

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA**

**(1) MELISA ROBINSON, and
(2) MICHAEL ROBINSON,
d/b/a THE RIVER VALLEY
MOBILE HOME COMMUNITY,**

Plaintiffs,

v.

**(1) THE TOWN OF OKAY,
OKLAHOMA, a municipal
corporation, and
(2) THE OKAY PUBLIC WORKS
AUTHORITY, a public trust,**

Defendants.

Civil Case No. _____

Complaint

This action is not related to any
previously filed cases in this Court.

Defendants took and damaged private property from Plaintiffs Melisa and Michael Robinson. We know an unconstitutional taking occurred because the Oklahoma courts have definitively said so: The Okay Public Works Authority (a public “Trust” created by and for the benefit of the Town of Okay) worked a taking (as a matter of Oklahoma law) by digging up the Robinsons’ land and installing public sewer lines on it without authorization and without following the rules for taking private property from a landowner. But the Robinsons have not been paid for that taking. Instead, they have

been told that their property was taken by the Trust (which is wholly controlled by the Town) and that the Trust cannot pay for that property because it has no money or property—every cent it takes in goes straight into the Town’s bank accounts. In effect, the trustees of the Town (who are also the trustees of the Trust) took the Robinsons’ property while they were wearing their Trust hats, not their Town hats. The trustees also say they only have money to pay constitutionally mandatory “just compensation” when they are wearing their Town hats. But the Fifth Amendment to the United States Constitution says that just compensation is mandatory, and Okay officials cannot avoid their constitutional duty by playing a shell game with public funds.

JURISDICTION AND VENUE

1. This case involves constitutional claims directly under the Fifth Amendment to the United States Constitution and under 42 U.S.C. § 1983.
2. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 2201, and 2202.
3. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)–(2) because both Defendants are located in—and all events or omissions giving rise to Plaintiffs’ claims occurred in—the Eastern District of Oklahoma.

PARTIES

4. Plaintiffs Melisa Robinson and Michael Robinson are citizens of the United States and long-time residents of Muskogee, Oklahoma.

5. Melisa and Michael are married and own property in Okay, Oklahoma, located off state highway 251A at the following coordinates: 35°51'22.2"N 95°18'25.0"W. The Robinsons own, manage, and rent mobile homes on the property. The Robinsons conduct this business in their individual capacities and d/b/a the River Valley Mobile Home Community.

6. Defendant the Town of Okay, Oklahoma, is a municipality located in Wagoner County, Oklahoma. The Town was organized under the statutes of the State of Oklahoma.

7. The Town operates under a council form of government and is governed by a five-member board of trustees.

8. The trustees elect the mayor from their own body.

9. Brad Mathews currently serves as the mayor of the Town.

10. There are four additional trustees that govern the Town with Mr. Matthews.

11. The Town is considered the "primary government" in Okay, Oklahoma. And it provides the following services: general government, public safety (fire and police), streets, public works (water, sewer, and trash),

judicial, public improvements, and planning and zoning for the geographical area organized as the Town of Okay, Oklahoma.

12. Defendant the Okay Public Works Authority is a “public trust” that was created solely for the use and benefit of the Town.

13. In 1962, the Town created the Trust to provide utility services, including water and sewer services, to the residents of the Town. The Town is the sole beneficiary of the Trust.

14. The Trust is considered a “blended component unit.”

15. A “blended component unit” is a separate legal entity for which the elected officials of the primary government are financially accountable and that meets one of the following blended component unit criteria:

a. The blended component unit’s governing body is the same or substantially the same as the Town Council, and there is a financial benefit or burden relationship with the Town, or Town management has operational responsibilities for the component unit;

b. The blended component unit provides services entirely or almost entirely to the Town; or

c. The blended component unit’s debt is expected to be repaid entirely or almost entirely with resources of the Town.

16. Both the Town and the Trust are governed by the same five trustees, including Mr. Matthews, who serves as both the mayor of the Town and the chairman of the Trust.

17. Both the Town and the Trust are located in the Town's two-room city hall building, located at 7420 N 37th E, Okay, Oklahoma, 74446.

18. The Town controls the "Okay Public Works Authority Enterprise Fund," which, on information and belief, is how the Town controls the finances of the Trust.

FACTS

The Robinsons and the River Valley Mobile Home Community.

19. Melissa and Michael have been married for nearly three decades.

20. The Robinsons have always lived in Muskogee, Oklahoma, where they went from raising two kids to now hosting their grandchildren.

21. Along the way, the Robinsons have carved out their own American Dream. Michael started his own small business—hauling mobile homes from Tulsa, Oklahoma, to install in various communities in eastern Oklahoma. Mobile homes are an essential housing option in Oklahoma.

22. Michael became an expert in the field, but it was never easy. Michael would leave the house *hours* before sunrise—and he wouldn't finish his work until late in the evening. With small kids at home and just a few

hours of sleep, Michael and Melissa were determined to make things work. It took grit and a never-give-up mentality.

23. Michael's business was a big success. Eventually, the Robinsons looked for ways to expand the business and use their expertise. For example, they considered whether to own and operate their own mobile home community. After all, it made perfect sense: Michael could install and maintain the homes; Melisa could manage the tenants and property.

24. The Robinsons first invested in a mobile home community in Oktaha, Oklahoma. The Robinsons still own the park today, renting the mobile homes to families and managing the community. The Oktaha community remains a success.

25. There was another mobile home community in Okay, Oklahoma, that the Robinsons would often drive past. It was in bad shape—with deteriorating and dilapidated properties. It was so bad, in fact, that the Town was considering whether to condemn the property as a dilapidated nuisance property.

26. But in 2006, the Robinsons bought the mobile home community to turn it around.¹ They then spent the next year cleaning up, fixing, and

¹ Vicky Barnett is Melissa's mother. Vicky also briefly owned the River Valley Mobile Home Community, including when the taking occurred in 2009. But Vicky was never involved in the management of River Valley. Rather, she was an owner in name only. And now the property, along with

improving the community with the goal of opening the River Valley Mobile Home Community.

27. For the Robinsons, it was (and still is) important to have a clean, safe, and reliable community where families could raise children.

28. With hard work and sheer determination, that's exactly what the Robinsons built at River Valley. It is now filled with homes full of families, children waiting for the school bus, and well-maintained properties.

29. As a result, the Town never tried to condemn the property.

30. Michael still runs his business of hauling and installing mobile homes from Tulsa. And Melisa still runs and manages the two mobile home communities, including River Valley.

31. Melisa manages both mobile home communities out of her home office in Muskogee. At least once a week (but usually more), she visits both communities to make sure everything is in proper order.

32. Melisa is always on call and responsive to her tenants' needs. She takes great pride in providing high-quality service and homes for her tenants and their families.

any other rights or claims associated with the property and the taking, belongs only to Melisa and Michael.

The Trust Takes Part of the Property and Causes Extensive Damage at River Valley.

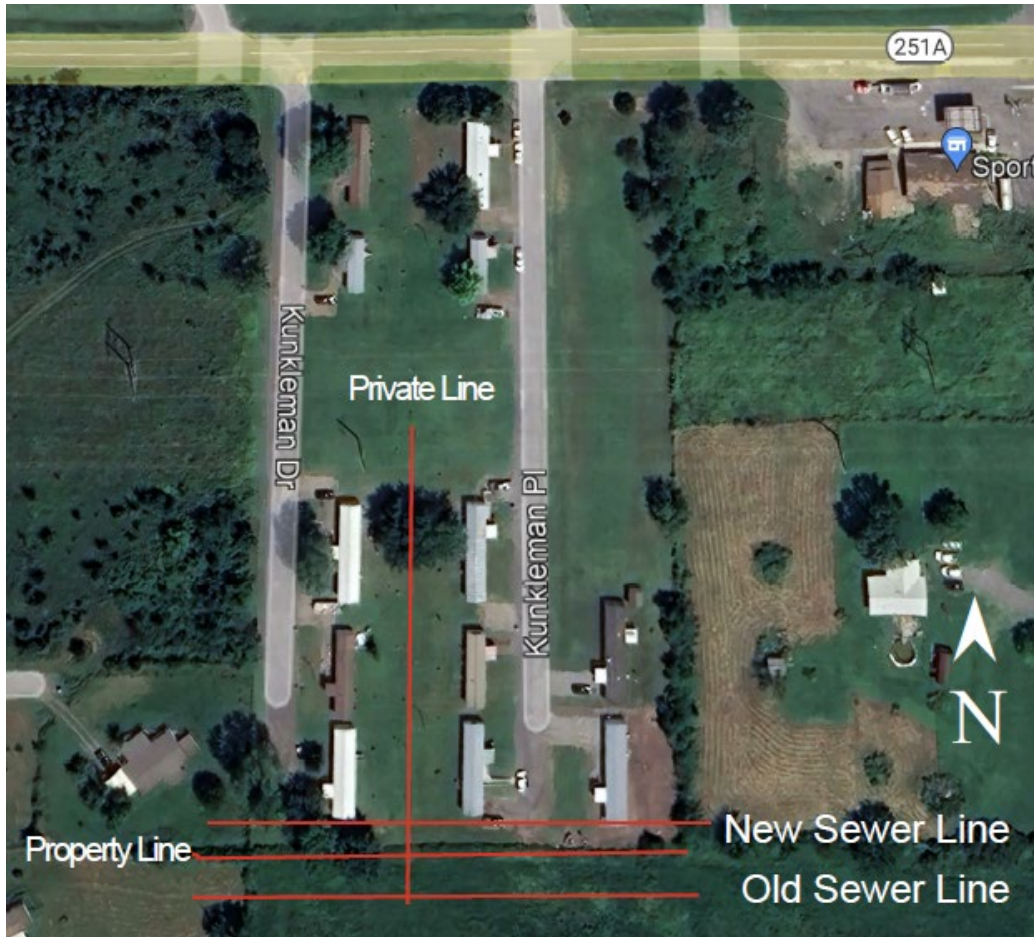
33. In 2009, the Trust received a grant from the Oklahoma Water Resources Board to replace, reconstruct, and relocate water lines and facilities at the Town's sewer treatment plant, which is located south of River Valley.

34. During the sewer project, Defendants determined that they had excess money from the grant to do some additional public sewer work, so they decided to replace two lines of pipe that affected River Valley.

35. Just south of River Valley, there was a main sewer line that ran in an east and west direction. Before the project, this pipe was not on Melisa's property. Defendants, however, wanted the new pipe to run through Melisa's property.

36. Defendants also decided to replace a sewer line that ran north and south across the River Valley property. This line was located between several mobile homes (where Melisa's tenants lived). Before the project, this pipe was a private line (that was installed by the original developer), and it connected to the old main line that was just south of Melisa's property.

37. Here's an aerial view of River Valley showing the original private line running north and south—and where Defendants wanted to relocate the main line running east and west:



38. Defendants hired their engineer to design the project. But in doing so, the engineer told Defendants about a critical detail: There were no existing public sewer easements on the River Valley property, so if Defendants wanted to go ahead with the project, they would need to obtain easements.

39. But that never happened. Neither the Town nor the Trust ever approached the Robinsons about the easements. In fact, Defendants *didn't even tell* the Robinsons about the project.

40. Instead, Defendants only asked Melisa if they could store some equipment and materials on her property, which Melisa understood was for a project on her neighbor's property—not on her property.

41. Melisa allowed the Trust to store its equipment at the end of the road in River Valley (*see* Kunkleman Drive in the picture, above), so the Trust could easily access and replace the sewer line that Melisa thought Defendants were replacing on the adjacent property.

42. One day, when Melisa was making her rounds checking on River Valley and her tenants, she stumbled upon an unexpected nightmare.

43. Rather than seeing construction being done on the neighbor's property, she found the Trust digging up her property in two directions.

44. The Trust had several pieces of construction equipment, like excavators and skid steers, in the middle of River Valley. The Trust had dug up Melisa's pipes—and it was causing extensive damage.

45. The Trust had gone ahead with its planned project, but it did so without first getting easements or permission to do so (like the Town's engineer told it to do)—and without even telling Melisa about the Trust's extensive plans to excavate *her* property.

46. What's more, the Trust did a terrible job when it replaced the pipes. The Trust failed to grade the pipes properly, which meant that sewage from each home was not draining.

47. Melisa had tenants who could not even flush a toilet or shower because the water wouldn't drain.

48. While digging, the Trust also hit underground power lines that powered the mobile homes. As a result, Melisa had tenants who lost power, causing air conditioners and refrigerators to blow out.

49. The Robinsons needed to fix the problems immediately so their tenants could have habitable homes.

50. The Robinsons asked the Town to work with them to fix the problems. Michael explained to the Town that he would provide the equipment if the Town sent some labor to help him fix the pipes.

51. The Defendants refused to help the Robinsons fix their property.

52. The Robinsons then fixed the problems themselves, which cost tens of thousands of dollars. The Robinsons paid that money out of their own pockets.

The Robinsons Win in State Court: The Oklahoma Supreme Court Orders the Trust to Pay Over \$70,000 for the Damage.

53. With no other option, the Robinsons turned to Oklahoma state court to hold Defendants responsible for the taking of the property (i.e., for

the easements they should have paid for) and for the damage they caused along the way.

54. In 2009, the Robinsons filed² an inverse condemnation claim against the Town in Wagoner County, Oklahoma, alleging a taking under the Oklahoma Constitution. (Under binding federal law at that time, the Robinsons were required to exhaust their state-law remedies before they could seek just compensation for a federal taking in federal court.) A copy of that petition (the “2009 Petition”) is attached as **Exhibit A**.

55. After filing the 2009 Petition, the Robinsons discovered during litigation that the Town claimed it was not technically the entity that damaged their property. Rather, it was the Trust that caused the damage.

56. It took the Town three years to reveal this to the Robinsons. So on the eve of trial in 2012, the Robinsons were forced to dismiss the 2009 Petition, without prejudice, and refile a new petition that included the Trust.

² The state court proceedings were captioned in Vicky’s name along with River Valley’s. But as explained above, *supra* note 1, the Robinsons have always managed River Valley (and own all rights and claims related to the property and the taking). Melisa also controlled the state court litigation. As a result, for the sake of simplicity, this Complaint references just the Robinsons—not Vicky, who no longer has any ownership interest in the property.

57. The Robinsons then filed an inverse condemnation claim against the Town and the Trust, again alleging state takings claims. A copy of that petition (the “2012 Petition”) is attached as **Exhibit B**.

58. The Robinsons did not include claims under the Fifth Amendment to the United States Constitution because, at that time, precedent from the United States Supreme Court required the Robinsons to first use state court procedures *and* be denied just compensation before they could file Fifth Amendment claims in federal court.

59. After the Robinsons filed the 2012 Petition, the Town pointed its finger at the Trust as being the responsible party.

60. The Town asked the state court to dismiss it from the lawsuit because it was technically the Trust (not the Town) that took and damaged the property. As the Town explained in its motion to dismiss, it “had no control over the method or manner upon which the work was conducted on the sewer system owned and operated by the [Trust].”

61. The state trial court dismissed the Town from the lawsuit, but the claim against the Trust went to trial. The order was one sentence: “The Court hereby sustains Defendant Town of Okay’s Motion to Dismiss.” A copy of that Order, from June 14, 2013, is attached as **Exhibit C**.

62. At this point, the Robinsons were just happy to *finally* have their day in court and ask the jury to hold the Trust accountable.

63. Following a trial, the jury returned a verdict against the Trust. A copy of the Verdict Form is attached as **Exhibit D**.

64. First, the jury found that “a taking or damaging of the property DID occur.”

65. Second, the jury found that the Trust owed \$73,350.00 in “just compensation,” which it was required to pay.

66. Following the verdict, the Trust filed its “Motion for Judgment Notwithstanding the Verdict and Alternative Motion For New Trial” (JNOV), which argued that the Trust could not commit an inverse condemnation taking because, as the Trust saw it, it did not have the power of eminent domain to take property.

67. The trial court denied the Trust’s motion for JNOV and new trial. The trial court then entered judgment on May 28, 2019. A copy of that entry is attached as **Exhibit E**.

68. The just compensation covered both the damage that the Trust caused—and an easement for the Trust for the new pipes it installed.

69. The just compensation also included “post judgment interest” that runs until the Trust pays “the full amount of the judgment.”

70. The Trust appealed the jury verdict and judgment to the Oklahoma Court of Appeals. On appeal, the Trust raised the same arguments from the JNOV. This time, the court of appeals agreed that the

Trust did not have the power to condemn property, and thus, did not commit an inverse taking. As a result, the appeals court vacated the verdict and judgment.

71. The Oklahoma Supreme Court agreed to hear the case, and it reversed the Court of Appeals. A copy of the Oklahoma Supreme Court decision, *Barnett v. Okay Public Works Authority*, 507 P.3d 1245, 2022 OK 24 (Okla. 2022), is attached as **Exhibit F**.

72. The Oklahoma Supreme Court said that the Trust *did* have the power of eminent domain and that it took River Valley's property.

73. The Oklahoma Supreme Court's decision was unanimous.

74. As a result, the Oklahoma Supreme Court affirmed the trial court's judgment, which included the jury verdict and the command that the Trust pay \$73,350 in "just compensation." The Supreme Court remanded the matter back to the trial court for further proceedings to resolve the outstanding issue of fees and costs.

75. On remand, the trial court awarded the Robinsons \$88,681.00 in attorneys' fees, appraisal fees, and costs. A copy of the Fees and Costs Award is attached as **Exhibit G**.

76. After a unanimous victory in the Oklahoma Supreme Court, the Robinsons thought their *thirteen-year-fight* to hold the Trust accountable had

finally come to an end. What the Robinsons didn't know, however, was that their legal fight with the Defendants was just entering a new chapter.

Defendants Engage in a Shell Game, Refusing to Pay Up.

77. The Robinsons then began the process of collecting the just compensation from the Trust.

78. At this point, the Robinsons thought all that was left was to collect the money from the Trust.

79. The Robinsons filed a "Notice of Collection of Judgment" and a "Statement of Judgment" in state court. The Robinsons also sent a demand letter to Defendants. A copy of these documents are attached as **Exhibit H**.

80. But in response, the Trust has now claimed, for the first time, that it has no money to pay the Robinsons.

81. To be sure, the Robinsons always believed that the Trust had a source of revenue: Residents of Okay have to pay for their water and sewer services. And to do so, residents—i.e., customers—make payments to the Trust.

82. But on March 16, 2023, when the Trust responded to written discovery requests in the collection of judgment proceedings, the Robinsons learned, for the first time, that the revenue from water and sewer customers is deposited directly into a bank account owned and controlled by the Town—not the Trust. A copy of the Trust's answers is attached as **Exhibit I**.

83. That same day, the Robinsons learned, for the first time, that any property the Trust uses is actually owned and controlled by the Town—not the Trust.

84. That same day, the Robinsons also learned, for the first time, that the Trust owned no real estate.

85. This was all surprising news to the Robinsons.

86. Since the filing of the 2012 Petition, when the Town first informed the Robinsons that it was actually the Trust that was responsible for the taking at River Valley, the Robinsons did not know, or have any reason to know, that the Trust could not pay just compensation for its taking.

87. Rather, from the time of taking in 2009 until the Trust gave notice on March 16, 2023 that it could not pay the Robinsons just compensation, both the Trust and the Town hid the fact that the Town (not the Trust) controls the revenue from water and sewer customers in Okay by depositing customer payments directly into the Town's bank account.

88. This concealment prevented the Robinsons from knowing that they had independent Fifth Amendment claims against the Town until, at the earliest, March 16, 2023.

89. Nor was there any way for the Robinsons to know about or discover this scheme. According to the Town's Audit Reports, there is an

“Okay Public Works Authority Enterprise Fund” that receives hundreds of thousands of dollars each year.

90. Indeed, the Fund includes revenue from “charges for services” for water, sewer, and sanitation services (along with other revenues).

91. Any reasonable person, including the Robinsons, would think that the Trust could use the Fund and its revenues to pay just compensation when it takes property for water, sewer, and sanitation lines.

92. Any reasonable person, including the Robinsons, would also think that the Town, as the primary government, would properly finance the Trust, a blended component unit of the Town, so that the Trust could pay just compensation when it takes property through eminent domain.

93. But as it turns out, any reasonable person would have been wrong on both fronts.

94. On April 29, 2024, the Robinsons—in one last try—asked the state trial court to have an asset hearing on the record. Brad Matthews, the mayor of the Town *and* the chair of the board for the Trust, testified.

95. Matthews said that the Trust had *nothing* that it could use to pay the Robinsons. A copy of that transcript is attached as **Exhibit J**.

96. According to Matthews, the Trust had no debts, no creditors, no equipment, no vehicles, no real estate, no personal property, no bank accounts, and no other way to pay the Robinsons.

97. Matthews also confirmed that all revenue from water and sewer customers in Okay is deposited directly into bank accounts controlled by the Town—not the Trust. And that the Trust could not use that revenue to pay just compensation to the Robinsons.

98. In short, the Robinsons have now discovered in the past year that Defendants have structured their relationship in such a manner that, although the Trust has the legal power to take private property through eminent domain, it can never fulfill its duty to pay just compensation, which necessarily comes with the power to exercise eminent domain.

99. Despite being unable to pay just compensation, the Trust exercised its power to take the Robinsons' property for the benefit of the Trust and the Town.

100. For the Robinsons, they are left with just an IOU that says the Trust technically owes them money.

101. After the asset hearing, the Robinsons decided to file this lawsuit in federal court. Current precedent from the United States Supreme Court (which changed in 2019) allows the Robinsons to file Fifth Amendment claims directly in this Court.

102. Until the March 16, 2023 discovery that the Trust could not pay just compensation, the Robinsons had been diligently pursuing their claim against the Trust in state court, which was required by precedent from the

United States Supreme Court in place when the taking occurred in 2009—and still in place when the Robinsons filed the 2012 Petition.

103. Indeed, under the precedent in place when the Robinsons filed the 2012 Petition, the Robinsons could not have filed these Fifth Amendment claims under the United States Constitution until they had used the state court procedures *and* were denied just compensation. That didn't happen until the March 16, 2023 discovery.

“Just Compensation” Requires the Payment of Money.

104. The Fifth Amendment's terms are plain and simple: “nor shall private property be taken for public use, without just compensation.”

105. The Fifth Amendment “does not prohibit the taking of private property, but instead places a condition on the exercise of that power.” *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 314 (1987) (citations omitted). That condition is “just compensation.”

106. If the government takes private property for public use, the landowner has a Fifth Amendment claim “for just compensation at the time of the taking.” *Knick v. Township of Scott*, 588 U.S. 180, 192 (2019) (citation omitted).

107. The Takings Clause, then, is as simple as the Pottery Barn rule: If you break it, you buy it. And you must buy it with “just compensation.”

108. Just compensation requires the payment of actual money.

109. In contrast, “[a] judgment for [a taking], left unsatisfied, does not constitute the payment of just compensation.” *Watson Mem’l. Spiritual Temple of Christ v. Korban*, No. 2024-C-00055, 2024 WL 3218549, at *11 (La. June 28, 2024).

110. As such, an unenforceable IOU or some promise to pay in the future is not the payment of “just compensation.”

111. Until the government pays a property owner with money, there is an ongoing and unremedied Fifth Amendment violation for the taking. That’s exactly what’s happening to the Robinsons.

CLAIMS

Count I

Fifth Amendment Violation Against the Trust: Directly Under the U.S. Constitution

112. Plaintiffs incorporate paragraphs 1 through 111 as if fully restated here.

113. The Fifth Amendment requires the government to pay just compensation when it takes private property for a public use.

114. The Fifth Amendment to the U.S. Constitution is self-executing.

115. The Fifth Amendment applies to the states through the Fourteenth Amendment.

116. In the Robinsons' state-court inverse-condemnation case, the jury found, and the Oklahoma Supreme Court confirmed, that a taking occurred when the Trust damaged River Valley's property and took an easement across River Valley's property.

117. That decision has preclusive effect in this lawsuit.

118. The Oklahoma Supreme Court confirmed the state trial court's judgment that the Trust owes \$73,350.00 in just compensation, including post-judgment interest, for the taking of River Valley's property.

119. That decision has preclusive effect in this lawsuit.

120. The state trial court determined that the Trust owes \$88,681.00 in attorneys' fees and costs.

121. That decision has preclusive effect in this lawsuit.

122. Under the Fifth Amendment, the payment of just compensation requires the payment of money.

123. The Trust has not paid the Robinsons any money.

124. The Robinsons did not discover that the Trust would not pay any money until, at the earliest, March 16, 2023. As described above, *supra* ¶¶ 80 to 87, and below, *infra* ¶¶ 149 to 152, this lack of discovery was the direct result of Defendants fraudulently concealing the financial realities between the Trust and the Town.

125. As long as the Trust continues to refuse to pay the Robinsons with money for the taking, the Robinsons continue to suffer an ongoing and unremedied Fifth Amendment violation.

Count II
Fifth Amendment Violation Against the Trust:
Through 42 U.S.C. § 1983

126. Plaintiffs incorporate paragraphs 1 through 111 as if fully restated here.

127. The Fifth Amendment requires the government to pay just compensation when it takes private property for a public use.

128. The Fifth Amendment applies to the states through the Fourteenth Amendment.

129. In the Robinsons' state-court inverse-condemnation case, the jury found, and the Oklahoma Supreme Court confirmed, that a taking occurred when the Trust damaged River Valley's property and took an easement across River Valley's property.

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135. Under the Fifth Amendment, the payment of just compensation requires the payment of money.

136. The Trust has not paid the Robinsons any money.

137. The Robinsons did not discover that the Trust would not pay any money until, at the earliest, March 16, 2023. As described above, *supra* ¶¶ 80 to 87, and below, *infra* ¶¶ 149 to 152, this lack of discovery was the direct result of Defendants fraudulently concealing the financial realities between the Trust and the Town.

138. The Trust acted under color of state law when it damaged and took the River Valley property.

139. The Trust continues to act under color of state law when it refuses to pay the Robinsons just compensation.

140. As long as the Trust continues to refuse to pay the Robinsons with money for the taking, the Robinsons continue to suffer an ongoing and unremedied Fifth Amendment violation.

Count III
Fifth Amendment Violation Against the Town:
Directly Under the U.S. Constitution

141. Plaintiffs incorporate paragraphs 1 through 111 as if fully restated here.

142. The Fifth Amendment requires the government to pay just compensation when it takes private property for a public use.

143. The Fifth Amendment to the U.S. Constitution is self-executing.

144. The Fifth Amendment applies to the states through the Fourteenth Amendment.

145. As an Oklahoma municipality, the Town has the power of eminent domain and could use that power to fulfill its obligations to provide water and sewer services for its residents.

146. Instead of using its own power of eminent domain to provide water and sewer services for its residents, the Town created the Trust, a nominally separate entity that also has the power of eminent domain.

147. While nominally separate, the Trust is controlled entirely by the Town and its officials, and it was created for the benefit of the Town.

148. The Town and the Trust have identical trustees and officers.

149. When the Town created the Trust, it deliberately ensured that the Trust would have no assets or revenue that it could use to pay just compensation when it exercised its power of eminent domain.

150. The Town continues to ensure that the Trust has no assets or revenue that it can use to fulfill the duty to pay just compensation that comes with its exercise of its eminent domain power.

151. For example, when sewer or water customers write checks to the Trust, those checks are deposited in bank accounts owned and controlled by the Town, which ensures the Trust never holds any money that could be used to fulfill its duty to pay just compensation.

152. In short, the Town has deliberately created an entity that has the power of eminent domain but has no ability to fulfill the constitutional duty to pay just compensation.

153. The Trust has the power to take property but no ability to pay for it.

154. As a direct result of the Town's efforts to ensure the Trust has no assets to pay just compensation, the Trust has not paid the just compensation it owes to the Robinsons as a result of its taking of their property.

155. But for the Town's decision to create an entity that has the power to take property but no ability to pay for it, the Robinsons' property would not have been taken by a judgment-proof entity.

156. But for the Town's decision to create an entity that has the power to take property but no ability to pay for it, the Robinsons' ongoing constitutional injury would be remedied—either because the taking of their

property would have been formally effected by the Town (which can be compelled to pay just compensation) or because their property would have been taken by a Trust that has assets or revenue to pay just compensation.

157. The Robinsons did not discover that the Town created and controlled the Trust in such a way that the Trust could not pay just compensation until, at the earliest, March 16, 2023. As described above, *supra* ¶¶ 80–87, 149–152, this lack of discovery was the direct result of Defendants fraudulently concealing the financial realities between the Trust and the Town.

158. As long as the Town continues to prevent the Trust from paying the Robinsons with money for the taking, the Robinsons continue to suffer an ongoing and unremedied Fifth Amendment violation.

Count IV
Fifth Amendment Violation Against the Town:
Through 42 U.S.C. § 1983

159. Plaintiffs incorporate paragraphs 1 through 111 as if fully restated here.

160. The Fifth Amendment requires the government to pay just compensation when it takes private property for a public use.

161. The Fifth Amendment applies to the states through the Fourteenth Amendment.

162. As an Oklahoma municipality, the Town has the power of eminent domain and could use that power to fulfill its obligations to provide water and sewer services for its residents.

163. Instead of using its own power of eminent domain to provide water and sewer services for its residents, the Town created the Trust, a nominally separate entity that also has the power of eminent domain.

164. While nominally separate, the Trust is controlled entirely by the Town and its officials, and it was created for the benefit of the Town.

165. The Town and the Trust have identical trustees and officers.

166. When the Town created the Trust, it deliberately ensured that the Trust would have no assets or revenue that it could use to pay just compensation when it exercised its power of eminent domain.

167. The Town continues to ensure that the Trust has no assets or revenue that it can use to fulfill the duty to pay just compensation that comes with its exercise of its eminent domain power.

168. For example, when sewer or water customers write checks to the Trust, those checks are deposited in bank accounts owned and controlled by the Town, which ensures the Trust never holds any money that could be used to fulfill its duty to pay just compensation.

169. In short, the Town has deliberately created an entity that has the power of eminent domain but has no ability to fulfill the constitutional duty to pay just compensation.

170. The Trust has the power to take property but no ability to pay for it.

171. As a direct result of the Town's efforts to ensure the Trust has no assets to pay just compensation, the Trust has not paid the just compensation it owes to the Robinsons as a result of its taking of their property.

172. But for the Town's decision to create an entity that has the power to take property but no ability to pay for it, the Robinsons' property would not have been taken by a judgment-proof entity.

173. But for the Town's decision to create an entity that has the power to take property but no ability to pay for it, the Robinsons' ongoing constitutional injury would be remedied—either because the taking of their property would have been formally effected by the Town (which can be compelled to pay just compensation) or because their property would have been taken by a Trust that has assets or revenue to pay just compensation.

174. For all the actions described in paragraphs 166 through 169, the Town was acting under color of state law.

175. The Robinsons did not discover that the Town created and controlled the Trust in such a way that the Trust could not pay just

compensation until, at the earliest, March 16, 2023. As described above, *supra* ¶¶ 80–87, 149–152, this lack of discovery was the direct result of Defendants fraudulently concealing the financial realities between the Trust and the Town.

176. As long as the Town continues to prevent the Trust from paying the Robinsons with money for the taking, the Robinsons continue to suffer an ongoing and unremedied Fifth Amendment violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

- A. For an entry of judgment holding Defendants liable for their ongoing and unremedied unconstitutional conduct;
- B. For a declaration that the Trust continues to violate the Fifth Amendment to the United States Constitution for as long as it fails to pay Plaintiffs with money;
- C. For a declaration that the Town continues to violate the Fifth Amendment to the United States Constitution for as long as the Trust cannot pay Plaintiffs money because of how the Town created and operates the Trust;
- D. For an award of just compensation and interest for the taking;
- E. For an award of reasonable attorneys' fees and costs; and
- F. Such other relief as this Court deems appropriate.

Date: July 30, 2024.

Respectfully submitted,

/s/ K. Ellis Ritchie

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**Pro hac vice motions to be filed*