

WENDY WHITAKER,
Plaintiff,
v.
CLAY WHITTLE,
Sheriff, Columbia County
SONNY PERDUE,
Governor, State of Georgia
THURBERT BAKER,
Attorney General
VERNON KEENAN, Director,
Georgia Bureau
Of Investigations,
Defendants.

Wendy Whitaker files this action for injunctive and declaratory relief to prevent her from being evicted from her home on Thanksgiving Day, November 27, 2008, for engaging in consensual teenage sex, over a decade ago, with a high school student who was one year and three months her junior. Ms. Whitaker also seeks an order removing her from the State's sex offender registry. She brings this action pursuant to O.C.G.A. § 9-11-65, § 9-4-2, § 9-5-1, § 9-6-20, and § 9-6-22.

PRELIMINARY STATEMENT

1. As the Georgia Supreme Court recently recognized, 55% of 15- to 19-year-old boys and 54% of 15- to 19-year-old girls have engaged in oral sex.¹
2. Wendy Whitaker is on the sex offender registry for engaging in a single act of consensual oral sex as a high school student. This conduct occurred on December 12, 1996. Ms. Whitaker had just turned 17. The other student was three weeks short of his 16th birthday. Both were sophomores in high school. For this act, Ms. Whitaker was arrested and charged with the crime of sodomy. She pled guilty to sodomy in the Superior Court of McDuffie County in 1997 and completed five years of probation.²
3. Because of this conviction, Ms. Whitaker is required to register as a "sex offender."³ Ms. Whitaker has never been convicted of any other sexual crime. The only other

¹ See Humphrey v. Wilson, 282 Ga. 520, 529, n. 42, 652 S.E.2d 501, 508, n.42 (2007) (citing Sexual Behavior and Selected Health Measures: Men and Women 15-44 Years of Age, United States, 2002, published by the Nat'l Center for Health Statistics, a branch of the Centers for Disease Control and Prevention ([http:// www.cdc.gov/nchs/products/pubs/pubd/ad/361-370/ad362.htm](http://www.cdc.gov/nchs/products/pubs/pubd/ad/361-370/ad362.htm))).

² See Indictment and Criminal Disposition Form (Ex. 1).

³ See O.C.G.A. § 42-1-12(e)(1) (requiring sex offender registration for persons convicted "on or after July 1, 1996, of a criminal offense against a victim who is a minor"); O.C.G.A. § 42-1-12(a)(9)(A) (defining "criminal offense against a victim who is a minor" to include "[a]ny conviction resulting from an underlying sexual offense against a victim who is a minor."

conviction she has received in her life is a misdemeanor shoplifting conviction.

4. Because she is on the sex offender registry, Ms. Whitaker is required to comply with the sex offender residence restriction law. See O.C.G.A. § 42-1-15(b) (prohibiting persons on the sex offender registry from living within 1,000 feet of schools, child care centers, churches, swimming pools, school bus stops, and other locations).
5. Ms. Whitaker, now 29 years old, owns a home with her husband in Harlem, Columbia County, Georgia. The Whitakers purchased the home in January 2006.
6. O.C.G.A. § 42-1-15 provides an exemption from the residence restrictions for certain persons who owned their homes prior to July 1, 2006. Ms. Whitaker is covered by this exemption.
7. Defendant CLAY N. WHITTLE, the Sheriff of Columbia County, has nevertheless ordered Ms. Whitaker to vacate her home by November 27, 2008 because it is within 1,000 feet of a child care center and church in violation of O.C.G.A. § 42-1-15(b). The Sheriff's Office erroneously determined that Ms. Whitaker does not fall within the homeowner exemption in § 42-1-15(f)(2) because her husband purchased the home and Ms. Whitaker's name was not placed on the deed until 2007.

8. If Ms. Whitaker fails to comply with the Sheriff's order to move, she faces 10-30 years in prison. See O.C.G.A. § 42-1-15(h)(2).
9. Plaintiff seeks a temporary restraining order and/or preliminary injunction permitting her to remain in her home while this Court determines whether the Sheriff's interpretation of O.C.G.A. § 42-1-15(f)(2), (g) is in error. The Whitakers cannot afford to pay the mortgage on their home and rent another residence. Absent an injunction, their home will likely go into foreclosure. Ms. Whitaker will suffer irreparable injury.
10. Plaintiff also seeks: (a) a final order declaring that Ms. Whitaker is covered by the homeowner exemption of O.C.G.A. § 42-1-15(f)(2), (g); (b) a preliminary and permanent injunction preventing Defendant WHITTLE from requiring Ms. Whitaker to vacate her home at 250 Church Street, Harlem, Georgia, pursuant to § 42-1-15(b); and (c) an order declaring that requiring Ms. Whitaker to register as a sex offender for engaging in consensual oral sex at age 17 with a teenager 15 months her junior violates the Equal Protection Clause, the prohibition against cruel and unusual punishment, the Due Process Clause, and the Takings Clause of the Georgia Constitution.

PARTIES

Plaintiff

11. Plaintiff WENDY WHITAKER resides in Harlem in Columbia County, Georgia. Ms. Whitaker was convicted of sodomy in 1997 for engaging in consensual oral sex with a high school classmate. Ms. Whitaker has never been a threat to anyone in her entire life. Nevertheless, her conviction requires her to register as a "sex offender" and comply with Georgia's sex offender residence law. Ms. Whitaker was ordered to vacate her lawfully purchased home because it is within 1,000 feet of a church and a child care center in violation of O.C.G.A. § 42-1-15(b).

Defendants

12. Defendant CLAY N. WHITTLE is the Sheriff of Columbia County. He is charged with the common law and statutory duties of the office of sheriff to enforce the laws of Georgia. Plaintiff asks that Defendant WHITTLE be enjoined from enforcing such portions of O.C.G.A. § 42-1-15 and O.C.G.A. § 42-1-12 as are necessary to protect Plaintiff's statutory and constitutional rights. Defendant WHITTLE is sued in his official capacity.
13. Defendant THURBERT BAKER is the Attorney General of the State of Georgia. He is charged by law with enforcement of the Georgia Code and the defense of the

constitutionality of the laws of Georgia. Plaintiff asks that Defendant BAKER be enjoined from enforcing such portions of O.C.G.A. § 42-1-15 and O.C.G.A. § 42-1-12 as are necessary to protect Plaintiff's statutory and constitutional rights. Defendant BAKER is sued in his official capacity.

14. Defendant SONNY PERDUE is the Governor of the State of Georgia. As chief executive of the State of Georgia, he has the duty to "take care that the laws are faithfully executed." Ga. Const. art. V, § 2, ¶ II. Plaintiff asks that Defendant PURDUE be enjoined from enforcing such portions of O.C.G.A. § 42-1-15 and O.C.G.A. § 42-1-12 as are necessary to protect Plaintiff's statutory and constitutional rights. Defendant PERDUE is sued in his official capacity.

15. Defendant VERNON KEENAN is the Director of the Georgia Bureau of Investigation ("GBI"). The GBI is charged with maintaining the State's sex offender registry and with adding and removing persons to and from the registry in accordance with O.C.G.A. § 42-1-12 and other law. Plaintiff asks that Defendant KEENAN be enjoined from enforcing such portions of O.C.G.A. § 42-1-15 and O.C.G.A. § 42-1-12 as necessary to protect Plaintiff's rights. Defendant KEENAN is sued in his official capacity.

JURISDICTION AND VENUE

16. Plaintiff seeks injunctive and declaratory relief.

Accordingly, this Court has jurisdiction over this action pursuant to Ga. Const. Art. 6, § 4, ¶ 1 (conferring exclusive jurisdiction of equitable cases to Georgia's superior courts), and O.C.G.A. § 9-4-2 (governing power of superior courts to issue declaratory relief).

17. Venue is proper in Columbia County because Ms.

Whitaker resides in Columbia County and the Columbia County Sheriff's Office is in Columbia County. See Ga. Const. Art. 6, § 2, ¶ III ("equity cases shall be brought in the county where a defendant resides against whom substantial relief is prayed"). See also O.C.G.A. § 9-10-30 (same).

FACTUAL ALLEGATIONS⁴

Ms. Whitaker's Criminal Conviction

18. When she was 17, Wendy Whitaker engaged in a single act of consensual oral sex with a young man who was one year and three months her junior. The act occurred on school property. Ms. Whitaker was indicted for and pled guilty to sodomy. She received five years of probation.

⁴ The facts set forth herein are verified in the attached Affidavit of Wendy Whitaker (Ex. 2).

Ms. Whitaker's Ownership Interest in Her Home

19. Wendy Whitaker married Michael Whitaker in February 2001. In January 2006, as a married couple, they jointly purchased a home located at 250 Church Street in Harlem, Georgia.
20. At the time of purchase, the deed was issued only in Michael Whitaker's name. Although her name was not placed on the deed until 2007, Ms. Whitaker furnished part of the purchase money used to buy the home in 2006.⁵ Ms. Whitaker and her husband have a joint bank account into which both of their checks are deposited, and from which the monthly mortgage payments are drawn. Ms. Whitaker has helped to pay for property taxes and upkeep on the home since 2006. The understanding and agreement between Ms. Whitaker and her husband at the time the home was purchased was that it was purchased jointly, as a marital home, in which they would share ownership. That understanding and agreement remains unchanged today.⁶

⁵ See Ex. 2 ¶ 5; Deeds to Whitaker residence (2006 and 2007 versions) (Ex. 3).

⁶ See Ex. 2 ¶ 5.

Application of Georgia's Sex Offender Statute to Ms. Whitaker

21. In 2003, the General Assembly passed a law restricting the locations in which persons on the sex offender registry could live. The law made it illegal for persons on the sex offender registry to live within 1,000 feet of schools, child care centers, neighborhood centers, and other locations. See O.C.G.A. § 42-1-13 (2003).
22. Unbeknownst to the Whitakers, a child care center operated inside a church within 1,000 feet of the home at 250 Church Street when the couple purchased it. The Columbia County Sheriff's Office ordered Ms. Whitaker to leave her home in 2006 because it was within 1,000 feet of a child care center in violation of Ga. Code Ann. § 42-1-13 (2006).
23. From 2006-2007, the Whitakers moved from residence to residence, paying mortgage on their home in Harlem and rent for other residences.
24. In July 2006, the General Assembly made a number of changes to the sex offender law. Two are of relevance to Ms. Whitaker's case.
25. First, the General Assembly added a "Romeo and Juliet" exception to the Code to ensure that teenagers of like age who engaged in consensual sexual activity would not have to register as sex offenders. Specifically, the legislature

revised the "sodomy" code section to provide that if: (1) the victim is between 13 and 16, (2) the person convicted of sodomy is 18 or younger, and (3) the person convicted is no more than four years older than the victim, that person will be guilty of a misdemeanor and will not have to register as a sex offender. See Ga. Code Ann. § 16-6-2(d); Ga. Code Ann. § 42-1-12(a)(9)(C).

26. According to the Supreme Court of Georgia, this change in the law:

appears to be a recognition by our General Assembly that teenagers are engaging in oral sex in large numbers; that teenagers should not be classified among the worst offenders because they do not have the maturity to appreciate the consequences of irresponsible sexual conduct and are readily subject to peer pressure; and that teenage sexual conduct does not usually involve violence and represents a significantly more benign situation than that of adults preying on children for sex.

Humphrey v. Wilson, 282 Ga. 520, 529, 652 S.E.2d 501, 508 (2007).

27. Unfortunately for Ms. Whitaker, however, this revision applies only prospectively to persons whose convictions occurred on or after June 30, 2001. See Ga. Code Ann. § 42-1-12(a)(9)(B), (C). In other words, if a 17-year-old girl had consensual oral sex with a 15-year-old boy today, she would not have to register as a sex offender at all. Only because the act occurred in 1996, she must register as a sex offender for life, have her picture posted on the

internet for life, and comply with numerous residence and employment conditions that treat her as if she is a predator, when there is absolutely no basis in fact for that treatment.

28. In July 2006, the General Assembly also greatly expanded the list of prohibited locations near which registered sex offenders could live. Under the 2006 law, no person on the sex offender registry could live within 1,000 feet of schools, churches, child care centers, swimming pools, neighborhood centers, parks, gymnasiums, or school bus stops. See Ga. Code Ann. § 42-1-15 (2006).
29. In November 2007, the Supreme Court of Georgia held in Mann v. Ga. Dep't of Corr., 282 Ga. 754, 653 S.E.2d 740 (2007) that Ga. Code Ann. § 42-1-15 violated the Takings Clause of the state and federal constitutions to the extent that it deprived homeowners of their real property.
30. In April 2008, the General Assembly modified Ga. Code Ann. § 42-1-15 in light of Mann. Specifically, the General Assembly amended the law to provide an exemption to the 1,000-foot residence restrictions for certain homeowners who had established property ownership before July 1, 2006.
31. The current version of O.C.G.A. § 42-1-15 states in pertinent part:

(b) No individual shall reside within 1,000 feet of any child care facility, church, school, or area where minors congregate. Such distance shall be determined by measuring from the outer boundary of the property on which the individual resides to the outer boundary of the property of the child care facility, church, school, or area where minors congregate at their closest points.

32. O.C.G.A. § 42-1-15(f)(2) makes an exception for

certain homeowners who owned property before July 1, 2006:

An individual owning real property and residing on such property . . . within 1,000 feet of a prohibited location, as specified in subsection (b) or (c) of this Code section, shall not be guilty of a violation of this Code section if such individual had established such property ownership . . . prior to July 1, 2006, and such individual successfully complies with subsection (g) of this Code section.

See O.C.G.A. § 42-1-15(f)(2) (emphasis added).

33. Under O.C.G.A. § 42-1-15(g), an individual must take

certain steps to demonstrate that she falls under the homeowner exception:

(g) If an individual is notified that he or she is in violation of subsection (b) or (c) of this Code section, and if such individual claims that he or she is exempt from such prohibition pursuant to subsection (f) of this Code section, such individual shall provide sufficient proof demonstrating his or her exemption to the sheriff of the county where the individual is registered within ten days of being notified of any such violation. For purposes of providing proof of residence, the individual may provide a driver's license, government issued identification, or any other documentation evidencing where the individual's habitation is fixed. For purposes of providing proof of property ownership, the individual shall provide a copy of his or her warranty deed, quitclaim deed, or voluntary deed, or other documentation evidencing property ownership. . . . Documentation provided pursuant to this subsection may be required to be date specific, depending upon the individual's exemption claim.

See O.C.G.A. § 42-1-15(g) (emphasis added).

34. A person who violates O.C.G.A. § 42-1-15(b) is subject to a mandatory term of 10-30 years in prison:

Any individual who knowingly violates any other any provision of this Code section, except subsection (d) of this Code section, shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor more than 30 years.

See O.C.G.A. § 42-1-15(h) (2).

Ms. Whitaker Is Ordered To Leave Her Home

35. In early 2008, Ms. Whitaker returned to her home in Harlem, believing that since she owned her home she had a right to reside there pursuant to Mann.
36. In July 2008, however, the Columbia County Sheriff's Office again ordered Ms. Whitaker to vacate her residence within 72 hours because it is within 1,000 feet of a church that houses a child care center.
37. In an effort to comply with the Statute, on or about July 8, 2008, Ms. Whitaker brought a copy of her deed and marriage certificate to the Sheriff's Office to show that she owned her home and thus qualified for the homeowner-exemption in O.C.G.A. § 42-1-15(f) (2), (g).
38. The Sheriff's Office, however, erroneously believed that Ms. Whitaker did not fall within the homeowner exemption because her name was not placed on the deed to her home until 2007.

39. In July 2008, Ms. Whitaker filed a motion for a preliminary injunction to halt her eviction in *Whitaker v. Perdue*, Civil Action No. 06-cv-140-CC, a federal action pending in the United States District Court for the Northern District of Georgia challenging the constitutionality of Georgia's sex offender residence restrictions. Sheriff WHITTLE agreed to stay Ms. Whitaker's eviction until the federal court addressed Ms. Whitaker's preliminary injunction motion.

40. The State of Georgia opposed Ms. Whitaker's motion, arguing that the issue was inappropriate for resolution in federal court since Ms. Whitaker had state court remedies.

41. On November 13, 2008, United States District Court Judge Clarence Cooper denied Ms. Whitaker's motion for a preliminary injunction. Judge Cooper held that Ms. Whitaker did not show a violation of the *ex post facto* clause or the substantive due process clause.⁷

42. Sheriff WHITTLE subsequently agreed to give Ms. Whitaker two weeks from the date of Judge Cooper's order to vacate her home. Ms. Whitaker now faces eviction from her home on Thanksgiving Day.

⁷ These claims were raised only in the federal action and are not raised in the present action.

43. The Whitakers can no longer afford to make mortgage payments and rent a second home. Absent injunctive relief from this Court, the Whitakers will likely face foreclosure and possible homelessness. In addition, they will be forced to leave the county where their family resides.⁸

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF O.C.G.A. § 42-1-15(f)(2) and (g)

44. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations in ¶¶ 1-10, 18-43.

45. O.C.G.A. § 42-1-15(f)(2) provides an exemption from the sex offender residence restrictions for certain persons who own real property. Section 42-1-15(f)(2) and (g) specifically state that persons "who had established such property ownership . . . prior to July 1, 2006" need not comply with the residence restrictions, so long as they provide "proof of property ownership."

46. Ms. Whitaker falls within the homeowner exemption of O.C.G.A. § 42-1-15(f)(2) and(g) because she had established property ownership prior to July 1, 2006 and provided proof of such ownership interest to the Sheriff's Office.

⁸ The school board in Columbia County designated all of its 5,000 school bus stops for purposes of O.C.G.A. § 42-1-15, making it impossible for the Whitakers to find a residence in the county where they will not be subject to a perpetual risk of eviction.

47. Although Ms. Whitaker's name was not placed on the deed until 2007, she has maintained an ownership interest in the home since it was purchased in January 2006, given, *inter alia*, her 2001 marriage and her financial contributions to the purchase of the home.
48. Ms. Whitaker furnished part of the purchase money used to buy the home in 2006; made mortgage payments; made property tax payments; and paid for the upkeep of the home since January 2006, thereby establishing an ownership interest in the home, along with her husband, under Georgia law. The understanding and agreement between Ms. Whitaker and her husband at the time the home was purchased was that it was purchased jointly, as a marital home, in which they would share ownership.
49. The Whitakers' home was acquired during the marriage and constitutes marital property. See McArthur v. McArthur, 353 S.E.2d 486 (Ga. 1987) (house purchased with joint spousal funds and titled only in husband's name acquired as marital property); Dasher v. Dasher, 283 Ga. 436, 436-37, 658 S.E.2d 571, 572 (2008) (property acquired as a direct result of the labor and investments of spouses during the marriage is a marital asset).
50. Ms. Whitaker also established property ownership through an implied trust theory, given her partial payment

of the purchase money for the home and the understanding at the time the home was purchased that the house would be jointly owned by Mr. and Ms. Whitaker. See Hemphill v. Hemphill, 168 S.E. 878 (Ga. 1933) (holding that where husband and wife purchased property jointly with the understanding and agreement that they would share ownership, but where the title was placed only in the husband's name, wife was entitled to have trust implied in her favor).

51. Because Ms. Whitaker had established a property interest in her home prior to July 1, 2006 and because she provided proof of such ownership as required by law, the Sheriff of Columbia County has no legal basis to evict Ms. Whitaker pursuant to O.C.G.A. § 42-1-15.

COUNT II

VIOLATION OF EQUAL PROTECTION CLAUSE OF THE GEORGIA CONSTITUTION, GA. CONST. ART. I, SEC. I, PAR. II

52. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations in ¶¶ 1-10, 18-43.
53. As applied to Ms. Whitaker, the Statute's registration and residence requirements violate Article I, Sec. I, Par. II of the Georgia Constitution.
54. O.C.G.A. § 42-1-12 and O.C.G.A. § 42-1-15(b) impose numerous, onerous sex offender registration and residence

restrictions on a 17-year-old who engaged in consensual oral sex with a 15-year old before June 30, 2001.

55. The same statutes impose no registration or residence requirements of any kind on a 17-year-old who engaged in consensual oral sex with a 15-year old at any time after June 30, 2001. See O.C.G.A. § 42-1-12(a)(9)(B), (C), (e).

56. There is no rational basis to treat these groups differently.

COUNT III

VIOLATION OF THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT, GA. CONST. ART. I, SEC. I, PAR. XVII

57. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations in ¶¶ 1-10, 18-43.

58. As applied to Ms. Whitaker, the Statute's registration and residence requirements are punishment in violation of Art. 1, Sec. I, Par. XVII of the Georgia Constitution.

59. Under the Georgia constitution, punishment is cruel and unusual if it is grossly out of proportion to the severity of the crime.

60. Requiring Ms. Whitaker to vacate her home and to register as a sex offender is cruel and unusual since the "gravity of the offense" bears no reasonable relationship with "the harshness of the penalty." Humphrey v. Wilson,

282 Ga. 520, 525 (2007).

61. In Humphrey, the Georgia Supreme Court held that a prison sentence was cruel and unusual as applied to a 17 year old who engaged in consensual sexual activity with a 15 year old. In so finding, the Court recognized:

- a. the "extraordinary reduction in punishment for teenage oral sex" by the Georgia legislature in 2006, consistent with evolving standards of decency;⁹
- b. the finding by the Centers for Disease Control that half of all teenagers engage in oral sex;¹⁰
- c. the fact that teenage sexual conduct "represents a significantly more benign situation than that of adults preying on children for sex";¹¹
- d. the fact that most states either do not punish the conduct in question or punish it as a misdemeanor.¹²

62. These factors reinforced the Court's finding that no legitimate penological goal is served by imprisoning a teenager who engages in consensual oral sex with a teen of similar age.

⁹ Humphrey, 282 Ga. at 529.

¹⁰ Id. at 529, n. 42.

¹¹ Id. at 529.

¹² Id. at 531, n. 56.

63. Similarly, no legitimate penological goal is served by requiring Ms. Whitaker to register as a sex offender and to abide by sex offender residence restrictions.
64. Ms. Whitaker stands to lose her home to foreclosure due to O.C.G.A. § 42-1-15.
65. Ms. Whitaker has been subject to public condemnation, censure, and ridicule as a result of O.C.G.A. § 42-1-12, the sex offender registration law.
66. Ms. Whitaker's entry of a guilty plea did not waive her cruel and unusual punishment challenge since there was a substantial change in the sex offender law subsequent to the entry of the guilty plea.
67. Requiring Ms. Whitaker to register as a sex offender for life for engaging in consensual oral sex as a 17-year-old with a person 15 months her junior violates the prohibition against cruel and unusual punishment.
68. Requiring Ms. Whitaker to vacate her lawfully purchased home for engaging in consensual oral sex at age 17 with a young man 15 months her junior violates the prohibition against cruel and unusual punishment.

COUNT IV

VIOLATION OF THE DUE PROCESS CLAUSE
OF THE GEORGIA CONSTITUTION,
GA. CONST. ART. I, SEC. I, PAR. I

69. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations of ¶¶ 1-10, 18-43.

70. Ga. Code Ann. § 42-1-15(f)(2), (g) is unconstitutionally vague in violation of Plaintiff's right to due process under the Georgia Constitution. This statute fails to provide fair notice of what the law requires, but subjects those charged with violating it to 10-30 years in prison.

71. A legislative enactment is impermissibly vague if it either "fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits" or "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." City of Chicago v. Morales, 527 U.S. 41, 56 (1999).

72. A law must provide "fair notice" of proscribed conduct so that citizens can conform their conduct to the law. Morales, 527 U.S. at 58.

73. The phrase "had established such property ownership . . . prior to July 1, 2006" in Ga. Code Ann. § 42-1-12(f)(2) is unconstitutionally vague.

74. The phrase "owning real property" in Ga. Code Ann. § 42-1-12(f)(2) is unconstitutionally vague.
75. The sentence "[d]ocumentation provided pursuant to this subsection may be required to be date specific" in Ga. Code Ann. § 42-1-12(f)(2) is unconstitutionally vague.
76. The Statute does not elaborate on what it means to "establish such property ownership" or "own[] real property." The Statute does not provide for what to do when the property in question is deeded in the name of one spouse, but both spouses have an equitable interest in it.
77. This provision can and has resulted in arbitrary enforcement - with law enforcement officials in one county interpreting the phrase differently than officials in other counties.
78. The Statute does not elaborate on its requirement that the documentation of ownership "may" be required to be "date specific." The Statute does not provide sufficient guidance as to what date is acceptable under the Statute and impermissibly leaves such discretion in the unpredictable hands of various local law enforcement officials.
79. The Sheriff's erroneous interpretation of the Statute - one that conflicts with Georgia property law - further supports Plaintiff's vagueness claim.

COUNT V

VIOLATION OF SUBSTANTIVE DUE PROCESS
CLAUSE OF THE GEORGIA CONSTITUTION,
GA. CONST. ART. I, SEC. I, PAR. I

80. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations of ¶¶ 1-10, 18-43.
81. O.C.G.A. § 42-1-12(e) is unconstitutional as applied to Ms. Whitaker under the Georgia Constitution to the extent it requires her to register as a sex offender a decade after she engaged in consensual sexual activity in high school with a person 15 months her junior - activity which over half of all teenagers engage in.
82. Wendy Whitaker poses no danger to anyone. There is no rational basis to evict her from her home and community twelve years after she engaged in consensual sex with a high school classmate.

COUNT VI

VIOLATION OF THE TAKINGS CLAUSE
OF THE GEORGIA CONSTITUTION,
GA. CONST. ART. I, SEC. III, PAR. I

83. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations of ¶¶ 1-10, 18-43.
84. Ga. Code Ann. § 42-1-15 was revised in 2008 to protect persons, like Ms. Whitaker, who owned their homes prior to July 1, 2006. The clear import of the Statute is to permit

persons on the registry to live in their homes if they had a property interest in their homes before July 1, 2006.

85. Ms. Whitaker has had a property interest in her home since she and her husband purchased it in January 2006.

86. Requiring Ms. Whitaker to leave her home will cause her substantial financial harm and interfere with her investment-backed expectations in her property. In addition, no government purpose is served by the eviction.

87. The Sheriff is requiring Ms. Whitaker to vacate a home in which she has a property interest in violation of state law and the Takings Clause of the Georgia Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court will:

1. Assume jurisdiction over this action;
2. Enter a temporary restraining and/or preliminary injunction enjoining the Sheriff of Columbia County from requiring Plaintiff to vacate her home pursuant to Ga. Code Ann. § 42-1-15;
3. Declare that Ms. Whitaker be permitted to reside in her home because she satisfies the requirements of Ga. Code Ann. § 42-1-15(f)(2) and (g);
4. Declare that evicting Ms. Whitaker from her home pursuant to Ga. Code Ann. § 42-1-15(b) violates:

- a. the Equal Protection Clause of the Georgia Constitution;
 - b. the prohibition against cruel and unusual punishment of the Georgia Constitution;
 - c. the Due Process Clause of the Georgia Constitution, to the extent that it is unconstitutionally vague;
 - d. the Takings Clause of the Georgia Constitution.
5. Declare that, as applied to Plaintiff, the requirement to register as a sex offender in Ga. Code Ann. § 42-1-12 violates:
 - a. the Equal Protection Clause of the Georgia Constitution;
 - b. the prohibition against cruel and unusual punishment of the Georgia Constitution;
 - c. the substantive component of the Due Process Clause of the Georgia Constitution.
6. Enter a permanent injunction;
7. Enter judgment in favor of Plaintiff;
8. Award Plaintiff the costs of this lawsuit and reasonable attorneys' fees; and
9. Order such other and further relief as this Court may deem just and proper.

Respectfully submitted this 20th day of November, 2008.

Sarah Geraghty

Sarah Geraghty
(Ga. Bar No. 291393)
Lauren Sudeall
(Ga. Bar No. 149882)
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VERIFICATION

I, Wendy Whitaker, hereby verify that the foregoing is true and correct.

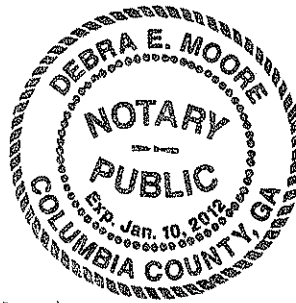
Wendy Whitaker
Wendy Whitaker

This 19 day of November, 2008.

Sworn to and subscribed before me

This 19th day of November, 2008

Debra E. Moore
Notary Public



My Commission expires: 1-10-2012

CERTIFICATE OF SERVICE


I hereby certify that I have this day served the foregoing *Complaint and Motion for TRO* upon Defendants Perdue, Baker, and Keenan by causing a true and correct copy thereof to be delivered by email and U.S. mail to the following address:

Mr. Joseph Drolet
Ms. Devon Orland
Office of the Attorney General
40 Capitol Square
Atlanta, GA 30334

I hereby certify that I have this day served the foregoing *Complaint and Motion for TRO* upon Defendant Whittle by causing a true and correct copy thereof to be delivered by email and Federal Express delivery to the Defendant's attorney at the following address:

Mr. David E. Hudson
Hull, Towill, Norman, Barrett & Salley, PC
P.O. Box 1564
Augusta, GA 30903-1564

This 20 day of November, 2008.



Sarah Geraghty
(Ga. Bar No. 291393)
Southern Center for Human Rights
83 Poplar Street, N.W.
Atlanta, Georgia 30303-2122
Tel: (404) 688-1202
Fax: (404) 688-9440

Attorney for the Plaintiff

EXHIBIT 1

VS

CRIMINAL ACTION NO. 97CR-0273

OFFENSE(S) _____

Wendy Faye DunaganSodomyJune Adj.TERM, 1997☒ PLEA☐ VERDICT _____ JURY _____ NON-JURY☐ OTHER DISPOSITION

_____ NEGOTIATED _____
☒ GUILTY ON COUNT(S) _____
 _____ NOLO CONTENDERE ON
 COUNT(S) _____
 _____ TO LESSER INCLUDED
 OFFENSE(S) _____
 ON COUNT(S) _____

_____ GUILTY ON
 COUNT(S) _____
 _____ NOT GUILTY ON
 COUNT(S) _____
 _____ GUILTY OF INCLUDED
 OFFENSE(S) OF _____
 ON COUNT(S) _____

_____ NOLLE PROSEQUI ORDER ON
 COUNT(S) _____
 _____ DEAD DOCKET ORDER ON
 COUNT(S) _____

(SEE SEPARATE ORDER)

_____ DEFENDANT WAS ADVISED OF THE RIGHT TO HAVE THIS SENTENCE REVIEWED BY
 THE SUPERIOR COURTS SENTENCE REVIEW PANEL

FIRST OFFENDER TREATMENT

WHEREAS, no adjudication of guilt has been made subsequent to the entry of the plea or verdict shown above, and
 WHEREAS, the Court has reviewed the defendant's criminal record on file with the Georgia Crime Information Center, and
 WHEREAS, the defendant has not previously been convicted of a felony or used the provisions of the
 First Offender Act (Ga. Laws 1968, p. 324).

NOW, THEREFORE, the defendant consenting hereto, it is the judgment of the Court that no judgment of guilt be imposed at
 this time but that further proceedings are deferred and the defendant is hereby sentenced to confinement for the period of
Five Years;

HOWEVER, it is further ordered by the Court:

☒ That the sentence may be served on probation;

_____ That upon service of _____ of the sentence, the remainder
 of _____ may be served on probation;

PROVIDED, that the defendant complies with the following general and special conditions herein imposed by the Court as part of
 the sentence.

PROVIDED, further, that upon violation of the terms of probation, upon conviction for another crime during the period of proba-
 tion, or upon the Court's determination that the defendant is or was not eligible for sentencing under the First Offender Act, the
 Court may enter an adjudication of guilt and proceed to sentence the defendant to the maximum sentence as provided by law.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised, that the Court may, at any time, revoke any
 conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation
 of any condition of probation herein granted. If such probation is revoked, the Court may enter an adjudication of guilt and proceed
 to sentence the defendant to the maximum sentence authorized by law with or without credit for time served on probation.

Upon fulfillment of the terms of this sentence, or upon release of the defendant by the Court prior to the termination of this
 sentence, the defendant shall stand discharged of said offense without court adjudication of guilt and shall be completely exonerated
 of guilt of said offense charged.

Let a copy of this Order be forwarded to the office of the State Probation System of Georgia and the Identification Division of the
 Federal Bureau of Investigation.

MBc
 Initials of Probation Officer

WEP
 Initials of Defendant

VS

CRIMINAL ACTION NO. 97CR-0273Wendy Faye Dunagan

FIRST OFFENDER TREATMENT (Page 2)

GENERAL CONDITIONS OF PROBATION

The defendant having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

- ☒ 1) Do not violate the criminal laws of any governmental unit.
- ☒ 2) Avoid injurious and vicious habits - especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.
- ☒ 3) Avoid persons or places of disreputable or harmful character.
- ☒ 4) Report to the Probation Officer as directed and permit such officer to visit you at home or elsewhere.
- ☒ 5) Work faithfully at suitable employment insofar as may be possible.
- ☒ 6) Do not change your present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.
- ☒ 7) Support your legal dependents to the best of your ability.

OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED, that the defendant pay a FINE of \$200.00 plus ~~COURT COST~~ of plus \$50 or 10%, whichever is less pursuant of OCGA §15-21-70 and pay RESTITUTION in the amount of and pay ~~ATTORNEY'S FEE~~ of \$20. Jail Assess. Fee, and \$10. Local Victim Asst. Program. To be paid ~~to the probation office~~ at the rate of \$25. per month commencing within 30 days and like sum on the 30th day thereafter until the entire sum shown above is paid in full.

~~Pay \$~~ Pay Probation Fees to be paid at the rate of \$ 20. each month beginning within 30 days.

OTHER SPECIAL CONDITIONS

It is ordered that defendant complete such mental health program as prescribed by the Probation Office and complete GED or equivalent.

The defendant was represented by the Honorable Albert H. Dallas, Attorney at Law,
County, by ~~Employment~~ (Appointment).

SO ORDERED, this 29th day of August, 1997. [Signature]
Judge Superior Court

Certificate of Service - This is to certify that a true and correct copy of both pages of this Final Disposition has been delivered in person and the defendant has been duly instructed regarding the conditions as set forth.

This 1st day of Oct., 1997.

Mackie B. Combs
Probation Officer

Wendy Faye Dunagan
Defendant

Filed in this office this 3rd day of October, 1997. [Signature]
Deputy Clerk

THE GRAND JURORS SELECTED,
CHOSEN AND SWORN FOR THE COUNTY OF McDUFFIE, TO-WIT:

- V 1. Vickie Newsome, Foreperson
- | | |
|--|---|
| 2. <u>Tommy Charles Goodyear</u> | 3. <u>Joseph Scott</u> |
| 4. <u>Maria McCorkle</u> | 5. <u>Mary Hatcher</u> |
| 6. <u>Angela Daniel</u> | 7. <u>Paula Hunt</u> |
| 8. <u>Hubert Nelson</u> | 9. <u>Alberta Finch</u> |
| 10. <u>Jeffery Hunt</u> | 11. <u>Mary Gibson</u> |
| 12. <u>James Crawley</u> | 13. <u>Mamie Mobley</u> |
| 14. <u>Betty Joe Perdue</u> | 15. <u>Willie Marshall</u> |
| 16. <u>Ervin Bernard Hart</u> | 17. <u>Eddie Newsome</u> |
| 18. <u>Mima Hill</u> | 19. <u>Delores Huff</u> |
| 20. <u>Sheila Langston</u> | 21. <u>Donald McCorkle <i>VR</i></u> |
| 22. <u>Jeannie Simmons <i>man</i></u> | 23. <u>Elma Jean Lazenby</u> |

in the name and behalf of the citizens of Georgia, charge and accuse **Wendy Faye Dunagan**, with the offense of Sodomy for that the said accused, in the County of McDuffie and State of Georgia, on the 12th day of December, in the year of our Lord Nineteen Hundred and Ninety-Six, did unlawfully perform a sexual act involving the mouth of the accused and the sex organ of another person, to wit: Kyle Murray, contrary to the laws of said State, the good order, peace and dignity thereof.

DENNIS C. SANDERS
District Attorney

Georgia, McDuffie County

Personally came Inv. Jerry Stanphill, who on oath says that, to the best of his knowledge and belief, Wendy Dunagan did, in the County aforesaid, commit the offense, of, TO-WIT 16-6-2. Sodomy

in said County, between the hours of 10:10 AM. and 11:40 AM., on the 12 day of Dec. 1996. The place of occurrence of said offense being

Thomson High School Whiteoak Rd. Thomson, GA.

and against The Laws of the State of Georgia

Said offense being described as, Dunagan did perform oral sex on a 15 year old male student, Kyle Murray while in a class room on school grounds

and thus deponent makes this affidavit that a warrant may issue for his arrest.

Affiant

Sworn to and subscribed before me this 16th day of December, 1996

Judge

Magistrate

Georgia McDuffie County

To any Sheriff or his deputy, Coroner, Constable, or Marshall of said state, GREETING:

For sufficient causes made known to me in the above affidavit, you are hereby commanded to arrest Wendy Dunagan the defendant named in the foregoing affidavit charged by the prosecutor therein with the offense against the laws of this State as enunciated in said affidavit and bring him before me or some other Judicial Officer of this State to be dealt with as the law directs.

Herein fail not. This December 16, 1996

Judge

Magistrate

Georgia _____ County

After hearing the evidence in the above case it is ordered that said defendant be bound in a bond of _____ Dollars for his appearance on the first day at the next term or session next after this day of the _____

Court of _____ to be held in and for said County to answer the charge of _____

In default thereof that he be committed to the common jail of said County, there to be safely kept until thence delivered by due course of law.

Given under my hand and seal this _____ day of _____, 19____.

Judge

(L.S.)
Magistrate

EXHIBIT 2

WENDY WHITAKER,
Plaintiff,
v.
CLAY WHITTLE,
Sheriff, Columbia County
SONNY PERDUE,
Governor, State of Georgia
THURBERT BAKER,
Attorney General
VERNON KEENAN, Director,
Georgia Bureau
Of Investigations,
Defendants.

Wendy Whitaker hereby swears as follows:

1. I am 29 years old and competent to make this affidavit.
2. I reside in Harlem, Georgia in Columbia County.
3. Ten years ago, when I was a 17-year-old high school student, I engaged in a consensual act of oral sex with a 15-year-old male. We were both sophomores in high school at the time. The young man was 15 months younger than me. I was arrested, charged with sodomy, and advised to plead guilty, and I ultimately completed five years on probation. My conviction requires me to register as a sex offender.

4. I married Michael Whitaker in February 2001. In January 2006, as a married couple, we jointly purchased a home located at 250 Church Street in Harlem, Georgia. At the time, the deed was issued only in my husband's name.
5. Although my name was not placed on the deed until 2007, I furnished part of the purchase money used to buy the home in 2006. My husband and I have a joint bank account into which both of our checks are deposited, and from which the monthly mortgage payments are drawn. I have helped to pay for property taxes and upkeep on the home since 2006. The understanding and agreement between me and my husband at the time the home was purchased was that it was purchased jointly, as a marital home, in which we would share ownership. That understanding and agreement remains unchanged today.
6. In 2006, I was required to move to comply with Georgia's previous sex offender residence law, Ga. Code Ann. § 42-1-13 (2006). My residence sat within 1,000 feet of a church, and, unbeknownst to my husband and me when we purchased the residence, a child care center operated on the church premises. For over two years, we owned our home and paid our mortgage, but could not reside there. In 2007, we moved to South Carolina because of the difficulty we experienced in finding a residence that complied with the sex offender law in Georgia.

7. In March 2008, following the decision of the Supreme Court of Georgia in Mann v. Dep't of Corrections, we moved back into our home in Harlem, Georgia. Since I have owned my home since January 2006, it was my understanding that I could reside there under the homeowner exemption in O.C.G.A. § 42-1-15.
8. On the afternoon of July 7, 2008, Officer David Rush, an employee of the Columbia County Sheriff's Office, informed me that my residence violated Ga. Code Ann. § 42-1-15.
9. I showed Officer Rush the deed to my house with my name on it, but he said I did not qualify for an exemption because my name was not on the deed as of July 1, 2006. My name was added to the deed in 2007.
10. I was given 72 hours to leave my home. I was not given anything in writing ordering me to leave my home. But Officer Rush told me that I had to move out in 72 hours, or a warrant would be issued for my arrest.
11. I am a plaintiff in *Whitaker v. Perdue*, Civil Action No. 06-cv-140-CC, a federal action pending in the United States District Court for the Northern District of Georgia challenging the constitutionality of Georgia's sex offender residence restrictions. After I was ordered to move in July 2008, my attorneys filed a motion for a preliminary injunction to attempt to prevent my eviction in the pending federal court case. Sheriff Clay Whittle, the Sheriff of Columbia County, agreed to stay my eviction until the

federal court addressed my preliminary injunction motion.

12. On November 13, 2008, United States District Court Judge Clarence Cooper denied my motion. Judge Cooper held that I did not show a violation of the *ex post facto* clause or the substantive due process clause.

13. Sheriff Whittle subsequently agreed to give me two weeks from the date of Judge Cooper's order to vacate my home. I now face eviction from my home on Thanksgiving Day.

14. My husband and I can no longer afford to make mortgage payments and rent a second home. Absent immediate injunctive relief from this Court, we will likely face foreclosure and possible homelessness.

I declare under penalty of perjury that the foregoing is true and correct.

Sworn on this 19 day of November, 2008.

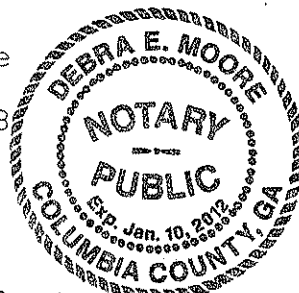
Wendy D. Whitaker
Signed

Wendy D. Whitaker
Printed

Sworn to and subscribed before me

This 19th day of November, 2008

Debra E. Moore
Notary Public



My Commission expires: 1-10-2012

EXHIBIT 3

EX5258 PG075

CLERK OF SUPERIOR COURT
COLUMBIA COUNTY, GEORGIA
FILED IN OFFICE

2006 JAN 24 PM 2:44

75-77
CINDY MASON, CLERK

PTL 0362006 000374



Recorded 01/24/2006 02:44PM
Georgia Transfer Tax Paid : \$65.50
CINDY MASON
Clerk Superior Court, Columbia County
B 05258 P 0075-0077

Deed
Doc: WD

For official use by Clerk's office only

Record and Return to:
David L. Huguenin, P.C.
4024 Washington Road
Martinez, GA 30907
File #: R06-056

STATE OF GEORGIA)
COUNTY OF COLUMBIA)

WARRANTY DEED

(Individual Seller)

THIS INDENTURE, made this 19th day of January, 2006, by and between Robert B. Rhoades, collectively and individually, as party of the First Part, hereinafter referred to as "Grantor" and Michael Whitaker, as party of the Second Part, hereinafter referred to as "Grantee" (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH: that said Grantor, for and in consideration of the sum of Ten Dollars and no/100 (\$10.00) and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does hereby remise, convey and forever quit claim unto the said Grantee, his/her/their heirs and assigns, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE
A PART HEREOF FOR LEGAL DESCRIPTION

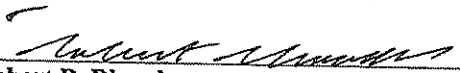
Property Tax Id Number: H3:214

TO HAVE AND TO HOLD the said property, together with all and singular the rights, members, hereditaments, improvements, easements and appurtenances thereunto belonging or in any wise appertaining, unto the Grantee, his/her/their heirs and assigns, forever, in FEE SIMPLE.

Page 2- Warranty Deed
RHOADES/WHITAKER - R06-056

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed, under seal, the day and year first above written.



Robert B. Rhoades (Seal)

(Seal)

(Seal)

Signed, sealed and delivered in the presence of:



Witness



Notary Public

My Commission Expires:

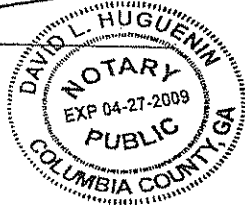


Exhibit "A"

ALL that lot or parcel of land with improvements thereon, situate, lying and being in the City of Harlem, County of Columbia, State of Georgia, being shown and designated as Lot "B", on a plat of survey prepared by J. Walton Flythe, Civil Engineer, dated April 20, 1955, and recorded in the Office of the Clerk of the Superior Court of Columbia County, Georgia, in Deed Book 50, page 121; reference being made to said plat for a more complete and accurate description as to the metes, bounds and location of said property.

Said property is hereby conveyed subject to all easements, reservations and restrictions of record in the aforesaid clerk's office.

Tax map & parcel number: H3:214

Said property being commonly known as 250 Church Street, Grovetown, Georgia 30813.

BK6187 PG079

CLERK OF SUPERIOR COURT
COLUMBIA COUNTY, GEORGIA

PT61 0362007 005288

2007 SEP 13 AM 10:42

Recorded 09/13/2007 10:42AM

Deed
Doc: WD

79-81
CINDY MASON, CLERK

Georgia Transfer Tax Paid : \$0.00

CINDY MASON

Clerk Superior Court, Columbia County

B 06187 P 0079-0081

Space for official use by Clerk's office only

Prepared by, record and return to:
David L. Huguenin, P.C.
4024 Washington Road
Martinez, Georgia 30907
File No. R07-2338

STATE OF GEORGIA)

WARRANTY DEED

COUNTY OF COLUMBIA)

(Joint Tenants with Right of Survivorship)

THIS INDENTURE, made and entered into this 5th day of September, 2007, by and between Michael Whitaker aka Michael L. Whitaker, as party of the first part, and Michael Whitaker aka Michael L. Whitaker and Wendy D. Whitaker, as Joint Tenants with Right of Survivorship, as party of the second part;

WITNESSETH:

That the party of the first part, for and in consideration of the sum of Ten Dollars and no/100 (\$10.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said party of the second part as joint tenants, for and during their joint lives and, upon the death of either of them, then to the survivor of them, in Fee Simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor, the following described property, to-wit:

See Exhibit "A" attached hereto and by this reference made a part hereof for legal description of subject property being conveyed herein

Tax Id Number: H03:214

Subject, however, to certain restrictions, covenants and easements of record or evidenced by use.

TO HAVE AND TO HOLD said property, together with all and singular the rights, members, hereditaments, easements and appurtenances to the same being, belonging or in anywise appertaining, to the only proper use, benefit and behoof of the party of the second part as joint tenants for and during their joint lives and, upon the death of either of them, then to the survivor of them, in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

And the party of the first part, for himself/herself/themselves, his/her/their heirs and assigns, will warrant and forever defend the right and title to the above-described property unto the party of the second part, as hereinabove provided, against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his/her/their hand(s) and seal(s) as of the day and year first above written.

Michael Whitaker (Seal)
Michael Whitaker aka Michael L. Whitaker

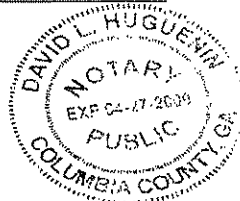
____ (Seal)

Signed, sealed and delivered in the presence of:

Paula Jenkins
Witness

[Signature]
Notary Public

My Commission Expires:



BK 6187 PG 081

Exhibit "A"

ALL that lot or parcel of land with improvements thereon, situate, lying and being in the State of Georgia, County of Columbia, being shown and designated as Lot "B", on a plat of survey prepared by J. Walton Flythe, Civil Engineer, dated April 20, 1955, on a plat recorded in the Office of the Clerk of the Superior Court of Columbia County, Georgia, in Deed Book 50, page 121; reference being made to said plat for a more complete and accurate description as to the metes, bounds and location of said property.

Said property is hereby conveyed subject to all easements, reservations and restrictions of record in the aforesaid Clerk's Office.

Tax map & parcel number: H03:214

Said property being commonly known as 250 Church St., Harlem, Georgia 30814.