

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ALAN DIPIETRO,

Plaintiff,

v.

TOWN OF BOLTON,

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES
[JURY TRIAL DEMANDED]

I. INTRODUCTION

1. This action seeks to vindicate Alan DiPietro's constitutional and common law rights. The Town of Bolton ("Bolton") took Mr. DiPietro's home, farm and land located at 110 Teele Road, Bolton, Massachusetts (the "Property"), worth at least \$370,000, as payment for a debt of approximately \$60,000. Bolton not only confiscated Mr. DiPietro's title and all of his equity in the Property, it also thwarted his every attempt to pay his debt and save his farm from foreclosure by the Town. The only "compensation" Mr. DiPietro received for his Property was the forgiveness of the approximately \$60,000 debt, while Bolton has kept all the Property's equity, at least \$310,000, as a windfall. This lawsuit alleges that Bolton, acting pursuant to M.G.L. c. 60, violated the U.S. and Massachusetts constitutions and unjustly enriched itself when it took Mr. DiPietro's Property without paying him just compensation. Because the Massachusetts tax foreclosure statute authorizes tax-lienholders to

foreclose and take absolute title to tax-indebted properties, even when the property is worth more than the tax debt, Bolton has a financial incentive to foreclose and then keep or sell valuable properties, like the Property in this case, rather than help owners avoid foreclosure.

2. Alternatively, if the seizure of Mr. DiPietro's Property is a penalty for his inability to pay his taxes, then Bolton imposed an unconstitutional excessive fine upon him when it seized a property worth more than four-and-a-half times his debt to Bolton.

II. PARTIES

3. Plaintiff Alan DiPietro is an individual who currently resides at the Property. Mr. DiPietro held absolute title to the Property until it was foreclosed on December 14, 2021. He has been injured by the Town's unconstitutional and inequitable seizure of title to his Property and the savings Mr. DiPietro had invested therein.

4. Defendant Town of Bolton is a municipal corporation with a principal office at 663 Main Street, Bolton, Massachusetts 01740. Bolton, through its Office of the Collector of Taxes, is responsible for the collection of real property taxes in Bolton and for taking property if the taxes remain unpaid.

III. JURISDICTION AND VENUE

5. Plaintiff brings this civil rights lawsuit pursuant to 42 U.S.C. § 1983.

6. Jurisdiction over Plaintiff's claims for declaratory and injunctive relief is vested in this Court by 28 U.S.C. §§ 1331 (federal question jurisdiction), 1343 (civil

rights jurisdiction), 1367 (supplemental jurisdiction) and 2201–2202 (the Declaratory Judgment Act).

7. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b), on the grounds that all or a substantial part of the acts giving rise to Plaintiff's claims occurred in Bolton, Massachusetts which is located in the District of Massachusetts.

IV. FACTUAL ALLEGATIONS

8. Alan DiPietro is a 50-year-old alpaca and hemp farmer and resident of Bolton.

9. Mr. DiPietro was previously a chief engineer at iRobot Corporation in Bedford, Massachusetts.

10. After becoming disenchanted with the bureaucracy and red tape involved in his corporate career, Mr. DiPietro began farming and herding alpacas in 2008 at his former property at 4 Riverside Park, Maynard, Massachusetts 01754.

11. Mr. DiPietro started by purchasing two females and one male and breeding them to grow his herd.

12. Over the next couple of years, Mr. DiPietro's success as an alpaca farmer soon led to the need for more land, as his one-acre field on Riverside Park was no longer adequate to house the growing herd.

13. Around March of 2014, Mr. DiPietro became separated from his wife and suffered through a financially devastating divorce that ultimately led to bankruptcy. After bankruptcy, he still had access to his 401(k) funds.

14. In 2014, Mr. DiPietro cashed out his 401(k) funds to purchase land in Bolton and bordering Stow, Massachusetts. Only that portion of Mr. DiPietro's land that falls within the tax jurisdiction of Bolton is the subject of this complaint.

15. The land Mr. DiPietro purchased was particularly appealing to him as its size and location would allow him to relocate his herd while remaining near his parents and his childhood hometown. He made plans to build a house on the Property that his parents could move into.

16. On June 20, 2014, Mr. DiPietro paid \$160,000 to purchase the land, which consists of five parcels located on Teele Road in Bolton (Worcester County)—i.e., the Property—and on Maple Street in Stow (Middlesex County). The land is 34 acres: 26 acres in Bolton and 8 acres in Stow. A true copy of the area plan dated August 27, 1991, depicting the Property is attached as **Exhibit A**.

17. After purchasing the land, Mr. DiPietro erected rustic wooden fencing, gates, and other small structures such as a shed that were necessary for his herd, mowed existing fields to allow the herd to graze, and moved his alpacas to the Property.

18. Around this time, because of his declaration of bankruptcy, the mortgagee on Mr. DiPietro's Riverside Park home accelerated foreclosure, leading to foreclosure and eviction of Mr. DiPietro from this home in 2016.

19. After losing his Riverside Park home in 2016, Mr. DiPietro resolved to move forward with a fresh start after divorce, bankruptcy, mortgage foreclosure, and

eviction. He moved a motorhome onto the Property and has been living and farming there ever since.

20. Mr. DiPietro's farming endeavors have struggled. Thanks in part to actions taken by Bolton and Stow, he has only been able to earn minimal income from his alpaca farm and subsists largely on SNAP benefits and vegetables he grows for his own consumption.

21. Mr. DiPietro sought to begin a new life as a farmer to escape from the bureaucratic frustrations of the corporate world. But it did not take long for him to fall into yet another bureaucratic quagmire.

The Environment-Related Litigation Regarding the Property

22. Shortly after beginning work on his new land, Mr. DiPietro was notified in 2014 by the Stow and Bolton Conservation Commissions that his maintenance efforts—specifically, mowing existing fields, erecting natural wooden fencing, erecting gates, and erecting small sheds to house his alpacas—may have violated the Massachusetts Wetland Protection Act (“WPA”) and other state and local environmental regulations.

23. The commissions informed Mr. DiPietro that he would need to either submit Notices of Intent to the respective commissions in order to receive Orders of Conditions for use permits to continue his property maintenance, or he would need to restore the land to its original state.

24. This began a protracted dispute between the towns and Mr. DiPietro as to whether the WPA and other environmental regulations applied to the work he was

conducting on his Property; specifically, whether the Property was covered by the environmental regulations and, if so, whether Mr. DiPietro's agricultural use of his property was exempt from conservation rules.

25. In the ensuing three years, the commissions issued enforcement orders and numerous tickets, and the towns filed two lawsuits against Mr. DiPietro on account of his alleged violations.

26. The commissions' enforcement actions and lawsuits frustrated Mr. DiPietro's ability to turn his Property to profitable use, further depressing his financial condition.

27. As a result, Mr. DiPietro became delinquent on his property taxes for 2016. It was at this point that 14% annual interest, subsequent tax bills, and costs began accruing on Mr. DiPietro's tax debt.

28. In order to redeem his property from its tax debt, Mr. DiPietro sought for ways to sell the Property's first lot (the "First Lot"), which would require him to receive a variance from the Bolton Zoning Board of Appeals to reclassify his lot as buildable, as well as an Order of Conditions from the Bolton Conservation Commission, and a septic permit for eventual residential construction on the Property.

29. By unanimous vote of the Bolton Zoning Board of Appeals on June 14, 2016, Mr. DiPietro successfully received the necessary variance for the First Lot, the address listed on the variance's findings and decision being 110 Teele Road, Bolton,

Massachusetts 01740. The findings and decision was subsequently recorded in the Worcester County Registry of Deeds on July 14, 2016.

30. After receiving the variance, Mr. DiPietro filed a Notice of Intent with the Bolton Conservation Commission in order to receive an Order of Conditions, a prerequisite for residential construction. However, around this time the Secretary of Energy and Environmental Affairs declared a drought watch for central Massachusetts, which forestalled Mr. DiPietro's ability to refute the presumption that waters on his Property were "perennial streams"—a presumption he would need to refute before becoming eligible for an Order of Conditions for the First Lot.

31. Refuting the perennial streams presumption was important to preserving the Property's residential value for potential buyers, because the presence of a perennial stream would create a 200 foot protected "riverfront area," a considerably greater amount of protected land than applicable to "intermittent streams" which are protected by a 100-foot "buffer zone." *See* 310 CMR § 10.04; G.L. c. 131 § 40; Bolton Bylaws §§ 233-2A–B, E (extending protected "riverfront area" to 200 feet adjacent to "perennial streams"). *See also* Bolton Bylaws § 233-2F (allowing perennial stream presumption to be rebutted by a preponderance of the evidence).

32. While the drought watch was still in effect and before Mr. DiPietro could receive the Order of Conditions necessary for him to prepare his Property for sale, the towns of Stow and Bolton jointly filed a lawsuit against Mr. DiPietro in the Massachusetts Superior Court on May 15, 2017, seeking injunctive and declaratory

relief and damages based on allegations he violated the WPA and state and local wetlands regulations (the “Superior Court Action”).

33. Mr. DiPietro was financially unable to hire counsel to represent him in the lawsuit.

34. Mr. DiPietro was served with process in the Superior Court Action on May 16, 2017, by the leaving of summons, the Order of Notice, and a copy of the complaint taped to his mailbox at 201 Maple Street, Stow, Massachusetts 01775, the address for the Stow portion of his land.

35. On May 24, 2017, the Superior Court held a hearing on a motion for preliminary injunction filed by the towns alongside their complaint, granting the motion after Mr. DiPietro, acting *pro se*, inadvertently failed to appear at the hearing, erroneously believing that the hearing was to be held two days later.

36. On May 25, 2017, Mr. DiPietro filed two motions in the Superior Court Action: 1) a motion for reconsideration asking the court for a new hearing on the towns’ preliminary injunction motion; and 2) a motion to dismiss. The court denied both motions on May 31, 2017, for failure to comply with Superior Court Rule 9A.

37. Emails Mr. DiPietro received through a FOIA request and communications with the local postmaster revealed that around the time of the commencement of the Superior Court Action, Bolton’s and Stow’s town clerks requested that the towns’ respective postmasters stop delivering mail to Mr. DiPietro at the Property and at his Maple Street address because they were supposedly not addresses officially registered with the towns.

38. Bolton and Stow took this action even though they had used the Maple Street address to serve process on Mr. DiPietro, even though nearly a year earlier the findings and decision of the First Lot's variance had been recorded in the Worcester County Registry of Deeds, and even though approximately three months earlier Mr. DiPietro had executed and recorded in the Worcester County Registry of Deeds a Declaration of Homestead for Homes Owned by Natural Persons for the portion of the Property at 110 Teele Road, Bolton, Massachusetts 01740.

39. Neither town nor the local postmasters informed Mr. DiPietro that his mail service would be or had been terminated.

40. Mr. DiPietro ultimately learned, after the conclusion of the Superior Court Action, that the supposed reason Bolton refused to recognize his address was because in Bolton's view, there were no legal home, structures, or business on the Property. Mr. DiPietro could not meet this home/structure/business requirement without authorization from the Conservation Commission and building department to construct on the Property, and he was unable to receive authorization, at first, because of the drought watch and later because of his back taxes.

41. Because he was no longer receiving mail from the court, Mr. DiPietro was not aware that his motions had been denied, and therefore was not aware that on May 31, 2017, the time for him to answer the complaint had begun to toll.

42. Without legal counsel and without notice of litigation developments, Bolton's actions precluded Mr. DiPietro from being able to argue in court that his land was unprotected, or that his activities were exempt from wetlands regulations

as agricultural use, Bolton Bylaws § 233-3C, or having occurred in “areas regarded as ‘previously developed’ or ‘degraded.’” *Id.* § 233-2E.

43. For nearly four months after filing his motions, Mr. DiPietro filed no other documents and made no other appearances with the court, leading to the court’s issuance of an order of default against him on September 29, 2017, for failure to respond to the complaint.

44. On September 8, 2017, while the Superior Court case was ongoing and only three weeks before the court’s order of default against Mr. DiPietro, Bolton issued tax taking titles of four of the Property’s parcels for the amount of \$5,870.47, interest, fees, and costs included.

45. On July 13, 2018, Bolton issued another tax taking title for the remaining parcel on the Property, for the amount of \$246.33, interest, fees, and costs included.

46. In total—interest, fees, and costs included—these tax liens on the Property totaled \$6,116.80.

47. Once each tax taking title was issued, 16% annual interest, plus costs, began accruing on Mr. DiPietro’s tax debt.

48. On December 18, 2017, the Superior Court entered a default judgment against Mr. DiPietro, ordering him to pay damages to Bolton and Stow with 12% interest accruing from the date of May 15, 2017, to restore the Property to its prior state, and to submit within 90 days a Notice of Intent to the towns’ respective

conservation commissions to seek approval for his proposed alterations to the Property.

49. On May 3, 2018, the Superior Court issued an execution of judgment against Mr. DiPietro for the amount of \$27,744.92 for unpaid tickets issued by Stow for the alleged environmental violations, interest and costs included.

50. On May 30, 2018, the Superior Court entered a judgment for Bolton's attorney's fees and costs against Mr. DiPietro, and on July 23, 2018, the court issued an execution of judgment for the amount of \$12,154.51, interest included.

51. With insufficient funds to secure counsel for an appeal, Mr. DiPietro looked for ways to pay the judgment.

Bolton's Efforts to Frustrate Mr. DiPietro's Attempt to Pay Taxes

52. Mr. DiPietro hoped that he could quickly sell part or all of the Property in order to secure the funds needed to satisfy the back taxes and judgment in the Superior Court Action. Unfortunately for him, Bolton would not allow the issue to be resolved so easily and allow him to redeem.

53. At the time of the default judgment against him, Mr. DiPietro was still unable to sell any portion of his Property, as he had not yet been granted an Order of Conditions from the Bolton Conservation Commission due to the ongoing drought watch that prevented him from rebutting the perennial stream presumption.

54. After the drought watch was finally lifted, Mr. DiPietro filed a request with the Bolton Conservation Commission on December 26, 2017, for a Determination of Applicability regarding whether the waters on his Property were "perennial

streams.” Mr. DiPietro was finally vindicated on January 16, 2018, when the Bolton Conservation Commission voted unanimously to recognize that the streams on the Property were intermittent, not perennial.

55. Mr. DiPietro subsequently filed a Notice of Intent with the Bolton Conservation Commission on February 28, 2018, in compliance with the Superior Court’s order, and was granted an Order of Conditions from the Conservation Commission on March 6, 2018, authorizing residential construction on the Property.

56. However, the Conservation Commission withheld the issuance of the concomitant Local Wetlands Bylaw Permit to Mr. DiPietro on the ground that he was delinquent on his property taxes, even though the commission was under no legal obligation to do so. *See Bolton Bylaws § 215-2* (“The licensing authority *may* deny ... any license or permit ... of any party whose name appears on said list [of delinquent taxpayers] furnished to the licensing authority from the tax collector”) (emphasis added).

57. Indeed, the Commission was required to give “[d]ue consideration ... to any demonstrated hardship on the applicant by reason of denial” of a permit. Bolton Bylaws § 233-6(B). Denying the permit to Mr. DiPietro due to his tax delinquency caused him grave hardship, as the permit was necessary for him to be able to prepare the Property for sale in order to raise the funds needed to redeem his back taxes and satisfy the Superior Court’s judgment against him.

58. However, the Commission did not take into account the hardship to Mr. DiPietro that denying the permit would cause, even though it knew that Mr. DiPietro

needed the permit in order to sell the First Lot and that he was in dire financial straits, in part because he had requested a waiver of the filing fee for the Notice of Intent.

59. Moreover, the same Bolton Bylaw which grants the Commission the discretion to deny permits for tax delinquency requires that the permit applicant be afforded a hearing on whether the permit should be withheld, to be held not earlier than 14 days after notice is given to the permit applicant. Bolton Bylaws § 215-2.

60. Although the tax delinquency issue was discussed at the March 6, 2018, hearing where the Conservation Commission issued the Order of Conditions authorizing residential construction on the Property, Mr. DiPietro was not given notice before the hearing that the Commission was considering withholding the permit because of the tax debts, he was not given notice that he had a right to argue and present evidence as to why withholding the permit would cause him undue hardship, and he was not given the opportunity at this hearing to argue why the permit should not be withheld due to the back taxes. He was also not subsequently afforded an independent hearing regarding whether tax delinquency would be grounds for denying the requested permit.

61. Furthermore, Bolton Bylaws § 215-3 states that “[a]ny party *shall* be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the licenses or permit, and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement” (emphasis added). Instead of offering a payment

agreement that Mr. DiPietro could afford, such as requiring him to immediately redeem his back taxes with proceeds from sale of the Property, Bolton's treasurer and tax collector offered an agreement that would have required Mr. DiPietro to make a substantial down payment that he could not afford.

62. Even in the face of Bolton's systematic prevention of Mr. DiPietro's ability to use and sell his Property, he still attempted to work with the Town in order to come into compliance, sell his Property, and to redeem his back taxes. Mr. DiPietro reached out to the Bolton treasurer and other town employees requesting information and asking what he could do to rectify the tax delinquency situation. He was contacted by Bolton's counsel, Mr. Gibbons, who instructed Mr. DiPietro to direct legal inquiries to his own counsel and send any other questions for the Town to Mr. Gibbons. Relying on this information, Mr. DiPietro sent emails to Mr. Gibbons to which Mr. Gibbons was largely unresponsive, bringing payment agreement negotiations to a halt.

63. Since 2016, Mr. DiPietro has been attempting to sell parts of the Property in order to raise funds to redeem his farm, and he has even found a number of potential buyers over the years. He has obtained purchase offers for parcels of the property including \$145,000 for a single parcel that is likely worth at least \$200,000 and an offer of \$510,000 for four parcels. Unfortunately, each offer was conditioned on receiving the necessary permits from Bolton that the Town refused to issue on account of Mr. DiPietro's property tax debt.

64. Bolton has even chilled any potential sale by directly warning potential buyers that no sale would be possible or allowed, even though such a sale would allow Bolton to quickly recoup what it was owed.

65. The Town has on multiple occasions since 2018 blocked his attempts to profitably use his Property in other ways.

66. For example, in October 2018, Mr. DiPietro filed an application with Bolton for a dog license so he could keep a guard dog to protect his farm from thieves. Bolton refused to issue the license supposedly because the Bolton Bylaws require dog licenses to contain a legally registered address and Bolton would not recognize the Property's address.

67. Mr. DiPietro subsequently received a dog license from the Town of Stow without incident.

68. In early October 2019, Mr. DiPietro conceived a new plan to raise money to pay his back taxes. He applied to the Massachusetts Department of Conservation and Recreation seeking approval of a forest cutting plan, in the hopes of logging his Property to raise funds to redeem his back taxes. The Department denied Mr. DiPietro's application, at the behest of the towns' conservation officials, on account of the environmental violations judgment.

69. In 2020, in a last ditch effort to save his property, Mr. DiPietro secured industrial hemp licenses from the Department of Agricultural Resources (MDAR) for the Property located in Bolton, as well as the portion of Mr. DiPietro's property located in Stow, respectively.

70. Starting in August of 2020, and again in September of 2021, the Town Administrator and other town employees were in communication with MDAR officials to inquire whether Mr. DiPietro's tax delinquency, invalid address, or alleged wetlands violations would serve as bases to revoke his license.

71. After Bolton secured foreclosure of the Property three months later, the Town's Conservation Agent contacted MDAR officials on December 21, 2021, instructing them to not renew the hemp license because the Town then effectively owned the Property and did not plan to continue use of the license.

72. Even before revoking the hemp license for the Bolton portion of Mr. DiPietro's property, Bolton's Conservation Agent attempted to have the hemp license for the Stow portion of Mr. DiPietro's property revoked. On September 27, 2021, she forwarded emails between Stow's Conservation Director and Town Clerk to MDAR officials which claimed that the address for the Stow portion of the property, 201 Maple Street, was not a legal address, and thus that the hemp license applications bearing this address were void.

Foreclosure and Eviction Proceedings

73. Instead of working with Mr. DiPietro to prepare the Property for sale so he could quickly redeem his Property, Bolton filed a lawsuit against him in the Land Court on September 12, 2019, to foreclose his right of redemption on his Property.

74. After Mr. DiPietro filed his answer in the Land Court case on February 14, 2020, and before any hearing was held in the case, the Land Court postponed its Entry of Finding and Payment of Legal Fees until June 4, 2020.

75. In its Entry of Finding and Payment of Legal Fees, the Land Court found that Mr. DiPietro could redeem upon payment to Bolton, on or before October 1, 2020, of the sum of \$41,532.79 with interest allowed by statute, court costs in the amount of \$1,012.80, and legal fees of \$2,110, for a total of \$44,655.59.

76. The Land Cour denied Mr. DiPietro's request for an order requiring Bolton to grant him the Order of Conditions that he needed in order to sell the First Lot or other portion of the Property to raise the funds to redeem his Property.

77. Mr. DiPietro was unable to sell any portion of the Property or otherwise raise the necessary funds and could not redeem the Property by the Land Court's October 1, 2020, deadline.

78. On October 5, 2020, Bolton filed a motion for judgment in the Land Court.

79. On June 3, 2021, the Land Court allowed the motion and held it in abeyance until September 2, 2021, giving Mr. DiPietro one final three-month period to redeem.

80. While the land court matter was pending, Mr. DiPietro sought mediation by the Massachusetts Office of Public Collaboration between Mr. DiPietro and Bolton regarding the tax and wetland issues. Bolton's attorneys refused mediation.

81. Without the ability to sell or profitably utilize his Property, Mr. DiPietro was unable to redeem.

82. The Land Court granted Bolton's motion for judgment on September 2, 2021.

83. On September 30, 2021, Bolton filed a motion for general default against Mr. DiPietro, which the Land Court granted on December 6, 2021, resulting in Bolton's ability to keep all of Mr. DiPietro's equity in the Property.

84. On December 14, 2021, the Land Court foreclosed Mr. DiPietro's right of redemption, transferring absolute title to the Property to Bolton.

85. Bolton continued to frustrate Mr. DiPietro's ability to earn income from the use of his Property.

86. For numerous years, Mr. DiPietro had been issued agricultural burn permits by the Town. Once the Town took absolute title, it had Mr. DiPietro's 2022 burn permit revoked.

87. After foreclosure, Bolton filed a summary process lawsuit against Mr. DiPietro in the Clinton District Court in order to evict Mr. DiPietro from the Property.

88. In the wake of a divorce, bankruptcy, foreclosure of and eviction from his Riverside Park home, Mr. DiPietro hoped that the investment of his retirement savings would allow him to start a new life as an alpaca farmer caring for his parents in their old age.

89. But at every turn, Bolton has prevented Mr. DiPietro from profitably utilizing the Property and, rather than granting the permits that would have allowed him to sell his Property so he could meet his legal and tax obligations to Bolton without losing the life savings invested in the Property's equity value, Bolton has

resorted to hardnosed litigation and underhanded tactics that Mr. DiPietro was financially and otherwise unable to effectively combat.

90. Now that he has lost title to his Property and faces eviction from his home, Mr. DiPietro has been left with no other option than to seek just compensation for his equity, with which he can attempt to restart his life again.

**G.L. c. 60 Disincentivizes Municipalities to Cooperate with
Taxpayers
So That They Can Pay Taxes**

91. Bolton put the financially-strapped Mr. DiPietro in a “catch-22” dilemma. He could not earn enough money to pay his taxes and satisfy the Superior Court’s judgment against him by farming, conducting a timber cut, or selling one of his lots because Bolton was blocking his permits on the ground that he had not paid the very debts he was attempting to pay.

92. Further, Bolton would not offer a payment agreement to Mr. DiPietro that he could afford, virtually ensuring that he would lose his Property.

93. The Massachusetts tax foreclosure statute, G.L. c. 60, authorizes tax-lienholders to foreclose and take absolute title to tax-indebted properties, even when the Property is worth more than the tax debt.

94. Thus municipalities have a powerful financial incentive to foreclose and then keep or sell valuable properties, like the Property in this case, rather than help owners avoid foreclosure by generating income from their property or negotiating a reasonable payment plan.

COUNT I

**VIOLATION OF FIFTH AMENDMENT
JUST COMPENSATION CLAUSE**

95. Mr. DiPietro restates and realleges as if fully set forth herein every allegation in each of the above-numbered paragraphs.

96. Under the Fifth Amendment to the United States Constitution, the government may not engage in a physical appropriation of property without providing just compensation. This self-executing prohibition is incorporated against the states through the Fourteenth Amendment and further made enforceable by 42 U.S.C. § 1983, which authorizes a private right of action against persons acting under the color of law who have deprived individuals of their federally protected rights.

97. As permitted by the tax foreclosure statute, Bolton foreclosed on Mr. DiPietro's Property and kept the Property's equity value in excess of the outstanding tax debts.

98. For having taken the surplus value of Mr. DiPietro's property, Bolton, a state actor, is liable under the Fifth Amendment's Taking Clause to pay just compensation to Mr. DiPietro for the surplus value of his property.

99. Bolton has not given Mr. DiPietro just compensation for the taking of the Property.

100. The Just Compensation Clause protects property, even property subject to tax liens.

101. The surplus value of Mr. DiPietro's property in excess of the tax debt—his equity—is a traditionally protected property interest under Massachusetts law and American legal tradition.

102. By taking full title to the Property that was worth more than Mr. DiPietro's tax debt, Bolton, operating under the color of state law, violated the Fifth Amendment guarantee of just compensation.

103. Mr. DiPietro's Property was worth at least \$310,000 more than the total amount of his tax debt to Bolton, including all interest, penalties, and fees.

104. When the Defendant took and foreclosed the Property, confiscating property worth at least \$310,000 in excess of the tax debt, it invaded and unconstitutionally took property without just compensation.

COUNT II
VIOLATION OF THE REASONABLE COMPENSATION CLAUSE
OF PART 1, ARTICLE X, OF THE
MASSACHUSETTS DECLARATION OF RIGHTS
(G.L. c. 79 § 14)

105. Mr. DiPietro restates and realleges as if fully set forth herein every allegation in each of the above-numbered paragraphs.

106. Under Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution, the government may not take private property for public use without reasonable compensation being paid or secured in a manner prescribed by law.

107. This state constitutional provision protects intangible property, including equity in homes and land.

108. Mr. DiPietro owned equity in the Property that exceeded the value of his tax debt.

109. Bolton, under color of state law, took the Property and its full value without compensation to Mr. DiPietro for his equity.

110. By taking absolute title to the Property and retaining approximately \$310,000 in equity value, over and above the amount of unpaid taxes and administrative expenses, costs, and interest owed by Mr. DiPietro, Defendant violated the Reasonable Compensation Clause of the Massachusetts Declaration of Rights.

111. Mr. DiPietro is entitled to an award of damages and petitions this Court accordingly under both the Massachusetts Declaration of Rights and Chapter 79, § 14, of Massachusetts General Laws.

COUNT III

VIOLATION OF EXCESSIVE FINES CLAUSE UNDER EIGHTH AMENDMENT; 42 U.S.C § 1983

112. Mr. DiPietro restates and realleges as if fully set forth herein every allegation in each of the above-numbered paragraphs.

113. The Eighth Amendment to the United States Constitution prohibits punitive fines or forfeitures grossly disproportionate to the offense they are designed to punish.

114. Mr. DiPietro failed to pay his taxes starting in 2016. His total debt at the time of foreclosure, including taxes, punitive interest, fees, and costs, was approximately \$60,000.

115. Enabled by the state's foreclosure statute, Bolton took Mr. DiPietro's Property that was worth at least \$310,000 more than he owed in taxes, interest, and all fees.

116. The divesture of the excess equity—Mr. DiPietro's savings built up in his Property—was in no way related to any harm caused by Mr. DiPietro's tax delinquency.

117. The tax statute already allows Bolton to collect costs and 16 percent interest on the debt. By taking and keeping at least \$310,000 more than the taxes, interest, and fees, Bolton, under color of state law, excessively punished Mr. DiPietro.

118. Taking at least \$310,000 in equity from Mr. DiPietro is punitive.

119. Taking at least \$310,000 as punishment for a much smaller tax debt was grossly disproportionate to any harm caused by the tax delinquency.

120. Mr. DiPietro is not significantly culpable for his failure to his property taxes. His delinquency occurred because of financial hardship caused by his divorce, declaration of bankruptcy, and inability to profitably utilize his property due to Bolton's enforcement actions and lawsuit.

121. Mr. DiPietro is not significantly culpable for his failure to redeem his back taxes. Before 2018, he was unable to sell his Property because the drought watch forestalled his ability to rebut the perennial stream presumption, thereby preventing him from receiving an Order of Conditions from the Bolton Conservation Commission authorizing residential construction that was necessary to prepare the Property for sale. After the drought watch was lifted, the Commission refused to grant Mr.

DiPietro an Order of Conditions on account of the fact that he owed back taxes, which has prevented him from either profitably utilizing or selling his Property.

122. Whatever degree of culpability Mr. DiPietro has for the original wetlands violations that led to his inability to profitably utilize his Property to raise funds to pay his property taxes, he has already had a substantial judgment with interest issued against him by the Superior Court. It would be excessive and inequitable to further punish him by depriving him of hundreds of thousands of dollars in equity.

123. Defendant has systematically prevented Mr. DiPietro from coming into compliance or selling his Property despite his earnest attempts to do so.

124. Rather than working with Mr. DiPietro to facilitate sale of his Property when there were sufficient legal channels available to do so, Bolton has instead chosen to divest Mr. DiPietro of his Property and all its equity.

125. Mr. DiPietro's equity is the last substantially valuable asset that he has, with which he could pick up the pieces and move forward with his life and farm.

126. Had Bolton not unnecessarily and inequitably withheld the Order of Conditions from Mr. DiPietro, and had it not moved on tax takings of his Property during this same time, he could have sold his Property and redeemed his back taxes by now.

127. But instead, Bolton is seeking a massive windfall at his expense by keeping the entire Property and its equity value.

128. Mr. DiPietro is an extremely low-income earner. He is a self-sufficient farmer who has been systematically prevented by Bolton from utilizing his Property for profitable agricultural and business purposes, which prevents him from expanding his income stream.

129. It is excessive to require Mr. DiPietro to relinquish his Property's equity for a tax debt that is, at most, one-fifth the value of the equity and which Bolton systematically prevented him from redeeming when there were sufficient legal channels available to do so.

COUNT IV

VIOLATION OF THE EXCESSIVE FINES CLAUSE UNDER PART 1, ARTICLE XXVI, OF THE MASSACHUSETTS CONSTITUTION'S DECLARATION OF RIGHTS

130. Mr. DiPietro restates and realleges as if fully set forth herein every allegation in each of the above-numbered paragraphs.

131. Part 1, Article XXVI, of the Massachusetts Constitution's Declaration of Rights protects against excessive fines and cruel or unusual punishment.

132. Defendants violated that protection when they took and foreclosed the Property, which was worth at least \$310,000 more than Mr. DiPietro owed.

133. The value of Mr. DiPietro's Property and all of his equity saved in it has no relation to any injury suffered by Defendant due to Mr. DiPietro's tax delinquency. Yet, Defendant took his Property and all of his equity therein.

134. The seizure of Mr. DiPietro's home equity, at least 460% more than the total tax debt, was grossly disproportionate to any harm caused by non-payment of the taxes due.

135. Seizing Mr. DiPietro's equity was an excessive fine in violation of the Massachusetts Constitution.

COUNT V

**VIOLATION OF EQUAL TAXATION GUARANTEE UNDER PART 1,
ARTICLE X, OF THE MASSACHUSETTS CONSTITUTION'S
DECLARATION OF RIGHTS**

136. Mr. DiPietro restates and realleges as if fully set forth herein every allegation in each of the above-numbered paragraphs.

137. Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution prohibits taxation inequality—the imposition of a disproportionate tax burden relatively greater than that imposed on another taxpayer.

138. In the alternative, if Bolton's actions were not a taking or an excessive fine, then forcing Mr. DiPietro to surrender all the equity value of his Property imposed upon him an enhanced tax burden relative to non-delinquent taxpayers who pay a much smaller fraction of their property's value.

139. Unlike non-delinquent payers, Mr. DiPietro was required to pay a tax many times higher than all others in the municipality. The equity taken was worth almost five times the amount of the tax debt.

140. Bolton's action's violated Part 1, Article X of the Declaration of Rights.

COUNT VI

UNJUST ENRICHMENT

141. Mr. DiPietro restates and realleges as if fully set forth herein every allegation in each of the above-numbered paragraphs.

142. Under the doctrine of unjust enrichment, a person who retains the money or property of another against the principles of justice or equity and good conscience may be required to make restitution.

143. A benefit was conferred upon Bolton at Mr. DiPietro's expense through the foreclosure of his Property.

144. Bolton took property worth at least \$310,000 more than it was owed in taxes, interest, costs, and fees.

145. Bolton received a windfall of at least \$310,000 in value beyond the tax revenue owed on the Property.

146. It would be unjust to allow Bolton to take and keep Mr. DiPietro's equity after Bolton systematically and unnecessarily prevented him from redeeming his back taxes.

147. Bolton and Mr. DiPietro could have entered into an agreement to grant him an Order of Conditions contingent upon the redemption of his back taxes from the proceeds of sale. Instead of helping Mr. DiPietro meet his legal obligations and retain his home and farm, Bolton seized the entire Property and its significant equity for itself.

148. If municipalities are allowed to retain property owners' equity in excess of what is owed in back taxes, there is no incentive for municipalities to help delinquent taxpayers retain their property.

149. If municipalities are allowed to retain property owners' equity in excess of what is owed in back taxes even after preventing taxpayers from lawfully using or

selling their property, they will continue to have an incentive to prevent taxpayers from paying their taxes so the municipality can take their property and receive a windfall. Such incentives are manifestly unjust to taxpayers such as Mr. DiPietro.

COUNT VII

DECLARATORY RELIEF ALLEGATIONS (M.G.L. c. 231A § 1)

150. Mr. DiPietro restates and realleges as if fully set forth herein every allegation in each of the above-numbered paragraphs.

151. Under the Fifth Amendment to the United States Constitution, and under Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution, Mr. DiPietro has a right to be free from uncompensated takings of private property.

152. Under the Eighth Amendment to the United States Constitution, and under Part 1, Article XXVI, of the Declaration of Rights in the Massachusetts Constitution, Mr. DiPietro has a right to be free from the imposition of excessive fines.

153. Under Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution, Mr. DiPietro has a right to be free from unequal taxation.

154. Defendant is enforcing statutes in a manner that violates the Fifth Amendment, 42 U.S.C. § 1983, and Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution, by taking property without just compensation.

155. Defendant is enforcing statutes in a manner that violates the Eighth Amendment, 42 U.S.C. § 1983, and Part 1, Article XXVI, of the Declaration of Rights in the Massachusetts Constitution by imposing excessive fines.

156. Defendant is enforcing statutes in a manner that violates Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution, by imposing a disproportionate tax obligation on Mr. DiPietro.

157. There is an actual and justiciable controversy in this case as to whether the Massachusetts foreclosure statute, as applied to Mr. DiPietro, violates the Fifth, Eighth, and Fourteenth Amendments, as well as Part 1, Articles X and XXVI, of the Declaration of Rights in the Massachusetts Constitution.

158. A declaratory judgment is necessary to adjudicate whether the foreclosure statute violates these federal and state constitutional guarantees and to clarify the legal relations between Mr. DiPietro and Defendant with respect to enforcement of the tax foreclosure statute.

159. A declaratory judgment as to the constitutionality of the foreclosure statute will give the parties relief from the uncertainty and insecurity giving rise to this controversy.

VII. REQUEST FOR RELIEF

WHEREFORE, Mr. DiPietro respectfully requests relief as follows:

A. An entry of judgment declaring that the Massachusetts tax foreclosure statute, G.L. c. 60, as applied to Mr. DiPietro, violates the Fifth Amendment, and Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution by

allowing Bolton to keep the surplus equity value transferred to Bolton upon the foreclosure of the Property (worth at least \$310,000).

B. An entry of judgment declaring that the Massachusetts tax foreclosure statute, G.L. c. 60, as applied to Mr. DiPietro, violates the Eighth Amendment, and Part 1, Article XXVI, of the Declaration of Rights in the Massachusetts Constitution by allowing Bolton to keep the surplus equity from the foreclosure of the Property far in excess of the debt owed by the property owner, resulting in an unconstitutionally excessive fine;

C. An entry of judgment declaring that Bolton violated Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution by imposing a disproportionate tax on Mr. DiPietro relative to other taxpayers;

D. An award of damages in excess of \$310,000, including all applicable interest, in an amount to be determined at trial;

E. An award of just compensation, as applicable, in an amount to be determined at trial pursuant to G.L. c. 79 § 14;

F. An award of restitution in an amount to be determined at trial;

G. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988;

H. An award of nominal damages; and

I. All further legal and equitable relief as the Court may deem just and proper.

JURY DEMAND

Mr. DiPietro hereby demands a jury trial on all issues triable by jury as a matter of right.

DATED: January 10, 2022

Respectfully submitted, Alan DiPietro, by his attorneys,

/s/ John C. LaLiberte
John C. LaLiberte, BBO# 556046
PioneerLegal, LLC
185 Devonshire Street
Boston, MA 02110
Phone: 617-723-2277
john.laliberte@pioneerlegal.org

JOSHUA POLK*
CA Bar No. 329205
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Tel: (916) 419-7111
Fax: (916) 419-7747
JPolk@pacificlegal.org

CHRISTINA M. MARTIN*
FL Bar No. 0100760
Pacific Legal Foundation
4440 PGA Blvd., Ste. 307
Palm Beach Gardens, FL 33410
Tel: (516) 691-5000
CMartin@pacificlegal.org

**Pro Hac Vice applications to be filed*

EXHIBIT A

