UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL LAUKKA and HEIDI WETTBERG, Plaintiffs,	
-v-	No. 2:24-cv-75
ONTONAGON COUNTY and MICHELE SMITH, Defendants.	Honorable Paul L. Maloney

OPINION AND ORDER GRANTING IN PART MOTION TO DISMISS

Plaintiff Michael Laukka and Heidi Wettberg failed to pay their property taxes. Using then existing state statutory procedures set forth in the General Property Tax Act (GPTA), Ontonagon County initiated tax foreclosure proceedings and eventually took Plaintiffs' properties. Ontonagon County sold the properties at auction and kept the proceeds, including the surplus (the amount of the sale that exceeded what Plaintiffs owed in taxes and fees). The Michigan Supreme Court subsequently found portions of the GPTA unconstitutional under the Michigan Constitution. *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 435 (Mich. 2020). The United States Supreme Court found a similar tax foreclosure statute in Minnesota violated the Takings Clause of the United States Constitution. *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023). The Michigan Legislature has since amended the GPTA.

Plaintiffs filed this lawsuit in the 32nd Circuit Court, located in Ontonagon County, Michigan. Plaintiff sued Ontonagon County and Michele Smith (the County Treasurer).

They alleged eleven causes of action: six under state law and five under federal law. Dozens of similar lawsuits have been filed in state and federal courts in Michigan.

Defendants filed a motion to dismiss. ECF No. 11. Plaintiffs opposed the motion. ECF No. 14. The court will grant the motion in part. The court will decline to exercise supplemental jurisdiction over the state law claims. The court will dismiss three of the federal causes of action. Since Defendants filed their motion to dismiss, the parties stipulated to dismiss the County Treasurer. ECF Nos. 18 and 19. The parties also stipulated to dismiss all of Michael Laukka's claims. ECF Nos. 21 and 22. Only Wettberg's claims against Ontonagon County remain.

I.

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a plaintiff to allege facts that provide both fair notice of the nature of the claim and the facts giving rise to that claim. *In re I.E. du Pont de Nemours and Co.*, 87 F.4th 315, 320 (6th Cir. 2023). "The complaint must 'contain either direct or inferential allegations respecting all material elements necessary for recovery under a viable legal theory.'" *Kreipke v. Wayne State Univ.*, 807 F.3d 768, 774 (6th Cir. 2015) (citation omitted). The factual allegations need not be detailed but must be "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Hobart-Mayfield, Inc. v. Nat'l Operating Comm. on Standards for Athletic Equip.*, 48 F.4th 656, 663 (6th Cir. 2022). Those factual allegations, taken to be true, must show that a legal claim is plausible, not merely possible. *Darby v. Childvine, Inc.*, 964 F.3d 440, 444 (6th Cir. 2020) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 668 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Rule 12(b)(6) provides a vehicle for a defendant to challenge whether a plaintiff pleads a plausible claim. *See Heyward v. Cooper*, 88 F.4th 648, 653 (6th Cir. 2023). When resolving motions to dismiss brought under Rule 12(b)(6), a court generally considers only the complaint and attached exhibits. *Diei v. Boyd*, 116 F.4th 637, 643 (6th Cir. 2024). The court must accept as true all well-pled factual allegations in the complaint and must draw all reasonable inferences in the plaintiff's favor. *Ogbonna-McGruder v. Austin Peay State Univ.*, 91 F.4th 833, 839 (6th Cir. 2024). A plaintiff pleads a facially plausible claim when the well-pled facts allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Matthew N. Fulton, D.D.S., P.C. v. Enclarity, Inc.*, 962 F.3d 882, 887 (6th Cir. 2020) (quoting *Ashcroft*, 556 U.S. at 678).

II.

Wettberg pled six state law claims. In an exercise of discretion, the court *sua sponte* declines to exercise jurisdiction over Plaintiff's state law claims. *See Transcontinental Leasing, Inc. v. Michigan Nat'l Bank of Detroit*, 738 F.2d 163, 165–66 (6th Cir. 1984) (noting that supplemental or pendent jurisdiction "is a doctrine of discretion"). The court exercises subject matter jurisdiction over this civil action under 28 U.S.C. § 1331 because Plaintiff pled federal constitutional claims. Under 28 U.S.C. § 1367(a), federal courts may exercise supplemental jurisdiction over the state law claims when those claims relate to the federal law claims.

A court may decline to exercise supplemental jurisdiction when the state law claim raises "a novel or complex issue of State law[.]" *Id.* § 1367(c)(1); *see City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 173 (1997); *see, e.g.*, *James v. Hampton*, 592 F. App'x 449,

462 (6th Cir. 2015) (affirming the dismissal of a state common law right-to-privacy claim when the district court found that the "claim presented a novel and complex issue of state law"). Our Supreme Court noted that supplemental jurisdiction "is a doctrine of discretion, not of plaintiff's right[.]" *City of Chicago*, 522 U.S. at 172 (quoting *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966)); *see Habich v. City of Dearborn*, 331 F.3d 524, 535 (6th Cir. 2003). When deciding whether to exercise supplemental jurisdiction over state law claims, a court should consider and weigh factors such as judicial economy, convenience, fairness and comity. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

The holding in *Rafaeli* and the Michigan Legislature's amendments to the GPTA constitute significant developments and changes to the relevant state law. Discussing the amendments, the Michigan Supreme Court explained that "MCL 211.78t creates a controlling and structured system for adjudication of tax-foreclosure disputes as the exclusive means for obtaining surplus proceeds." *Schafer v. Kent Cnty.*, 29 N.W.3d 25, 50 (Mich. 2024). The court then held that the amendments applied to claims arising prior to *Rafaeli. Id.* Citing *Schafer*, the Sixth Circuit found that the exclusivity only limits a former property owner's state remedies for seeking the surplus. *Howard v. Macomb Cnty.*, 133 F.4th 566, 572 (6th Cir. 2025).

The balance of factors weighs in favor of declining to exercise supplemental jurisdiction. Judicial economy and convenience weigh in favor of exercising supplemental jurisdiction. Dismissing the state law claims would require Plaintiff to pursue remedies in two forums. Comity, however, weighs strongly in favor of declining jurisdiction over the state law claims. While Plaintiff filed this lawsuit in 2024, it remains in the early stages of litigation.

No case management order has issued. These state law claims should be resolved by the state courts. Fairness also weighs heavily in favor of declining jurisdiction over the state law claims. Some persuasive authority exists for dismissing the state law claims outright. At least one judge in the Eastern District of Michigan relied on *Schafer* to dismiss a plaintiff's state law claims for a pre-*Rafaeli* foreclosure. *Palakurthi v. Wayne Cnty.*, No. 21cv10707, 2025 WL 1293351, at *6 (E.D. Mich. May 5, 2025). Fairness to Plaintiff favors dismissal without prejudice.

III.

Defendant argues that the statute of limitations expired for Plaintiff's federal claims. A defendant may raise a statute of limitations defense in a Rule 12(b)(6) motion when the allegations in the complaint establish the defense. *Wershe v. City of Detroit*, 112 F.4th 357, 364–65 (6th Cir. 2024). To avoid a statute of limitations defense, a plaintiff must commence the lawsuit within a prescribed period of time that begins when the claim accrues. *See Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 105 (2013). When analyzing a statute of limitations defense, a court must consider (1) when the claim accrued, (2) the date plaintiff filed the lawsuit, and (3) any permissible delay between those two events. *Future Now Enters., Inc. v. Foster*, 525 F. App'x 395, 398 (6th Cir. 2013).

Plaintiff's foreclosure proceeding finalized in 2017. Wettberg did not plead when her foreclosure occurred. She attached a spreadsheet as an exhibit to the complaint that indicates her foreclosure occurred in March 2017. ECF No. 1-1 PageID.33. Defendant attached a Notice of Judgment of Foreclosure of Wettberg's property as an exhibit to their motion.

ECF No. 11-3 PageID.111. The document indicates that the judgment would become final on March 31, 2017, if Wettberg did not redeem the property. *Id.*

A.

Michigan's three-year statute of limitations for personal-injury claims applies to claims brought under 42 U.S.C. § 1983. Because Congress did not provide a statute of limitations for § 1983, the Supreme Court directs trial courts to use "a State's personal injury statute of limitations ... for all § 1983 claims." *Nance v. Ward*, 597 U.S. 159, 174 (2022) (citing *Wallace v. Kato*, 549 U.S. 384, 387 (2007)); *see Reguli v. Russ*, 109 F.4th 874, 879 (6th Cir. 2024) ("At the outset, state law determines the *length* of § 1983's statute of limitations. The Supreme Court has held that the statute incorporates the limitations period for personal-injury torts from the State where the events occurred."). Michigan has a three-year statute of limitations for personal-injury claims, which the Sixth Circuit has held must be borrowed for § 1983 claims arising in the state. Mich. Comp. Laws § 600.5805(10); *Wolfe v. Perry*, 412 F.3d 707, 714 (6th Cir. 2005); *see, e.g., Lyndon's LLC v. City of Detroit*, No. 23-1895, 2024 WL 3427176, at *2 (6th Cir. July 16, 2024) (applying the three-year statute of limitations period to a Fifth Amendment takings claim). Plaintiff does not argue that her federal claims have a different statute of limitations.

B.

Plaintiff's § 1983 claims accrued when the judgment of foreclosure became final. Federal law determines when a § 1983 claim accrues and when the statute of limitations begins to run. *Reguli*, 109 F.4th at 879. A claim accrues when "the plaintiff has a complete

and present cause of action." *Corner Post, Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 810 (2024) (citation omitted). The Supreme Court has "explained that a cause of action does not become complete and present for limitations purposes—it does not *accrue*—until after the plaintiff can file suit and obtain relief." *Id.* (citation modified). "Put differently, this 'injury-occurrence' or 'occurrence' rule triggers the limitations period on the first day that every element of a claim has occurred such that the plaintiff may sue in court over the claim." *Reguli*, 109 F.4th at 879. "A constitutional violation accrues the moment the government undertakes a constitutional act. For example, a violation of the Takings Clause occurs 'at the time of taking.'" *Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (quoting *Knick v. Twp. of Scott*, 588 U.S. 180, 194 (2019)).

The Fifth Amendment to the United States Constitution provides, in part, that private property shall not "be taken for public use without just compensation." U.S. Const. amend. V. "The paradigmatic taking requiring just compensation is a direct government appropriation or physical invasion of private property." *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005). The plain text of the amendment "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *Id.* at 536 (citation omitted). The clause does not "limit governmental interference with property rights *per se*," rather it "'secure[s] *compensation* in the event of otherwise proper interference amounting to a taking.'" *Id.* at 537 (citation omitted). The Takings Clause does not require payment prior to a taking. *Hurley v. Kincaid*, 285 U.S. 95, 104 (1923). The government must, however, provide some mechanism for compensation. *See Stringer v. United States*, 471 F.2d 381, 383 (5th Cir. 1973) ("It is well established that a property owner is not entitled

to actual compensation before the Government takes possession of his land, but only to an adequate provision for compensation[.]"). Additionally, "the availability of state-law compensation remedies cannot delay or undo the accrual of a takings claim." *Wilson*, 145 S. Ct. at 20 (citing *Knick*, 588 U.S. at 193-94).

For § 1983 claims arising from tax foreclosures of property in Michigan prior to the recent amendments to the GPTA, the claims accrued on the date the circuit court entered a final judgment terminating all of the rights to the property held by the former property owner. Property owners generally possess an interest in the equity of their property. *Hall v. Meisner*, 51 F.4th 185, 190 (6th Cir. 2022); *see Tyler*, 598 U.S. at 638–39. "History and precedent" have established the "principle that a government may not take more from a taxpayer than she owes[.]" *Tyler*, 598 U.S. at 639. Following the public sale of a tax-foreclosed property, under "long-settled principles, the debtor would then be entitled to any surplus proceeds from the sale, which represented the value of the equitable title thus extinguished." *Hall*, 51 F.4th at 194. But under the GPTA at the time Ontonagon County foreclosed on Plaintiff's property, she did not retain any interest at all to the property. Under the earlier versions of the GPTA, when the circuit court entered a final judgment "[a]ll redemption rights to the property expire," Mich. Comp. Laws § 211.78k(5), and "fee simple title" to the property "vests absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property," *id.* § 211.78k(6). *See Hall*, 51 F.4th at 194. "Before that event, the plaintiffs held equitable title; after it, they held no title at all." *Id.* at 196. Importantly, prior to the recent amendments, the GPTA did not provide any mechanism by

which a former property owner could obtain surplus proceeds following a tax foreclosure sale. *Rafaeli*, 952 N.W.2d at 447–48.

Absent a period of delay, the statute of limitations expired for Plaintiff's § 1983 claims. Plaintiff's claims accrued on or about March 31, 2017. The three-year statute of limitations expired on March 31, 2020. Plaintiff filed this lawsuit in April 2024.

IV.

Plaintiff argues that a class action lawsuit, *Wayside Church v. Van Buren County*, No. 1:14cv1274 (W.D. Mich. 2014), tolled the statute of limitations for her claims. The *Wayside* lawsuit began on December 11, 2014. *Wayside* involved both a plaintiff class and a defendant class. The complaint pled a class of former owners of real property in Michigan who lost property for non-payment of real property taxes, where the property was then sold for an amount in excess of the amount owed, and where the property owners were denied the surplus proceeds.

In addition to borrowing Michigan's statute of limitations, federal courts also apply state tolling rules for class action lawsuits, so long as the tolling rules are not "inconsistent with the federal policy underlying the cause of action under consideration." *Wershe*, 112 F.4th at 370 (citation omitted). Michigan Court Rule 3.501 sets forth the procedures for class actions and subrule (F) provides for tolling. Rule 3.501(F)(1) states that the statute of limitations "is tolled as to all persons within the class described in the complaint." Rule 3.501(F)(2) identifies events that cause the statute of limitations to resume running. And Rule 3.501(F)(3) provides that if the event identified in (F)(2) is superseded by an order of

the trial court, "the statute of limitations shall be deemed to have been tolled continuously from the commencement of the action."

Applying the Rule 3.501(F), the *Wayside* lawsuit tolled Plaintiff's statute of limitations. On November 5, 2015, in the *Wayside* lawsuit, the court granted a motion to dismiss and entered judgment. In February 2017, the Sixth Circuit vacated the court's opinion and order and remanded the action with instructions to dismiss the lawsuit for lack of subject matter jurisdiction. In March 2017, this court reopened the case and then promptly dismissed the action for lack of subject matter jurisdiction. The court granted a motion to reopen the lawsuit in March 2019 based on new authority issued by the Supreme Court. In a companion case also involving a *Wayside* opt-out, the Sixth Circuit looked at this series of events and found that the statute of limitations for the claims of the members of the *Wayside* class were tolled upon the filing of the *Wayside* lawsuit in December 2014. *Perry v. St. Joseph Cnty.*, No. 25-2012, 2026 WL 2476333, at *2 (6th Cir. Aug. 24, 2026). Following this court's order reopening the case in 2017, Rule 3.501(F)(3) applied so that the class members' claims were tolled continuously until the plaintiff in *Perry* opted out. *Id.* at *2.

Following *Perry*, the statute of limitations for Plaintiff's claims had not yet expired when she filed this lawsuit. Like the plaintiff in *Perry*, Plaintiff was a member of the class described in the initial *Wayside* complaint. Plaintiff opted out of the *Wayside* lawsuit in July 2023.[1] She filed this lawsuit in April 2024, well within the three-year limitations period.

[1] *Wayside*, No. 1:14cv1274 (WD. Mich. July 19, 2023), ECF No. 333-1 PageID.6165.

IV.

Defendant seeks dismissal of three of Plaintiff's federal causes of action: her takings claim arising under the Fifth Amendment (Count 2); her Eighth Amendment Excessive Fines claim (Count 5); and her substantive due process claim (Count 7).

The court will dismiss Plaintiff's arising-directly under the Fifth Amendment takings claim (Count 2). The Sixth Circuit has consistently found that 42 U.S.C. § 1983 provides the exclusive remedy for constitutional violations. *See Foster v. Michigan*, 573 F. App'x 377, 391 (6th Cir. 2014) ("To the extent that Appellants attempt to assert direct constitutional claims, they fail; we have long held that § 1983 provides the exclusive remedy for constitutional violations."); *c.f., O'Connor v. Eubanks*, 83 F.4th 1018, 1029 (6th Cir. 2023) (Thapar, J., concurring) ("Perhaps our circuit should allow suits against officials directly under the takings clause."). Multiple district courts, including this one, have already rejected the same arising-directly claim in the context of tax foreclosure cases. *See, e.g., Grainger v. Ottawa Cnty.*, No. 1:19cv501, 2021 WL 790771, at *11 (W.D. Mich. Mar. 2, 2021); *Fox v. Saginaw Cnty.*, No. 19cv11887, 2021 WL 120855, at *13 (E.D. Mich. Jan. 13, 2021).

The court will dismiss Plaintiff's Eighth Amendment excessive fines claim (Count 5). The Supreme Court and the Sixth Circuit have rejected this cause of action raised in the context of a tax foreclosure proceeding. *Pung*, 146 S. Ct. at 1973; *Freed*, 81 F.4th at 659; *Hall*, 51 F.4th at 197.

The court will also dismiss Plaintiff's substantive due process claim (Count 7). The Sixth Circuit affirmed the dismissal of a substantive due process claim brought in the context of a tax foreclosure action. *Hall*, 51 F.4th at 197 (adopting the reasoning of the district court).

Several district courts, including this one, have reasoned that because our Constitution provides an explicit provision for a taking without just compensation, the substantive due process clause will not cover the same government conduct. *Grainger*, 2021 WL 790771, at *13; *Fox*, 2021 WL 120855, at *15.

V.

Plaintiff's claims in this lawsuit arise from a tax foreclosure proceeding and the subsequent sale of her property. Defendant Ontonagon County kept the surplus, the amount that exceeded what Plaintiff owed in taxes and fees. Plaintiff's § 1983 claims accrued in March 2017, when the final judgment of foreclosure entered. The three-year statute of limitations for those claims expired in March 2020, several years before Plaintiff filed this lawsuit. Applying Michigan's tolling rules for class action lawsuits, the *Wayside* lawsuit tolled the statute of limitations for Plaintiff's federal claims until she opted out of that lawsuit. The court declines to exercise jurisdiction over the state law claims as they raise novel issues of state law. The court dismisses Plaintiff's state law causes of action and remands those claims to 32nd Circuit Court. The court also dismisses Plaintiff's arising-directly Fifth Amendment claim, her Eighth Amendment Excessive Fines claim, and her claim for violation of substantive due process.

ORDER

For the reasons given in the accompanying Opinion, the court declines to exercise jurisdiction over Plaintiff's state law claim and **REMANDS** the state law claims to the 32nd Circuit Court. The court **GRANTS IN PART** Defendant's motion to dismiss. ECF No. 11. The court dismisses Plaintiff's arising-directly takings claim, her excessive fines claim, and her substantive due process claim. Defendant must file its answer to the complaint within twenty-eight (28) days. **IT IS SO ORDERED.**

Date: September 24, 2026

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge