

**TOWNSHIP TRUSTEES OF SCHOOLS** )  
**TOWNSHIP 38 NORTH, RANGE 12** )  
**EAST,** )  
) **No. 13 CH 23386**  
**Plaintiff,** )  
) **Judge Sophia H. Hall**  
**vs.** ) **Calendar 14**  
)   
**LYONS TOWNSHIP HIGH SCHOOL** )  
**DISTRICT NO. 204** )  
)   
**Defendant.** )

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“TTO”), by its undersigned counsel, for its Second Revised Motion for Summary Judgment (the “Motion”) against the defendant, Lyons Township High School District No. 204 (“LT”), states as follows:

The TTO is entitled to a declaratory judgment that LT: (a) failed to pay \$511,068.60 for its annual audits during fiscal years 1994 through 2012; (b) failed to pay \$2,628,807 for its proportionate share of the Treasurer's costs during fiscal years 2000 through 2013; and (c) was over allocated investment income of \$1,386,267.03 during fiscal years 1995 through 2012. These claims arise as a result of unauthorized and unlawful conduct by the former Treasurer, Robert Healy, which gave LT impermissible financial benefits, to the detriment of other school districts, in violation of the Illinois School Code, Intergovernmental Cooperation Act, and other aspects of Illinois law. The TTO is also entitled to summary judgment on LT's affirmative defenses. If this Court does not grant this Motion in full, the TTO requests this Court enter partial summary judgment on such issues as would narrow the scope of trial.

## **II. STANDARD ON SUMMARY JUDGMENT**

Summary judgment is appropriate where the pleadings, depositions, affidavits and admissions show there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005. Particularly appropriate to this case, the construction, interpretation and effect of documents and statutes are questions of law. *Briarcliffe Lakeside Townhouse Owners Ass'n v. City of Wheaton*, 170 Ill. App. 3d 244, 249 (2d Dist. 1988); *Rice v. Bd. of Trustees of Adams County, Ill.*, 326 Ill. App. 3d 1120, 1122 (4th Dist. 2002).

## **III. STATEMENT OF MATERIAL FACTS - GENERAL OVERVIEW**

### **A. The TTO: The Trustees And The Treasurer.**

#### **1. The Trustees.**

Plaintiff is a body politic comprised of three Trustees who are elected by voters within Lyons Township (“Trustees”). (See Amend. Compl. and Answer, Exs. 1 and 2 at ¶¶1, 5; 105 ILCS 5/5-2.) The School Code provides that “the school business of all school townships...shall be transacted by three trustees....” 105 ILCS 5/5-2. The Trustees also appoint the Lyons Township School Treasurer (“Treasurer”). (Exs. 1 and 2 at ¶¶1, 5; 105 ILCS 5/8-1.)

#### **2. The Treasurer.**

The Treasurer provides financial services for eleven school districts: LT (*i.e.*, District 204); Western Springs School District 101; LaGrange School District 102; Lyons School District 103; Cook County School District 104; LaGrange School District 105; Highlands School District 106; Pleasantdale School District 107; Willow Springs School District 108; Indian Springs School District 109; and Argo Community High School District 217. (See Exs. 1 and 2 at ¶6.) They consist of 38 schools educating about 20,000 students. (See *id.* at ¶7.) The Treasurer also provides financial services for two other bodies: the LaGrange Area Department of Special

Education and the West 40 Intermediate Service Center. (See Exs. 1 and 2 at ¶6.) The Treasurer during the time period relevant to this lawsuit was Robert Healy.

The Treasurer is required to: (a) “[c]ollect from the township and county collectors the full amount of taxes levied by the school boards in his township;” (b) “[b]e responsible for the receipts, disbursements and investments arising out of the operation of the school districts under his supervision;” and (c) “[p]ay all lawful orders issued by the school board of any district in his township.” 105 ILCS 5/8-17(a)(2); (a)(3); (a)(9). In other words, the Treasurer collects, manages and invests the tax revenue of each district and pays their bills as they direct. The Treasurer is the “only lawful custodian” of these funds. 105 ILCS 5/8-7.

The Treasurer is not statutorily authorized to enter into contracts generally on behalf of the TTO. Section 8-7 of the School Code authorizes the Treasurer to enter only into certain types of contracts not applicable here; and Section 8-17 set forth other duties of the Treasurer, but none of those include the duty to contract. See 105 ILCS 5/8-7 and 5/8-17.

**B. The Treasurer Is A Zero-Sum Office.**

The Treasurer is compensated and has expenses of office, *e.g.*, leased offices, additional staff, and office supplies. (Exs. 1 and 2 at ¶24; Affidavit of S. Birkenmaier, Ex. 3, at ¶7.) The only source of revenue to pay for these expenses is the districts. (See 105 ILCS 5/8-4; Ex. 3 at ¶71.) The TTO does not have a tax base or any other source of its own revenue. (Ex. 3 at ¶71.)

The School Code requires that each district “shall pay a proportionate share” of the Treasurer’s compensation and expenses. 105 ILCS 5/8-4. This share “shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount

of funds as belong to each such...district.” *Id.* Each year, the Treasurer sends an invoice to each school district for its proportionate share of the prior year’s costs. (Ex. 3 at ¶¶72-73.)<sup>1</sup>

LT has about 25% of the total funds the Treasurer manages. This means LT is statutorily required to pay about 25% of the Treasurer’s costs. If LT does not “pay” (in cash) the invoice setting forth LT’s proportionate share, this creates a shortfall in funding, i.e., a public deficit at the TTO. The TTO has no other source of revenue to “make up” the shortfall. Absent relief from this Court, the other school districts will have to pay more than their share to cover the shortfall.

The Treasurer is permitted to pool for investment purposes the monies each district has. 105 ILCS 5/8-7. These monies must be “accounted for separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the...school district...from which such investment was required.” *Id.* At all times relevant the Treasurer pooled investments. (Ex. 3 at ¶6.) Each district, thus, has a share of the pooled investments and a share of the investment income. If LT was over allocated such income then the other districts were under allocated income. (Dep. of M. Thiessen, Exhibit 4, at 114:20-115:11).

**C. LT (i.e., District 204).**

LT is governed by a Board of Education elected by the public for a two-year term. (Dep. of T. Kilrea, Exhibit 5, at 16:19-18:13.) LT’s Board has various committees, including a Finance Committee. (*Id.* at 22:19-24) The most senior person charged with running the day-to-day operations of LT is the Superintendent, Timothy Kilrea. (*Id.* at 18:21-19:9.)

**IV. CLAIM 1 – LT’s FAILURE TO PAY FOR ITS ANNUAL AUDITS**

There is no genuine dispute that: (1) Healy paid \$511,068.60 for LT’s annual audits and treated those payments as an expense of his office; (2) Healy *did not* pay for the annual audits of

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<sup>1</sup> The Treasurer, like the school districts, uses a fiscal year running from July 1 to June 30. (Ex. 3 at ¶4.)

other school districts; and (3) regardless of what Healy told LT, the Trustees never voted to approve a contract whereby the TTO would pay for LT's annual audits.

**A. Material Facts: LT Did Not Pay For Its Own Annual Audits; But Other Districts Paid For *Their* Own Annual Audits And Their Share Of LT's.**

The School Code provides that “[e]ach school district shall, as of June 30 of each year, cause an audit of its accounts to be made....” 105 ILCS 5/3-7. Each district must submit this audit to the regional superintendent of schools. *Id.* If any district does not, the regional superintendent “shall...cause such audit to be made by employing an accountant...to conduct such audit and shall bill the district for such services....” *Id.*

During fiscal years 1994 through 2012, LT engaged Baker Tilly (or its predecessors) to provide these audits and other professional services. (Exs. 1 and 2 at ¶51.) During this same time period, however, LT did not pay for its audits – rather, the Treasurer paid for those audits and treated them as an expense of the Treasurer's office. (Exs. 1 and 2 at ¶54; Ex. 3 at ¶¶20-53; see Ex. 3(A) at tabs 1994 – 2012 for TTO's analysis and backup.)

LT has argued that the Treasurer *also* paid for the audits of the other districts. The TTO has undertaken a detailed analysis of the records and they establish beyond *genuine* dispute that LT's is wrong. (Ex. 3 at ¶¶54-69; see Ex. 3(B) at tabs 101 – 2045 for TTO's analysis and backup.) With three exceptions, totaling \$18,352, the Treasurer *only* paid for LT's audits. (Ex. 3 at ¶30.) The total amount that the Treasurer paid for LT's audit, on the other hand, is \$511,068.60. (Ex. 3 at ¶53.) After 2012, when Healy left office, LT resumed paying for its own annual audit. (Exs. 1 and 2 at ¶56; Ex. 3 at ¶52.)

**B. Legal Argument: The School Code Requires LT to Pay for Its Audits.**

This Court must construe the School Code, like all statutes, as a single piece of legislation without focus on phrases in isolation. *People v. Glisson*, 202 Ill. 2d 499, 505 (2002);

*People ex rel. Bodecker v. Community Unit School Dist. No. 36*, 409 Ill. 2d 526, 532 (1951);

This Court should also assume that the legislature did not intend an absurd result. *Id.*

The only logical reading of Section 3-7 is that each district pays for its own audit, either because (1) it is the entity that “causes” the audit to be made, or (2) the regional superintendent “causes” the audit to be made and then bills the district. 105 ILCS 5/3-7. Any other interpretation would produce an absurd result wherein the district is *not* responsible for the cost of its audit if the district causes it, but *is* responsible for the cost if the regional superintendent causes it.

Although extrinsic evidence is not needed, it further supports this. LT was the party who “engaged” Baker Tilly and it stands to reason that LT should therefore pay Baker Tilly. Further, the undisputed documentary evidence establishes, with three isolated exceptions in eighteen years, all of the other school districts paid for *their* own audit.

LT argues that the TTO agreed to pay for LT’s annual audits. This argument fails for several reasons. First, such an agreement would violate the School Code’s requirement that LT pay for its own audit, and a public body cannot enter into a contract that “is *ultra vires*, contrary to statutes, or contrary to public policy.” *Matthews v. CTA*, 2016 IL 117638, ¶98.

Second, there is no evidence that that the Trustees ever voted to approve a contract whereby the TTO would pay for LT’s audits. (See Ex. 11.) Whatever Healy may have told LT is of no help, because Healy cannot bind the TTO; the doctrine of apparent authority is not applicable against public officials. *Patrick Eng’g, Inc. v. City of Naperville*, 2012 IL 113148, ¶36. Only official conduct by the Trustees can bind the TTO. *See Matthews*, 2016 IL 117638, ¶99; *Schivarelli v. CTA*, 335 Ill. App. 3d 93, 102 (1st Dist. 2005).

There is no genuine dispute that Healy paid for LT’s audits and treated them as an expense of his office. This means each other district paid for its own audits, and a share of LT’s

audits. The School Code does not permit this. The TTO is entitled to summary judgment and this Court should issue a declaratory judgment that the Treasurer may debit \$511,068.60, representing LT' audit costs, from the monies being held by the Treasurer;

**V. CLAIM 2 – LT'S FAILURE TO PAY ITS PROPORTIONATE SHARE**

There is no genuine dispute that LT did not pay its proportionate share of the Treasurer's costs. Even assuming the parties entered into a contract excusing LT from doing so (which the TTO disputes), such contract would violate Illinois law or be effective for only one year.

**A. Material Facts: LT Did Not Pay Its Proportionate Share.**

The School Code requires each district to pay its proportionate share of the Treasurer's compensation and expenses. 105 ILCS 5/8-4. At the close of each fiscal year, the Treasurer sends an invoice to the districts for their share. (Ex. 3 at ¶¶72-73; Ex. 3(C) at tabs 1994-2012.) There is no dispute that beginning with the invoice for fiscal year 2000, and continuing through the invoice for fiscal year 2013, LT did not pay its proportionate share. For fiscal years 2000-2002 and 2013, LT paid a portion of its share; for fiscal years 2003-2012 LT paid nothing. (Ex. 3 at ¶¶98.) LT's theory is that in 2000 the parties entered into a contract whereby LT was permitted to offset from LT's share the salaries that LT was paying three of LT's employees.

**1. The Beckwith February 29, 2000 memorandum.**

There is no dispute that Healy and the then-current LT Director of Business Services, Lisa Beckwith, discussed LT's unhappiness with paying for roughly 25% of the Treasurer's costs and that the Trustees were aware of these discussions. The end-result of these discussions was a February 29, 2000 memorandum from Beckwith to Healy.

In the Memorandum, Beckwith states the relevant "proposal:"

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer's office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable, payroll, imprest and student activities.
- Annual salary and benefit costs for 3 employees as listed below:

	Salary	OASDI		Insurance	Insurance	
	<u>99-00</u>	<u>Medicare</u>	<u>IMRF</u>	<u>Medical</u>	<u>Life</u>	<u>Total</u>
Programmer Analyst	\$41,205	\$3,152	\$3,045		\$48	\$47,450
Accounts Payable Bkkeeper	\$23,192	\$1,774	\$1,714	\$7,028	\$48	\$33,756
Payroll Bookkeeper	\$21,861	\$1,672	\$1,616		\$48	\$25,197
Total	\$86,258	\$6,598	\$6,375	\$7,028	\$144	\$106,403

An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to the close of the fiscal year.

(See Ex. 6.)

LT was not proposing to hire new employees; these employees “were in place for years beforehand....” (Ex. 5 at 92:19-93:7.) LT believed the Treasurer should pay their salaries and other expenses of employment, totaling \$106,403, because LT was performing its own business services; although other districts also performed their own business services. (Dep. of E. Grimes, Exhibit 7, at 8:1-10; 28:20-29:3.)

## **2. The March 2000 Trustees’ meeting.**

On March 21, 2000, the Trustees had a board meeting. A copy of the Agenda, Minutes and relevant attachment are Exhibit 8. The Agenda reflects the Trustees intended to approve prior minutes, financial reports, office expenses, and a bond. (See Ex. 8, p. 1.) Item No. 8 on the Agenda was “District 204 Business Office.” (Ex. 8, p. 1.)



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The Minutes reflect that Trustees voted “approve” prior minutes, financial reports, the Treasurer’s office quarterly expenses, and a bond for another district. (Ex. 8, pp. 2-3.) The Minutes reflect that the Trustees discussed other items, including the following:

Healy submitted to the Trustees the proposal from District 204 stating this office absorb certain payroll, accounts payable and computer processing expenditures by District 204. As these costs would be incurred by the Treasurer’s office if Lyons Township High School were to totally utilize the facilities of the Treasurer’s office. These costs would certainly be incurred. A point to be clarified is to make sure that workman’s compensation is covered. A further recommendation by Trustee Hartigan is that the trustees be given an evaluation of the employee’s performance for those aforementioned personnel employed at the high school.

(Ex. 8, p. 2)

The Minutes then reflect the following action:

A motion was made by Russell Hartigan seconded by Joseph Nekola to accept the proposal given to the Lyons Township Trustees of Schools by Cook County High School District #204.

ROLL CALL: Ayes - Joseph Nekola, Russell Hartigan

Nays - None

(Ex. 8, p. 3)

A copy of Beckwith’s proposal was attached to the Minutes. (See Ex. 8, p. 4.) There is no mention in the Minutes – *over the next decade* – of the Trustees ever again discussing or voting on Beckwith’s proposal, or on any similar proposal. (See Ex. 11, pp. 91-225.)

### **3. The June 2000 LT Board of Education meeting.**

On June 19, 2000, LT’s Board of Education held a meeting. A copy of the Agenda, Minutes and relevant attachments are Exhibit 9. The Agenda reflects that the meeting was divided into different sections including: New Business; Consent Agenda; and Open Session. (Ex. 9, p. 1-3.) The Consent Agenda included numerous items, including Item P, “Township Treasurer’s Invoice.” (See Ex. 9, p. 2.)

The Minutes reflect that in New Business, LT’s Board discussed and approved a new contract (Ex. 9, pp. 7-8); in the “Open Session,” LT’s Board approved an agreement with a faculty association (Ex. 9, p. 14); and in the “Consent Agenda,” LT’s Board voted to approve 62

items, *en masse*. (Ex. 9, pp. 9-13.) One of these 62 items was the “Township Treasurer’s Invoice.” (Ex. 9, p. 13.) The invoice itself was part of Exhibit T to the Consent Agenda.

The first page of Exhibit T was a memorandum from Beckwith to LT’s Board:

Attached is a copy of the Lyons Township High School Treasurer’s bill for the 1999-2000 school year. The District’s share is \$165,476, which is a 6% increase over the 1998-1999 school year. Also attached is a copy of the agreement that we made with the Treasurer, which pays the District \$106,403 for comparable services provided to other township districts but not to Lyons Township High School. Board of Education action is to approve a payment in the net amount of \$59,073.

(Ex. 9, p. 17)

Beckwith recites she was attaching “the agreement” with Healy. The next two pages, however, were the Treasurer’s invoice to LT for fiscal year 1999, showing LT owed \$165,476. (Ex. 9, pp. 18-19.) The final page was Beckwith’s proposal to Healy. (Ex. 9, p. 20) In other words, when Beckwith refers to “the agreement,” she meant her memorandum to Healy.

Although Beckwith refers to the Treasurer’s invoice for the “1999-2000 school year,” the invoice was actually for the 1998-1999 year. Beckwith was recommending to LT’s Board that it offset the Treasurer’s invoice for 1998-1999 with the salaries for 1999-2000. Regardless, LT’s position is that “the [LT Board] vote approving payment of the [Treasurer’s] invoice and the vote approving the contract are one, one [and] the same vote.” (Ex. 5 at 61:5-23) (emphasis added).

**B. Legal Argument: The Alleged Contract, Even If Both Parties Voted To Approve It, Violated Illinois Law Or Was For One Year At Most.**

**1. Such contact would violate Section 8-4 of the School Code.**

LT argues that it instead of paying its full proportionate share, LT would get a credit for the cost of three employees, and just pay the difference (if any). A public body, however, cannot enter into a contract that “is *ultra vires*, contrary to statutes, or contrary to public policy.” *Matthews*, 2016 IL 117638, ¶98. The alleged contract modified the allocation of expenses, contrary to the School Code, and functionally excused LT from paying its share.

Each year the Treasurer sent an invoice for each district's share of its expenses. The School Code mandates each district "shall pay" that share. 105 ILCS 5/8-4. It is undisputed that during fiscal years 2000 through 2013, LT did not pay its full share, but rather applied an offset, resulting in a total shortfall in funding of \$2,628,807. (Ex. 3 at ¶¶84-99.)

LT's theory, that it can offset its own costs, does not work. The Treasurer invoices the districts for costs already incurred. If the districts do not pay their share of those costs, the Treasurer will have spent more funds than it will receive. If one district refuses to pay its share, then other districts have to pay more than their share, in violation of the School Code.

Also, if LT truly "sold" its services to the Treasurer (like a vendor) then Healy should have included the \$106,403 when calculating the Treasurer's expenses for that year, and this should have been done for every year. That amount would then be billed proportionately to all districts – including LT. But this did not happen; Healy altered the statutory formula for determining the proportionate share.

## **2. Such contract would violate the Intergovernmental Cooperation Act.**

The Intergovernmental Cooperation Act provides that one public body may "exercise[], combine[], transfer[], and enjoy[]" its powers with another public body. 5 ILCS 220/3. Under LT's theory, this is what happened, *i.e.*, LT performed services for the TTO. The "governing bodies" of each party, however, must approve such contract. 5 ILCS 220/5. As discussed below, this did not happen. Moreover, because the contract would result in the other districts paying more than their statutory share, *those districts* also needed to approve the alleged contract; there is no evidence this happened.

The Act also provides that "[s]uch contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties." 5 ILCS 220/5. Beckwith's

“proposal” does not contain this detail. It does not state its purpose or objectives, nor the rights, powers, or any other responsibilities of the parties. Indeed, it does not even provide for an offset; it states that LT will invoice the Treasurer and be paid in return; LT invented the offset.

The existence of a proper intergovernmental agreement is not formality. In *Village of Montgomery v. Aurora Township*, 387 Ill. App. 3d 353, 354 (2nd Dist. 2008), Montgomery sought a declaratory judgment on who had to maintain a bridge. Aurora Township argued that either Montgomery or the City of Aurora had agreed to do so. The court explained that:

[a]lthough the record contains intergovernmental agreements reflecting that during certain years, [the City of] Aurora agreed to plow and salt the bridge on behalf of the Township, neither Aurora nor Montgomery ever executed a formal agreement to take over maintenance responsibility for the bridge.

*Id.* at 358. Accordingly, lacking a formal intergovernmental agreement, the Township retained the obligation for maintenance of the bridge. *Id.*

Similarly, in *Connelly v. Clark County*, 16 Ill. App. 3d 947 (4th Dist. 1973), the court concluded that while Clark County could operate a gravel pit for its own needs, it *could not sell excess gravel to other public bodies*, absent a formal intergovernmental agreement. *Id.* at 952. When dealing with non-home rule units, like here, this is even more important, because they only have that power expressly given them by statute, and such grants of power are strictly construed. *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1119 (2nd Dist. 2010).

### **3. Such a contract would have been effective for only a single fiscal year.**

Beckwith’s memorandum proposes that the Treasurer absorb the salaries of three LT employees for “99-00.” (See Ex. 6.) The face of the memorandum is not ambiguous; nothing in the memorandum suggests it was to be applicable for more than one year.

Further, the governing board of a public body is forbidden from making contracts for services lasting longer than the period for which the board has left to serve. *Cannizzo v. Berwyn*

*Twp. 708 Cmty. Mental Health Bd.*, 318 Ill. App. 3d 478, 482-87 (1st Dist. 2000). Such contracts are void *ab initio*. *Id.* at 487. Of the three Trustees, one is elected every 2 years to serve a 6-year term, with elections occurring in odd-numbered years. 105 ILCS 5/5-4, 5-13, 5-14. LT's theory is that the TTO agreed to the contract in March 2000. A new board was then created upon the next election in 2001. A contract lasting beyond 2001 would be *ultra vires* and void.

Moreover, when asked whether the alleged contract "had to be approved every year by both parties," LT's Superintendent answered, "[a]s it involves expenditures, yes." (Ex. 5 at 55:2-4.) Beckwith proposed that the Treasurer pay for three LT employees, totaling \$106,403. By 2012, however, LT had increased its "proposal" to five employees, totaling \$297,991.10. (See Ex. 13; Dep. of D. Sellers, Ex. 14, at 74:8-22.) There is no evidence in the Minutes that the Trustees ever discussed, or voted upon these subsequent proposals, or the ever-increasing costs from the original "99-00" proposal. (See Ex. 11, pp. 91-225.) The Trustees are required to Minutes of their meetings. 5 ILCS 120/2.06(a). The Minutes and accompanying documents are the only lawful evidence of actions taken by the Trustees. *See Bellwood v. Galt*, 321 Ill. 504, 508 (1926); *Otey v. Westerman*, 276 Ill. App. 395, 402 (4th Dist. 1934).

Finally, when entering into multi-year contracts, the Trustees historically never permitted such contracts to renew automatically. When entering into potentially ongoing contracts the Trustees reviewed them annually or biennially, took note of cost increases, and recorded their approval in the Minutes. (See Ex. 11, pp. 2, 20, 32, 40, 56, 67, 97, 114, 130 (contract with Puffer Hefty School District), pp. 35, 62, 106, 112-23, 217 (lease with District 102), pp. 58-59, 84, 130, 159 and 188 (employment contracts).)

**4. Healy and Beckwith had no authority to enter into a contract.**

Only the Trustees could have bound the TTO to the alleged contract. 105 ILCS 5/5-2; 5/8-7; 5/8-17. *See also Matthews*, 2016 IL 117638, ¶99 (CTA may only be bound by official action taken by its board); *Patrick Eng’g*, 2012 IL 113148, ¶36 (doctrine of apparent authority not applicable against public bodies). Beckwith even acknowledged that she knew that Healy was not authorized to enter into the purported contract. (Dep. of L. Beckwith, Exhibit 10, at 96:3-23.) Further, LT does not dispute that Beckwith did not have authority to bind LT to this type of contract; rather, only LT’s Board could do so. (Ex. 5 at 32:11-33:6; 38:8-39:21.)

**5. The Trustees never voted to enter into a contract with LT in 2000.**

The Minutes reflect that the Trustees discussed Beckwith’s proposal in March 2000. They also reflect that the Trustees wanted to clarify if worker’s compensation insurance was covered and Trustee Hartigan recommended they be given employee evaluations. (Ex. 8, p. 2.) These points suggest the matter was not final and further discussion was needed.

Moreover, the Minutes reflect that the Trustees merely voted to “accept” Beckwith’s proposal. (Ex. 8, p. 3.) In the context of a deliberative body, Merriam-Webster defines “accept” as, *inter alia*, “*of a deliberative body: to receive (a legislative report) officially (as from a committee).*” (<https://www.merriam-webster.com/dictionary/accept> and <https://www.merriam-webster.com/dictionary/accept#legalDictionary>) (emphasis added).

Historically, the Trustees used “accept” to signify “receive,” and used “approve” to indicate their consent to take other official action. Between 1993 and 2012, the Trustees took close to 500 actions. (See Ex. 11, p. 1-225.) Of those, 384 were votes “to approve” resolutions, contracts, or similar items. Included in this was an action “to accept and approve legal bills” and two were “to accept and approve minutes” – this demonstrates this “accept” and “approve” were

not intended to mean the same thing. (See Ex. 11, p. 100, 216, 222) Only seven actions were recorded as solely “to accept;” in addition to the LT proposal, the Trustees also voted “to accept” a canvass and proclamation” (*i.e.*, voting results) six times. (Ex. 11, pp. 17, 37, 65, 80, 99, 119.)

When the Trustees entered into contracts they voted to “approve” the contract. For example the Trustees voted to “approve” a contract to provide services to Puffer Hefty School District. (See Ex. 11, p. 78 and p. 79a-c for the contract; see also pp. 2, 20, 32, 40, 56, 67, 97, 114, 130.) Other examples include approving a lease with District 102 (see Ex. 11, p. 35, 62, 106, 122-3, and 217) and employment contracts (see Ex. 11, p. 58-9, 84, 130, 159, and 188). This is not unusual – LT’s Board also voted to “accept” to a donation, handbook, and funding (see Ex. 12, pp. 4, 38, 106), while voting to “approve” contracts (see Ex. 12, pp. 17, 34, 59, 72, 113). It is, thus, apparent that the Trustees voted to “receive” Beckwith’s proposal, not enter into a contract.

#### **6. LT’s Board never voted to enter into a contract with the TTO in 2000.**

Only LT’s Board could enter into the alleged contract. (Ex. 5 at 22:19-24; 24:5-25:6; 32:11-33:6; 38:8-39:21.) Illinois law regulates the contractual authority and procedures of a Board of Education; it is not treated the same as a private corporation. *Wesclin Educ. Ass’n v. Board of Educ.*, 30 Ill. App. 67, 75 (5th Dist. 1975). Statutes conferring powers on LT’s Board are strictly construed as a limitation on its powers. *Id.*

LT’s Board, like the Trustees, was also required to keep minutes and was forbidden to transact business except at a formal meeting. 5 ILCS 120/2.06(a); 105 ILCS 5/10-6. At its June 2000 meeting, LT’s Board voted to authorize payment of a single invoice to the TTO in the amount of \$59,073. (See Ex. 9, pp. 9-13.) LT argues that this was also a vote to enter into the alleged contract. (See Ex. 5 at 61:8-23.) But the Minutes do not reflect a vote on a contract. (See

Ex. 9.) Further, Beckwith did not recommend that the Board approve a contract; she recited the “Board of Education action is to approve a payment....” (Ex. 9, p. 17) (emphasis added).

Beckwith also recited that the “agreement that we made with the Treasurer” was attached. (Ex. 9, p. 17.) But she only attached her proposal to Healy. No vote to approve her proposal is to be found in the Minutes, despite it being required that such approval be recorded in the Minutes. *Decatur v. Board of Educ. of Decatur School Dist.*, 205 Ill. App. 57, 61 (3d Dist. 1917).

Finally, the TTO invoice was included on the “Consent Agenda.” LT uses the “Consent Agenda” for “business items that are routine and come every month or every time during the year.” (Dep. of T. Kilrea, Ex. 5 at 44:17-19) This is consistent with *Robert’s Rules of Order*, which LT follows. (Ex. 5 at 21:24-22:2); *Robert’s Rules of Order* Newly Revised, 11th ed., p. 361:13-14). The Consent Agenda was not an appropriate way for LT’s Board to vote to enter into a contract that it had never before discussed publicly. Conversely, in that same June 2000 meeting, LT’s Board voted to approve two other contracts, in the “New Business” and “Open Session” portions of the meeting. (Ex. 9, pp. 7-8, 14.) Likewise, from 2000 through 2012, LT’s Board voted to “approve” contracts in the New Business, Unfinished Business, or Open Session portions of its meetings (see Ex. 12, pp. 59, 94 and 113), whereas it used the Consent Agenda to approve things like monthly bills, meeting minutes, and resignations. (See Ex. 12.)

The TTO is entitled to summary judgment and this Court should issue a declaratory judgment that the Treasurer may debit \$2,628,807 from LT’s funds. (Alternatively, if this Court finds that the parties entered into a one-year contract, the amount would be \$2,522,404.)

## **VI. CLAIM 3 – OVER ALLOCATION OF INVESTMENT INCOME TO LT**

One of the duties of the Treasurer is to pool and invest the tax dollars it receives. The Treasurer then allocates the investment income per the School Code. During Healy’s tenure, on a



quarterly basis, he would do this through a bookkeeping entry. There is no genuine dispute, and both parties' experts agree, that when Healy did this, he (at times) allocated to LT more than its proportionate share of the income being allocated, to the tune of at least \$1.3 million.

**A. Material Facts: LT Was Allocated More Income From The Pooled Investments Than Its Proportionate Share Of Distributions Actually Made.**

**1. The School Code's Requirements.**

Section 8-7 of the School Code authorizes the Treasurer to pool and invest the tax dollars it collects, and requires the Treasurer to allocate the income earned on the pooled funds. This allocation is done by a bookkeeping entry. (Exs. 1 and 2 at ¶¶39-40; Dep. of R. Healy, Exhibit 15, at 66:5-14.) If one district receives an over allocation, then the other districts receive less money. (Ex. 4 at 114:20-115:11.)

**2. Healy's Allocation of Investment Income.**

During fiscal years 1995 through 2012, Healy collected the property taxes and other revenue each district received and accumulated that revenue within a general fiduciary fund. (Ex. 15 at 51:11-52:5.) Healy also maintained a general ledger for each district, and each district had various purposed "funds" (*e.g.*, for education or transportation). The monies collected from each district (as accumulated in the general fiduciary fund) were, for accounting purposes, "placed" in these separate funds for each district. (Affidavit of J. Martin, Exhibit 16, ¶4a-e.)

Healy invested the money in the general fiduciary fund, earning income that was deposited back into the fiduciary fund. Healy periodically allocated this investment income to the districts. (Ex. 15 at 51:11-53:23; Ex. 16 at ¶4a-e.) Each month, Healy received a computer report of the separate purposed "fund" balances for each district, which he then added together. (Dep. of K. Bradshaw, Exhibit 17, at 92:24-93:8.) He also added together each district's total fund balance to arrive at a "total fund balance" for all districts. He then calculated an average fund

balance per quarter. The total fund balance for all districts became the denominator, and the total fund balance for each separate district became the numerator, in an equation to determine the percentage of income to be allocated to the districts. (Ex. 15 at 52:1-54:19; Ex. 16 at ¶4 a-e.)

Healy then estimated how much income could actually be allocated according to this percentage. (Dep. of M. Terpstra, Exhibit 18, at 43:15-44:3; Ex. 15 at 52:16-59:15.) He did not allocate all of the income that was earned; the amount of income to be distributed was a conservative estimate of the income available for distribution. Some investment income was retained by the Treasurer and not allocated at that time. (Ex. 15 at 52:7-59:22.) When Healy made an allocation, the Treasurer's office made a bookkeeping entry in the general ledger for each district; no investment income was actually "paid." (Ex. 15 at 65:19-66:14.)

Healy prepared these calculations each quarter on handwritten ledger sheets during the relevant period, with all of the foregoing information set forth. (The investment income identified on the sheets is not the total amount earned each quarter, but rather is the amount Healy would actually distribute; recall that Healy allocated only a rounded, conservative amount of the actual, earned income.)

Healy's ledger sheets were accurate when prepared; were prepared and retained in the ordinary course of the TTO's business; and Healy had personal knowledge of the information and calculations in the handwritten sheets. (Ex. 15 at 94:5-96:12; Ex. 20 at 66:12-16.) (Copies of those handwritten sheets are contained in two folders marked as Bradshaw deposition exhibits 5 and 6; due to their voluminous nature they are not being attached.) (See Ex. 17 at 115:2-117:6.)

### **3. The Experts Have a Non-Material Dispute as to the Amount Allocated**

The amount Healy calculated each quarter to be allocated to a given district should have been the amount actually allocated to that district. Thus, for example, if one would add up the

sums Healy calculated on his handwritten sheets to be allocated to LT each quarter, those sums should appear in TTO's general ledger for LT each quarter. At various times, however, the amounts set forth on Healy's notes that should have been allocated to LT were not the amounts actually allocated to LT. In some years, LT was over allocated income, and in other years, LT was under allocated investment income. (Ex. 16 at ¶4e; Ex. 17 at 90:19-92:18; 103:2-12 and 110:21-114:3; see also Exhibit 3 to Bradshaw deposition, attached as Exhibit 16(B) hereto.)

The total amount of investment income that should have been allocated to LT (as reflected on Healy's notes), versus the amount actually allocated to LT (as reflected on the general ledger), reveals that LT was over allocated, in net, at least \$1,386,267.03.

The TTO says "at least" because the TTO's expert, James Martin, opines that the over-allocation was \$1,427,442.04. (Ex. 16 at ¶6.) Martin reviewed an analysis prepared by the Treasurer's office and made adjustments as reflected on the Exhibit 16(C), entitled "District 204, Interest Allocation Analysis, Summary of Differences by Fiscal Year." (Ex. 16, ¶¶5-6.) Martin also examined allocations to the other districts and found that LT received distributions that other districts were not receiving. (Ex. 20 at 72:12-76:5.) Martin determined that when LT was being misallocated income in a given quarter, the other districts were being given the proper percentages and amounts set forth on Healy's ledger sheets. (Ex. 20 at 154:4-155:7.)

Martin's opinion, that Healy over allocated \$1,427,442.04 to LT, is based upon several assumptions respecting Healy's handwritten notes. First, that Healy's determination of the total fund balance for the general fiduciary fund and the total fund balance for each district was accurate. Second, that Healy's percentage of income to be allocated to each district was accurate, *i.e.*, Healy accurately determined the numerator and denominator of the equation. Third, that the

amount of income identified to be distributed each quarter on the handwritten pages was available to be distributed. (Ex. 20 at 30:11-33:20; 66:12-16, 69:14-24; Ex. 18 at 47:21-49:15.)

LT's expert, Martin Terpstra, studied Martin's analysis and opined that, using Martin's methodology, the result should be a little bit less, \$1,386,267.03. (Ex. 19 at pp. 9-10.) To render this dispute non-material, the TTO will accept Terpstra's calculation of \$1,386,267.03.

**B. Legal Argument: LT Was Unlawfully Over Allocated Investment Income.**

**1. LT was over allocated investment income at the time of distribution.**

There is no genuine dispute, and even both experts agree, that when Healy made allocations of income to the districts he gave more to LT than his business records indicate LT should have received, to the tune of at least \$1,386,267.03.

LT argues that the total amount of income earned cannot be determined because of incomplete records. This is a red herring. It is undisputed that: (a) income was earned; (b) deposited into the general fiduciary fund; (c) allocated to all of the districts; and (d) all of the districts used that income. The point is that, at the time of distribution, the records are sufficient to establish that Healy gave LT more than its share of the allocations actually being made. Either (a) LT was over allocated income during the years in question, or (b) LT is creating an offset for future distributions, theorizing that when future distributions occur, the other districts will "catch up" and the allocations will then become properly proportionate.

Terpstra testified that the TTO's financial statements for the years 1995 through 2007 revealed Healy did not distribute all of the income earned. (Ex. 18 at 30:24-34:13). Terpstra asserts that if the undistributed income is distributed in the future, what LT owes would be reduced. (Ex. 19, at pp. 5-6.) As Terpstra testified, however, the undistributed income is available to be distributed, and LT would get its proportionate share when it is distributed. (Ex. 18 at 30:12-38:20.) Martin agreed. (Ex. 20, at 125:9-17.) Given this, there is no reason for LT to

“hang on” to the excess allocations; it will get them in the future with everyone else. Accordingly, LT be un-allocated the \$1.3 million that Healy improperly allocated to LT, or the TTO should be authorized to withhold \$1.3 million in future allocations to LT.

Several facts are important to note from Terpstra’s opinions, which are set forth in both his report (Exhibit 19) and in his deposition. With respect to the methodology that Martin used, Terpstra: (a) *does not* disagree with the quarterly determinations by Healy of the total general fiduciary fund balance for all districts; (b) *does not* disagree with Healy’s quarterly determination of the fund balances for each district; and (c) *does not* disagree that Healy accurately calculated the percentage of investment income that each district was to receive. (Terpstra’s report and his testimony do not dispute these statements.)

Terpstra also does not dispute that Martin’s analysis was accurate with respect to the amounts actually allocated to LT as set forth in the general ledger. His only minor disagreement is set forth on pages 9-10 of his report. Terpstra opines that Martin should not have ignored 3 entries, which is how Terpstra arrived at his figure \$1,386,267.03, which the TTO will accept.

## **2. Terpstra’s other opinions do not defeat the TTO’s position.**

Terpstra also opines that certain entries on Healy’s handwritten sheets are inaccurate. (Expert Report, Ex. 19 at pp. 8-9.) On those entries where Healy’s math was incorrect as to the amount of income to be allocated to a district, however, the general ledger for the district shows the correct amount. Furthermore, most of the inaccuracies do not relate to LT and those that do reflect an over allocation of income – as the TTO contends. Terpstra’s second, fifth, seventh, ninth and eleventh bullet-points on pages 8-9 of Exhibit 19 refer to LT (District 204), and they all show that Healy benefitted LT.

Thus, while Healy's handwritten sheets are not perfect, when Healy set forth a sum that was to be allocated to a district other than LT, that sum, as pointed out by Terpstra, was correctly recorded in the general ledger for that district. Further, as Martin and Healy agreed, the handwritten sheets are the business records of the TTO. (Ex. 15 at 94:5-96:11; Ex. 20 at 66:12-16.) While Terpstra opines that there were over allocations to other districts (see Ex. 19 at pp. 10-11), this merely means the TTO would be justified in pursuing those districts.

Other than a difference of opinion as to the precise amount, both experts agree that using Healy's handwritten sheets as to the amount of income to be allocated to LT, and comparing the amount actually allocated to LT as reflected on its general ledger, there was an over allocation to LT of more than \$1.3 million dollars. The TTO is entitled to summary judgment on this claim, and this Court should enter a declaratory judgment that the Treasurer may debit and reallocate \$1,386,267.03, from the monies being held by the Treasurer and allocable to LT.

## **VII. THE TTO IS ENTITLED TO JUDGMENT ON LT'S AFFIRMATIVE DEFENSES**

### **A. First Affirmative Defense: *Laches*.**

"There is considerable reluctance to impose the doctrine of *laches* to actions of public entities unless unusual or extraordinary circumstances are shown." *Van Milligan v. Board of Fire & Police Comm'rs*, 158 Ill. 2d 85, 90 (1994). This is because "*laches* may impair the functioning of the [public body] in the discharge of its government functions, and valuable public interests may be jeopardized or lost by negligence, mistakes, or inattention of public officials. *Id.*; accord *Wabash County v. IMRF*, 408 Ill. App. 3d 924, 936 (2d Dist. 2011).

Any delay in filing suit must also cause particular prejudice, "[a] defendant's suggestion that he might have asserted his rights differently or have entered into some kind of settlement

had the plaintiff promptly asserted its rights is only speculative and does not support the validity of a *laches* defense.” *City of Chicago v. Alessia*, 348 Ill. App. 3d 218, 229 (1st Dist. 2004).

If this Court were to apply *laches*, the interests of the other districts and the public they serve would be barred. Moreover, LT has asserted only generalized prejudice, alleging that it relied on the purported contract in formulating its budget. (Ex. 21 at ¶55.) The “prejudice” of which LT complains is just that it wants to keep the financial benefits it wrongfully received.

**B. Second Affirmative Defense: Statute of Limitations.**

This Court denied LT’s motion for summary judgment, ruling as follows with respect to the “public right” exception to the statute of limitations:

There is an obligation of the governmental unit to act on behalf of the public, it appears, and the extent to which the expenditure – my understanding of the language is how much money is involved here. And that extent of expenditure is there is a lot of money involved here. So I think that the Statute of Limitations does not prevent the trustees from pursuing this.

(Report of Proceedings, Exhibit 22, at 9:6-14.) The TTO respectfully requests the affirmative relief that this Court should enter summary judgment that the TTO is pursuing a “public right” based on its prior analysis.

In denying LT’s motion, this Court also explained that it did not believe that the TTO held the funds at issue in trust, instead likening the Treasurer as more akin to a bank. Respectfully, the TTO submits the explanation of the court in *Hackett v. Trustees of School*, 398 Ill. 27, 32 (1947), “the trustees of schools...holds all of its property in trust for public use.” For this additional reason, the TTO requests summary judgment on LT’s second affirmative defense.

**C. Third and Fourth Affirmative Defenses: Promissory and Equitable Estoppel.**

These doctrines “will not be applied to governmental entities absent extraordinary and compelling circumstances.” *Matthews*, 2016 IL 117638, ¶94. Promissory estoppel is an offensive

doctrine, not an affirmative defense. *Id.* at ¶¶93-94, n.11. Regardless, it creates a contract implied in fact. *Id.* at ¶93. A public body cannot be liable under a contract implied in fact that is contrary to statute. *Id.* at ¶98. In *Matthews*, the court explained that the CTA “can only be contractually bound by official action taken by the Chicago Transit Board.” *Id.* at ¶99. “Consequently, a CTA employee cannot act in such a manner as to form a contract without the approval of the Chicago Transit Board.” *Id.* at ¶98. Healy’s conduct cannot create promissory estoppel.

Equitable estoppel requires a public body take official action, or action by an official with express authority. *Patrick Eng’g*, 2012 IL 113148 (2012), ¶39. Healy had no express authority on these matters and LT cannot point to official conduct by the Trustees that might be a basis for equitable estoppel. Further, its purpose is to “to prevent fraud or injustice.” *Gorgees v. Daley*, 256 Ill. App. 3d 143, 146 (1st Dist. 1993). Adhering to the School Code is not unjust.

**D. Fifth Affirmative Defense: Waiver.**

Waiver “arises from an affirmative act, is consensual, and consists of an intentional relinquishment of a known right.” *People v. Houston*, 229 Ill. 2d 1, 10 n.3 (2008). LT has the burden of proving “a clear, unequivocal and decisive act of its opponent manifesting an intention to waive rights.” *Ciers v. OL Schmidt Barge Lines, Inc.*, 285 Ill. App. 3d 1046, 1050 (1st Dist. 1996). Mere delay is not a waiver; rather the Trustees must engage in an affirmative act, as Healy cannot waive the rights of the TTO. *Schivarelli*, 355 Ill. App. 3d at 102.

**E. Sixth Affirmative Defense: Unclean Hands.**

Unclean hands is “not favored by the courts....” *Carlyle v. Jaskiewicz*, 124 Ill. App. 3d 487, 498 (1st Dist. 1984). Its purpose “is to protect courts of equity in keeping with the policy that equity should not aid a wrongdoer; [its purpose] is not to protect the party asserting it as a defense.” *Id.*; see also *Cole v. Guy*, 183 Ill. App. 3d 768, 776 (1st Dist. 1989).



LT alleges the TTO's "bad conduct" began in 2013, when the TTO (a) denied the existence of the purported contract, (b) argued that any contract required an intergovernmental agreement, (c) asserted that LT was over allocated income, and (d) sought to recoup the audit payments. (Ex. 21 at ¶92.) The TTO's assertion of its claims cannot be fairly characterized as either "fraudulent or unlawful" in purpose, even if LT disagrees with their merits.

**F. Seventh and Eighth Affirmative Defenses: Quasi Contract.**

LT alleges unjust enrichment and *quantum meruit*. Through each, LT alleges that the parties agreed that LT could offset the salaries of its own personnel against LT's share of the Treasurer's expenses of office. These are not affirmative defenses; they are affirmative claims. *Partipilo v. Hoffman*, 156 Ill. App. 3d 806, 809-10 (1st Dist. 1987); *Storino, Ramello & Durkin v. Rackow*, 2015 IL App (1st) 142961, ¶36.

**G. Ninth Affirmative Defense: Voluntary Payment Doctrine.**

No Illinois court has ever applied this doctrine against a public body; and other jurisdictions have held that the doctrine does not apply to public funds. *See, e.g., Kansas City v. Halvorson*, 177 S.W.2d 495, 498 (Mo. 1943); *Township of Normania v. Yellow Medicine County*, 286 N.W. 881, 883 (Minn. 1939); *State ex rel. Hunt v. Fronizer*, 1906 WL 1164 (Ohio C.C. May 19, 1906); *Wiles v. McIntosh County*, 88 N.W. 710, 712-13 (N.D. 1901); *Village of Ft. Edwards v. Fish*, 50 N.E. 973 (N.Y. 1898). It is little more than another form of estoppel and estoppel against public bodies is disfavored in Illinois. *Matthews*, 2016 IL 117638 at ¶94. Estoppel also may not be applied against a public body through the unauthorized acts of a public official. *Patrick Eng'g*, 2012 IL 113148 at ¶39. There doctrine just has no place here.

Regardless, it fails under the facts presented. When Healy allocated income to LT, he did not do so under LT's "claim of right" to the payments. When Healy paid for LT's audits, he

made a cash payment to Baker Tilly; but Baker Tilly is not the party asserting this defense. Finally, although Beckwith proposed that the TTO would “pay” to LT the sums set forth in her memorandum, the parties disregarded this and the TTO never made a payment to LT.

#### **VIII. CONCLUSION**

WHEREFORE, for the reasons stated herein, the plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court grant this Motion for Summary Judgment and:

- a. enter a declaratory judgment that the Treasurer may debit \$511,068.60, representing LT’ audit costs, from the monies being held by the Treasurer;
- b. enter a declaratory judgment that the Treasurer may debit \$2,628,807, representing the amount of LT’s proportionate share of the Treasurer’s compensation and expenses, from the monies being held by the Treasurer;
- c. enter a declaratory judgment that the Treasurer may debit \$1,386,267.03, representing the over allocation of investment income, from the monies being held by the Treasurer;
- d. enter summary judgment against LT on LT’s Affirmative Defenses; and
- e. provide such further relief as may be equitable.

The Plaintiff will provide a form declaratory judgment for entry upon this Court’s ruling on this Motion for Summary Judgment.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: /s/ Barry P. Kaltenbach.  
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**PROOF OF SERVICE**

The undersigned, an attorney, certifies that a copy of the following document, **Plaintiff's Second Revised Motion for Summary Judgment**, has been served upon:

Jay R. Hoffman  
Hoffman Legal  
20 N. Clark Street, Suite 2500  
Chicago, IL 60602  
[jay@hoffmanlegal.com](mailto:jay@hoffmanlegal.com)

as follows:

X	by personal service on July 2, 2018 before 5:00 p.m.
	by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 225 W. Washington Street, Chicago, Illinois, on July 2, 2018 before 5:00 p.m.
	by facsimile transmission from 225 W. Washington Street, Suite 2600, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 460-4201, consisting of ____ pages on July 2, 2018 before 5:00 p.m., the served [party/parties] having consented to such service.
	by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on July 2, 2018 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
X	by electronic mail, on July 2, 2018 before 5:00 p.m., the served [party/parties] having consented to such service.

\_\_\_\_\_/s/ Barry P. Kaltenbach  
Barry P. Kaltenbach

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