials. 457 U.S. at 937. Both prongs are satisfied here.

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17 First, the Private Defendants’ authority to foreclose on Ms. Searle’s home and  
18 retain her surplus equity arose exclusively from Arizona’s statutory framework governing  
19 tax lien sales. *See* A.R.S. §§ 42-18101 et seq. The Arizona legislature created the tax lien  
20 scheme, authorized private parties to purchase tax liens, and conferred upon them the  
21 power to initiate foreclosure proceedings and acquire title to properties if liens were not  
22 redeemed. Unlike ordinary creditors foreclosing on a mortgage, Defendants did not  
23 negotiate or contract with Ms. Searle; rather, they exercised rights granted solely by  
24 Arizona law to enforce a tax lien that originated with the government. The Supreme Court  
25 has made clear that where private parties derive their power from statutory authority and  
26 operate within a state-created process, their actions are attributable to the state. *See U.S.*

1 *v. Classic*, 313 U.S. 299, 326 (1941) (“Misuse of power, possessed by virtue of state law  
2 and made possible only because the wrongdoer is clothed with the authority of state law,  
3 is action taken ‘under color of’ state law.”); *see also Health and Hospital Corp. of Marion*  
4 *Cnty. v. Talevski*, 599 U.S. 166, 171 (2023) (nursing facilities receiving Medicaid funding  
5 acted under color of law for § 1983 purposes). Here, Defendants exercised a government-  
6 created foreclosure mechanism, making them liable under *Lugar*.  
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9         Second, Defendants’ seizure of Ms. Searle’s home was carried out with substantial  
10 assistance from state officials. The Maricopa County Treasurer played an integral role in  
11 the process by selling the tax lien and issuing a Treasurer’s Deed upon foreclosure, thereby  
12 effectuating the transfer of title to Defendants. A private entity is deemed a state actor  
13 where the government is “entwined in its management or control.” *See Brentwood Acad.*  
14 *v. Tenn. Secondary Sch. Ath. Ass’n*, 531 U.S. 288, 296 (2001). Here, the Private  
15 Defendants relied on state-created mechanisms and the direct involvement of county  
16 officials to take title to Ms. Searle’s home. The Private Defendants’ conduct is thus fairly  
17 attributable to the state.  
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21         The Private Defendants’ argument that they are merely private investors in tax  
22 liens, and thus cannot be state actors, lacks merit. Courts have consistently held that when  
23 private parties exercise government-delegated authority, they are subject to constitutional  
24 constraints. In *Tulsa Prof’l Collection Servs., Inc. v. Pope*, 485 U.S. 478 (1988), the  
25 Supreme Court found that a private creditor’s ability to file claims against an estate under  
26 a state probate statute constituted state action because the process depended on state law  
27 and judicial enforcement. Defendants’ acquisition of Ms. Searle’s home through a tax  
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1 foreclosure—a process created and controlled by the State of Arizona—places them  
2 squarely within this framework.

3           Moreover, the Private Defendants’ reliance on cases holding that mere  
4 participation in a state regulatory scheme does not transform private parties into state  
5 actors is misplaced. Unlike businesses that operate independently but comply with state  
6 regulations, Defendants did not act of their own accord in a competitive market; rather,  
7 they exercised a government-granted power to take property through a statutory tax  
8 foreclosure process, which is a traditional function of the state. In fact, in his testimony  
9 regarding Ariz. H.B. 2098, which was one bill offered as a potential legislative solution  
10 in the wake of *Tyler*, Defendant Treasurer Allen recognized that a private purchaser stood  
11 *in the place of the government*, stating that “the purchase of the original lien was under  
12 the understanding that [the purchaser] would have an opportunity to own the property[.]”  
13 Tax Lien; Redemption; Property Sale: Hearing on H.B. 2098 Before the H. Comm. on  
14 Ways & Means, 2024 Leg., Fifty-sixth Legislature – Second Regular Sess. (Ariz. 2024)  
15 (testimony taken on Feb. 14, 2024 by John Allen at 34:15, Treasurer of Maricopa  
16 County).<sup>5</sup>

17           Finally, even if Defendants were not directly classified as state actors, their conduct  
18 would still be unconstitutional under the joint-action doctrine, which applies when private  
19 parties and state officials work together to deprive an individual of their rights. *See Dennis*  
20 *v. Sparks*, 449 U.S. 24, 27-28 (1980) (“Private persons, jointly engaged with state officials  
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<sup>5</sup> <https://www.azleg.gov/videoplayer/?eventID=2024021067&startStreamAt=865>

1 in the challenged action, are acting see ‘under color’ of law for purposes of § 1983  
2 actions.”). Here, the county government actively participated in the tax lien sale,  
3 foreclosure, and deed transfer process, enabling Defendants to profit from the taking of  
4 Ms. Searle’s home equity. This close cooperation between private parties and the state  
5 supports a finding of state action. *See Cont’l Res.*, 317 Neb. at 413 (“Because Continental  
6 elected this option and obtained title to the property, we find that it took Fair’s property  
7 and could be liable to pay just compensation.”); *257-261 20th Ave., Realty, LLC*, 259 N.J.  
8 at 445 (“By working in tandem under that framework, local government, as the Nebraska  
9 Supreme Court has observed, effectively delegates to private investors the common  
10 governmental function of seizing properties to satisfy a tax debt.”) (internal quotation  
11 marks omitted).

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16 **V. Ms. Searle Was Not Required to File a Notice of Claim.**

17 Defendants are also wrong to assert that Arizona’s notice-of-claim statute provides  
18 an “independent basis” for dismissal of all of Ms. Searle’s state law claims. Indeed,  
19 Defendants do not even make an effort to describe how their assertion interacts with Ms.  
20 Searle’s separate claims or prayer for relief.  
21

22 For instance, Ms. Searle alleges four state law claims against the County: the taking  
23 of private property without valid public use; the taking of private property without just  
24 compensation; the violation of the Excessive Fines Clause; and the violation of the Gift  
25 Clause. While true that the first three of these claims seek damages, they also seek other  
26 appropriate relief based on the constitutional violations at play. *See, e.g.,* Complaint at 7  
27 ¶¶ 23, 24; 37 ¶ 140; 38 ¶ 148; 39 ¶ 155; 43 ¶ 175 (referring to “other appropriate relief,”  
28

1 “other relief,” “other relief,” and a *per se* violation of the Gift Clause, with no request for  
2 damages, respectively).

3 At minimum, all of Ms. Searle’s state law claims above may go forward to the  
4 extent that she seeks declaratory and injunctive relief—including a claim that she has  
5 unlawfully suffered a taking without just compensation. The Arizona Supreme Court and  
6 Court of Appeals have held that the notice-of-claim statute does not apply to claims for  
7 declaratory or injunctive relief regarding the validity of a statute. For instance, in *State v.*  
8 *Mabery Ranch, Co.*, 216 Ariz. 233 (2007), the Court of Appeals of Arizona held that  
9 “section 12–821.01 does not apply to a claim such as this, in which a private party seeks  
10 an injunction restraining conduct by a public entity.” *Id.* at 245 ¶ 53. Here, Ms. Searle’s  
11 state law claims seek declarations that Arizona’s prior tax lien statutes violated the  
12 Arizona Constitution and must therefore be declared invalid and enjoined in their  
13 application to Ms. Searle. Such claims for equitable relief regarding the validity of a  
14 statute are not subject to the notice-of-claim requirements under Arizona precedent. As  
15 such, the Private Defendants’ reliance on the notice-of-claim statute does not merit  
16 dismissal of any, much less all, of Ms. Searle’s state law claims.

17 Additionally, Arizona’s notice-of-claim statute is designed to give public entities  
18 an opportunity to investigate and settle disputes before litigation. However, a failure to  
19 provide just compensation is not a dispute subject to discretionary settlement—it is a  
20 constitutional obligation. As the U.S. Supreme Court held in *First English Evangelical*  
21 *Lutheran Church v. Cty. of Los Angeles*, 482 U.S. 304, 315 (1987), once a taking occurs,  
22 the government must compensate the property owner; it has no discretion to withhold  
23  
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1 compensation. In *Felder v. Casey*, 487 U.S. 131, 146 (1988), the U.S. Supreme Court held  
2 that a state may not impose procedural barriers that interfere with constitutional claims  
3 and that federal constitutional rights—including claims for just compensation—cannot be  
4 restricted by state procedural rules. Specifically, it held that:  
5

6 Notice-of-claim provisions, by contrast, are neither universally familiar  
7 nor in any sense indispensable prerequisites to litigation, and there is thus  
8 no reason to suppose that Congress intended federal courts to apply such  
9 rules, which “significantly inhibit the ability to bring federal actions.”

10 *Id.* at 141 (citing *Brown v. United States*, 742 F.2d 1498, 1509, n.6 (1984) (en banc)  
11 (collecting cases rejecting the imposition of notice-of-claim statutes on federal  
12 constitutional questions). Because Ms. Searle’s federal claims arise directly from the  
13 failure to satisfy a constitutional obligation, Defendants cannot rely on a state procedural  
14 statute to avoid liability.  
15

16 **VI. The State of Arizona is Not an Indispensable Party.**

17 The Private Defendants seek dismissal under Rule 12(b)(7), arguing that the State  
18 of Arizona is a necessary party to this litigation. The Court ought to summarily reject this  
19 argument. Indeed, even in *Tyler* itself, Ms. Tyler dismissed the State of Minnesota before  
20 obtaining relief against Hennepin County from the U.S. Supreme Court. *See* Exhibit 2  
21 (“Geraldine Tyler, through the undersigned counsel, hereby voluntarily dismisses  
22 Defendants State of Minnesota...”); *Tyler*, 598 U.S. at 639 (“*The County* had the power  
23 to sell Tyler’s home to recover the unpaid property taxes. But it could not use the toehold  
24 of the tax debt to confiscate more property than was due.”) (emphasis added).  
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1 More specifically, under Arizona Rule of Civil Procedure 19(a), a party is required  
2 to be joined only if: (1) in the party’s absence, the court cannot accord complete relief  
3 among existing parties, or (2) the party claims an interest in the litigation such that  
4 proceeding without it would impair its ability to protect that interest or subject existing  
5 parties to multiple or inconsistent obligations. Neither prong applies here.  
6

7 First, Ms. Searle has obtained essentially all the relief that she could from the  
8 Arizona Attorney General—a concession of unconstitutionality of the statute. In Ms.  
9 Searle’s ongoing federal case, the State was dismissed with prejudice in exchange for this  
10 admission, which tangibly benefited her on the merits of her ongoing claims against the  
11 Private Defendants. *See* Exhibit 3, Joint Stipulated Motion to Dismiss with Prejudice All  
12 Claims Against Defendant Attorney General Kristin K. Mayes, Case No. CV-24-00025-  
13 PHX-JJT (ECF No. 32) (“[T]o the extent a private party retains the excess proceeds of a  
14 sale or value of the equity in a home that exceeds what the State could retain by statute,  
15 that result is an unconstitutional taking under *Tyler*.”). It would be an odd result, if in  
16 obtaining this damning concession from the Attorney General, Ms. Searle had accidentally  
17 precluded herself from prevailing against the actual parties who injured her.  
18  
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21

22 Second, a judgment in Ms. Searle’s favor on her current claims would provide  
23 complete relief, regardless of the Attorney General’s presence in the case. Ms. Searle  
24 seeks just compensation, the expungement of an excessive fine, and declaratory relief,  
25 among her claims. Each of these can be granted without the State’s presence because the  
26 current Defendants are the ones who (1) Issued a Treasurer’s Deed and (2) ultimately  
27 acquired Ms. Searle’s home and stand to benefit from the unconstitutional and unlawful  
28

1 taking of her equity. The State's absence does not impede the Court's ability to make Ms.  
2 Searle whole or grant the relief in her prayer. The Private Defendants do not articulate  
3 why such relief would be incomplete.  
4

5 In the same vein, the Private Defendants fail to explain how the State's absence  
6 prevents the court from granting complete relief to Ms. Searle. No relief is being sought  
7 from the State, and the Defendants' failure to provide just compensation is of their own  
8 making, not the State's. Nor is there any risk that proceeding without the State will impair  
9 Ms. Searle's interests or create inconsistent obligations. Defendants may not force Ms.  
10 Searle to include a party from whom she seeks no relief.  
11

12 Defendants have completely inverted the necessary party analysis. As the Arizona  
13 Supreme Court recognized in *Scottsdale Ginning Co. v. Longan*, 24 Ariz. 356, 366 (1922),  
14 a party lacking actual or constructive possession is not a necessary defendant. Defendants'  
15 argument effectively tries to designate the State as a responsible third-party to deflect their  
16 own liability, when in reality, Rule 19 joinder might have been an issue only if Ms. Searle  
17 had sued the State alone and failed to join the County and the Private Defendants who,  
18 because of the taking, possess title to the property at issue. Their attempt to reverse the  
19 analysis is both legally baseless and a transparent effort to avoid responsibility for their  
20 unconstitutional windfall.  
21

22 Rule 19 does not allow a defendant to force joinder of a party simply because they  
23 would prefer to share liability. The rule requires a concrete showing that the absent party  
24 is truly necessary for relief to be granted, and Defendants have not come close to meeting  
25 this burden. Because Ms. Searle's claims can proceed against the private Defendants who  
26  
27  
28

1 currently control her property and surplus equity, the motion to dismiss under Rule  
2 12(b)(7) should be denied.

3 Dated this 7th day of February 2025 and respectfully submitted,  
4

5 By: /s/ Veronica Lucero  
6 Veronica Lucero  
7 Davillier Law Group LLC  
8 2201 E. Camelback Rd., Suite 355  
9 Phoenix, AZ 85016

10 By: /s/ Grady J. Block  
11 Grady J. Block\*  
12 William E. Trachman\*  
13 Mountain States Legal Foundation  
14 2596 S. Lewis Way  
15 Lakewood, Colorado 80227  
16 \*Pro Hac Vice

17 *Attorneys for Plaintiff*  
18  
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1 **ORIGINAL** of the foregoing  
2 e-filed and e-served this 7th day of February 2025.

3 COPY of the foregoing  
4 emailed this 7th day of February 2025 to:

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23 *Attorneys for John M. Allen, in his official*  
24 *Capacity as the Treasurer of Maricopa County*

25  
26  
27  
28  
By: /s/ Yuka Weisgerber

# Exhibit 1

## Grady Block

---

**Subject:** Arapaho - Searle; Rule 408 Settlement Offer  
**Location:** Microsoft Teams Meeting

**Start:** Mon 11/18/2024 4:00 PM  
**End:** Mon 11/18/2024 4:30 PM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Organizer:** William Trachman  
**Required Attendees:** Grady Block; jll@hgplaw.com; Veronica Lucero <vlucero@davillierlawgroup.com>;  
dbg@hgplaw.com  
**Optional Attendees:** Kim Miles (MCAO)

---

## Microsoft Teams [Need help?](#)

### [Join the meeting now](#)

Meeting ID: 268 677 155 806

Passcode: uSG9Kp

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### Dial in by phone

[+1 720-464-2155,,901788214#](#) United States, Denver

[Find a local number](#)

Phone conference ID: 901 788 214#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

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# Exhibit 2

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

GERALDINE TYLER, on behalf of herself and all  
others similarly situated,

Case No.: 0:20-cv-00889-PJS-BRT

Plaintiff,

v.

**NOTICE OF VOLUNTARY  
DISMISSAL**

STATE OF MINNESOTA, and CYNTHIA BAUERLY,  
in her capacity as Commissioner, Minnesota  
Department of Revenue, HENNEPIN COUNTY and  
MARK V. CHAPIN, Auditor-Treasurer, in his official  
capacity,

Defendants.

---

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), plaintiff Geraldine Tyler, through the undersigned counsel, hereby voluntarily dismisses Defendants State of Minnesota and Cynthia Bauerly, from the above-captioned action without prejudice. Each party shall pay its own costs and fees and thereby waive their rights, if any, to seek costs or expenses from the opposing party.

The dismissed defendants are listed in the attached Exhibit A, Tolling Agreement, which is incorporated herein in its entirety by reference.

DATED: April 10, 2020

REINHARDT WENDORF & BLANCHFIELD

*s/Garrett D. Blanchfield*

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*Counsel for Plaintiff*

# Exhibit 3

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7 *Attorneys for Plaintiff Christine M. Searle*

8  
9 *Additional counsel listed on signature page*

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF ARIZONA**

12  
13 Christine M. Searle,

14 Plaintiff,

15 v.

16 John M. Allen (“Allen”), in his individual  
and official capacity, as The Treasurer of  
17 Maricopa County; Arapaho LLC;  
18 American Pride Properties, LLC; Kristin  
19 Mayes, in her official capacity, as the  
Attorney General of the State of Arizona;  
20 John Doe; Jane Doe; Black Corporations;  
21 White Partnerships; and Green Limited  
22 Liability Companies,

23 Defendants.

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

**JOINT STIPULATED MOTION  
TO DISMISS WITH PREJUDICE  
ALL CLAIMS AGAINST  
DEFENDANT ATTORNEY  
GENERAL KRISTIN K. MAYES**

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1 Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiff Christine M. Searle  
2 and Defendant Arizona Attorney General Kristin K. Mayes (“the moving parties”)  
3 respectfully ask the Court to dismiss with prejudice all claims against the Attorney  
4 General. In so moving, Attorney General Mayes acknowledges and states the following  
5 view of the law:

6 1. In *Tyler v. Hennepin County*, 598 U.S. 631 (2023), the U.S. Supreme Court  
7 confirmed that states can collect “taxes on property,” and “[i]n collecting these  
8 taxes, [states] may impose interest and late fees,” *id.* at 637-38, as well as “seize  
9 and sell property, including land, to recover the amount owed,” *id.* at 638, 639.  
10 The Supreme Court held, however, that states cannot “confiscate more property  
11 than [is] due,” which violates the Fifth Amendment’s Takings Clause as  
12 incorporated against the states through the Fourteenth Amendment. *See id.* at 637,  
13 639 (citation omitted).

14 2. Consistent with *Tyler*, Arizona’s statutory scheme recognizes that when the  
15 State forecloses on an unsatisfied tax lien, it cannot confiscate more than it is owed.  
16 *See* A.R.S. §§ 42-18303(C), 42-18113(B)(1). Rather, the State must sell the  
17 encumbered property, subtract the amount owed—including interest, penalties,  
18 fees, and costs—and return the “balance remaining” to “the owner of the property  
19 who was dispossessed by the sale.” A.R.S. § 42-18303(C); *see id.* § 42-18113(A),  
20 (B)(1) (providing that a county treasurer can assign the lien to the State, and that  
21 taxes “assessed against that property are not payable until they have been derived  
22 from the sale or redemption of the property” or resale of the lien).

23 3. Arizona’s statutory scheme allows county treasurers to sell tax liens to  
24 private parties to “secure the payment of unpaid delinquent taxes.” A.R.S. § 42-  
25 18101(A); *id.* § 42-18114 (authorizing sale to “the person who pays the whole  
26 amount of delinquent taxes, interest, penalties and charges due on the property,  
27 and who in addition offers to accept the lowest rate of interest on the amount so  
28 paid to redeem the property”). When county treasurers sell tax liens to private

1 parties, they do so on the State’s behalf. *See id.* § 42-18001(A)(1).

2 4. Under *Tyler*, the State cannot “extinguish a property interest that it  
3 recognizes everywhere else to avoid paying just compensation when it is the one  
4 doing the taking.” 598 U.S. at 645. And because the State cannot authorize others  
5 to do that which the State is not empowered to do, county treasurers cannot sell to  
6 private parties more of a property interest than the State itself could be assigned  
7 and retain. Thus, when a private party purchases a tax lien pursuant to A.R.S. §§  
8 42-18101 *et seq.*, only the interest in the tax lien (including authorized fees, costs,  
9 and interest) is conveyed.

10 5. Accordingly, under *Tyler*, A.R.S. § 42-18204(B) is unconstitutional to the  
11 extent it purports to extinguish a dispossessed owner’s property interest in the sale  
12 proceeds or value of the equity that exceed what the State is owed and could retain  
13 by statute. Further, to the extent a private party retains the excess proceeds of a  
14 sale or value of the equity in a home that exceeds what the State could retain by  
15 statute, that result is an unconstitutional taking under *Tyler*.

16 6. Accordingly, the moving parties agree that:

- 17 a. The State does not presently possess any property or funds that  
18 belong to Plaintiff;
- 19 b. given the Attorney General’s view of the law in light of *Tyler*,  
20 Plaintiff has thus received all the relief from the Attorney General to which  
21 she is entitled and that the Attorney General can give with respect to  
22 Plaintiff’s claims; and
- 23 c. the claims against the Attorney General should therefore be  
24 dismissed.

25 Notwithstanding the foregoing, Plaintiff reserves all claims, arguments, and other  
26 rights available by law with respect to the Maricopa County Treasurer John M. Allen,  
27 Arapaho LLC, and American Pride Properties LLC, and does not waive or forfeit any  
28 claims or arguments against the remaining private party defendants with respect to

1 Plaintiff's property interests.

2 For purposes of this stipulated dismissal, the Attorney General takes no position  
3 on the remaining issues in the case, including any defenses, which are for the private  
4 parties to resolve.

5 The moving parties agree that the Attorney General does not waive or forfeit any  
6 claims, defenses, arguments, or other rights available by law in future proceedings in this  
7 matter or any related matters, except to the extent that they contradict the  
8 acknowledgments and statements above.

9 For these reasons, the moving parties respectfully ask the Court to dismiss with  
10 prejudice all claims against the Attorney General and enter the proposed order attached  
11 herewith. The moving parties agree to bear their own costs and fees.

12  
13 RESPECTFULLY SUBMITTED this 20th day of March, 2024.

14 By: /s/ Grady J. Block

15 Grady J. Block\* (Pro hac vice)  
16 William E. Trachman (Pro hac vice)  
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26 *Attorneys for Plaintiff Christine M. Searle*  
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By: /s/ Luci D. Davis (with permission)

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**CERTIFICATE OF SERVICE**

I hereby certify that upon filing this Motion on this 20th day of March 2024, I shall cause a true and correct copy of the foregoing **JOINT STIPULATED MOTION TO DISMISS WITH PREJUDICE ALL CLAIMS AGAINST DEFENDANT ATTORNEY GENERAL KRISTIN K. MAYES** to be electronically circulated to the following counsel in this matter:

Arapaho LLC: John L. Lohr Jr., jll@hgplaw.com

American Pride Properties, LLC: John L. Lohr Jr., jll@hgplaw.com

Treasurer John Allen: Kim Miles, milesk@mcao.maricopa.gov  
Kate Kane, Katherine.Kane@mcao.maricopa.gov

/s/ William E. Trachman  
William E. Trachman