

DeNITTIS OSEFCHEN PRINCE, P.C.
Stephen P. DeNittis, Esquire (031981997)
Joseph A. Osefchen, Esquire (024751992)
Shane T. Prince, Esquire (022412002)
525 Route 73 North, Suite 410
Marlton, New Jersey 08053
(856) 797-9951

JAVERBAUM, WURGAFT, HICKS,
KAHN, WIKSTROM & SININS, P.C.
Michael A. Galpern, Esquire
1000 Haddonfield-Berlin Rd., Ste. 203
Voorhees, New Jersey 08043
(856) 596-4100

Attorneys for Plaintiff and the Proposed Class

MARY PEEK, BELINDA BLANDING,
 THOMAS DEFERRO, DONALD
 ALEXANDER and DARLENE M. HUGHES
 on behalf of themselves and all others
 similarly situated,

Plaintiff,

v.

BOROUGH OF RUNNEMEDE, NEW
 JERSEY; GLOUCESTER TOWNSHIP,
 NEW JERSEY; VOORHEES TOWNSHIP,
 NEW JERSEY, BOROUGH OF
 BARRINGTON, NEW JERSEY; and
 BOROUGH OF BELLMAWR, NEW
 JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 CAMDEN COUNTY

DOCKET NUMBER: CAM-L-2419-24

**THIRD AMENDED CLASS ACTION
 COMPLAINT**

INTRODUCTION

1. This is a class action for money damages and/or restitution, filed under New Jersey law, on behalf of a proposed class of persons and entities who were charged and paid, or who reimbursed, unlawful “vacant” or “abandoned” property registration fees of \$500 semi-annually as part of five pre-2022 Vacant Properties Registration Programs (“VPR Programs”) run by Defendants Borough of Runnemede, New Jersey (“Runnemede”), Gloucester Township, New Jersey (“Gloucester”), Voorhees Township, New Jersey (“Voorhees”), Borough of Barrington (“Barrington”), and Borough of Bellmawr, New Jersey (“Bellmawr”) (collectively “Defendants”)

between 2016 and January 18, 2022.

2. As described in greater detail herein, the ordinances authorizing the creation and administration of the unlawful five pre-2022 VPR Programs at issue – and the Programs themselves – which ran approximately from 2016 through to 2022 – were unconstitutional, ultra vires, and contrary to New Jersey law, in that:

- a. They utilized an overbroad definition of registrable property, such that a fully occupied property was considered to be vacant or abandoned and subject to the registration and fee requirement so long as it was, e.g., in default on a mortgage or subject to a foreclosure action or lis pendens;
- b. The mandatory registration fees charged to class members under these VPR Programs greatly exceeded the actual costs incurred in operating the VPR Programs; thus, the VPR Programs were not a proper exercise of police powers and instead was an unlawful revenue-raising measure of a type barred by New Jersey law and which Defendants was not legally empowered to enact prior to January 18, 2022;
- c. The delegation by Defendants to a private, for-profit company, Community Champions Corporation (hereafter “Pro Champs”), of full managerial power and control over what was supposed to be municipal programs, including the registration of properties and collection of municipal funds under the VPR Programs, in the absence of any delegation legislation which would enable this private entity to exercise such governmental functions, was in violation of established New Jersey law; and
- d. Defendants’ policy of allowing Pro Champs to treat any unpaid registration fees mandated by the pre-2022 VPR Programs as liens on real property, and requiring that such fees be paid before good title to the property could be conveyed, violated New Jersey law as it existed prior to 2022.

3. Indeed, in an opinion dated August 16, 2021 in McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs; Township of Galloway; and Township of Hamilton, et al., Superior Court of New Jersey, Atlantic County, Docket No. ATL-L-2311-18 (Attachment A hereto), Atlantic County Assignment Judge Julio L. Mendez struck down three virtually identical vacant and abandoned property registration programs operated by Pro Champs in Galloway Township, Hamilton Township, and Egg Harbor Township, New Jersey, holding that

the four aspects of these programs outlined above violated the New Jersey Constitution and other New Jersey law; with all three of these programs sharing the same features present in the pre-2022 VPR Programs at issue in the case at bar, which also was operated by Pro Champs.

4. On January 18, 2022, New Jersey enacted a statute which, for the first time, permitted municipalities to establish registration programs for vacant, abandoned, and foreclosed properties, and to charge a registration fee of up to \$500 annually per property in connection with such programs. See N.J. Stat. §§ 40:48-2.12s1- s3. That 2022 statute, however, was not retroactive and its effective date on January 18, 2022 did nothing to legalize unlawful registration programs previously run by municipalities and counties, such as the pre-2022 Runnemedede VPR Programs.

5. Defendants have since amended the five VPR Programs at issue and their enabling ordinances, ostensibly to comply with New Jersey law as set forth in McCormick and N.J. Stat. §§ 40:48-2.12s1- s3. However, this does not change the fact that the five pre-2022 VPR Programs at issue operated by Defendants were unconstitutional, ultra vires, and unlawful, at minimum, from 2016 through January 18, 2022, including when Defendants required Plaintiffs' properties to be registered with these Programs and charged unlawful fees and expenses for those properties.

6. Defendants have never refunded any of the monies they collected relating to properties as part of the five pre-2022 VPR Programs at issue, during which time those Programs were unconstitutional, ultra vires, and unlawful.

7. This lawsuit seeks money damages and restitution under various legal and equitable theories to obtain refunds of the unlawful registration fees which were assessed and paid to Defendants by Plaintiffs and the class under the five unlawful pre-2022 VPR Programs at

issue in this case. This lawsuit does not seek a prerogative writ or a writ of mandamus since the ordinances which created the unlawful pre-2022 VPR Programs, and the pre-2022 Programs itself, have already been repealed and replaced. Nor does this lawsuit challenge or seek any refunds or damages relating to any current VPR Programs operated by Defendants after January 18, 2022.

THE PARTIES

8. Plaintiff Mary Peek resides at and owns a home located at 17 W. 7th Avenue, Runnemede, New Jersey. Defendant Runnemede required that Plaintiff Peek's property be registered with the pre-2022 Runnemede VPR Program during the class period and charged fees for that property under the pre-2022 Runnemede VPR Program. Specifically, during the class period, Plaintiff's property had a foreclosure petition filed against it and, even though Plaintiff's property was never at any point "vacant" or "abandoned", the pre-2022 Runnemede VPR Program required that Plaintiff Peek's property be registered and Defendant Runnemede charged at least two \$500 semi-annual VPR fees for that property in 2020. Plaintiff Peek either paid, or was forced to reimburse, those VPR fees. Specifically, Plaintiff Peek paid at least one \$500 semi-annual VPR fee and also reimbursed her mortgagee for another \$500 semi-annual VPR fee which had been initially advanced by her mortgagee and which Plaintiff Peek was required to reimburse under the terms of her mortgage contract.¹ Ms. Peek's bankruptcy proof of claim filed by Plaintiff Peek's mortgagee indicating, inter alia, that Plaintiff Peek was required to reimburse her mortgagee "\$500.00" for a "VACANT PROPERTY PRESERVATION FEE"

¹ As outlined in greater detail herein, Defendants were aware at all times that every mortgage contract required the mortgagor to reimburse the mortgagee for any fees, including VPR fees, advanced by the mortgagee. Thus, Defendants were well aware that no matter whether the property owner paid the VPR fees directly to Defendants or the VPR fees were initially advanced by the mortgagee, the property owner would ultimately be required to pay that unlawful fee.

advanced by the mortgagee. This was also confirmed in a letter from a bankruptcy trustee confirming that Plaintiff Peek paid off all amounts listed in the proofs of claims submitted as of her bankruptcy, including reimbursement of the VPR fee advanced by her mortgagee.

9. Plaintiff Belinda Blanding is a New Jersey citizen residing in Blackwood, Gloucester Township, Camden County, New Jersey, who was assessed and paid a nonrefundable “registration fee” of at least \$300.00 as part of the Gloucester Township VPR Program implemented and operated by Defendant Gloucester Township. Specifically, Plaintiff Blanding was charged and paid multiple semi-annual Program registration fees, including registration fees and/or related expenses of \$575.00 on or about May 20, 2017, \$500.00 on or about April 9, 2018, and \$50.00 on or about July 25, 2019

10. Plaintiff Thomas Deferro is a New Jersey citizen who resided in Voorhees Township, Camden County, New Jersey, who was assessed and paid a nonrefundable “registration fee” of between \$500 and \$2,500 as part of the Voorhees Township VPR Program implemented and operated by Defendant Voorhees Township. Specifically, Plaintiff Deferro was charged by and paid multiple Program registration fees and/or related expenses totaling at least \$2,296.49 in June 2017 (\$471.60), June 2018 (\$75.00 and \$514.89), July 2018 (\$75.00), March 2019 (\$10.00), May 2019 (\$75.00 and \$500.00), and December 2019 (\$500.00 and \$75.00).

11. Plaintiff Donald Alexander was a New Jersey citizen during the relevant class period who resided in the Borough of Barrington, Camden County, New Jersey, who was assessed and paid a nonrefundable “registration fee” of between \$500 and \$2,000 per year, plus expenses, as part of the Borough of Barrington VPR Program implemented and operated by Defendant Borough of Barrington. Specifically, Plaintiff Alexander was required to register his

defaulted property with the Voorhees VPR Program and was charged an annual Program registration fee and related expenses totaling \$570.00 on or about June 2, 2021, and paid such fees and expenses.

12. Plaintiff Darlene M. Hughes is a New Jersey citizen residing in the Borough of Bellmawr, Camden County, New Jersey, who was assessed and paid nonrefundable registration fees and other charges of between \$500.00 and \$3,000.00 per year as part of the Borough of Bellmawr VPR Program implemented and operated by Defendants Borough of Bellmawr. Specifically, Plaintiff Hughes was required to register her foreclosed property with the Bellmawr VPR Program and was charged multiple registration fees, and paid such fees, including registration fees and related expenses and late fees of \$640.00 on or about September 21, 2021; \$540.00 on or about March 28, 2022; and \$500.00 on or about March 1, 2023.

13. Defendant Borough of Runnemede is organized as a municipality under the constitution and laws of the State of New Jersey, and is a citizen of New Jersey.

14. Defendant Gloucester Township is located in Camden County, New Jersey, and is organized as a municipality under the constitution and laws of the State of New Jersey, and is a citizen of New Jersey.

15. Defendant Voorhees Township is located in Camden County, New Jersey, and is organized as a municipality under the constitution and laws of the State of New Jersey, and is a citizen of New Jersey.

16. Defendant Borough of Barrington is located in Camden County, New Jersey, and is organized as a municipality under the constitution and laws of the State of New Jersey, and is a citizen of New Jersey.

17. Defendant Borough of Bellmawr is located in Camden County, New Jersey, is

organized as a municipality under the constitution and laws of the State of New Jersey, and is a citizen of New Jersey.

18. At all times relevant to this Complaint, Defendants – acting in concert with their agent Pro Champs – created, implemented, and performed the policies, conduct, and actions complained of herein. Moreover, Defendants received money from their unlawful conduct complained of herein; namely, the charging and collection of registration fees for properties owned by Plaintiffs and the proposed Class pursuant to the five unlawful and unconstitutional pre-2022 VPR Programs and ordinances at issue in this case.

JURISDICTION AND VENUE

19. Jurisdiction and venue over this matter is proper in New Jersey Superior Court, Camden County, in that all actions complained of herein occurred in Camden County, New Jersey. Moreover, Plaintiffs and Defendants are located in Camden County, New Jersey.

20. There is no federal jurisdiction over this matter, in that the complaint raises New Jersey state law claims exclusively, no federal claims are pleaded, no questions of federal law are raised, and the amount in controversy is less than \$5 million.

THE CONDUCT WHICH GIVES RISE TO THE CLASS CLAIMS

21. In or around 2015, Camden County established a County-Wide Registration Program for Abandoned Properties within Camden County, and retained third-party agent Pro Champs to administer the Program. Camden County then extended an invitation to the various municipalities within Camden County to participate in the Program via a Shared Services Agreement.

22. Over the next eighteen months, many municipalities within Camden County – including Defendants herein – entered into the Shared Services Agreement with Camden County,

allowing Pro Champs to operate VPR Programs in, inter alia, the five municipalities at issue in this case via its contract with Camden County.

23. Under the Professional Services Contract, each municipality shared the registration fees that were charged and paid for properties required to be registered and listed as part of the pre-2022 Runnemedede VPR Programs at issue.

24. Specifically, for each registration fee collected on “vacant” or “abandoned” properties under each of the five VPR Programs at issue in this case, the first \$100 went to Pro Champs, the second \$100 went to Camden County, the third \$100 went to the Defendant municipality, and any amount in excess of \$300 went to the Defendant municipality. Thus, the vast majority of all VPR fees collected went to the Defendant municipality.

25. This complaint does not challenge the proposition that municipalities and counties have general police powers to enact ordinances to protect the health and well-being of their citizenry and property.

26. Nor does this complaint challenge that municipalities and counties have a legitimate interest in resolving issues relating to vacant, abandoned, and foreclosed properties within their borders.

27. What the complaint does challenge are the specific actions taken by Defendants in the creation, implementation, and operation of the five pre-2022 VPR Programs at issue from 2016 until at least January 18, 2022

28. Specifically, Plaintiffs’ complaint alleges that both the ordinances creating the five pre-2022 VPR Programs at issue, and the pre-2022 VPR Programs themselves, were ultra vires, invalid, and in violation of the New Jersey Constitution and other New Jersey law for the reasons set forth in detail herein. Consequently, Plaintiffs and every other class member who

was damaged by this illegal and unconstitutional conduct, including those who either paid or who reimbursed registration fees paid under the five pre-2022 VPR Programs between 2016 and January 18, 2022 are entitled to refunds of any such illegal fees they paid and/or money damages for any such illegal fees they were forced to reimburse.

29. Under each of the five pre-2022 VPR Programs, VAP fees were to be paid by either the home owner or the mortgagee or both, with all such ordinances stating **“All registration fees must be paid directly from the Mortgagee, Trustee, Servicer, or Owner.”**

30. Defendants were each fully aware at all relevant times that every mortgage contract required a home owner to reimburse the mortgagee for any fees advanced by the mortgagee relating to their property, including VPR fees.

31. Thus, Defendants knew that, regardless of whether a VPR fee was paid directly by the homeowner, or a VAP fee was initially advanced by the mortgagee, Defendants’ collection of unlawful VPR fees under the unconstitutional ordinances would damage all homeowners whose homes were listed on one of the five pre-2022 Runnemedede VPR Programs by requiring the homeowner to either pay these fees directly to Defendants’ agent Pro Champs or to reimburse VPR fees initially advanced by their mortgage company.

32. Specifically, Defendants knew that every home owner whose property was listed on one of the five VPR Programs was faced with the same threat: to either pay the illegal and unconstitutional VPR fees directly to Pro Champs or to reimburse their mortgagee for any such VPR fees initially advanced by the mortgagee. Defendants knew that the failure to do one or the other would result in the loss of the homeowner’s property and/or a threat by Pro Champs to impose a lien on their property.

33. Consequently, Defendants knew that Plaintiffs and every other class member who

paid registration fees to Pro Champs pursuant to the five pre-2022 VPR Programs at issue directly, as well as every class member who was forced to reimburse their mortgagee for VPR fees initially advanced by the mortgagee during this period, would be damaged and were damaged by the same unlawful and unconstitutional ordinances and pre-2022 VPR Programs at issue. Thus, all should be entitled to full refunds of the unlawful VPR fees they paid directly to Defendants via their agent Pro Champs or money damages for those illegal fees which they were forced to reimburse to their mortgagee.

A. The Five Pre-2022 VPR Programs Were Unlawful Because They Utilized an Overbroad Definition of Vacant and Abandoned Property.

34. The stated purpose of the five pre-2022 VPR Programs at issue, as described in their enabling ordinances, was to prevent vacant and abandoned properties in the relevant municipality.

35. Yet, each of the five pre-2022 VPR Programs at issue required that every property that was subject to an ongoing foreclosure action must register with the Program and pay the associated annual registration fees, even if said property was fully occupied and was not vacant or abandoned.

36. This overbroad requirement that defaulted and foreclosed properties must register and pay a fee, even if legally occupied, violated both the New Jersey constitution and New Jersey law.

37. As held by Judge Mendez in McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs; Township of Galloway, et al., an overly broad definition of a vacant and abandoned property such as that set forth in the Runnemede ordinance renders said municipal ordinance – and the abandoned property registration Program it created – in violation of the New Jersey Constitution and invalid under New Jersey law. See Attachment A hereto, 08/16/21

Opinion in McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs, et al., No. ATL-L-2311-18 (N.J. Super. Ct., Atlantic Cnty.), at Page 25-26:

“[T]he Court holds that the challenged ordinances are arbitrary, capricious, and unreasonable in that they potentially seek to regulate homes that are not actually vacant and abandoned. The overly broad definition of VAP [Vacant Abandoned Property], in the Court’s view, is directed at increasing revenue rather than solving issues related to vacant and abandoned homes. Even worse in the Court’s opinion, the ordinances may have the effect of punishing homeowners with unreasonably high fees, irrespective of the fact that these property owners are still maintaining their property, paying off their mortgage, and these ordinances pose an additional undue hardship for no rational basis... The Court holds that the ordinances, which define a vacant and abandoned property based off whether a homeowner defaulted on their mortgage, is arbitrary, capricious, and unreasonable. In the Court’s view, the ordinances, as enacted, define VAPs in an overly broad fashion, which allows municipalities to collect fees from properties that were never abandoned, never blighted, and never vacant.” (emphasis added)

38. Each of the five pre-2022 VPR Programs at issue was similarly overbroad, in that they charged VPR fees for properties which were in default or subject to foreclosure but were not actually vacant or abandoned. For the same reasons found by Judge Mendez in McCormick, these VAP fees were unconstitutional, ultra vires, and unlawful.

39. Specifically, each of the five pre-2022 VPR Programs at issue forced a homeowner whose property was not actually vacant – and was instead fully occupied – to have their property listed on what was supposed to be a “vacant and abandoned” properties registry, which charged mandatory fees simply because the homeowner had missed one or more mortgage payments and was facing a foreclosure procedure against the home, even if they were still living in their home.

40. The fundamental unfairness of this situation is graphically illustrated by what happened to Plaintiff Peek.

41. Plaintiff Peek's home was required to be listed on the pre-2022 Runnemedede VPR Program while Plaintiff was still living in her home, merely because she had fallen behind on her mortgage payments and was facing a foreclosure petition which had been filed but had not yet been perfected.

42. Thus, Plaintiff Peek's home was not "vacant" or "abandoned" at any point during the time her home remained listed with the pre-2022 Runnemedede VPR Program. Despite this, Peek was charged at least \$1,000 in VPR fees for her home in 2020, in the form of two semi-annual fees of \$500 each, at a time when Plaintiff Peek was valiantly trying to stave off foreclosure, get current on her mortgage arrearage and remain in her home.

43. Put simply, instead of using what little money she had to pay down her mortgage and get her property out of foreclosure, Plaintiff Peek was forced to pay an additional \$1,000 in VPR fees to Pro Champs, and/or to reimburse her mortgagee for VPR fees initially advanced by her mortgagee, rather than use that money to catch up on her mortgage arrears.

44. Indeed, it is darkly ironic that what Defendants billed as municipal programs designed to prevent properties from becoming "vacant and abandoned" actually made it more likely for fully occupied properties to become vacant, by forcing people who were already behind on their mortgages to pay and/or reimburse large VPR fees at a time when they needed all their money to pay down their mortgage arrearage so they could keep living in their homes.

45. Based on these same types of practices, Judge Mendez correctly held in McCormick that a pre-2022 VPR Program which operated in this manner was overbroad. For the same reasons set forth in McCormick, the requirement of the five pre-2022 VPR Program at issue that a fully occupied property which was merely subject to an ongoing foreclosure procedure had to participate and pay fees was overbroad, and thus was unconstitutional, ultra

vires, and unlawful.

B. The Programs Were an Unlawful Revenue-Raising Measure Which Defendants Were Not Empowered to Enact Prior to 2022.

46. During the time the five pre-2022 VPR Programs at issue operated unlawfully, the New Jersey Legislature had not enacted any statute which empowered a municipality to raise revenue using fees charged as part of any program relating to the registration of vacant or abandoned properties in the municipality.

47. Without such a statute, the sole possible legal authority for charging mandatory fees under the Program was N.J.S.A. § 40:48-1(4), which authorizes a municipality to **“fix the fees of any officer or employee of the municipality for any service rendered in connection with his office or position, for which no specific fee or compensation is provided.”**

48. It is black letter law in New Jersey, however, that the police power of a municipality to charge mandatory fees is strictly limited to fees which defray the actual costs of municipal services provided, and that this power cannot be used to raise revenue or generate a profit. See, e.g., Fielders v. N. Jersey St. Ry. Co., 68 N.J.L. 343, 357 (1902) (the New Jersey Supreme Court held that the police power of a municipality includes **“the power to exact reasonable fees, not for the purpose of revenue, but only as incidental to the power of regulation.”**); Moyant v. Borough of Paramus, 30 N.J. 528, 546-47 (1959) (**“[t]he power to regulate includes the right to charge a fee designed to defray the costs thereof, but such must not ‘exceed the bounds of reason considered in connection with the service granted’”**).

49. The five pre-2022 VPR Programs created and operated by Defendants charged fees which far exceeded the actual cost of any services which were provided by the Programs, and thus was an unlawful revenue-raising measure which generated a profit for Defendants.

50. Indeed, Pro Champs – Defendants’ agent which administered the complained-of

Program – expressly admitted this on its website, where it advertised its services in operating vacant property registration programs to municipalities as being “**revenue positive**”. See Attachment B, Pro Champs webpage entitled “**What PROCHAMPS Does,**” where Pro Champs says it “**Holds responsible parties accountable to register property, with multiple points of contact and with real people**” and states plainly “**Zero costs to the community with shared registration fees (revenue positive).**” (emphasis added).

51. The phrase “**Zero costs to the community**” meant that the neither the municipality nor the county paid Pro Champs any money to operate the VPR Program.

52. Moreover, the phrases “**shared registration fees**” and “**revenue positive**” meant exactly what they sound like: the municipality, county, and Pro Champs each earned a profit on the registration fees collected, and they split that profit among themselves.

53. In keeping with that purpose, many of the pre-2022 VPR Programs operated by Defendants charged a semi-annual VPR fee (i.e., twice a year) which began at \$300 to \$500 for the initial registration and then increased to several thousand dollars a year for subsequent years.

54. It should be noted that these registration fees were for VPR Programs that did nothing more than compile a list of purportedly vacant properties and keep track of the current owners thereof.

55. It is specifically alleged that no services provided under the pre-2022 VPR Programs by Defendants cost anywhere close to amount of VPR fees charged per year.

56. In fact, the cost of placing a property on one of the five pre-2022 VPR Program registries and updating that property’s ownership information every year – which is all the VPR Programs at issue did – was less than \$100 a year.

57. Indeed, the creation and maintenance of the five 2022 VPR Programs at issue cost

Defendants nothing whatsoever, as the creation and maintenance of the registry itself was wholly delegated by Defendants to their agent, Pro Champs.

58. As noted previously, Pro Champs specifically advertised to municipalities and counties that its operation of the registration program would involve **“Zero costs to the community”**. See Attachment B, Pro Champs webpage entitled **“What PROCHAMPS Does”**.

59. Thus, the simple truth is that the type of vacant and abandoned property registration programs run by Pro Champs, including the five pre-2022 VPR Programs at issue, did not cost the participating municipalities or counties anything at all. This fact was specifically noted by Judge Mendez in his decision holding the programs administered by Pro Champs in Galloway, Hamilton, and Egg Harbor Townships unconstitutional. See Attachment A, 08/16/21 Opinion in McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs, et al., No. ATL-L-2311-18 (N.J. Super. Ct., Atlantic Cnty.), at 30:

“[T]he costs incurred by Defendant Pro Champs in their code enforcement are not the costs incurred by Township Defendants regarding the property registration program. The Court will explain in greater detail below why the costs incurred by a private third party in rendering a service is not the same as the costs incurred by the actual municipality. Indeed, based on the evidence presented, it costs Township Defendants nothing to administer the VAP [Vacant Abandoned Property] ordinances.” (emphasis added)

60. Rather, Pro Champs specifically marketed itself to municipalities such as Defendants as offering “turn-key” vacant property registration programs operated solely by Pro Champs, at no cost to the municipality or county.

61. Pro Champs told municipalities and counties that if they were to “hire” Pro Champs – without pay – to administer a vacant property registration program, both Pro Champs and the municipality (as well as the county) would actually make a profit sharing the registration fees that vacant property owners were charged annually. See Attachment B, Pro Champs

webpage entitled “**What PROCHAMPS Does,**” where Pro Champs tells municipalities there will be “**Zero costs to the community with shared registration fees (revenue positive).**” (emphasis added).

62. It is for this very reason that Defendants hired Pro Champs as their agent to administer the five pre-2022 VPR Programs at issue.

63. Neither Defendants nor their agent Pro Champs provided any services in exchange for the mandatory, nonrefundable semi-annual VPR fees, beyond the creation and maintenance of the Program registry itself (which was paid for via additional expenses and “processing” fees charged and collected by Defendants and their agent Pro Champs).

64. Listing a vacant property on a registry and keeping track of the name and contact information of the property owner actually costs less than \$100 per year, per property, to compile and maintain such a list. Yet the VPR Programs at issue charged an initial fee of between \$300 and \$500 for the initial registration and then raised those fees dramatically – in some cases to over \$2000 – in subsequent years.

65. Any additional services that were performed by or at the behest of Defendants, or their agent Pro Champs, relating to vacant properties were not paid for out of the VPR fees. Rather, they were paid for separately out of other fees imposed and collected for violations issued to property owners for such things as failing to cut the grass or otherwise maintain the property, or out of various expenses and additional fees (such as “processing fees”) charged and collected by Defendants and Pro Champs in connection with the registration fees.

66. Indeed, many of VPR fees charged by the five pre-2022 VPR Programs at issue were actually higher than the vacant property registration fees which Atlantic County Assignment Judge Mendez held to be unlawfully and unconstitutionally high when he declared

the three municipal vacant property registration programs managed by Pro Champs in Atlantic County to be unconstitutional in McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs, et al., No. ATL-L-2311-18 (N.J. Super. Ct. Atlantic Cnty., Aug. 16, 2021) (Attachment A hereto) at 29-31, where the Court stated as to registration fees of \$300 to \$1,000 per year:

“The Court holds that the registration fees charged in connection with the VAP [Vacant and Abandoned Property] Registry are not reasonably related to the costs incurred by Township Defendants or Defendant ACIA in administering the registry ordinance. The Court is alarmed by the excessive fee structure incorporated in the ordinance, which has no connection with the actual costs of compiling the registry and has accumulated a total of over two million dollars for Defendants. Each ordinance imposing registration fees ranging from \$300.00 per year to \$1,000.00 per year...

* * *

The revenue scheme created by the ordinances has no reasonable connection to constitutionally enacted regulations, nor does it seek to defray the costs of constitutionally enacted regulation. It is only that, a revenue scheme, which the Court can find no practical connection to the actual regulation of VAPs which was the purpose for enacting the ordinances. In conclusion, the Court holds that the fee structure as designed is arbitrary and capricious and holds that the ordinances are unconstitutional.” (emphasis added).

67. These words apply equally the VPR fees charged by the five pre-2022 VPR Programs at issue, which were equal or even higher than the amounts at issue in McCormick.

68. The costs associated with listing a property on a VPR Program registry, and updating that information every year, was less than \$100 per year.

69. Moreover, the cost of maintaining a property on the registry actually decreased after the initial listing, as the only thing required thereafter was to compare a submitted form with the registry to ensure that the listed ownership information contained in the registry remained current.

70. None of this cost Defendants anywhere near the pre-2022 VPR fees charged by

Defendants per property, which ranged from between \$300 to \$500 for the first year and then grew to over a \$1,000 per year, per property.

71. There was only one possible explanation for the amount of those registration fees: the true intent of the exorbitant fee structure for these Programs was not to defray the actual costs incurred in creating and running a vacant property registry program, but rather to generate revenue for the Defendants. See Attachment A, 08/16/21 Opinion in *McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs, et al.*, No. ATL-L-2311-18 (N.J. Super. Ct., Atlantic Cnty.), where the Court held that registration fees of \$300 to \$1,000 **“seem wholly punitive in nature to the property owner and based on the evidence are not incidental to the municipalities’ use of their police power, as there has been no evidence presented that the municipalities provide any services whatsoever aside from the list itself.”**

72. Based on the foregoing, the pre-2022 VPR Programs at issue charged excessive fees from at least 2016 through January 18, 2022. A significant portion of these fees were not for reimbursement of any expense incurred by Defendants but rather were an illegal, for-profit, revenue-raising measure which neither the Defendants, nor their agent Pro Champs was legally empowered to authorize or carry out.

C. Defendants Improperly Delegated Municipal Functions and Authority to a Private, For-Profit Company.

73. In New Jersey, municipalities may not delegate to private parties functions that traditionally comprise core government operations without statutory authorization. See *Essex County Corr. Officers PBA Local No. 382 v. County of Essex*, 439 N.J. Super. 107, 126 (App. Div. 2014); see also *33 Route 22 Readington Realty Holdings, LLC v. Twp. of Readington*, 221 N.J. 318, 346 (2015) (New Jersey Supreme Court found it unconstitutional when a municipality adopted a resolution that **“effectively delegated its land-use authority to private entities,”**

notwithstanding that the Municipal Land Use Law permitted it to do so); Arabia v. Zisman, 143 N.J. Super. 168, 175 (Ch. Div. 1976) (an ordinance permitting private owners of beachfront property to forbid people to place beach chairs directly on that property was an **“illegal delegation of the municipality’s authority to private individuals”** over public property).

74. With respect to the five pre-2022 VPR Programs at issue, Defendants illegally delegated to an agent – Pro Champs, a private, for-profit company – purely municipal functions in the absence of any enabling legislation.

75. Pro Champs did not merely exercise “ministerial” actions under these Programs.

76. Rather, at Defendants’ behest, Pro Champs improperly exercised municipal powers by managing what was supposed to be municipal Programs, collecting municipal funds in the absence of any delegation legislation enabling it to do so.

77. Put simply, Pro Champs marketed itself to municipalities as a “turn-key” operation, promising that if the municipality would simply authorize Pro Champs to run a vacant property registration program in the town’s name, Pro Champs would do virtually all of the work and Pro Champs, the municipality, and the county would split the profits generated from program registration fees, with little or no oversight from the municipality or county.

78. Here, Defendants hired Pro Champs to exercise broad discretion over the administration and management of the five pre-2022 VPR Programs at issue, including:

- a. making determinations about which properties were “registerable” under the VPR Programs;
- b. inputting all data into the Program registry;
- c. identifying the responsible parties and property owners;
- d. informing owners of the registration requirement;
- e. collecting the registration fees; and

- f. remitting portions of these fees to Defendants after taking out Pro Champs' portion of said fees.

79. Pro Champs also played an intricate role in helping determine the specific amount of the fees that Defendants ultimately would charge under the five pre-2022 VPR Programs at issue.

80. Additionally, Pro Champs was the point of contact for title companies and others who inquired about a property's title. When someone spoke to Pro Champs about possible liens on the property, Pro Champs would inform them that any unpaid registration fees owed under the Program were municipal liens on the property which must be satisfied to convey good title.

81. Based on these same facts, Judge Mendez had no trouble holding that Galloway, Hamilton, and Egg Harbor Townships had each illegally delegated municipal powers to Pro Champs in operating their vacant property registries. See Attachment A, 08/16/21 Opinion in McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs, et al., No. ATL-L-2311-18 (N.J. Super. Ct., Atlantic Cnty.), at 34:

“In the Court’s opinion, and as evidenced by the record, Defendant Pro Champs are essentially functioning as a ‘collection agency’ for municipal funds, although no statute exists which would permit them to do so... In the Court’s view, Defendant Pro Champs is managing and handling municipal funds without any statutory authority to do so. The Court holds that the control retained by Defendant Pro Champs far exceeds the realm of ministerial functions which is permissible under New Jersey law, and Defendant Pro Champs is performing municipal functions in their enforcement of the ordinances at issue.” (emphasis added).

82. Based on the foregoing, the five pre-2022 VPR Programs at issue were also unconstitutional and unlawful because Defendants unlawfully delegated municipal functions to private party Pro Champs from approximately 2016 through January 18, 2022.

D. Defendants Allowed pro Chapms to Unlawfully Report to Closing Agents, Title Companies, and Others that Unpaid Program Registration Fees Were Liens on Real Property.

83. Defendants also pursued a policy of allowing Pro Champs to treat unpaid registration fees and associated expenses and late fees assessed through the pre-2022 VPR Programs at issue as municipal liens on real property, and advising title companies, closing agents, and others that unpaid VPR fees were liens on real property which must be paid off in order to convey marketable title.

84. Specifically, Defendants designated their agent Pro Champs as the “point of contact” for speaking to inquiring parties about the five pre-2022 VPR Programs at issue generally, and to those performing title searches relating to properties on the VPR Program registries.

85. Under the five pre-2022 VPR Programs at issue, Defendants knowingly allowed their agent Pro Champs to implement a uniform policy of advising inquiring parties that unpaid VPR fees were liens on the subject properties which must be paid off at closing in order to convey marketable title.

86. Such a policy was unlawful. Unpaid VAP fees under the five pre-2022 VPR Programs at issue were not liens on real property under New Jersey law. Nor was there any legal obligation that they be paid off at closing in order to convey marketable title.

87. Nor could Pro Champs use the power improperly delegated by Defendants to exercise municipal authority over the VPR Programs to force anyone to treat unpaid VPR fees as municipal liens.

88. Indeed, in his opinion striking down the three municipal vacant property registration programs run by Pro Champs in Atlantic County, Judge Mendez correctly held in

McCormick that unpaid VPR Program fees are not liens under New Jersey law. Indeed, Judge Mendez specifically required Pro Champs and the municipal defendants to expressly advise inquiring parties that unpaid VAP fees were not liens and did not have to be paid off to convey valid title. See Attachment A, 08/16/21 Opinion in McCormick 106 LLC v. Champions Corporation d/b/a Pro Champs, et al., No. ATL-L-2311-18 (N.J. Super. Ct., Atlantic Cnty.), at 36:

“[T]he Court hereby holds that unpaid registration fees, and/or any fines connected to violations thereof, are not liens on real property. In reaching this determination, the Court grants Plaintiff request for declaratory judgment and the associated relief requesting Defendants be enjoined from referring title companies/searchers to Defendant Pro Champs to ascertain the existence and amount of unpaid registration fees on a given property, as in the Court’s opinion this is a purely municipal function. Additionally, the Court orders that Defendants are hereby compelled to inform the inquiring title companies/searchers that any unpaid fees are not liens, and do not interfere with a property’s title.” (emphasis added).

89. Based on the foregoing, Defendants’ policy of treating unpaid fees imposed under the pre-2022 VPR Programs at issue as liens on real property, and/or advising inquiring parties that such unpaid VPR fees were municipal liens, was yet another reason why the five pre-2022 VPR Programs at issue were unconstitutional, ultra vires, and unlawful.

THE FACTS NEEDED TO RECOGNIZE THE UNLAWFUL NATURE OF THE FEES BEING CHARGED WERE HIDDEN BY DEFENDANTS FROM PLAINTIFFS AND THE CLASS

90. The unlawful nature of the excessive fees being charged under the five pre-2022 VPR Programs was hidden by Defendants from citizens and was not discoverable through the exercise of reasonable diligence and intelligence.

91. Indeed, Plaintiffs do not contend that vacant and abandoned property registration programs are or were per se unlawful in New Jersey, or that all such programs are or were

unlawful and/or unconstitutional.

92. Rather, Plaintiffs' claims are that the specific facts set forth in detail herein rendered the fees charged by Defendant under the specific VPR Programs at issue rendered each such program unlawful and/or unconstitutional.

93. Without knowledge of those specific facts, a citizen exercising reasonable diligence and intelligence would have no way of knowing that the pre-2022 VPR Programs fees were unlawful and unconstitutional until those facts were revealed and known.

94. First, as correctly found by Judge Mendez in McCormick, fees charged under an ordinance passed under the police power of a municipality or county are generally lawful and only become unlawful, excessive and unconstitutional when those fees exceed the cost of the services performed by the municipality or county in exchange for those fees, thereby generating an unlawful profit for the municipality or county.

95. Thus, in order to appreciate the unlawful nature of the pre-2022 VPR Programs at issue and the fees they imposed, a citizen first had to be aware that the fees charged under the Program exceeded the costs incurred in operating the Program.

96. Neither Plaintiffs nor the class had knowledge that the fees charged by Defendants under the Programs at issue exceeded the costs of any services performed by Defendants under the Program. Nor did Plaintiffs or the class have any way of discovering that such VPR fees were being used as an unlawful revenue raising measure for the municipality.

97. Defendants never informed Plaintiffs, the class, their citizens, or the general public that the fees charged by Defendants under the pre-2022 VPR Programs at issue greatly exceeded the costs incurred by Defendants in operating these Programs.

98. Nor was this fact discoverable by Plaintiffs through the exercise of reasonable

diligence and intelligence.

99. To the contrary, at all relevant times, Defendants described the purpose of the fees charged under the five pre-2022 VPR Programs at issue to be solely to reimburse Defendants for the costs actually incurred in operating the Programs.

100. Second, as correctly found by Judge Mendez in McCormick, it is not unlawful per se for a private entity – such as Pro Champs – to be hired by a municipality or county to perform ministerial services relating to a municipal or county program. Such action only becomes unlawful when the municipality or county wholly delegates governmental functions to such a private entity without statutory authorization.

101. In the case at bar, Defendants never disclosed to Plaintiffs, the class, their citizens, or the general public that Pro Champs' role in the pre-2022 VPR Programs at issue went well beyond performing merely ministerial functions, or that Defendants had improperly and unlawfully delegated full and total control over every aspect of the Programs to Pro Champs, or that Pro Champs was exercising full municipal and county power over the Programs.

102. To the contrary, at all relevant times, Defendants publicly described the five pre-2022 VPR Programs at issue as being operated by the municipality.

103. Unbeknownst to Plaintiffs and the class, the involvement of Defendants in the five pre-2022 VPR Programs at issue was limited largely to receiving their share of VPR fees collected by Pro Champs, with virtually every other aspect of the Program controlled entirely by Pro Champs, with little or no municipal supervision or oversight.

104. The level of control which private entity Pro Champs exercised over the five pre-2022 VPR Programs at issue was not discoverable by an ordinary citizen using reasonable diligence and intelligence.

105. Third, as outlined herein, Defendants and their agent Pro Champs treated unpaid fees charged under the five pre-2022 VPR Programs at issue as “municipal liens,” and represented to inquiring parties that unpaid fees charged by the Program were “municipal liens,” when in fact such fees were not municipal liens at all.

106. The facts needed to determine that such unpaid VPR fees were not eligible to be considered municipal liens are complex and were beyond the ability of Plaintiffs and the class to uncover using ordinary diligence and intelligence.

107. Indeed, it took a full evidentiary hearing to enable Judge Mendez to determine in McCormick that the claim by those defendants that unpaid vacant property registry programs were municipal liens was false and unlawful.

108. Plaintiffs and the class lacked the benefit of any such evidentiary hearing and had no reason to doubt Defendants’ claims as to the status of unpaid VPR Programs fees as municipal liens here.

CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this action as a class action pursuant to N.J. Ct. Rule 4:32, on behalf of a class defined as:

All Persons or Entities who, between January 1, 2018 and January 18, 2022, either paid and/or were caused to reimburse monies as registration fees for the Vacant Properties Registration Program in any of the following municipalities: Borough of Runnemede, Borough of Bellmawr, Borough of Barrington, Gloucester Township or Voorhees Township. The class excludes Persons or Entities who paid registration fees, but were subsequently reimbursed.

110. The class for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

111. The exact number and identities of the persons who fit within the proposed class

are contained in Defendants' records and can be easily ascertained from those records.

112. The proposed class is composed of at least one thousand persons or entities.

113. The claims in this action arise exclusively from Defendant's uniform policies as alleged herein.

114. There are common questions of law and fact affecting the rights of the class members, including, inter alia, the following:

- a. Whether the five pre-2022 VPR Programs at issue violated the New Jersey Constitution or was otherwise in violation of New Jersey law;
- b. Whether Defendants made a profit on the fees charged and collected under the five pre-2022 VPR Programs at issue;
- c. Whether the registration fees charged under the five pre-2022 VPR Programs at issue' exceeded the costs incurred in operating the Programs;
- d. Whether the registration fees charged under the five pre-2022 VPR Programs exceeded the cost of the services offered under the Programs;
- e. Whether the definition of properties subject to the five pre-2022 VPR Programs at issue was overbroad under the New Jersey Constitution and New Jersey law;
- f. Whether the charging and collection of registration fees under the five pre-2022 VPR Programs at issue violated New Jersey law;
- g. Whether Defendants unlawfully retained the private, for-profit company Pro Champs to exercise municipal functions in operating the five pre-2022 VPR Programs at issue;
- h. Whether unpaid registration fees charged under the five pre-2022 VPR Programs at issue were liens required be paid off in order to convey valid title to real property;
- i. Whether law and/or equity permits Defendants to retain fees unlawfully collected under the five pre-2022 VPR Programs at issue;
- j. Whether law and/or equity requires Defendants to disgorge/divest themselves of fees unlawfully collected under the five pre-2022 VPR Programs at issue;
- k. Whether Defendants have been unjustly enriched by registration fees collected under the five pre-2022 VPR Programs at issue;

- l. Whether a constructive trust has been created under which Plaintiffs and the class remain the equitable and/or legal owners of fees collected under the five pre-2022 VPR Programs at issue; and
- m. Whether Defendants are liable under any other legal or equitable theory requiring the refund of fees collected under, or payment of damages caused by, the five pre-2022 VPR Programs at issue.

115. Plaintiffs each are members of the class they seeks to represent.

116. The claims of Plaintiffs are not only typical of all class members, they are identical in that they arise from Defendants' uniform policies and conduct, and are based on the same legal theories as all class members.

117. Plaintiffs have no interest antagonistic to, or in conflict with, the class.

118. Plaintiffs will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent themselves and the class.

119. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

120. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

121. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because, inter alia, the amount of damages suffered by each class member is too small to make individual lawsuits to recover the registration fees economically feasible.

122. Common questions will predominate, and there will be no unusual manageability issues.

COUNT I

Declaratory Judgment as to the Legal Validity of the Pre-2022 VPR Programs at Issue

123. For the reasons set forth herein, the five pre-2022 VPR Programs at issue, and the ordinances establishing those Programs, each violated the New Jersey Constitution and were unlawful, invalid, ultra vires, and contrary to other New Jersey law.

124. Plaintiffs and the class seek a class-wide declaratory judgment declaring that the five pre-2022 VPR Programs at issue and their establishing ordinances were unlawful and/or unconstitutional prior to January 18, 2022, based on the unlawful and/or unconstitutional aspects of these Programs and ordinances outlined previously in this complaint.

125. The purpose of this declaratory judgment is to establish, on a class-wide basis, that the five pre-2022 VPR Programs at issue and/or their establishing ordinances were unlawful and/or unconstitutional prior to January 18, 2022.

126. Plaintiffs and all class members were damaged by the operation of these pre-2022 VPR Programs and their establishing ordinances and need and are entitled to a declaratory judgment that each such Program was unconstitutional and/or unlawful prior to January 18, 2022, and that all fees collected under each such Program were unlawfully collected.

COUNT II

New Jersey Civil Rights Act, N.J.S.A. § 10:6-2

127. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

128. By the acts alleged herein, Defendants deprived Plaintiffs and the class of substantive due process or equal protection rights, privileges, or immunities secured by the New Jersey Constitution and/or the laws of New Jersey by, inter alia, an unlawful taking of property without just compensation and interfering with property rights by claiming unlawful liens on said

property and other conduct outlined herein.

129. These violations were committed directly by Defendants, as well as through Defendants' agent Pro Champs, in that Defendants improperly delegated governmental authority and functions to Pro Champs, and Pro Champs held itself out as acting in the name of Defendants, when the violations were committed.

130. Plaintiffs and the class suffered damages as a result of these violations, specifically including all monies paid to Defendants under the five unlawful pre-2022 VPR Programs at issue.

COUNT III

Unjust Enrichment/Disgorgement/Restitution

131. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

132. By the acts alleged herein, Defendants have received a benefit from Plaintiffs and the class in the form of unlawful registration fees paid to Defendants under the pre-2022 VPR Programs at issue prior to January 18, 2022.

133. The retention of that benefit by Defendants would be unjust and inequitable in that these fees were unlawful when collected, yet Defendants compelled payment of same by threatening the imposition of additional penalties for non-payment and by threats that title to the properties in question could not be conveyed without payment of said fees.

134. Defendants have not refunded these unlawfully collected fees.

135. Equity demands that Defendants disgorge and divest themselves of all monies they unlawfully collected as fees prior to January 18, 2022 under the unlawful and/or unconstitutional pre-2022 VPR Programs at issue and that Defendants not be permitted to continue to retain such unlawfully collected fees.

136. Moreover, the fees unlawfully collected by Defendants as fees prior to January 18, 2022 under the unlawful and/or unconstitutional pre-2022 VPR Programs at issue were a benefit which law and/or equity demands be returned to Plaintiffs and the class in the form of restitution, money damages and/or refunds.

COUNT IV

Constructive Trust

137. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

138. By the acts alleged herein, a wrongful act has occurred which resulted in the transfer of money from Plaintiffs and the class to Defendants under circumstances that give rise to a constructive trust.

139. As a matter of law and equity, the monies which Plaintiffs and the class were charged and forced to pay as pre-2022 VPR Program fees remain the legal and equitable property of Plaintiffs and the class.

140. By operation of law and general equity, a constructive trust has been established with the unlawfully collected fees comprising the corpus of the trust, Defendants acting as fiduciaries, and Plaintiffs and the class acting as beneficiaries of said trust.

COUNT V

Refund of Overpayment to Government Under In re N.J. State Bd. of Dentistry, 84 N.J. 582 (1980)

141. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

142. New Jersey law requires that any government unit or agency which collects an overpayment or unlawful fee must refund such payment when (a) there was fraud, duress, extortion, or mistake of fact; (b) payment was imposed by an invalid law which was believed to be valid; or (c) the basis for payment was thereafter set aside by judicial decision. See In re N.J.

State Bd. of Dentistry, 84 N.J. 582, 587 (1980) (“**A long line of decisions in this State establishes the principle that when a tax already collected is set aside by judicial decision, ‘the law raises an assumption to refund the money which can no longer be honestly retained.’**”).

143. Under the facts alleged herein, all of the above factors are present. The registration fees charged and paid under the five pre-2022 VPR Programs at issue were charged and paid based on fraud, duress, extortion, and mistake of fact, as Defendants and their agent falsely claimed, inter alia, that the fees were owed and that the failure to pay such fees by Plaintiffs and the class would create a lien on their properties.

144. Moreover, the fees were imposed based on an invalid law which Plaintiffs and the class believed to be valid, and which thereafter was amended by Defendants ostensibly to comply with the judicial decision by Judge Mendez in McCormick, setting aside similar registration programs and ordinances.

145. Consequently, as held by the New Jersey Supreme Court, Defendants have “**not a particle of right to the money in question, ... [and] according to the principles of common honesty**” all monies collected by Defendants under the five unlawful pre-2022 VPR Programs and ordinances at issue must be refunded to Plaintiffs and the class. See In re N.J. State Bd. of Dentistry, 84 N.J. 582, 587 (1980).

COUNT VI

Protection From Fundamentally Unfair Government Action Under Doe v. Poritz, 142 N.J. 1 (1995)

146. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

147. This claim is pled in the alternative to Plaintiffs’ other causes of action.

148. Under the doctrine of fundamental fairness, a New Jersey citizen, as a matter of

law, is entitled to protection, including reimbursement, from a governmental body which subjected the citizen to unfair treatment, and there is no explicit statutory or constitutional protection to be invoked. See Doe v. Poritz, 142 N.J. 1, 108 (1995) (“**New Jersey’s doctrine of fundamental fairness ‘serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against governmental procedures that tend to operate arbitrarily. [It] serves, depending on the context, as an augmentation of existing constitutional protections or as an independent source of protection against state action.’**”).

149. Under the facts alleged herein, Plaintiffs and the class have been treated unjustly, unfairly, and arbitrarily by Defendants, in that they were charged and paid registration fees to Defendant under the five unlawful and unconstitutional pre-2022 VPR Programs at issue described herein. Consequently, Plaintiffs and the class are entitled to reimbursement of such fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this court to:

- a. Certify the class action pursuant to N.J. Ct. Rule 4:32;
- b. Enter a declaratory judgment as requested herein;
- c. Enter judgment in favor of Plaintiffs and each class member for damages suffered as a result of Defendants’ conduct alleged herein, to include interest and pre-judgment interest;
- d. Award Plaintiffs and the class reasonable attorneys’ fees and costs; and
- e. Grant such other and further legal and equitable relief as the court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues so triable.

DeNITTIS OSEFCHEN PRINCE, P.C.

Dated: June 15, 2026

By:



Stephen P. DeNittis, Esq. (031981997)
Joseph A. Osefchen, Esq. (024751992)
Shane T. Prince, Esq. (022412002)
525 Route 73 North, Suite 410
Marlton, NJ 08053
Telephone: (856) 797-9951
Fax: (856) 797-9978
sdenittis@denittislaw.com

and

Michael A. Galpern, Esquire
Zachary M. Green, Esquire
**JAVERBAUM, WURGAFT, HICKS,
KAHN, WIKSTROM & SININS, P.C.**
1000 Haddonfield-Berlin Road, Ste. 203
Voorhees, NJ 08043
Telephone: (856) 596-4100
Fax: (856) 702-6640
mgalpern@lawjw.com

Counsel for Plaintiffs and the Proposed Class

CERTIFICATION PURSUANT TO R. 4:5-1

To the best of Plaintiffs' knowledge, the matter in controversy is not related to any pending action. No arbitration proceeding is pending or contemplated. There are no other parties known to Plaintiffs at this time who should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Stephen P. DeNittis is designated as trial counsel.

DeNITTIS OSEFCHEN PRINCE, P.C.

Dated: June 15, 2026

By:



Stephen P. DeNittis, Esq.
Joseph A. Osefchen, Esq.
Shane T. Prince, Esq.
525 Route 73 North, Suite 410
Marlton, NJ 08053
Tel.: (856) 797-9951
Fax: (856) 797-9978
sdenittis@denittislaw.com
josefchen@denittislaw.com
sprince@denittislaw.com

Attachment A

FILED

AUG 16 2021

ATLANTIC COUNTY
LAW DIVISION**PREPARED BY THE COURT**

MCCORMICK 106 L.L.C.,

Plaintiffs,

vs.

COMMUNITY CHAMPIONS
CORPORATION d/b/a PRO CHAMPS;
TOWNSHIP OF GALLOWAY; AND
TOWNSHIP OF HAMILTON,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-2311-18**Order**

Dated: August 16, 2021

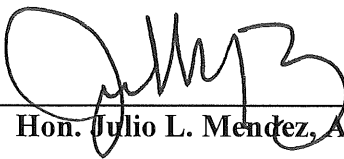
COURT ORDER

THIS MATTER coming before the Court by way of Cross Motions for Summary Judgment, with Plaintiff, McCormick 106, LLC initially filing a prerogative writ action on November 6, 2019, challenging the validity and constitutionality of property registration ordinances enacted by Defendants, with the Court hearing oral argument on the Motions on February 5, 2021, with Keith Bonchi, Esquire appearing on behalf of the Plaintiff McCormick 106, LLC; James Graziano, Esquire appearing on behalf of Defendant Community Champions Corporation d/b/a Pro Champs; Matthew Madden, Esquire appearing on behalf of Defendants Township of Galloway, Township of Hamilton, and Egg Harbor Township; and Frederick Shenkman, Esquire appearing on behalf of Defendant Atlantic County Improvement Authority, and for all the reasons outlined in the attached Memorandum of Decision, and for good cause shown;

IT IS on this 16th day, **AUGUST 2021, ORDERED** as follows:

1. The Court **HEREBY** holds that pursuant to their General Police Powers, Township Defendants have a legitimate interest in passing regulations seeking to address issues concerning Vacant and Abandoned Properties.
2. The Court **HEREBY** holds that the Vacant and Abandoned Property Ordinances challenged in this matter, as enacted, are arbitrary, capricious, and unreasonable.
3. The Court **HEREBY** holds that the Vacant and Abandoned Property Ordinances, as enacted, contain an overly broad and unreasonable definition of Vacant and Abandoned Property.

4. The Court also **HEREBY** holds that the fee structure imposed under the Vacant and Abandoned Property Ordinances is arbitrary, capricious, and unreasonable in that there is no reasonable connection between the fees imposed and any regulatory services provided.
5. The Court also **HEREBY** holds that Defendant Pro Champs has been improperly delegated municipal functions without any enabling legislation.
6. The Court **HEREBY** holds that any unpaid registration fees/fines are not liens on real property.
7. Defendants are **HEREBY** enjoined from referring inquiring title companies/third parties to Defendant Pro Champs to ascertain the existence and amount of any unpaid registration fees/fines on a given property.
8. The Court **HEREBY** orders Defendants to advise any such inquiring third parties that any unpaid registration fees/fines are not liens on real property.
9. This is a final order.



Hon. Julio L. Mendez, A.J.

Date: August 16, 2021

FILED

AUG 16 2021

PREPARED BY THE COURT

MCCORMICK 106 L.L.C., Plaintiffs, vs. COMMUNITY CHAMPIONS CORPORATION d/b/a PRO CHAMPS; TOWNSHIP OF GALLOWAY; AND TOWNSHIP OF HAMILTON, Defendants.	ATLANTIC COUNTY LAW DIVISION SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO. ATL-L-2311-18 Memorandum of Decision Dated: August 16, 2021
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Decided: August 16, 2021

Mr. Keith Bonchi, Esq., appearing on behalf of Plaintiff McCormick 106, LLC.

Matthew Madden, Esq. appearing on behalf of Township Defendants of EHT, Township of Galloway, and Township of Hamilton

James Graziano, Esq., appearing on behalf of Defendant Community Champions Corporation d/b/a ProChamps

Frederick Shenkman, Esq., appearing on behalf of Defendant Atlantic County Improvement Authority

Mendez, A.J.S.C

THIS MATTER comes before the court by of Cross Motions for Summary Judgment, with Plaintiff, McCormick 106, LLC (hereinafter "Plaintiff") initially filing a prerogative writ action on November 6, 2019, challenging the validity and constitutionality of property registration ordinances enacted, as well as the implementation of those ordinances, which includes a process for the identification of vacant and abandoned properties, and a system for collecting fees related thereto, which Plaintiff argues Defendants have represented to third parties as a lien. The ordinances, which were enacted in early 2016 by Township Defendants of

EHT, Township of Galloway, and Township of Hamilton (hereinafter “Township Defendant”) enabled Defendant Atlantic County Improvement Authority (hereinafter “Defendant ACIA”) and Defendant Community Champions Corporation d/b/a Pro Champs (hereinafter “Defendant Pro Champs”) to track and register what was considered vacant and abandoned properties (hereinafter “VAPs”) and charge and collect fees for properties meeting that definition. The ordinances, as enacted, establish a broad definition of VAP, which included property owners who defaulted on mortgage payments, regardless of whether the property was actually vacant and abandoned.

The Court will explain the basis for its decision below, and hereby holds that the ordinances, as enacted, without any enabling legislation, are arbitrary, capricious, and unreasonable. In granting the motion for summary judgment, the Court reached the following holdings: (1) Township Defendants have a legitimate interest in resolving the issues related to VAPs pursuant to their general police powers; (2) the evidence demonstrates that the ordinances definition of what constitutes as a VAP (“vacant and abandoned property”) is unreasonable in that it is overly broad, rendering the ordinance arbitrary, capricious, and unreasonable; (3) the fees imposed under the ordinance exceed the bounds of reasonableness in connection to the costs and services of compiling the VAP registry, rendering the ordinance arbitrary, capricious, and unreasonable; (4) Defendant Pro Champs collecting and managing of municipal funds constitutes as a private third party engaging in municipal functions without any legislative delegation enabling them to do so, and (5) the unpaid registration fees are not liens, and Defendants are enjoined from misrepresenting them as such to inquiring third parties.

BACKGROUND

I. Factual History

Plaintiff is owned and entirely controlled by Beltway Capital Management, which is in the business of buying bundles of distressed properties at discount, evicting tenants, and then trying to flip the properties. J62 at 14:17-15:8; 19:24-25:7; 23:12-20. As part of the process and prior to acquiring the properties, Plaintiff orders lien searches on those properties. In 2018, Plaintiff was assigned the mortgage for and foreclosed on real property located in Hamilton at 5303 Harding Highway, Unit #107 (“the Hamilton property”) and thereafter obtained a sheriff’s deed dated April 24, 2018. When Plaintiff went to re-sell the property, a Charles Jones search indicated the existence of \$2000 worth of unpaid property registration fees, with a notation to contact PRO CHAMPS for resolution. Pro Champs’ printout revealed \$1500.00 in delinquent registration fees regarding the Hamilton property. The title company would not permit the sale to close unless the unpaid registration fees were addressed, leading to an Escrow Agreement between the Plaintiff, the buyer, and the title company.

The Hamilton Ordinance specifically states that part of its intent is to establish a process to address deterioration and blight in the municipality “caused by increasing amount of abandoned, foreclosed or distressed real property located within the municipality, and to identify, regulate, limit and reduce the number of abandoned properties located within the municipality.” See J13 at page 2. The Hamilton Ordinance also defines properties that must be registered as “any real property located in the municipality, whether vacant or occupied, that is in default on a mortgage, has had a *lis pendens* filed against it by the lender holding a mortgage on the property, is subject to an ongoing foreclosure action by the lender, is subject to an application for a tax deed or pending tax assessor’s lien sale, or has been transferred to the lender under a deed in lieu

of foreclosure.” *Id.* at page 3. Those defined properties are required to be registered. *Id.* at page 5.

On January 3, 2018, Plaintiff was assigned the mortgage on real property in Galloway located at 413 Xanthus Ave (“the Galloway property”). The property had unpaid registration fees assessed against it even before Plaintiff purchased the mortgage. The property had been subject to a foreclosure, even though it was always occupied and never vacant; the foreclosure was eventually dismissed. Pro Champs sent an email to Plaintiff advising that the property must be registered with the VAP program, and a fee of \$300.00 is required. Plaintiff sold its assignment of the mortgage on the Galloway property, and was required to pay off the registration fee before doing so.

The Galloway Ordinance specifically sets forth its purpose to “establish a process to address the deterioration and blight of neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed real property located within Galloway Township, and to identify, regulate, limit and reduce the number of abandoned properties located within the Township.” *See* J24 at p.1. The Galloway Ordinance defined properties subject to the Ordinance as “any real property located in Galloway Township, whether vacant or occupied, that is in default on a mortgage, has had a *lis pendens* filed against it by the lender holding a mortgage on the property, is subject to an ongoing foreclosure action by the lender, is subject to an application for a tax deed or pending tax assessor’s lien sale, or has been transferred to the lender under a deed in lieu of foreclosure.” *Id.* at page 2

On October 6, 2017, Plaintiff was assigned the mortgage on real property in EHT located at 215 Gray Avenue (“the EHT property”). Plaintiff foreclosed on the mortgage and obtained a sheriff’s deed to the EHT property on February 13, 2019. As with the Hamilton property,

Plaintiff sought to re-sell the EHT property. Similar to the Hamilton property, a Charles Jones search revealed two years' of unpaid vacant and abandoned registry charges, and directed Plaintiff to Pro Champs for resolution. Plaintiff was required to escrow the \$2,000.00 in unpaid vacant registration fees in order to close.

The purpose of the EHT Ordinance, similar to the other ordinances, was to “establish a process to address the deterioration and blight of Township neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed real property located within the Township, and to identify, regulate, limit and reduce the number of abandoned properties.” *Id.* at p.2. The Egg Harbor Township Ordinance also identifies the criteria for properties required to be registered. *Id.* at 3-4. The Egg Harbor Ordinance specifically recognized that it was part of the overall code enforcement in Egg Harbor. *Id.* at EHT000119; *See also*, J54 at 15:13-16:1. For example, failure of the mortgagee and/or owner to maintain the property could result in a violation of the applicable code upon a finding of a determination of the Township’s code enforcement officer. J28 at EHT000118.

Plaintiff arguing that the registration fees have been shown to have no reasonable connection to the costs of the service being provided, which is \$100.00 per property, and have generating the following revenue for Defendants:

- Over \$1.6 million for the ACIA
- Over \$682,000.00 for Hamilton Township
- Over \$430,000.00 for EHT Township
- Over \$270,000.00 for Galloway Township

II. Procedural History

On October 28, 2019, Plaintiff filed its Complaint against Defendants Pro Champs, ACIA, and EHT under docket no. L-2817-19. On November 9, 2019, Plaintiff filed its amended Complaint under docket no. L-2311-18 against Defendants Pro Champs, Hamilton, Galloway,

and ACIA. The Complaints filed were identical in substance, and the separate dockets were consolidated by Court Order dated January 30, 2020. In May 2019, Plaintiff filed a motion for partial summary judgment as to Counts III and IV of its Complaint under docket no. L-2311. Counts III sought a declaratory judgment that the Township of Hamilton's unpaid vacant property registration fees were not a lien, while Count IV sought the same relief regarding the Township of Galloway. Additionally, the Motion sought to permanently enjoin Defendant Pro Champs from collecting any unpaid registration fees as liens, or from representing to title companies or searchers that the unpaid fees were liens. On June 7, 2019, the Court heard oral arguments on the motion. Thereafter, the Court issued an Order partially granting the motion, holding that the unpaid registration fees under the municipal ordinances were not liens on real estate. The Court denied without prejudice the injunctive relief pending the outcome of the litigation.

On September 29, 2020, Plaintiff filed a Motion for Summary Judgment. Defendants filed Opposition and Cross Motions for Summary Judgment on November 10, 2020. The Court heard oral arguments on the motions on February 5, 2021. At the hearing, the Court ordered the parties to attempt settlement and advised and provided a control date to bring the matter back and discuss any progress. On April 22, 2021, the Court conducted a Case Management Conference, wherein the parties advised that they have been unable to settle. The Court advised that a Memorandum of Decision would be issued in conjunction with the Court's ruling.

On June 8, 2021, the Court received correspondence from Township Defendants advising that "Township Defendants have committed to duly adopting revisions to the Vacant Property Registration Ordinances at issue in this matter in order to create an exemption for properties that remain owner occupied, notwithstanding the existence of a default on their

mortgage.”¹ In response, Plaintiffs drafted correspondence to the Court arguing that Defendants actions are a “backdoor attempt to negate a ruling which would have an effect on all such illegal ordinances throughout the State of New Jersey.”² Thereafter, the Court ordered the parties to submit final submissions on the issue and advised that a ruling would be rendered shortly after. Defendant Pro Champs submitted correspondence to the Court arguing that Township Defendants recent revisions to the Vacant and abandoned property (hereinafter referred to as “VAP”) program have rendered portions of this case moot, and rebutting the argument advanced by Plaintiff that any decision entered by the Court in this matter would bear an impact on the State as a whole.

III. New Jersey’s Foreclosure Crisis

As stated above, at the heart of Plaintiff’s Complaint is a challenge to ordinances enacted by Township Defendants. Defendants reiterated throughout their moving papers and again at oral argument the dire circumstances that led to the adoption of the ordinances at issue. The New Jersey Supreme Court noted that the State was victim to an “unprecedented foreclosure crisis” caused by the crash of the housing market in 2007–2008. GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172, 184 (2017). “In the wake of the crash, thousands of families who could no longer meet their mortgage payments faced foreclosure actions and the loss of their homes.” Ibid.

Atlantic County was hit especially hard by the foreclosure crisis. Peter Miller, who has served as Administrator for Egg Harbor Township for over thirty (30) years, described the

¹ Correspondence received from Township Defendants Counsel on June 8, 2021

² Correspondence received from Plaintiffs’ Counsel on June 8, 2021

specific impact that the foreclosure crisis had on Atlantic County, offering the explanation as the reasoning behind participating in the Program:

Well, following the great recession and the closing of the casinos, Atlantic County had more foreclosures than any other county in the United States, and Egg Harbor Township had the most foreclosures in all of Atlantic County by municipality. We had months where we were getting 200 foreclosure notices a month. We were having a very difficult time tracking down property owners to care for their properties. (J-54, 10:18 – 11:1).

As a result of the 2008 mortgage crisis, an overwhelming number of properties became neglected and vacant. Indeed, Atlantic County has had one of the highest rates of VAPs in the country. It is undisputable that such properties pose a significant concern to municipalities, causing a detrimental economic, health and safety impacts while also creating unnecessary costs. With this as the backdrop, Municipalities have attempted to devise plans to assist their code enforcement in combatting the VAPs problem.

IV. Enacted Ordinances

ACIA is a county improvement authority organized pursuant to the County Improvement Authorities Law, N.J.S.A. 40:37A-44. (ACIA's Statement of Facts ("ASOF")) ¶ 1. The ACIA's powers include the ability to publish and disseminate information, ASOF ¶ 2; and to make: (1) plans for the carrying out of a program for the voluntary repair and rehabilitation of buildings, (2) plans for enforcement of laws, codes and regulations relating to the use and occupancy of buildings and improvements, and (3) plans for the compulsory repair, demolitions, or removal of buildings and improvements. ASOF ¶ 3. The ACIA's powers also include the ability to enter into any and all agreements or contracts that are necessary, convenient or desirable to carry out any power expressly granted to the ACIA.

On or about December 7, 2015, after issuing a Request for Proposals ("RFP") for a county-wide registration program for abandoned properties subject to mortgages that are in

default (the “Program”), the Atlantic County Improvement Authority (“ACIA”) entered into a Professional Services Contract with Community Champions Corporation (“Pro Champs”). (J-3).

The purpose of the RFP issued by the ACIA was explicitly stated therein as follows:

The ACIA is requesting proposals from qualified individuals and firms to provide a County-wide registration program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance of abandoned and vacated properties subject to a mortgage or properties subject to mortgages that are in default.

(J-1, Pg. 2).

The ACIA sponsored a meeting for municipal officials interested in the Program at which a presentation was made by Ted Mucellin from Pro Champs. (J-56, 9:10 – 10:17 & J-54, 14:23 – 15:9). Ted Mucellin noted during his presentation that Atlantic County had one of the highest rates of foreclosure in the country and that the Program would allow for a method of monitoring which properties were involved in the foreclosure process and provide the Municipalities with a point of contact so that if there were code violations on a particular property, the responsible party would be notified in order to expedite addressing property maintenance issues. (J-56, 11:24 – 12:10). With the backdrop of this foreclosure crisis, in the fall/winter of 2015, Egg Harbor, Galloway, and Hamilton Township decided to participate in Program (J-54, 10:8-14).

On January 1, 2016, Hamilton, Egg Harbor, and Galloway entered into a Shared Services Agreement with the ACIA. The Agreement permitted the townships to participate in the county-wide abandoned property registration program implemented by Pro Champs, through its contact with the ACIA. On February 16, 2016, Hamilton adopted Ordinance no. 1812-2016 (“the Hamilton Ordinance”). On February 17, 2016 Egg Harbor Township adopted Ordinance No. 4 entitled “An Ordinance to amend Chapter 173 of the Township Code entitled “Property Maintenance” requiring registration and maintenance of certain real property mortgages; and the regulation, limitation and reduction of abandoned real property” (the “Egg Harbor Ordinance”)

(J-28). On February 23, 2016, Galloway adopted Ordinance No. 1932-2016 (“the Galloway Ordinance”). The ordinances defined Vacant and Abandoned Properties as such:

“any real property located in the municipality, whether vacant or occupied, that is in default on a mortgage, has had a *lis pendens* filed against it by the lender holding a mortgage on the property, is subject to an ongoing foreclosure action by the lender, is subject to an application for a tax deed or pending tax assessor’s lien sale, or has been transferred to the lender under a deed in lieu of foreclosure.”

(J013 at 238-11).

The Ordinances enacted noted the negative implications of the foreclosure crisis; recognized the increase in the number of vacancies and abandoned properties; and determined that the presence of VAPs can lead to a decline in property value, create attractive nuisances and lead to a general decrease in neighborhood and community aesthetics. (J-28). Specifically, the Egg Harbor Ordinance concluded that Egg Harbor had a vested interest in protecting neighborhoods against the decay caused by foreclosed, VAPs and that it was in the best interests of the health, safety and welfare of its citizens to participate in the Program. (J-28). The purpose of the Egg Harbor Ordinance was explicitly stated therein as follows:

It is the purpose and intent of the Township to establish a process to address the deterioration and blight of Township neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed real property located within the Township, and to identify, regulate, limit and reduce the number of abandoned properties. It is the Township’s further intent to participate in the County-wide registration program established by the Atlantic County Improvement Authority as a mechanism to protect neighborhoods from becoming blighted due to a lack of adequate maintenance and security of abandoned and foreclosed properties. (J-28).

The ordinances implemented along with the Program imposed an annual registration requirement on all properties in the townships which met the definition of “abandoned real property” set forth in the relevant ordinances. In Hamilton, any property meeting the definition of “abandoned” required the mortgagee, upon default, to register the property with Pro Champs. Additionally, a non-refundable annual registration fee charging \$500.00 per property

accompanies the registration, payable and collectable by Pro Champs. The Hamilton Ordinance also imposes property maintenance and security requirements on the mortgage, and any violations – such as failing to register the property or maintain it – results in a \$500.00 fine. The Galloway Ordinance is identical to Hamilton’s, except the annual registration payment charges \$300.00 per year and the fines for violations are \$1,000.00 per day. The EHT Ordinance defined abandoned property in the same way as the Hamilton and Galloway Ordinance, and imposed the same registration requirements. The annual registration fee for the EHT Ordinance is \$500.00, and any violations of the ordinance result in \$1,500 fine per day.

In April 2017, Pro Champs circulated correspondence to municipal officials – including Hamilton – suggesting “best practice” changes to their abandoned property registration ordinances. In the letter contained suggestions that municipalities charge bi-annual registration fees, update the language in its definitions to be more inclusive and encompass all triggers (default, foreclosure, REO, etc.), and impose a civil penalty for failure to register. The suggestion to move the VAP registration from annual to 6-month registration was accepted by Defendant Hamilton, who then began requiring mortgagees to pay registration fees twice a year, doubling the amount of fees required and revenue generated by Hamilton. Hamilton thereafter adopted Ordinance No. 1853-2017 on September 5, 2017, which (1) made the registration requirement semi-annual, requiring \$1,000.00 in registration fees per year rather than \$500.00, and (2) it increased the fine for noncompliance from \$500.00 to \$1000.00. The change in noncompliance fee allowed the municipality to use the threat of fines in the municipal courts as a collection mechanism.

Additionally, during the course of discovery, evidence regarding Defendants’ methods of enforcement were entered into the record. One piece of evidence was correspondence

encompassing Galloway's letterhead, which was directed to a mortgagee, informing them of the VAP registration requirement, and ordering that payment must be made to Pro Champs within 45 days. The letter was sent and signed by a representative of Defendant Pro Champs, although the communication was contained in a letter bearing Galloway's letterhead. During depositions, Galloway Township's manager noted that Defendant Pro Champs has Galloway's permission to use its letterhead for this purpose. (J-58 at 19:14-21).

V. Post-Final Hearing Submissions to Revise Ordinances

As mentioned above, on June 8, 2021, the Court received correspondence from Township Defendants advising that:

“Township Defendants have committed to duly adopting revisions to the Vacant Property Registration Ordinances at issue in this matter in order to create an exemption for properties that remain owner occupied, notwithstanding the existence of a default on their mortgage.”³

In response, Plaintiffs drafted correspondence to the Court arguing that Defendants actions are a “backdoor attempt to negate a ruling which would have an effect on all such illegal ordinances throughout the State of New Jersey.”⁴ The Court permitted the parties to submit final summations regarding the revisions to the ordinances.

Defendants argued that their willingness to adopt the revisions and create an exemption for the properties that are not truly vacant and abandoned is consistent with the overall purpose of the ordinances and renders significant portions of this matter moot. Specifically, Defendants argued it was never the intent of the ordinances to have an owner who is living in their house assessed a registration fee. Defendants maintain that there was no evidence introduced

³ Correspondence received from Township Defendants Counsel on June 8, 2021

⁴ Correspondence received from Plaintiffs' Counsel on June 8, 2021

confirming that this has ever occurred, but nonetheless acknowledge that the Court expressed concern that such a situation could arise under a strict reading of the ordinance. Defendants further claim that due to the revisions in the ordinance, it renders the issue moot. Defendants also reject Plaintiff's argument that Court's decision would impact the state as a whole. In support of this proposition, Defendants argue it would be unfair to enter an Order invalidating ordinances that (1) this Court has never seen and (2) impact municipalities that have not had a chance to participate in this matter and mount an appropriate defense.

In response, Plaintiff argues that simply because Defendants have indicated they propose to amend the ordinances, it does not mean the ordinances have been amended. At present, no ordinances have been amended, and they remain in the same state as when the lawsuit was filed. Plaintiff argues under no reasonable conception of the term could a case or controversy be considered moot based on the possibility of future action. Additionally, Plaintiff argues that even if the ordinances had been amended, the specific amendment would pose no bearing on whether the municipalities are permitted to enact VAP registration programs in the first place, therefore this matter could not be moot based on the adoption of amendments. Nor does the exemption for houses that are occupied have any bearing on the Court's determination as to whether the municipal Defendants VAP programs are preempted by State legislation, or whether the municipal-revenue collection and enforcement authority have been illegally delegated to a private third party in the absence of enabling legislation. Plaintiff further argues that the exemption has no bearing on the current fee structure contemplated and implemented by the VAP ordinances, which Plaintiff has alleged is an illegal revenue-generating tax – nor does it relate to Plaintiff's contention that the fee structure has no relationship to the costs incurred by municipalities.

Plaintiff argues that the Court should view Defendants actions as a “misapprehension that they could potentially escape having to disgorge millions of dollars in ill-gotten revenue.”

Plaintiff arguing that the registration fees have been shown to have no reasonable connection to the costs of the service being provided, which is \$100.00 per property, and have generating the following revenue for Defendants:

- Over \$1.6 million for the ACIA
- Over \$682,000.00 for Hamilton Township
- Over \$430,000.00 for EHT Township
- Over \$270,000.00 for Galloway Township

VI. Parties' Position

At the crux of Complaint, Plaintiff characterizes the Registration Ordinances as an unauthorized “naked attempt to generate revenue” and a tax which has not been authorized by the State legislature and which has no reasonable relation to the issue it seeks to address, in this instance the maintenance of properties which are the subject of a foreclosure. Plaintiff further contends that the State legislature has not authorized the Registration Ordinances because proposed State legislation which mirrors the format authorized by the Townships was never enacted. At the heart of Plaintiff’s main argument, it is asserted that the Registration Ordinances apply, in some instances, to properties which are not actually vacant or abandoned.

In response, Township Defendants argue that the Ordinances are authorized by the State Constitution pursuant to their broad police powers and maintain that Defendants actions are valid under the authority entrusted to them for the preservation of the public health, safety and welfare of the Townships and their residents. Township Defendants further contend that Plaintiff has failed to lay out a feasible preemption argument considering the legislation cited as preemptive in Plaintiff’s moving papers is (1) not comprehensive and (2) did not express any legislative

intent to preempt. Township Defendants assert that the (5) separate Legislative enactments cited by Plaintiff do not support the argument that the Legislature has already comprehensively addressed the issue, and actually lend credence to the premise that the issue has not been comprehensively addressed by the State legislature. Township Defendants go on to argue that if the legislation cited by Plaintiff comprehensively addressed the issue of properties involved in the foreclosure process and their impact on municipalities, Township Defendants would not have had a need to enact the additional legislation cited by Plaintiff in support of its preemption argument.

Defendant ACIA argues that based on the Personal Service Agreements (hereinafter referred to as “PSAs”) entered into with Township Defendants, Defendant ACIA did not recommend to the municipalities the amount of the registration fee. Defendant ACIA further contends that the PSA made no reference or suggestion that the failure to pay a registration fee would be a lien on property. Defendant ACIA argues that if the municipality only charged a registration fee of \$200, the ACIA would get nothing and whether the ACIA received any money from the registration program was solely within the discretion of the municipalities. Defendant ACIA direct the Court’s attention to the thrust of Plaintiff’s Complaint, asserting that the “gist of Plaintiff’s concerns are not directed toward the ACIA.”

Defendant Pro Champs argues the statutory and case law make clear that municipalities’ police powers provide the authority to enact ordinances such as those at issue, in order to maintain properties such as those that are subject to the Ordinances. Defendant Pro Champs further contends that Plaintiff ignores the heavy burden required to invalidate municipal ordinances, which are presumed valid unless there is a clear showing that they are arbitrary, capricious or unreasonable. Perhaps recognizing its inability to meet that standard, Defendants

argue that Plaintiff completely disregards it. Defendant Pro Champ requests the Court to view the Complaint as Plaintiff's attempt to seek "absolution from the problems and costs that arise directly and indirectly from VAPs blighting municipalities while it engages in a profit-making enterprise off these very same properties."

Both parties assert that this matter need not go to trial and can instead be decided on a Motion for Summary Judgment, agreeing that there is no genuine issue of material fact to be decided, and that the disagreement here centers solely on an issue which can be decided as a matter of law. The Court has thoughtfully reflected on the oral arguments of all parties and has reviewed the moving papers as well as the relevant legal authority. After careful consideration, the Court holds, and will provide the basis for its decision in further detail below, that (1) Defendants lack the authority to compile a registry of vacant and abandoned homes that is triggered by a mere default, (2) there is no reasonable and/or rational connection between the fees imposed and the compiling of the registry, (3) Township Defendants have illegally delegated a municipal function to a private party, Defendant Pro Champs, and (4) Defendants actions of representing the unpaid VAP fees to as a lien on title is not permissible under the law.

DISCUSSION

I. Court Rule and Applicable Standard

i. Summary Judgment

Summary judgment is granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment as a matter of law." R. 4:46-2(c). Under the Brill standard, in determining whether a genuine issue of material fact exists, the court must view the competent evidence presented in a light most favorable to the

non-moving party. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). In determining whether an issue is material, the crux of the inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 533.

In evaluating a motion for summary judgment, the court must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Id. at 540. After the passage of “adequate time to complete the discovery, summary judgment should be granted ‘against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.’” Id.

It has long been the preference of New Jersey courts to use summary judgment to preserve judicial manpower and facilities for meritorious cases. Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67, 74 (1954); Monmouth Lumber Co. v. Indemnity Ins. Co. of Am., 21 N.J. 441 (1955). In fact, the New Jersey Supreme Court has reiterated that when evidence is so one-sided that a party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Brill, supra, 142 N.J. at 540.

ii. Invalidating a Municipal Ordinance

Under the general police powers statute (N.J.S.A. 40:48-2), municipalities have broad discretion to enact ordinances to protect the health and well-being of their citizenry and property. Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 230 (1980). As stated in the New Jersey Constitution:

The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. **The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.**

N.J. Const. art. IV, 7, ¶ 11 **emphasis added.**

Municipal action is presumed valid, and the burden is on the party challenging the ordinance to show that the ordinance is “arbitrary capricious or unreasonable.” Pheasant Bridge Corp. V. Township of Warren, 169 N.J. 282, 290 (2002). Therefore, the “presumption of validity [cannot] be overcome unless the evidence clearly shows unreasonableness.” Timber Glenn Phase III, LLC v. Township of Hamilton, 441 N.J. Super. 514, 523 (App, Div. 2015) (emphasis added) (citations omitted). Indeed, in New Jersey, municipalities’ ability to enact the ordinances need not be derived from an express authority and may be rooted in their inherent police power stemming from the general police powers. New Jersey’s basis in home rule means that the police power should be vested in municipalities to meet the needs of their communities. Inganamort v. Fort Lee, 62 N.J. 521, 528(1973).

Additionally, several state statutes authorize municipal registration programs. By way of example, N.J.S.A. 40:48-2 authorizes a municipality to:

[M]ake, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law.

N.J.S.A. 40:48-2.

The New Jersey Supreme Court has consistently maintained that ordinances adopted pursuant to the police powers granted to municipalities are to be liberally construed in favor of a municipality. The Supreme Court stated:

This express delegation of police power to a municipality, Hudson Circle Servicer, Inc. v. Kearny, 70 N.J. 289, 298, 359 A.2d 862 (1976), is buttressed by the constitutional provision that “any law concerning municipal corporations . . . shall be liberally construed in their favor. N.J.Const. (1947), Art. IV, s VII, par. 11; Hudson Circle Servicer, Inc., 70 N.J. at 298, 359 A.2d 862; Divan Builders, Inc. v. Wayne Tp. Planning Board, 66 N.J. 582, 595, 334 A.2d 30 (1975).

Quick Chek Food Stores v. Springfield Twp., 83 N.J. 438, 447 (1980).

N.J.S.A. 40:48-2 “has been construed as ‘. . . an express grant of broad general police powers to municipalities . . . subject only to the limitation that such action not be prohibited by or inconsistent with the Constitution or the other statutes.’” New Jersey Builders Ass'n v. Mayor & Twp. Council of E. Brunswick Twp., 60 N.J. 222, 226–27 (1972) (quoting Fred v. Mayor and Council, Old Tappan Borough, 10 N.J. 515, 520-521, 92 A.2d 473, 475 (1952)). “This broad delegation of police power is ‘. . . in addition, rather than merely ancillary, to the sundry detailed authorizations for municipal action contained in our statutes.’” Ibid. (quoting Summer v. Teaneck Tp., 53 N.J. 548, 552, 251 A.2d 761, 763 (1969)). Against this backdrop, the Court will consider (1) whether Defendants have the authority to enact VAP ordinances, and (2) whether the ordinances enacted here are constitutionally valid.

iii. Municipal Power to Charge Fees

In 1902, the New Jersey Supreme Court explained that the police power of a municipality includes “the power to exact reasonable fees, not for the purpose of revenue, but only as incidental to the power of regulation.” Fielders v. N. Jersey St. Ry. Co., 68 N.J.L. 343, 357 (1902). In 1959, the Supreme Court explained, “[t]he power to regulate includes the right to charge a fee designed to defray the costs thereof, but such must not ‘exceed the bounds of reason

considered in connection with the service and the cost of the service granted.'" Moyant v. Borough of Paramus, 30 N.J. 528, 546-47 (1959).

Similarly, in 1971 the Supreme Court reiterated this same sentiment stating that under N.J.S.A. 40:48-2, "the inherent right to charge a fee in connection with a purely regulatory non-licensing ordinance has been said to be limited to an amount primarily designed to defray the costs of regulation." Nelson Cooney & Son, Inc. v. S. Harrison, 57 N.J. 384, 390, n.4 (1971). More recently, the Supreme Court stated that "because regulatory ordinances are presumptively valid, they 'will be sustained absent proof that the fees imposed unreasonably exceed the cost of regulation.'" New Jersey Shore Builders Ass'n v. Twp. of Jackson, 199 N.J. 38, 60 (2009). The Supreme Court went on to say that " '[a] litigant asserting that a charge imposed ostensibly for regulatory purposes is in reality a tax must bear the burden of proving that allegation.'" Ibid. The ability to charge fees and impose penalties are also consistent with other statutorily authorized powers, including N.J.S.A. 40:48-1(4) which authorizes a municipality to "fix the fees of any officer or employee of the municipality for any service rendered in connection with his office or position, for which no specific fee or compensation is provided." N.J.S.A. 40:48-1(4)

iv. Delegation of Municipal Functions to Private Third Party

In New Jersey, Municipalities may not delegate to private parties' functions traditionally at the core of government operations. Essex County Corr. Officers PBA Local No. 382 v. County of Essex, 439 N.J. Super. 107, 126 (App. Div. 2014). It long has been the law in this State that governments can delegate ministerial functions. Cf. Schwartz v. City of Camden, 77 N.J. Eq. 135, 138 (Ch. 1910). In 33 Route 22 Readington Realty Holdings, LLC v. Twp. Of Readington, 221 N.J. 318, 346 (2015), a Court found it unconstitutional when a municipality adopted a resolution that "effectively delegated its land-use authority to private entities," notwithstanding

that the Municipal Land Use Law permitted it to do so, either expressly or by implication.

Similarly, in Arabia v. Zisman, 143 N.J. Super. 168 (Ch. Div. 1976), a Chancery Judge held that an ordinance which permitted private owners of beachfront property to forbid people to place beach chairs directly on that property, was an “illegal delegation of the municipality’s authority to private individuals” over public property. Id. at 175.

v. Injunctive Relief

In New Jersey, requests for injunctive relief are to be selectively granted in circumstances where the threatened harm is likely to be committed in the absence of such a restriction.

The great care which a court of equity should exercise in the granting of injunctive relief, an extraordinary remedy, has been reiterated in numerous cases. To authorize an injunction, the court must be reasonably satisfied that the threatened harm is likely to be committed and that defendant intends to perpetrate the act sought to be enjoined, or that the act probably will be done unless the court prevents it. An injunction will not issue to prohibit the doing of acts already done, and merely to allay a plaintiff’s fears or apprehensions, where there is nothing to show that the wrongs complained of are likely to be continued unless restrained.

New Jersey State AFL-CIO v. State Fed’n of Dist. Boards of Ed., 93 N.J. Super. 31, 42–43 (Ch. Div. 1966)

II. Analysis

After conducting an advanced review of the case law cited by both parties, acknowledging that municipal ordinances are presumptively valid, and after careful consideration of the arguments advanced, the Court grants Plaintiff’s Motion for Summary Judgment and request for injunctive relief. In granting the motion for summary judgment, the Court reached the following holdings: (1) Township Defendants have a legitimate interest in resolving the issues related to VAPs pursuant to their general police powers; (2) the evidence demonstrates that the ordinances definition of what constitutes as a VAP (“vacant and abandoned property”) is unreasonable in that it is overly broad, rendering the ordinance arbitrary, capricious, and unreasonable; (3) the

fees imposed under the ordinance exceed the bounds of reasonableness in connection to the costs and services of compiling the VAP registry, rendering the ordinance arbitrary, capricious, and unreasonable; (4) Defendant Pro Champs collecting and managing of municipal funds constitutes as a private third party engaging in municipal functions without any legislative delegation enabling them to do so, and (5) the unpaid registration fees are not liens, and Defendants are enjoined from misrepresenting them as such to inquiring third parties.

The Court holds that pursuant to municipalities general police powers to enact ordinances to protect the health and well-being of their citizenry and property, they do have a legitimate interest in resolving the issues related to VAPS. The Court is of the opinion that the particular ordinances, as enacted, are problematic, as the general police powers granted to municipalities do not provide blanket authority to establish a revenue-generating scheme which seems to bear no reasonable connection to alleviating the problems stemming from VAPs. Defendants argue that the ordinances have been enacted with the purpose of solving concerns related to VAPs, however their current definitions of a VAP pose the risk of going far beyond the intended purpose of the regulation. The Court has great concerns that this ultra-broad definition of vacant and abandoned homes, which is triggered upon a mere default, is targeting financially vulnerable homeowners, is driven towards increasing municipal revenue, and is not reasonably addressing issues concerning VAPs.

The Court has considered the principle that municipal ordinances are presumptively valid, but is nonetheless of the opinion that no legal authority exists which allows municipalities to enact a regulation under the guise of alleviating issues related to VAPs, when it appears that the intended purpose has been geared toward unreasonable revenue generating scheme, which encompasses a definition that arbitrarily and capriciously imposes such ordinances against

homes that are not even vacant or abandoned. The expansive means employed to resolve the issue of blighted homes as a result of this overly broad definition is arbitrary, capricious, and unreasonable.

The Court also holds that the general police powers permit municipalities to exact reasonable fees, however not for the purpose of revenue but only as incidental the power of regulation. Here, Defendants enjoyed the presumption that the fees were reasonable, but in the Court's view, Plaintiff has proffered proof that the fees imposed unreasonably exceed the cost of the regulation. The Court can find no rational basis for the amount of fees imposed as a result of landing on the VAP registry, or as a result of failing to register and/or violating one of requirements, which seem wholly punitive in nature to the property owner and based on the evidence are not incidental to the municipalities' use of their police power, as there has been no evidence presented that the municipalities provide any services whatsoever aside from the list itself. For those reasons, the Court holds the fees imposed here are arbitrary, capricious, and unreasonable.

The Court is of the opinion that there is a method for municipalities to enact legislation aimed at addressing issues related to VAPs, and holds that municipalities have a legitimate interest in addressing such issues. However, for the reasons outlined in this memorandum of decision, the Court holds that the ordinances, as enacted, are arbitrary, capricious, and unreasonable, rendering them not in accordance with the police powers, as the ordinances: (1) establish an overly-broad and unreasonable definition of vacant and abandoned properties; (2) charge excessive fees for the purpose of generating revenue, and not as incidental to the services provided pursuant to their police powers; (3) illegally delegate municipal functions to a private third party, Defendant Pro Champs, in the absence of any enabling legislation. Finally, for

reasons stated in prior rulings, the Court holds that the unpaid registration fees are not liens on the property, and hereby enjoins Defendants from making any misrepresentations to third parties that the fees are liens.

i. The Court holds that the VAP Ordinances are Invalid as Enacted

Plaintiff argues it is well-established that municipalities have no independent ability to self-govern and may only exercise the powers granted by the Legislature. Toll Bros. Inc. v. Bd. Of Chosen Freeholders of Burlington, 194 N.J. 223, 251-52 (2008). Plaintiff further argues no enabling legislation exists which permits Defendants to establish this registration program. Plaintiff also presents the Legislature's inaction as a source of authority to support the argument that Defendants do not have the authority to enact the registration ordinances. New Jersey case law is clear that the Legislature's consideration of and failure to pass a law is highly relevant. Shwartz v. Bender Invest., Inc., 58 N.J. 444(1971). In relation thereto, Plaintiff argues that the New Jersey legislature has contemplated allowing municipalities to create registration schemes such as this and they have ultimately decided against enacting any legislation which would directly permit municipalities to do what is being challenged. At the root of Plaintiff's argument regarding this bill, which would have enabled Defendants to enact the ordinances at issue, is the notion that if municipalities were already entrusted with the authority to implement an abandoned property registration ordinance as Defendants argue, then there would have been no reason for the legislature to contemplate passing any enabling legislation.

In response, Defendants argue that the municipalities' ability to enact the ordinances need not be tied directly to a specific statutory authority and is rooted in their inherent police power stemming from the New Jersey Constitution. Further, Defendants assert that the N.J. Supreme Court, referring to N.J.S.A. 40:48-2, has stated that the ordinances adopted pursuant to the police

powers granted to municipalities are to be liberally construed in favor of a municipality. Hudson Circle Servicer, Inc., 70 N.J. at 298; Divan Builders, Inc., 66 N.J. 582, at 595 (1975).

While the Court finds Plaintiffs' arguments regarding legislative inaction and lack of delegation in this area to be compelling and relevant, the Court still holds that the general police powers granted to municipalities would permit them to pass regulations aimed at addressing issues related to VAPS, as the Court holds that the municipalities have a legitimate interest in such an area under their police power. However, the general police powers do not permit the Township Defendants to enact the ordinances challenged in this case. The municipalities argue that the ordinances are designed to apply to VAPs, however a property finds themselves qualified for the VAP registry upon a mere default.

The ordinances, as currently enacted, run the risk of being over-inclusive. For that reason, the Court holds that the challenged ordinances are arbitrary, capricious, and unreasonable in that they potentially seek to regulate homes that are not actually vacant and abandoned. The overly broad definition of VAP, in the Court's view, is directed at increasing revenue rather than solving issues related to vacant and abandoned homes. Even worse in the Court's opinion, the ordinances may have the effect of punishing homeowners with unreasonably high fees, irrespective of the fact that these property owners are still maintaining their property, paying off their mortgage, and these ordinances pose an additional undue hardship for no rational basis.

A narrower definition of VAPs, which only applied to homes that were actually foreclosed, or were truly vacant/abandoned, would alleviate these concerns. The municipalities argue the ordinances are designed to resolve the issues surrounding VAPs, however a homeowner's defaulting in a mortgage does not render a property vacant and abandoned, and thus this definition could have the effect of making it tremendously more difficult for homeowners to get

out of a hole after defaulting. In the Court's opinion, the June 8th correspondence to the Court wherein Defendants advised that the ordinances would be amended to avoid listing a non-vacant home on the VAP registry, was an acknowledgement by Defendants that there were deficiencies with the ordinances.

The Court holds that the ordinances, which define a vacant and abandoned property based off whether a homeowner defaulted on their mortgage, is arbitrary, capricious, and unreasonable. In the Court's view, the ordinances, as enacted, define VAPs in an overly broad fashion, which allows municipalities to collect fees from properties that were never abandoned, never blighted, and never vacant. An ordinance encompassing a narrower definition of a vacant and abandoned property, with a more reasonable fee structure, may be consistent with the general police powers and would not be arbitrary and capricious. Indeed, in the Court's view, the broad definition increases revenue for Defendants with no reasonable connection to a service provided, ignores the detrimental impact on property owners, is inconsistent with the overall purpose of the ordinances which is to address issues related to VAPs, and as a result runs afoul of a proper exercise of police powers.

For all those reasons, the Court holds that Defendants may be permitted to pass ordinances regulating VAPs under their general police powers, even in the absence of enabling legislation as argued by Plaintiff. However, the Court holds that the general police powers are not a sufficient source of authority for Defendants to pass a regulation that (1) seeks to regulate homes that are not actually vacant and abandoned, but whose homeowners merely defaulted, and (2) establishes a revenue generating scheme that is not connected to any services provided by the municipality. As the Court will explain in greater detail below, the Court holds that although municipalities have a legitimate interest in solving the issues related to VAPs, the fines imposed as a part of this

registry system are not designed to defray costs, but instead to generate revenue, and therefore bear no reasonable connection to rectifying the actual issue of VAPs. For the foregoing reasons, the Court finds that Township Defendants did not have express or implied authority to enact the ordinances at issue.

ii. **The Court holds the Fees Imposed by the Ordinances Exceed the Bounds of Reasonableness in Connection with the Service and the Cost of Compiling the VAP Registry**

Defendants argue that the general police powers have provided them with the authority to pass the ordinances, as well as providing them with the authority to charge fees to defray the costs of the services rendered pursuant to the ordinance. In response, Plaintiff maintains that the municipality lacks any express authority to pass the ordinances, and therefore lacks the authority to charge fees in association thereof unless the fees charged are reasonably related to Defendants proper exercise of their police powers.

As outlined in greater detail above, in the Court's view, municipalities general police power may grant them the authority to regulate VAPs, however this ordinance is seeking to impose fees on properties that are not actually VAP, and therefore cannot pass muster under the Constitution. Additionally, the ordinances registration and fines component, in effect creates a scheme to collect fees, and there is no rational basis to offset the fees charged. Plaintiff argues, and the Court agrees, that any case law granting municipalities with the authority to charge fees to defray the costs of regulation must be in relation to those regulations which municipalities have the authority to enact in the first place. Here, Defendants have established abandoned property registration ordinances, notwithstanding that the legislature has never expressly authorized them to do so, and as such they argue that the ordinances were passed pursuant to their police powers. As New Jersey case law mandates, the fees charged under the ordinance pursuant to the police

powers therefore must bear a reasonable connection to the services provided by municipalities with regard to the enforcement of the ordinances.

Defendants contend that New Jersey Courts have a long history of approving of registration fees to defray the costs of exercising police powers. See Bernardsville Quarry, Inc. v. Borough of Bernardsville, 129 N.J. 221, 228-29 (1992) (inherent in the power to regulate and control is the power to charge fees to defray the cost of such control); Colonial Oaks W., Inc. v. E. Brunswick Twp., 61 N.J. 560, 571-72 (1972) (the power to regulate construction carries with it the power to charge fees to defray the cost of the regulations); Econ. Enterprises, Inc. v. Township Comm. Of Manalapan Twp., 104 N.J. Super. 373, 379-80 (App. Div. 1969) (Uniform fees charged to those whose activities cause increased costs to a municipality are acceptable); New Jersey Shore Builders Ass'n v. Twp. of Jackson, 199 N.J. 38, 60 (2009). (because regulatory ordinances are presumptively valid, they will be sustained absent proof that the fees imposed unreasonably exceed the cost of regulation).

In response, Plaintiff argues that the general police powers does not permit municipalities to charge fees for purposes of revenue, but must be designed to defray the costs of the service being provided. The evidence presented confirms that the compiling of the VAP registry costs nothing for Township Defendants and Defendant ACIA. Moreover, Plaintiff argues that it costs \$100.00 for Defendant Pro Champ to list a property on the registry, and there is no reasonable basis for the additional fees imposed.

While Defendants have asserted that the registration fees are used to defray the costs of code enforcement, their proposition ignores important components of New Jersey's case law in this area. Specifically, the fees charged by a municipality may not exceed the costs of providing the specific service or program. Colonial Oaks West, Inc. v. E. Brunswick, 61 N.J. 560 (1972).

Similarly, in Daniels v. Borough of Point Pleasant, the Court held that a municipal power to regulate building construction allowed it to charge permit fees designed to defray the costs of such regulation, but that the fees must not “exceed the bounds of reasonableness in connection with the service and the cost of the service granted.” Daniels v. Borough of Point Pleasant, 23 N.J. 357, 361 (1975).

The Court holds that the registration fees charged in connection with the VAP Registry are not reasonably related to the costs incurred by Township Defendants or Defendant ACIA in administering the registry ordinance. The Court is alarmed by the excessive fee structure incorporated in the ordinance, which has no connection with the actual costs of compiling the registry and has accumulated a total of over two million dollars for Defendants. Each ordinance imposing registration fees ranging from \$300.00 per year to \$1,000.00 per year, and accompanying violation fines ranging from \$500.00 to \$1,500.00 per day.

In the absence of any legislative delegation allowing municipalities to charge these fees, Defendants have not established any rational connection between the fees imposed and the regulatory action undertaken as required by a proper exercise of police powers. The Court acknowledges that the issue of VAPs is a realistic area of concern for municipalities, and there may a constitutionally permissible method for regulating these properties in a manner that actually seeks to rectify the problem. However, the evidence put forth presents no connection between the excessive fees charged and any increased costs incurred by Defendants associated with rectifying the problem of VAPs. No evidence has been presented that Defendants do anything aside from compiling the registry.

Defendants argue that in accordance with New Jersey case law, the registration fees are permitted as they are part of the code enforcement programs that deal with VAPs and are a tool

in furtherance of that code enforcement. The Court rejects this argument for two reasons. First, the Court finds that the costs incurred by Defendants Pro Champs in their code enforcement are not the costs incurred by Township Defendants regarding the property registration program. The Court will explain in greater detail below why the costs incurred by a private third party in rendering a service is not the same as the costs incurred by the actual municipality. Indeed, based on the evidence presented, it costs Township Defendants nothing to administer the VAP ordinances. The only service provided by Defendants is the registry itself. There has been no evidence presented that Defendants incur any other costs to address issues related to VAPs, or to enforce the regulation. A mere registry, with no evidence of further action or costs, does not justify the exceptionally high fees imposed by the ordinances. The Court acknowledges that the municipalities may be able to justify fees if evidence is presented which provides a rational connection between the fees imposed and the cost of rendering these services to the VAPs.

Second, the actual fees charged do not bear a reasonable relationship to the services provided as it costs Defendant Pro Champs \$100 to administer the registration program. In the Court's opinion, setting the registration fees from \$300.00-\$1,000.00 per year, and the fines from \$500.00-\$1,500.00 per day, without providing a scintilla of evidence as to how these numbers were computed and determined, is the definition of arbitrary and capricious. The lack of evidence entered on this issue, and the evidence presented demonstrating the large sums of money the municipalities has acquired as a result of these registration fees and fines, is another indication to the Court that the ordinances were designed for purposes of generating revenue, not rectifying issues of VAPs. The Court also finds highly alarming the evidence entered regarding Defendant Pro Champs April 17th Memo to municipalities suggesting they charge bi-annual registration fees, rather than annual, and to increase the amount charged, without any detailed

justification for doing so. In other words, the way the ordinances are designed, it adds up to a revenue scheme charged by a third party, which has no rational connection to the costs of the services provided by the municipalities to address issues associated with blighted and VAP properties.

The Court is highly concerned that property owners that have never abandoned, and properly maintained, their properties, are being charged fees by third parties, for falling behind on a mortgage payment. This default automatic trigger mechanism for fees has no reasonable connection to code enforcement for VAPs, and is arbitrary, capricious, and unreasonable. As a result, the Court holds that ordinances are unconstitutional. The revenue scheme created by the ordinances has no reasonable connection to constitutionally enacted regulations, nor does it seek to defray the costs of constitutionally enacted regulation. It is only that, a revenue scheme, which the Court can find no practical connection to the actual regulation of VAPs which was the purpose for enacting the ordinances. In conclusion, the Court holds that the fee structure as designed is arbitrary and capricious and holds that the ordinances are unconstitutional.

iii. The Court holds that Township Defendants have Improperly Delegated Municipal Power to Defendant Pro Champs in the absence of any Enabling Legislation.

Defendants argue that (1) the municipalities retained ultimate control over what Pro Champs was doing and (2) what was delegated to Defendant Pro Champs was “ministerial” functions, and there is no unlawful delegation of municipal power. In contrast, Plaintiff argues that Defendant Pro Champs is a private third party which has been illegally delegated purely municipal functions in the absence of any enabling legislation. The Court holds that Defendant Pro Champ is improperly exercising municipal power by managing and collecting municipal funds in the absence of any delegation legislation which would enable them to do so.

Municipalities may not delegate to private parties' functions traditionally at the core of government operations. Essex County Corr. Officers PBA Local No. 382 v. County of Essex, 439 N.J. Super. 107, 126 (App. Div. 2014). It long has been the law in this State that governments can delegate ministerial functions. Cf. Schwartz v. City of Camden, 77 N.J. Eq. 135, 138 (Ch. 1910). Defendants argue that Pro Champs merely collected and disbursed the registration fees and did not have the discretion to determine the fee. Defendants further argue that Pro Champs did not have the discretion to determine the allocation of the fee and the ordinance set forth the quantum of the fee and the contract between the ACIA and the Municipalities set forth the division of the proceeds. The Court rejects this argument, as made clear by the factual history in this case, Pro Champs played an intricate role in helping the municipalities determine what the specific fee charged should be.

In-fact, as evidenced by the letter Defendant Pro Champs sent to Defendant Townships on April 17, 2017, it was at the direction of Defendant Pro Champs that Hamilton Township began charging bi-annual fees rather than annual, which was in direct response to the suggestions of Defendant Pro Champs. Additionally, Defendant Pro Champs is the point of contact for title companies/searchers that are inquiring about a property's title. Another highly alarming piece of evidence is the letter produced by Defendant Galloway during the course of discovery, which was a communication encompassing Galloway's letterhead, informing a mortgagee of the registration requirement, and ordering that payment must be made to Pro Champs within 45 days. The letter was sent and signed by a representative of Defendant Pro Champs, although it appeared in a correspondence bearing the Township of Galloway's letterhead.

In the Court's opinion, and as evidenced by the record, Defendant Pro Champs are essentially functioning as a "collection agency" for municipal funds, although no statute exists which would permit them to do so. Indeed, Defendant Pro Champs is a private party engaged in:

- making determinations about which properties fall under the definition of "abandoned" under respective municipal ordinances,
- inputting all data into the registry,
- identifying the responsible parties and homeowners,
- informing the mortgagees of the registration requirement,
- collecting the registration fees, and
- remitting respective portions to Township Defendants and Defendant ACIA after taking their share.

In the Court's view, Defendant Pro Champs is managing and handling municipal funds without any statutory authority to do so. The Court holds that the control retained by Defendant Pro Champs far exceeds the realm of ministerial functions which is permissible under New Jersey law, and Defendant Pro Champs is performing municipal functions in their enforcement of the ordinances at issue. Even if the legislature had provided Township Defendants with the express authority to establish and implement a VAP registration program, the legislature also would have had to pass enabling legislation permitting municipalities to delegate their authority and power regarding the administration and enforcement of such programs to a private third party, such as Defendant Pro Champs. In the absence of such delegation legislation, Defendant Pro Champs may only handle ministerial duties, and here they have been improperly delegated the authority to undertake municipal functions in the collection of funds. For the foregoing reasons, the Court holds that Township Defendants have illegally delegated municipal power to Defendant Pro Champ.

iv. **The Court holds that any Unpaid Fees are not Liens on Property, and Defendants are Enjoined from Misrepresenting to Inquiring Third Parties that the Unpaid VAP Fees are Liens on the Property.**

Plaintiff argues that Defendants actions have cause title companies to treat unpaid registration fees as liens in certain instances, which is not permissible under the law. Plaintiff further argues that it is undisputed that the unpaid registration fees are not liens, and there is no obligation that they be paid off at closing in order to convey marketable title. When this matter came before the Court, Defendants agreed with Plaintiff's position, acknowledging that the unpaid registration fees are not liens on real property, and essentially consented to the entry of summary judgment on this point. Nonetheless, Plaintiff argues that title companies are being instructed by Defendants that this is the case, and Defendant Pro Champs is intentionally failing to disclose that the unpaid registration fees are not required to be paid off prior to closing.

Plaintiff argues that this has caused title companies to treat the unpaid registration fees as liens in certain circumstances because (1) they are relatively new; (2) they are being represented to title companies, underwriters, and searching companies as municipal charges that must be paid off at closing; and (3) there is a lack of judicial decisional authority on the issue of whether they constitute valid liens. Plaintiff argues that this kind of uncertainty generated by defendants has clouded title over these properties, and title companies do not want to pay claims or take any risk that these unpaid fees have to be paid upon closing.

Based on the record, the process works in the following manner: a title company reaches out to a municipality to inquire about the existence and amount of unpaid taxes, charges, and possible liens. The municipality then informs the title companies about the existence of an unpaid registration fee and/or fees related to violations for failure to register/maintain. Depending on the particular Township Defendant, what happens next might vary. In Hamilton,

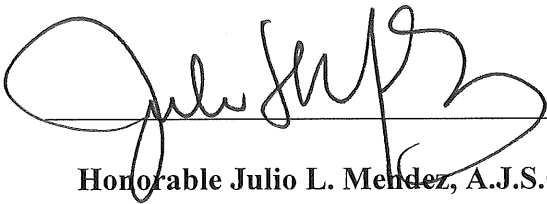
the title company would be advised that this was an outstanding fee on the property that must be paid off by the buyer or seller before the property is sold. In Galloway, the title company would be directed to Defendant Pro Champs to ascertain the existence and actual amount owed. Defendant Pro Champs argues that they would clarify with a title company or searcher that the unpaid registration fees are not liens. Nonetheless, the title company/searcher would sometimes add the registration fee into the Charles Jones report under “lienable” item.

For all these reasons, the Court hereby holds that unpaid registration fees, and/or any fines connected to violations thereof, are not liens on real property. In reaching this determination, the Court grants Plaintiff request for declaratory judgment and the associated relief requesting Defendants be enjoined from referring title companies/searchers to Defendant Pro Champs to ascertain the existence and amount of unpaid registration fees on a given property, as in the Court’s opinion this is a purely municipal function. Additionally, the Court orders that Defendants are hereby compelled to inform the inquiring title companies/searchers that any unpaid fees are not liens, and do not interfere with a property’s title.

CONCLUSION

For all the reasons outlined in this Opinion, Plaintiff’s Motion for Summary Judgment is granted on the above-mentioned issues and the request for injunctive relief is granted. In granting the motion for summary judgment, the Court reached the following holdings: (1) Township Defendants have a legitimate interest in resolving the issues related to VAPs pursuant to their general police powers; (2) the evidence demonstrates that the ordinance’s definition of what constitutes as a VAP (“vacant and abandoned property”) is unreasonable in that it is overly broad, rendering the ordinance arbitrary, capricious, and unreasonable; (3) the fees imposed under the ordinance exceed the bounds of reasonableness in connection to the costs and services

of compiling the VAP registry, rendering the ordinance arbitrary, capricious, and unreasonable; (4) Defendant Pro Champs collecting and managing of municipal funds constitutes as a private third party engaging in municipal functions without any legislative delegation enabling them to do so, and (5) the unpaid registration fees are not liens, and Defendants are enjoined from misrepresenting them as such to inquiring third parties.



Honorable Julio L. Mendez, A.J.S.C.

Dated: August 16, 2021

Attachment B



PROCHAMPS

What PROCHAMPS Does



Holds responsible parties accountable to register property, with multiple points of contact and with real people.



Provides a web-based communications platform facilitating direct communication with property managers.



Team of dedicated professionals, assigned to your community assuring results on your behalf.



Team of dedicated professionals, assigned to your community assuring results on your behalf.



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Sales
 321.465.0006
info@prochamps.com
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 321.423.0639
support@prochamps.com
[Live Chat](#)

DeNITTIS OSEFCHEN PRINCE, P.C.
Stephen P. DeNittis, Esquire (031981997)
Joseph A. Osefchen, Esquire (024751992)
Shane T. Prince, Esquire (022412002)
525 Route 73 North, Suite 410
Marlton, New Jersey 08053
(856) 797-9951

JAVERBAUM, WURGAFT, HICKS,
KAHN, WIKSTROM & SININS, P.C.
Michael A. Galpern, Esquire
1000 Haddonfield-Berlin Rd., Ste. 203
Voorhees, New Jersey 08043
(856) 596-4100

Attorneys for Plaintiff and the Proposed Class

MARY PEEK, on behalf of herself and all
 others similarly situated,

Plaintiff,

v.

BOROUGH OF RUNNEMEDE, NEW
 JERSEY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 CAMDEN COUNTY

DOCKET NUMBER: CAM-L-2419-24

**CONSENT ORDER ALLOWING
 PLAINTIFF LEAVE TO FILE A THIRD
 AMENDED COMPLAINT**

THIS MATTER having been opened to the Court with the consent of Plaintiff, Mary
 Peek, and the defendant, Borough of Runnemede, New Jersey;

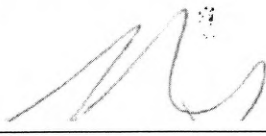
AND it appearing that Plaintiff seeks to file a Third Amended Complaint;

IT IS ORDERED that Plaintiff shall be allowed to file a Third Amended Complaint in the
 above captioned matter.

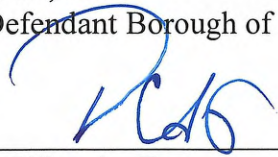
SO ORDERED this 26th day of June, 2026.

Michael E. Joyce
 HON. MICHAEL E. JOYCE, J.S.C.

DeNITTIS OSEFCHEN PRINCE P.C.
Attorneys for Plaintiffs

By: 
Stephen P. DeNittis, Esq.

PARKER McCAY, P.A.
Attorneys for Defendant Borough of Runnmede

By: 
John C. Gillespie, Esq.

DATED: June 11, 2026



DeNittis | Osefchen | Prince, P.C.
Attorneys at Law

denittislaw.com

5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, NJ 08053
P: 856.797.9951 | F: 856.797.9978

June 30, 2026

1515 Market Street, Suite 1200
Philadelphia, PA 19102
P: 215.564.1721 | F: 215.564.1759

315 Madison Ave., 3rd Floor
New York, NY 10017
P: 646.979.3642

Via ECourts Only

Clerk, Camden County
Superior Court of New Jersey
Camden County Hall of Justice
101 South Fifth Street
Camden, NJ 08103

Re: Peek vs. Borough of Runnemede, New Jersey, et al.
Docket No. CAM-L-2419-24

Dear Sir/Madam:

Attached is the Third Amended Complaint which I would request that you file pursuant to Judge Joyce's Order of June 26, 2026 which is attached. This Amended Complaint has been previously filed prior to the Order being granted so we are refiling to err on the side of caution.

Thank you for your attention in this matter.

Very truly yours,

DeNITTIS OSEFCHEN PRINCE, P.C.



STEPHEN P. DeNITTIS

SPD:dmc

Encl.

cc: John C. Gillespie, Esquire (via eCourts & email)
Michael Galpern, Esquire (via email)



Stephen P. DeNittis**** | Joseph A. Osefchen | Shane T. Prince*

Joseph A. D'Aversa | Charles J. Galvin* | James A. Barry* | Gregory C. DiCarlo* | Donald F. Browne, Jr.