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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH08263

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**LYONS TOWNSHIP TRUSTEES OF
SCHOOLS, TOWNSHIP 38 NORTH,
RANGE 12 EAST,**)

Plaintiff,)

vs.)

**LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204,**)

Defendant.)

No. 18 CH 8263

Calendar 07

Judge Diane J. Larsen

PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East ("Trustees"),¹ by its undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., moves to dismiss the Counterclaim filed by the Defendant, Lyons Township High School District 204, pursuant to 735 ILCS 5/2-619.1, and in support of this Motion states as follows:

¹ In its Complaint the Plaintiff identifies itself as the "Trustees," because the Plaintiff is a body politic comprised of three trustees (see 105 ILCS 5/5-2). In its Counterclaim the Defendant identifies the Plaintiff as "the TTO"; this creates some confusion for the reasons discussed within this Motion.

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I. INTRODUCTION AND LEGAL STANDARD

The Trustees filed a simple Complaint respecting Defendant's non-payment of four annual invoices sent to Defendant for fiscal years 2014 through 2017 (FY2014 through FY2017). Defendant has responded with a four-count Counterclaim seeking broad relief based upon alleged violations of the Illinois School Code. This Counterclaim should be dismissed for a number of reasons. First, Defendant does not have a private right of action under the School Code and all four Counts of the Counterclaims should be dismissed on this basis.

Next, in Counts I and IV, Defendant seeks a monetary judgment, but also seeks to direct how that judgment should be paid; this would require rewriting the School Code – something this Court is not empowered to do. It would also force other school districts to pay the judgment; but the Defendant has not joined those school districts. Count IV also fails because the Defendant does not plead the basis for its assertion that the Trustees owe it a fiduciary duty. In Counts II and III, Defendant seeks declaratory relief that is so vague it would not settle and fix the rights of the parties, but rather would lead to more litigation. All of these defects are apparent from the face of the Counterclaim, and from a review of other pleadings of which this Court may take judicial notice, and so they are properly considered under Section 2-615. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25.

Finally, dismissal is warranted under 2-619(a)(3) because another action is pending between the parties that involves the same issue presented by the Counterclaim (the "First Lawsuit"). Indeed Defendant's Counterclaim in the First Lawsuit seeks recovery for some of the same alleged wrongs the Defendant is pursuing in its current Counterclaim. This argument is clearly identified below and set forth separately in accordance with Section 2-619.1.

II. FACTUAL BACKGROUND

A. The Allegations of Plaintiff's Complaint.

The Trustees filed their Complaint on June 29, 2018. (See Compl., Exhibit 1.) On October 10, 2018, Defendant filed its Answer, Affirmative Defense and Counterclaim. (See Exhibit 2.) Plaintiff is a body politic consisting of three elected trustees (the "Trustees"). The Trustees appoint the Lyons Township School Treasurer (the "Treasurer") to serve as the treasurer for the school districts and educational bodies within Lyons Township. (See Compl., Ex. 1; Answer, Ex. 2, ¶ 7; see also 105 ILCS 5/8-1 ("the trustees of schools shall appoint a treasurer....")) The Treasurer services thirteen such districts or bodies, including the Defendant. (See Compl., Ex. 1; Answer, Ex. 2, ¶¶ 8-9.)

Under the School Code, the Treasurer is compensated for his services and the Treasurer also has expenses of office. (See Compl., Ex. 1; Answer, Ex. 2, ¶ 10; see also 105 ILCS 5/8-4.) The Trustees, however, do not have a tax base to pay for these items. (See Compl., Ex. 1; Answer, Ex. 2, ¶ 15.) Accordingly, the School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district...and a proportionate share of the expenses of the treasurer's office." (See Compl., Ex. 1; Answer, Ex. 2, ¶ 10; see also 105 ILCS 5/8-4.) The School Code provides the formula for determining the proportionate shares of each district. (See Compl., Ex. 1; Answer, Ex. 2, ¶ 11; see also 105 ILCS 5/8-4.) In accordance with the School Code, after each fiscal year concludes, the Treasurer calculates each district's proportionate share and sends an invoice to each district for that district's proportionate share. (See Compl., Ex. 1; Answer, Ex. 2, ¶ 14.)

For FY2014 through FY2017 the Treasurer sent its annual invoice to each district, including the Defendant. (See Compl., Ex. 1; Answer, Ex. 2, ¶¶ 17-21.) The Defendant paid

some, but not all, of the four annual invoices at issue. (See Compl., Ex. 1; Answer, Ex. 2, ¶¶ 17-21.) The total amount owed but remaining unpaid, as of the time the Complaint was filed, was \$636,740.08. The Trustees seek declaratory approval to debit this amount from the nearly \$50,000,000 that the Treasurer is holding on behalf of Defendant.

B. The Allegations of Defendant's Counterclaim.

In Count I of its Counterclaim, Defendant seeks recovery of monetary damages for an alleged violation of Section 5/8-7 of the School Code, 105 ILCS 5/8-7. In Counts II and III, Defendant seeks declaratory relief with respect to the School Code. In Count IV, Defendant seeks monetary damages for an alleged breach of fiduciary duty. The material allegations from each Count are discussed as is relevant in Section III (Legal Argument).

As an initial matter, however, the Defendant uses the term “the TTO” to identify the Plaintiff. (See Counterclaim, Ex. 2, preamble.) This creates confusion. Plaintiff, as it alleges in its Complaint, is a body politic consisting of three Trustees. 105 ILCS 5/5-2. The Trustees appoint the Treasurer. 105 ILCS 5/8-1. In its Counterclaim, the Defendant alleges that “[t]he TTO is a local public entity....” (Ex. 2, ¶ 2.) The Defendant further alleges that “the TTO – including its Treasurer and other employees – had and has a duty to provide [Defendant]....” (Ex. 2, ¶ 6.) The Defendant then alleges the Treasurer is “the Treasurer of the TTO.” (Ex. 2, ¶¶ 8-9.) The Treasurer, however, is not the treasurer “of the TTO.” Rather the Treasurer is the treasurer for the school districts within Lyons Township.

Moreover, at various points the Defendant alleges that the School Code imposes certain duties upon “the TTO” and cites to Sections 5/8-5, 8-6 and 8-7 of the School Code. (See *e.g.*, Ex. 2, ¶¶ 12, 23-27.) Article 8 of the School Code, 105 ILCS 5/8, is entitled “Treasurers,” whereas Article 5, 105 ILCS 5/5, is entitled “Trustees of Schools”. Sections 5/8, 8-6 and 8-7 impose

certain duties upon the Treasurer; not the Trustees. The Defendant appears to conflate the Trustees (a body politic), the Treasurer, and perhaps “other employees,” with “the TTO” such that it is not clear to Plaintiff who is being counter-sued or in what capacity.

C. The First Lawsuit.

The First Lawsuit is pending before Judge Sophia Hall. A copy of Trustees’ Amended Complaint in the First Lawsuit is attached as Exhibit 3; a copy of Defendant’s Second Amended Counterclaim is attached as Exhibit 4. In the First Lawsuit, the Trustees also seek relief with respect to unpaid annual invoices for Defendant’s proportionate share of the Treasurer’s expenses, but the First Lawsuit is limited to pre-FY2013 (*this* lawsuit is for post-FY2013). The Trustees also seek relief with respect to their claim that the former Treasurer, Robert Healy, over-allocated to Defendant the income generated from pooled investments; and that Healy improperly paid for the costs of Defendant’s annual audits. (See generally Exhibit 3.)

Defendant’s Counterclaim in the First Lawsuit asserts that after discovering Healy had also embezzled funds in his care, the Trustees recovered certain monies from Healy’s official surety bonds and misapplied those recovered monies. (See generally Exhibit 4.) As explained below, Defendant’s present Counterclaim will result in duplicative litigation on many issues.

III. LEGAL ARGUMENT

A Count I Should be Dismissed Because No Private Right of Action Exists; Defendant’s Prayer For Relief is Improper; and Count I is Duplicative of Issues Raised in the First Lawsuit.

1. Argument Under Section 2-615.

In Count I, Defendant alleges that Section 8-7 of the School Code requires “the TTO” to “account to [Defendant] for all of [Defendant’s] investment earnings, and to credit [Defendant] with the full amount of its investment earnings.” (Ex. 2, ¶12.) (Actually, Section 8-7 is directed

towards the Treasurer, not “the TTO”; see 105 ILCS 5/8-7.) Defendant then alleges that “the TTO” has failed to comply with Section 8-7 by not properly crediting Defendant with its pooled investment earnings (both prior to FY2013 and after FY2013). Defendants seek monetary damages for this alleged violation of Section 8-7. Count I fails for a number of reasons.

In *Lewis E. v. Spagnolo*, the Illinois Supreme Court held that the plaintiffs, a putative class of schoolchildren, could not pursue a claim that the defendants, state and local school boards and officials, violated obligations imposed upon them under the School Code. 186 Ill. 2d 198, 227-32 (1999). Plaintiffs sought a declaratory judgment that they had certain rights under the School Code and further equitable relief. *Id.* at 203. The Court held that plaintiffs could not proceed through use of a declaratory judgment. *Id.* at 232. The Court also explained that “in Illinois, an implied private right of action under a statute is a means by which a plaintiff may pursue a tort action. If a statute is construed as providing an implied private right of action, the plaintiff may pursue a tort action against a defendant whose violation of the statute proximately caused injury to the plaintiff.” *Id.* at 231; *see also Collins v. Bd. of Educ.*, 792 F. Supp. 2d 992, 999-1000 (N.D. Ill. 2011) (“Numerous courts have rejected attempts to create an implied right of action under the School Code.”).

Here, Defendant is suing for money damages based upon a purported violation of Section 8-7 the School Code. Although a private right of action does not exist under the School Code, even if a private right *did* exist, Defendant does not allege liability in tort. Defendant is not using the School Code as a predicate for a tort action; rather, Defendant is merely suing for money damages for an alleged violation of the School Code. Under Illinois law, no such right of action may be maintained. For this reason, Count I should be dismissed.

Defendant also seeks improper relief. Defendant prays for a money judgment, but also that this Court “prohibit the TTO from using funds that belong directly or indirectly to [Defendant] to pay the award....” (See Ex. 3 at p. 10.) Needless to say, it is unusual for a plaintiff (or counter-plaintiff) to request money damages *and* seek direction as to how the award be paid. As set forth above, the Trustees does not have a tax base or any other sort of revenue *other than* adding together the Treasurer’s expenses of office and invoicing the districts for their proportionate share thereof. If a money judgment is entered against the Plaintiff the *only* way it can pay the judgment is to treat the payment as an expense of the Treasurer’s office and invoice *each district* – including the Defendant – for their proportionate share. The Defendant, of course, would then end up paying a proportionate share of its own recovery.

To avoid this outcome, the Defendant wants not just a money judgment, but a direction that “the TTO” not include Defendant’s share of this judgment on the next annual invoice. Trustees are unaware of what legal authority exists to empower this Court to fashion such relief. To the extent Defendant asserts that all of the *other* districts should be invoiced, but *not* the Defendant, the problem is twofold: (a) this would require rewriting the School Code to alter the statutory formula; and (b) the other districts would be necessary parties to the Counterclaim. For this additional reason, this aspect of the prayer for relief is improper and dismissal is warranted.

2. Argument Under Section 2-619.

Section 2-619(a)(3) provides this Court with discretion to dismiss a matter when “there is another action pending between the same parties for the same cause.” 735 ILCS 5/2-619(a)(3); *Schacht v. Lome*, 2016 IL App (1st) 141931, at ¶ 33. This avoids duplicative litigation. *Id.* at ¶ 34. Although there is confusion as to what the Defendant means through the use of its phrase “the TTO,” there is no question that the parties are the same in both lawsuits. There is also no

question that “the same cause” exists; “[l]awsuits present the same cause when the relief requested is based on substantially the same set of facts.” *Id.* at ¶36. “[T]he crucial inquiry is whether both arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof, or relief sought materially differs between the two actions.” *Id.*

In Paragraph 19, Defendant alleges, “the TTO” has failed to properly allocate income from pooled investments of funds belonging to all of the districts (a) prior to FY2013 and (b) after FY2013, and Defendant claims it has also been damaged by the alleged failure to account for those funds. (See Ex. 2, ¶ 19.) Whether pooled investments were properly allocated prior to FY2013, however, is directly at issue in the First Lawsuit. (See Ex. 3 at ¶¶ 38-47.)

B. Count II Should be Dismissed Because No Private Right of Action Exists; the Declaratory Relief Sought Would Not Terminate Any Controversy; and Count II is Duplicative of Issues Raised in the First Lawsuit.

1. Argument Under Section 2-615.

In Count II the Defendant asserts that Sections 8-5 and 8-6 of the School Code impose certain financial recordkeeping obligations upon the Treasurer. (See Ex. 2, ¶¶23-26.) The Defendant also asserts that Section 8-7 imposes an obligation upon “the TTO” to account to the Defendant for the Defendant’s share of pooled investment income. (See Ex. 2, ¶27.) Defendant’s imprecise pleading rears its head here, because Section 8-7 imposes certain duties upon the Treasurer; it is unclear if Defendant is asserting that Section 8-7 imposes upon the Trustees, as the body politic bringing this action, the duties set forth in Section 8-7.

Defendant then prays for a declaratory judgment that: (a) Sections 8-5 and 8-6 require the Treasurer to “maintain detailed records of all investment income” and to allow the Defendant to “inspect those records”; (b) Section 8-7 requires the Treasurer to “fully account” for the Defendant’s investment earnings; and (c) Section 8-7 requires the Treasurer to “credit

[Defendant] with the full amount of its investment earnings as those earnings are received.” (See Ex. 2, at pp. 12-13.) Count II fails for several reasons.

First, for the reasons set forth above, there is not a private right of action under Sections 8-5, 8-6 or 8-7 of the School Code and Defendant may not maintain its action for declaratory relief. *See Lewis E.*, 186 Ill. 2d at 227-32 (holding the School Code does not afford a private right of action for such relief).

Second, the declaratory relief sought is too vague. The purpose of a declaratory judgment is to “settle and fix rights of the parties.” *Kaybill Corp. v. Cherne*, 24 Ill. App. 3d 309, 315 (1st Dist. 1974). The judgment must “finally and effectively decide the rights of parties on the issues presented and terminate the entire controversy between them....” *Id.* The judgment must “represent the ultimate and precise determination” of the issue presented. *Id.*

What would it mean to enter a judgment that the Treasurer must “maintain detailed records”; or that the Treasurer must “fully account” for investment earnings? That would give precious little direction to Plaintiff and would only result in further legal action. Is the Treasurer’s general ledger a “detailed record?” What does the Defendant mean when it seeks the right “to inspect those records of those accounts?” Which records, of which accounts, and what does it mean to “inspect” records?² The relief sought is too vague; Count II should be dismissed.

2. Argument Under Section 2-619.

The Defendant incorporates the first thirty-two paragraphs of its Counterclaim (and, thus, all of Count I) into Count II. Thus, minimally, for the same reasons that Count I is duplicative of the issues being litigated in the First Lawsuit, so is Count II.

² The Trustees disagree that Section 8-5 grants *Defendant* the right to inspect records; the reference to “school board members” in that Section refers to the school board members of schools that *do not* have a township treasurer, but rather have a school treasurer. This is evident from reading Article 8 as a whole.

C. Count III Should be Dismissed For the Same Reasons as Count II.

1. Argument Under Section 2-615.

In Count III, the Defendant also seeks a declaratory judgment. In gist, Defendant does not believe that it should have to pay for its proportionate share of legal fees incurred by Trustees in the First Lawsuit. Defendant contends that the “American Rule” requires the Plaintiff to not include those fees amongst the expenses of the Treasurer’s office when invoicing the Defendant and the other districts their proportionate share on an annual basis.

For the reasons more fully set forth in Plaintiff’s Motion to Strike Defendant’s Affirmative Defense, the “American Rule,” which prohibits “prevailing parties from recovering their attorney fees from the losing party” (see *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 64) has nothing to do with the issues before this Court. In sending the annual invoices the Treasurer is not billing for “prevailing party” attorneys’ fees; but billing districts for expenses incurred during the fiscal year, as mandated by the School Code; some of those expenses happen to be attorneys’ fees. Indeed, it does not matter who prevails in the First Lawsuit; the legal fees are expenses of office and must be paid regardless of who wins.

In an effort to avoid paying, however, Defendant seeks a declaratory judgment that “the TTO” may not attempt to obtain payment for these legal fees. As with Count II, however, Defendant may not maintain its declaratory judgment action. See *Lewis E.*, 186 Ill. 2d at 227-32 (holding the School Code does not afford a private right of action). Count III should be dismissed.

The requested declaratory relief is, once again, too vague. Defendant seeks a declaration that Section 8-4 of the School Code “prohibits the TTO from attempting to recover from [Defendant] any portions of the [attorneys’ fees] in the past, present, or future through either

annual pro rata expense billings, transfers of assets, misallocation of investment earnings, application of recoveries belong to member districts, or otherwise.” (See Ex. 2 at p. 15, item (a).) Is the Defendant really seeking a declaration that the Treasurer may not include legal fees in the annual invoices that were already sent? If so, the relief would be moot. What would it mean to enter a judgment that the Treasurer cannot “attempt[] to recover from Defendant any portion of the [attorneys’ fees]...through...otherwise?” What encompasses “otherwise?”

The Defendant also seeks a declaratory judgment that “the TTO” may not include on the Treasurer’s annual invoices “expenses [for] which the TTO refuses to provide sufficient information and documentation....” (See Ex. 2 at p. 16, item (c).) What amount of documentation constitutes “sufficient” documentation?

In prayer for relief (d) the Defendant asks this Court enter judgment that “the TTO” cannot “decide it underbilled...expenses....” (See Ex. 2 at p. 16, item (d).) Can this Court really prohibit “the TTO” from “deciding” something? The problems with the requested declaratory relief are numerous, and the above are illustrative, but they would not afford an “ultimate and precise determination” of any controversy. *See Kaybill Corp.*, 24 Ill. App. 3d at 315 (explaining that declaratory judgments must “settle and fix the rights of the parties.”).

2. Argument Under Section 2-619.

Count III also duplicates the issue being litigated in the First Lawsuit. As with Count II, Count III incorporates all of the allegations that come before it; so for the same reasons Count II is duplicative of the First Lawsuit, so is Count III. Count III, of course, includes further allegations. Among the issues raised by Count III is whether the Treasurer under-billed expenses appearing on his annual invoices in past years. (See Ex. 2 at pp. 15-16, item (b).) This is directly at issue in the First Lawsuit. (See Ex. 3 at ¶¶ 24-37.) Count III also raises the issue of whether

the monies recovered under former-Treasurer Robert Healy's surety bonds was misapplied. (See Ex. 2 at p. 16, items (c) and (d) referencing the "application of recoveries....") But the Defendant is already seeking recovery for this same alleged misapplication in its Counterclaim in the First Lawsuit. (See Ex. 4 at pp. 26-28.) Count III also raises the issue of whether there was "misallocation of investment earnings" (see Ex. 2 at p. 16, item (d)) which is squarely at issue in the First Lawsuit.

D. Count IV Should be Dismissed Because No Private Right of Action Exists; Defendant Does Not Adequately Allege a Fiduciary Duty is Owed; Defendant's Prayer for Relief is Improper; and Count IV is Duplicative of Issues Raised in the First Lawsuit.

1. Argument Under Section 2-615.

In Count IV, Defendant alleges that it is owed a fiduciary duty and that "the TTO" breached that duty. Defendant begins Count IV by adopting and incorporating the entirety of the preceding fifty paragraphs of the Counterclaim, arguably transforming its entire Counterclaim into one for breach of fiduciary duty. This inexact pleading practice produces considerable guesswork as to the Defendant's basis for asserting a fiduciary duty is owed and by whom.

In Paragraph 6 of the Counterclaim, Defendant alleges that "[a]s the fiscal agent for [Defendant], the TTO – including its Treasurer and other employees – has and had a duty to provide [Defendant]" with certain documents and information. In Paragraphs 23 through 25 of the Counterclaim, Defendant alleges that the "Treasurer" is required to maintain certain financial records pursuant to Section 8-5 and 8-6 of the School Code. In Paragraph 27, the Defendant alleges that Section 8-7 requires "the TTO to account to [Defendant] for all of [Defendant's] investment earnings," despite Section 8-7 describing the responsibilities of the Treasurer. Then in Paragraph 28, Defendant alleges "the TTO" has not properly credited [Defendant] with

investment income. Finally, in Paragraphs 53 and 54, Defendant alleges the “TTO” is the fiscal agent of the Defendant.

These allegations do not make clear whom the Defendant contends owes it a fiduciary duty or the basis for asserting such a duty is owed. Is it the Plaintiff (a body politic), the trustees individually, the Treasurer, or maybe the “other employees” referenced in Paragraph 6? What specific sections of the School Code is the Defendant relying upon to assert the existence of this duty? Or is the Defendant relying upon some other fact pattern or aspect of Illinois law? It is important to know whom the Defendant contends owes it a duty, and the basis therefor, because a fiduciary duty is limited to the scope of the relationship that created the duty. *Latimer v. Perry*, 410 Ill. 119, 128 (1951); *Am. Hardware Mfrs. Ass’n v. Reed Elsevier, Inc.*, No. 03 C 9421, 2004 WL 3363844, at *11 (N.D. Ill. Dec. 28, 2004). Put another way, one might owe a fiduciary obligation in some respects, but not others.

“The burden of pleading and proving the existence of a fiduciary relationship lies with the party seeking relief and, where the relationship does not exist as a matter of law, facts from which a fiduciary relationship arise must be pleaded and proved by clear and convincing evidence.” *In re Estate of Bontkowski*, 337 Ill. App. 3d 72, 78 (1st Dist. 2003). Defendant has the burden to more precisely allege its theory under Count IV.

Moreover, to the extent the Defendant is asserting that the School Code imposes upon a fiduciary duty, the Defendant may not maintain its declaratory action in an effort to enforce the School Code, as the School Code confers no private right of action. *See Lewis E.*, 186 Ill. 2d at 227-32 (holding the School Code does not afford a private right of action). For either or both of these reasons, Count IV should be dismissed.

Another problem with Count IV is that the prayer for relief is improper, similar to the prayer in Count I. Defendant again prays that a judgment be entered, but that this Court direct “the TTO” how to pay for that judgment. The Defendant’s prayer either would require this Court to rewrite the School Code, and/or would require that Defendant join as necessary parties all of the other districts at issue. This further warrants dismissal of Count IV.

2. Argument Under Section 2-619.

Count IV is also duplicative, at least in part, with Defendant’s Counterclaim in the First Lawsuit. In the First Lawsuit, Defendant alleges a breach of fiduciary, asserting that Trustees misapplied the monies recovered under former-Treasurer Robert Healy’s surety bonds by using those monies to pay for certain “expenses” instead of crediting the monies directly to Defendant. (See Ex. 4 at pp. 26-28.) These same claims repeat themselves in the current Counterclaim.

In Paragraph 40 of the current Counterclaim, Defendant alleges that “the TTO has attempted to recover certain claimed expenses by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against those expenses, instead of crediting these funds to LT....” In Paragraph 42 the Defendant alleges that Trustees have improperly applied “recoveries of insurance proceeds....” Although nominally part of Count III, Defendant incorporates these allegations into Count IV. In Paragraph 62(f) of Count IV, Defendant alleges that “the TTO” breached its alleged fiduciary duty by, *inter alia*, misapplying “insurance recoveries.” The “insurance recoveries” to which Defendant alludes are the same monies recovered under former-Treasurer Robert Healy’s surety bonds. The Defendant is already asserting these monies were misapplied in Defendant’s Counterclaim in the First Litigation.

Other aspects of Count IV overlap with the First Lawsuit, too. For example, in Paragraph 62(a), the Defendant alleges that it has not been credited with a proper share of investment

income prior to July 1, 2013 (FY2013) – but whether such investment income was properly allocated is directly at issue in the First Lawsuit. (See Ex. 3 at ¶¶ 38-47.)

IV. CONCLUSION

For these reasons, the Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, requests that this Court grant this Motion and dismiss the Counterclaim filed by the Defendant, Lyons Township High School District 204, pursuant to 735 ILCS 5/2-619.1, along with providing such other relief as may be appropriate.

Respectfully submitted,

LYONS TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: /s/ Barry P. Kaltenbach
One of its attorneys.

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EXHIBIT

1

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LYONS TOWNSHIP TRUSTEES OF)
SCHOOLS, TOWNSHIP 38 NORTH,)
RANGE 12 EAST,)

Plaintiff,)

vs.)

LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT 204,)

Defendant.)

No.

2018CH08263
CALENDAR/ROOM 07
TIME 00:00
Declaratory Jdmt

COMPLAINT

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, by its undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., for its Complaint for Declaratory Relief against the defendant, Lyons Township High School District 204, states as follows:

Nature of the Case

1. Plaintiff brings this action to remedy Defendant's refusal to comply with the Illinois School Code. Plaintiff is charged by statute with providing financial services to school districts within Lyons Township. The School Code requires that the school districts pay their proportionate share for those services. Each year, all of the school districts pay their proportionate share – except for Defendant. Defendant refuses to pay its share, despite having more than ample funds to do so, forcing the Plaintiff to incur a deficit and creating the risk that all of the other school districts within Lyons Township will ultimately have to bear the cost of Defendant's refusal.

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Parties, Jurisdiction and Venue

2. Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (“Trustees”), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

3. Defendant, Lyons Township High School District 204 (“District 204”), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

4. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

5. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

The Trustees and the Treasurer

6. Pursuant to the School Code, Plaintiff is comprised of three Trustees who are elected by and responsible to the voters within Lyons Township. 105 ILCS 5/5-2.

7. One of the duties of the Trustees is to appoint the Lyons Township School Treasurer (“Treasurer”) to serve as the treasurer for the school districts and related educational bodies within Lyons Township. 105 ILCS 5/8-1.

8. Within Lyons Township, there are eleven school districts consisting of thirty-eight schools and educating approximately 20,000 students for whom the Trustees are responsible, and for whom the Treasurer provides financial services. The school districts include District 204 and also: 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.

9. In addition, the Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves students from fifteen school districts, and West 40 Educational Services, which serves forty school districts.

How the Treasurer's Office is Funded

10. Under the School Code, the Treasurer is entitled to be compensated for his or her services, and the Treasurer also has expenses of office, *e.g.*, leased offices, staff salaries, and office supplies. The School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office." 105 ILCS 5/8-4 (emphasis added).

11. Each district's proportionate share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such...district." 105 ILCS 5/8-4.

12. This statutory formula obligates the districts with the most money to pay the largest proportion of the Treasurer's costs. For example, on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. This means that, on average, District 204 is charged by the School Code with paying about twenty-five percent of the Treasurer's costs.

13. This statutory formula is mandatory. No district may unilaterally decide it does not wish to pay its proportionate share.

14. In accordance with the School Code, on an annual basis the Treasurer calculates each district's proportionate share of the Treasurer's compensation and expense, and sends an invoice to each district.

15. If a district does not pay its proportionate share, in full or in part, this creates a deficit. The Plaintiff does not have a tax base or any source of revenue other than the payments received from the school districts. The Plaintiff cannot "make up" this deficit from its own funds. Ultimately, if left uncorrected, this will force each of the other school districts within Lyons Township to absorb the costs that such district refuses to pay.

District 204's Failure to Pay its Proportionate Share for Fiscal Years 2014-2017

16. The Treasurer uses a fiscal year commencing on July 1 and running through June 30 of the following year.

17. For fiscal year 2014, the Treasurer sent its annual invoice to all school districts in April 2015. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$252,053.43. District 204 paid only \$242,321.00, leaving an unpaid balance that year of \$9,732.43.

18. For fiscal year 2015, the Treasurer sent its annual invoice to all school districts in May 2016. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$395,094.69. District 204 paid only \$236,482, leaving an unpaid balance that year of \$158,612.69.

19. For fiscal year 2016, the Treasurer sent its annual invoice to all school districts in May 2017. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$322,352.21. District 204 paid only \$208,061, leaving an unpaid balance that year of \$114,291.21.

20. For fiscal year 2017, the Treasurer sent its annual invoice to all school districts in May 2018. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$354,103.75. District 204's payment was due on June 28, 2018. As of the time this Complaint is being filed, all of the districts except District 204 paid their invoice or have advised that payment in full is imminent. District 204 has not paid anything, and during a May 21, 2018 Board of Education meeting, District 204 indicated it would not be paying its invoice in full.

21. In total, for fiscal years 2014 through 2017, District 204 has failed to pay \$636,740.08. If left uncorrected, the other school districts within Lyons Township will ultimately have to absorb the amounts that District 204 refuses to pay.

The Trustees Seek a Declaratory Judgment to Permit Payment

22. Because of its statutory obligations to serve all of the school districts within Lyons Township, the Plaintiff brings this action seeking declaratory relief.

23. The Treasurer is holding, as custodian, approximately \$50,000,000 in funds that belong to District 204 and that District 204 could utilize to pay its invoices so that the other school districts do not have to absorb this amount. Plaintiff, therefore, seeks a judgment that it is authorized to debit from the funds it currently holds as custodian for District 204 such amounts as District 204 refuses to pay, presently calculated at \$636,740.08.

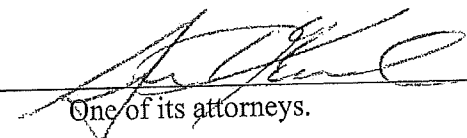
24. An actual controversy exists between the Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

WHEREFORE, Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, respectfully prays that this Court enter a declaratory judgment in its favor and against the Defendant, Lyons Township High School District 204, on this Complaint and that this Court award Plaintiff its costs and make the following findings as a matter of law:

- A. Between fiscal years 2014 and 2017, inclusive, District 204 has failed to pay its proportionate share of the Treasurer's compensation and expenses of office, as required by Section 8-4 of the School Code, totaling \$636,740.08, or such other amount as may be proven;
- B. The Treasurer is authorized to debit from the funds it currently holds as custodian for District 204 the amount determined to be owed by District 204; and
- C. Such other findings as may be equitable and appropriate.

Respectfully submitted,

LYONS TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

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One of its attorneys.

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EXHIBIT

2

Return Date: No return date scheduled
Hearing Date: No hearing scheduled
Courtroom Number: No hearing scheduled
Location: No hearing scheduled

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH08263

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,)	
)	
Plaintiff,)	No. 2018 CH 08263
)	
v.)	Hon. Diane J. Larsen
)	
LYONS TOWNSHIP HIGH SCHOOL)	Calendar 7
DISTRICT 204,)	
)	
Defendant.)	Jury Trial Demanded

LT'S ANSWER, AFFIRMATIVE DEFENSE, AND COUNTERCLAIM

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT"), by its attorney, responds to the Complaint of Plaintiff Lyons Township Trustees of Schools, Township 38 North, Range 12 East ("the TTO") as follows:

Answer

1. Plaintiff brings this action to remedy Defendant's refusal to comply with the Illinois School Code. Plaintiff is charged by statute with providing financial services to school districts within Lyons Township. The School Code requires that the school districts pay their proportionate share for those services. Each year, all of the school districts pay their proportionate share — except for Defendant. Defendant refuses to pay its share, despite having more than ample funds to do so, forcing the Plaintiff to incur a deficit and creating the risk that all of the other school districts within Lyons Township will ultimately have to bear the cost of Defendant's refusal.

RESPONSE: LT denies the allegations of this paragraph.

2. Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East ("Trustees"), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

RESPONSE: LT admits the allegations of this paragraph.

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3. Defendant, Lyons Township High School District 204 ("District 204"), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

RESPONSE: LT admits the allegations of this paragraph.

4. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

RESPONSE: LT admits the allegations of this paragraph.

5. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

RESPONSE: LT admits the allegations of this paragraph.

6. Pursuant to the School Code, Plaintiff is comprised of three Trustees who are elected by and responsible to the voters within Lyons Township. 105 ILCS 5/5-2.

RESPONSE: LT admits that 105 ILCS 5/5-2 provides that the "school business of all school townships having school trustees shall be transacted by three trustees, to be elected by the qualified voters of the township, as hereinafter provided." LT otherwise denies the allegations of this paragraph.

7. One of the duties of the Trustees is to appoint the Lyons Township School Treasurer ("Treasurer") to serve as the treasurer for the school districts and related educational bodies within Lyons Township. 105 ILCS 5/8-1.

RESPONSE: LT admits that 105 ILCS 5/8-1 provides that "the trustees of schools shall appoint a treasurer who shall be ex-officio clerk of the board." LT otherwise denies the allegations of this paragraph.

8. Within Lyons Township, there are eleven school districts consisting of thirty-eight schools and educating approximately 20,000 students for whom the Trustees are responsible, and for whom the Treasurer provides financial services. The school districts include District 204 and also: 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.

RESPONSE: LT admits that within Lyons Township, there are the 11 school districts listed in the paragraph. LT also admits that these 11 school districts contain 38 schools and about 20,000 students. LT also admits that the Treasurer provides financial services for some but not all of these districts. LT otherwise denies the allegations of this paragraph.

9. In addition, the Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves students from fifteen school districts, and West 40 Educational Services, which serves forty school districts.

RESPONSE: LT admits the allegations of this paragraph.

10. Under the School Code, the Treasurer is entitled to be compensated for his or her services, and the Treasurer also has expenses of office, e.g., leased offices, staff salaries, and office supplies. The School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office." 105 ILCS 5/8-4 (emphasis added).

RESPONSE: LT admits that the TTO correctly quoted from a portion of 105 ILCS 5/8-4. LT otherwise denies the allegations of this paragraph.

11. Each district's proportionate share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such...district." 105 ILCS 5/8-4.

RESPONSE: LT admits the allegations of this paragraph.

12. This statutory formula obligates the districts with the most money to pay the largest proportion of the Treasurer's costs. For example, on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. This means that, on average, District 204 is charged by the School Code with paying about twenty-five percent of the Treasurer's costs.

RESPONSE: LT admits on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. LT denies that the School Code requires LT to pay a share of "the Treasurer's costs." LT otherwise denies the allegations of this paragraph.

13. This statutory formula is mandatory. No district may unilaterally decide it does not wish to pay its proportionate share.

RESPONSE: LT admits the School Code, in 105 ILCS 5/8-4, provides that LT “shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the township treasurer’s office.” LT otherwise denies the allegations of this paragraph.

14. In accordance with the School Code, on an annual basis the Treasurer calculates each district's proportionate share of the Treasurer's compensation and expense, and sends an invoice to each district.

RESPONSE: LT admits that during the years relevant to this case, the Treasurer sent invoices to the districts for certain salaries and expenses. LT otherwise denies the allegations of this paragraph.

15. If a district does not pay its proportionate share, in full or in part, this creates a deficit. The Plaintiff does not have a tax base or any source of revenue other than the payments received from the school districts. The Plaintiff cannot "make up" this deficit from its own funds. Ultimately, if left uncorrected, this will force each of the other school districts within Lyons Township to absorb the costs that such district refuses to pay.

RESPONSE: LT admits that the TTO does not have a tax base, and that it does not have any legitimate source of revenue other than the payments received from the school districts. LT otherwise denies the allegations of this paragraph.

16. The Treasurer uses a fiscal year commencing on July 1 and running through June 30 of the following year.

RESPONSE: LT admits the allegations of this paragraph.

17. For fiscal year 2014, the Treasurer sent its annual invoice to all school districts in April 2015. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$252,053.43. District 204 paid only \$242,321.00, leaving an unpaid balance that year of \$9,732.43.

RESPONSE: LT admits that for fiscal year (“FY”) 2014, the Treasurer sent LT an invoice in April 2015 demanding payment of \$252,053.43. LT also admits that LT paid \$242,321.00 to the TTO for FY2014. LT otherwise denies the allegations of this paragraph.

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18. For fiscal year 2015, the Treasurer sent its annual invoice to all school districts in May 2016. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$395,094.69. District 204 paid only \$236,482, leaving an unpaid balance that year of \$158,612.69.

RESPONSE: LT admits that for FY 2015, the Treasurer sent LT an invoice in May 2016 demanding payment of \$395,094.69. LT also admits that LT paid \$236,482.00 to the TTO for FY2015. LT otherwise denies the allegations of this paragraph.

19. For fiscal year 2016, the Treasurer sent its annual invoice to all school districts in May 2017. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$322,352.21. District 204 paid only \$208,061, leaving an unpaid balance that year of \$114,291.21.

RESPONSE: LT admits that for FY 2016, the Treasurer sent LT an invoice in May 2017 demanding payment of \$322,352.21. LT also admits that LT paid \$208,061.00 to the TTO for FY2016. LT otherwise denies the allegations of this paragraph.

20. For fiscal year 2017, the Treasurer sent its annual invoice to all school districts in May 2018. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$354,103.75. District 204's payment was due on June 28, 2018. As of the time this Complaint is being filed, all of the districts except District 204 paid their invoice or have advised that payment in full is imminent, District 204 has not paid anything, and during a May 21, 2018 Board of Education meeting, District 204 indicated it would not be paying its invoice in full.

RESPONSE: LT admits that for FY 2017, the Treasurer sent LT an invoice in May 2018 demanding payment of \$354,103.75. LT also admits that LT paid \$218,150.11 to the TTO for FY2017. LT otherwise denies the allegations of this paragraph.

21. In total, for fiscal years 2014 through 2017, District 204 has failed to pay \$636,740.08. If left uncorrected, the other school districts within Lyons Township will ultimately have to absorb the amounts that District 204 refuses to pay.

RESPONSE: LT denies the allegations of this paragraph.

22. Because of its statutory obligations to serve all of the school districts within Lyons Township, the Plaintiff brings this action seeking declaratory relief.

RESPONSE: LT denies the allegations of this paragraph.

23. The Treasurer is holding, as custodian, approximately \$50,000,000 in funds that belong to District 204 and that District 204 could utilize to pay its invoices so that the other school districts do not have to absorb this amount. Plaintiff, therefore, seeks a judgment that it is authorized to debit from the funds it currently holds as custodian for District 204 such amounts as District 204 refuses to pay, presently calculated at \$636,740.08.

RESPONSE: LT admits that the Treasurer holds certain funds of LT in an agency account.

LT otherwise denies the allegations of this paragraph.

24. An actual controversy exists between the Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

RESPONSE: LT admits the allegations of this paragraph.

WHEREFORE, LT respectfully asks this Court to enter judgment in its favor, and against the TTO, on all claims set forth in the TTO's Complaint; to award LT its costs of suit; and to grant LT all other relief that is just and proper.

Affirmative Defense

First Affirmative Defense – American Rule Barring Recovery of Attorneys' Fees

1. Illinois follows the American Rule regarding the award of attorneys' fees. Under that rule, each party to litigation must normally bear its own litigation expenses, regardless of who wins the case. The rule prohibits parties from recovering their attorney's fees from their opponents in the absence of express authorization contained either in a statute or in a contract between the parties.

2. In 2013, the TTO brought claims against LT in a Circuit Court of Cook County, Illinois case entitled *Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District 204*, 2013 CH 23386 ("the First TTO-LT Case").

3. The First TTO-LT Case currently is ongoing.

4. From fiscal year 2013 (“FY2013”) through FY2017, the TTO has attempted to recover a portion of its attorneys’ fees and related litigation costs associated with the First TTO-LT Case (“the TTO’s Attorney’s Fees”) by including the TTO’s Attorneys’ Fees in the annual pro rata expense bills that the Treasurer has sent to LT.

5. No Illinois statute expressly authorizes the TTO to recover any portion of the TTO’s Attorneys’ Fees from LT, either before or after the conclusion of the First TTO-LT Case.

6. No contract between the TTO and LT expressly authorizes the TTO to recover any portion of the TTO’s Attorneys’ Fees from LT, either before or after the conclusion of the First TTO-LT Case.

7. The TTO’s claim in this case relating to the recovery of a portion of the TTO’s Attorneys’ Fees through the annual pro rata expense bills sent to LT is barred by Illinois law adopting the American Rule on attorneys’ fees.

WHEREFORE, LT respectfully asks this Court to enforce the Illinois law adopting the American Rule regarding the award of attorneys’ fees in order to defeat that portion of the TTO’s claim in this case seeking to recover a portion of the TTO’s Attorney’s Fees; to award LT its costs of suit; and to grant LT all other relief that is just and proper.

Counterclaim

1. LT is a public school district organized under the laws of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.

2. The TTO is a local public entity organized under the law of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.

3. The TTO has three elected Trustees. The TTO's Trustees select a salaried Treasurer ("the Treasurer") to operate an office that performs accounting and investment functions.

4. LT is a member district of the TTO. LT's membership in the TTO is mandated by state statute.

5. Under Illinois law, the TTO is charged with serving as the fiscal agent of LT and the other school districts and educational entities purportedly within the TTO's jurisdiction ("the Other Districts").

6. As the fiscal agent for LT, the TTO – including its Treasurer and other employees – had and has a duty to provide LT with truthful and complete information and documentation about financial matters involving LT.

7. From about June 2012 through the present, Michael Thiessen has been President of the TTO's Board of Trustees.

8. From about October 2013 to June 2018, Dr. Susan Birkenmaier was the Treasurer of the TTO.

9. From about July 2018 through the present, Kenneth Getty has been the Treasurer of the TTO.

Count I: Violation of 105 ILCS 5/8-7

10. LT incorporates by reference the allegations in paragraphs 1-9 above.

11. Section 8-7 of the School Code, 105 ILCS 5/8-7, provides, in part, as follows:

When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall 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 fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired.

12. Accordingly, Section 8-7 requires the TTO to account to LT for all of LT's investment earnings, and to credit LT with the full amount of its investment earnings.

13. In 2013, the TTO informed LT and the Other Districts that it was holding interest income that the TTO had earned on behalf of the districts prior to July 1, 2013, but that it had failed to credit to the districts' agency accounts. The TTO further informed LT and the Other Districts that it would distribute these funds, and that it was making a distribution of \$500,000 to the districts.

14. At that time, however, the TTO failed to disclose to LT and the Other Districts that it was not crediting the districts with the full amount of the undistributed earnings that the TTO had located.

15. In 2017, LT learned that the TTO still was holding on to the balance of the undistributed earnings the TTO located in 2013.

16. Since at least fiscal year ("FY") 2013, the TTO has credited the agency accounts of LT and the Other Districts with investment income earnings that are less than the full amounts of the earnings the TTO actually received.

17. Since at least FY2013, LT has made repeated requests on the TTO to account for, and document, the investment interest earnings on the pooled investments that the TTO received, and LT's share of those earnings. LT has asked the TTO to explain and document, among other things, the total amount of quarterly and annual interest that the TTO has earned, the formula used to determine disbursement, the fees paid to various investment managers, and a breakdown of all earnings and disbursements to the member districts.

18. The TTO has repeatedly ignored and/or failed to cooperate in good faith with LT's requests for information and documentation about investment matters. Furthermore, the TTO

refuses to include in its annual audit reports the total annual investment earnings the TTO received, and the total annual investment earnings it distributed – critical figures that the TTO stopped disclosing in its audit reports beginning in FY2008.

19. Accordingly, since at least FY2013, the TTO has failed to comply with the requirements of Section 8-7 in at least the following ways:

- (a) Failing to credit LT with LT’s full share of investment income that the TTO earned on LT’s behalf prior to July 1, 2013 but failed to distribute to LT in those earlier years;
- (b) Failing to credit LT with LT’s full share of investment earnings since FY2013; and
- (c) Failing to fully account to LT for the TTO’s investments, earnings, distributions, and related financial information and documentation despite repeated requests from LT.

20. The TTO’s violations of Section 8-7 caused LT to suffer monetary damages. LT presently is unable to determine the amount of damages resulting from the TTO’s violations of Section 8-7 because the TTO has failed to provide sufficient information and documentation to LT, despite LT’s repeated requests.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count I; award LT compensatory damages in an amount to be determined at trial; prohibit the TTO from using funds that belong directly or indirectly to LT to pay the award; award LT its costs of suit; and award LT any other relief that is just and proper.

Count II: Declaratory Judgment as to 105 ILCS 5/8-5 through -7

21. LT incorporates by reference the allegations in paragraphs 1-20 above.

22. In this count, LT seeks a declaratory judgment concerning LT and the TTO’s respective rights and responsibilities under Sections 8-5, 8-6, and 8-7 of the School Code, 105 ILCS 5/8-5 through -7.

23. Section 8-5(a) of the School Code requires the Treasurer to maintain a “cash book” in which “he shall enter in separate accounts all moneys received and paid out, with the amount, date, from whom, to whom and on what account received or paid out” 105 ILCS 5/8-5(a).

24. Section 8-5(a) requires the Treasurer to maintain a “district account book” in which “he shall post from the cash book all receipts and expenditures on account of any district, with the amount, date, from or to whom, and from what sources and for what purposes.” 105 ILCS 5/8-5(a).

25. Section 8-5(a) gives school districts such as LT the right to inspect the Treasurer’s records of accounts, which “shall be subject at all times to the inspection of the ... school board members” 105 ILCS 5/8-5(a).

26. For the funds of an individual school district such as LT, Section 8-6 of the School Code requires the Treasurer to maintain a “cash book” with “separate balances” in which “he shall enter in separate accounts the balance, total of all moneys received in each fund, and the total of the orders countersigned or checks signed with respect to each fund and extend the balances and the aggregate cash balance for all funds balance at least monthly.” 105 ILCS 5/8-6.

27. Section 8-7 requires the TTO to account to LT for all of LT’s investment earnings, and to credit LT with the full amount of its investment earnings.

28. Since FY2013, the TTO has credited the agency accounts of LT and the Other Districts with investment income earnings that are less than the full amounts of the earnings the TTO actually received.

29. Since FY2013, LT has made repeated requests on the TTO to account for, and document, the investment interest earnings on the pooled investments, and LT’s share of those investments. LT has asked the TTO to explain and document, among other things, the total amount

of interest that the TTO has earned, the formula used to determine disbursement, the fees paid to various investment managers, and a breakdown of earnings and disbursements to the member districts.

30. The TTO has repeatedly ignored and/or failed to cooperate in good faith with LT's requests for information and documentation about investment matters. Furthermore, the TTO refuses to include in its annual audit reports the total annual investment earnings the TTO received, and the total annual investment earnings it distributed – critical figures that the TTO stopped disclosing in its audit reports beginning in FY2008.

31. An actual controversy exists between the TTO and LT concerning their respective rights, powers, and obligations under Sections 8-5, 8-6, and 8-7 of the School Code.

32. Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, authorizes this Court to make binding declarations of the parties' respective rights and obligations, having the force of final judgments, and to grant such further relief as this Court deems just and proper.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count II; to award LT its costs of suit; to grant LT such relief as is just and proper; and to enter a declaratory judgment declaring the rights and obligations of the parties as follows:

a. Section 8-5 and 8-6 of the School Code requires the Treasurer to maintain detailed records of all investment income the TTO receives, and all earnings belonging to LT, and to allow LT to inspect those records of those accounts.

b. Section 8-7 requires the Treasurer to fully account to LT for investment earnings on pooled investment funds of the school districts that include LT.

c. Section 8-7 requires the Treasurer to credit LT with the full amount of its investment earnings as those earnings are received.

Count III: Declaratory Judgment as to 105 ILCS 5/8-4

33. LT incorporates by reference the allegations in paragraphs 1-32 above.

34. In this count, LT seeks a declaratory judgment concerning LT and the TTO's respective rights and responsibilities under Section 8-4 of the School Code, 105 ILCS 5/8-4.

35. Section 8-4 requires each district to "pay a proportionate share of the compensation of the township treasurer ... and a proportionate share of the expenses of the township treasurer's office." 105 ILCS 5/8-4.

36. In 2013, the TTO brought claims against LT in a Circuit Court of Cook County, Illinois case entitled *Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District 204*, 2013 CH 23386 ("the First TTO-LT Case").

37. The First TTO-LT Case currently is ongoing.

38. In the First TTO-LT Case, the TTO alleged that the TTO brought claims against LT for the benefit of the Other Districts.

39. From FY2013 through the present, the TTO has attempted to recover its present and future attorneys' fees and related litigation costs associated with the First TTO-LT Case ("the TTO's Attorneys' Fees") by including the TTO's Attorneys' Fees in the annual pro rata expense bills that the Treasurer sent to LT. The TTO has indicated that these recovery attempts will continue into the future.

40. Since FY2013, the TTO has attempted to recover certain claimed expenses by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against those expenses, instead of crediting these funds to LT and the Other Districts.

41. Since FY2013, the TTO has attempted to recover for expenses incurred in several prior years, which expenses the TTO now claims it underbilled in those years, by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against the TTO's claimed past billing shortfalls, instead of crediting these funds to LT and the Other Districts.

42. Since FY2013, the TTO has attempted to reduce its ongoing deficits by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against the TTO's claimed deficits, instead of crediting these funds to LT and the Other Districts.

43. Section 8-4 only applies to (a) the office expenses of (b) the Treasurer.

44. The TTO has incurred and will incur the TTO's Attorneys' Fees, not the Treasurer. Furthermore, the TTO's Attorneys' Fees are not office expenses, as they are not expenses for accounting or investment functions.

45. Since FY2013, the TTO also has attempted to recover, through annual pro rata billings purportedly made pursuant to Section 8-4, for certain expenses that either are not, or do not appear to be, office expenses of the Treasurer, and have largely refused LT's repeated requests made to the TTO to explain and document those improper and/or questionable expenses.

46. LT does not dispute the TTO's authority under Illinois law to retain counsel ostensibly for the benefit of the Other Districts (although that is not what the TTO actually did in the First TTO-LT case). However, no provision of the School Code allows the TTO to charge LT for a proportionate share of the costs of the TTO's claimed representation of the Other Districts, which representation is to the detriment and disadvantage of LT.

47. Illinois follows the American Rule regarding the award of attorneys' fees. Under that rule, each party to litigation must normally bear its own litigation expenses, regardless of who

wins the case. The rule prohibits parties from recovering their attorney's fees from their opponents absent express authorization contained either in a statute or in a contract between the parties.

48. Section 8-4 only authorizes the TTO to bill LT for a proportionate share of the Treasurer's compensation and the expenses of the Treasurer's office. Nothing in Section 8-4, or other provisions of the School Code, authorizes the TTO to seize earnings and/or assets belonging to LT and the Other Districts and use those assets to pay the TTO's Attorneys' Fees, to offset against claimed underbillings of expenses in past years, or to reduce the TTO's claimed deficits.

49. An actual controversy exists between the TTO and LT concerning their respective rights, powers, and obligations under Section 8-4 of the School Code.

50. Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, authorizes this Court to make binding declarations of the parties' respective rights and obligations, having the force of final judgments, and to grant such further relief as this Court deems just and proper.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count III; to award LT its costs of suit; to grant LT such relief as is just and proper; and to enter a declaratory judgment declaring the rights of the parties as follows:

a. Section 8-4 of the School Code and Illinois law governing the recovery of attorneys' fees in litigation prohibits the TTO from attempting to recover from LT any portion of the TTO's Attorneys' Fees in the past, present, or future through either annual pro rata expense billings, transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

b. Section 8-4 of the School Code is the only section of the School Code that authorizes the TTO to seek recovery of the expenses of the Treasurer's office from LT, and accordingly, the TTO could not and may not make recoveries of claimed expenses of the

Treasurer's office in current or past years, or reductions in the TTO's claimed deficits, through transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

c. Section 8-4 of the School Code permits the TTO to recover from LT, through pro rata expense billings, only the expenses of the Treasurer's office, and accordingly, the TTO could not and may not include in those billings any expenses that are not actual expenses of the Treasurer's office (*i.e.*, that are not for the Treasurer's accounting and investment functions), or for those expenses which the TTO refuses to provide sufficient information and documentation from which to confirm that the expenses are actual and legitimate expenses of the Treasurer's office.

d. Section 8-4 does not permit the TTO to issue invoices for expenses of the Treasurer's office, and then, in later years, decide that it underbilled those expenses in prior years and seek to recover those alleged underbillings through further expense billings, transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

Count IV: Breach of Fiduciary Duty

51. LT incorporates by reference the allegations in paragraphs 1-50 above.

52. In this count, LT does not seek a recovery of damages that would duplicate any of the damages awarded under another count in this Counterclaim.

53. As the fiscal agent of LT, the TTO owed and owes LT a fiduciary duty to manage the funds and investments of LT, distribute investment earnings to LT, and invoice LT for the expenses of the Treasurer's office in a fair, responsible, open, candid, and professional manner.

54. As the fiscal agent of LT, the TTO owed and owes LT a fiduciary duty to respond to LT's reasonable inquiries for information and documentation concerning the funds and investments of LT, the distribution of investment earnings to LT, the TTO's internal operations that are funded in part by LT, the TTO's uses of pooled investment funds that belong in part to LT, and the invoicing from the TTO to LT of the claimed expenses of the Treasurer's office.

55. Since at least FY2013, the TTO has operated with a deficit.

56. The TTO has financed its deficit by borrowing money from the funds of LT and the Other Districts.

57. No provision in the School Code or any other Illinois law authorizes the TTO to borrow money from the funds of LT and the Other Districts. LT and the Other Districts never authorized these uses of their funds.

58. West 40 Intermediate Service Center #2 ("West 40") is a regional education agency operating in the Western Cook County suburbs.

59. West 40's geographic area includes Lyons Township and additional areas outside of Lyons Township.

60. West 40's geographic area includes school districts that are both inside and outside of the jurisdictional boundaries of the TTO.

61. Since at least FY2013, the TTO has provided financial assistance to West 40 using the agency funds of LT and the Other Districts. LT and the Other Districts never authorized these uses of their funds.

62. Accordingly, since at least FY2013, the TTO has breached its fiduciary duty to LT in at least the following ways:

- (a) Failing to credit LT with LT's full share of investment interest that the TTO earned on LT's behalf prior to July 1, 2013, but failed to distribute to LT as required during those earlier years;
- (b) Failing to credit LT's agency account with LT's full share of investment earnings since FY2013;
- (c) Failing to fully account to LT for the TTO's investments, earnings, and distributions and related financial information and documentation despite repeated requests for information and documentation from LT;
- (d) Attempting to recover from LT through annual pro rata expense billings the TTO's Attorneys' Fees, rather than charging those fees solely to the Other Districts;
- (e) Attempting to recover from LT through annual pro rata expense billings other expenses that are not expenses of the Treasurer's office, and/or other expenses that the TTO has refused to explain and document in order to show that they are actual and legitimate expenses of the Treasurer's office;
- (f) Attempting to recover from LT through the misapplication of insurance recoveries for the TTO's alleged underbillings in the annual pro rata expense invoices sent to LT and the Other Districts in prior years;
- (g) Failing to promptly and candidly respond to communications from LT seeking information and documentation concerning the funds and investments of LT, the distribution of investment earnings to LT, the TTO's internal operations that are funded in part by LT, the TTO's uses of pooled investment funds that belong in part to LT, and the invoicing of LT for the expenses of the Treasurer's office;

(h) Using the funds of LT, without its consent and without statutory authority, to finance the deficits of the TTO; and

(i) Using the funds of LT, without its consent and without statutory authority, to provide financial assistance to West 40.

63. The TTO's violations of its fiduciary duty to LT caused monetary damages to LT. LT presently is unable to determine the amount of damages resulting from the TTO's violations of fiduciary duty because the TTO has failed to provide sufficient information and documentation to LT, despite LT's repeated requests.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count IV; award LT compensatory damages in an amount to be determined at trial; prohibit the TTO from using funds that belong directly or indirectly to LT to pay the award; award LT its costs of suit; and award LT any other relief that is just and proper.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

By s/Jay R. Hoffman
Its Attorney

Jay R. Hoffman
Hoffman Legal
20 N. Clark St., Suite 2500
Chicago, IL 60602
(312) 899-0899
jay@hoffmanlegal.com
Attorney No. 34710

CERTIFICATE OF SERVICE

Jay R. Hoffman, an attorney, certifies that on October 10, 2018, he caused the foregoing pleading to be served by email on the following attorney:

Barry P. Kaltenbach
kaltenbach@millercanfield.com

s/Jay R. Hoffman

EXHIBIT

3

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12)
EAST,)

Plaintiff,)

vs.)

LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)

Defendant.)

No. 13 CH 23386

Hon. Sophia H. Hall
Calendar 14

VERIFIED AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, by its undersigned counsel, KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C., for its Verified Amended Complaint for Declaratory Relief against the defendant, Lyons Township High School District No. 204, states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“Township Trustees”), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange Park, Cook County, Illinois.

2. Defendant, Lyons Township High School District No. 204 (“District 204”), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

3. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

4. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER

5. Pursuant to the Illinois School Code, 105 ILCS 5/1 *et seq.* (the "School Code"), and more particularly Section 8-1 thereof, the Township Trustees, who are elected by and responsible to the voters within Lyons Township, have appointed the Lyons Township School Treasurer (the "Treasurer") to serve as the statutorily-appointed treasurer for the school and other educational districts within Lyons Township for which the Township Trustees are responsible.

6. These school and other educational districts for which the Township Trustees are responsible, and for which the Treasurer provides financial services, include District 204 and: 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; Argo Community High School District 217; LaGrange Area Department of Special Education, which serves students from fifteen area school districts; Intermediate Service Center #2, which serves forty school districts in western Cook County; Lyons Township Elementary School District Employee Benefits Cooperative; and the Lyons Township Elementary School District Employee Benefits Cooperative.

7. The above school districts contain thirty-eight schools servicing almost 20,000 students.

8. The districts within Lyons Township comprise a Class II county school unit within the meaning of the School Code.

9. The duties of the Township Trustees and the Treasurer are set out in Articles 5 and 8 of the School Code, respectively.

10. As alleged more specifically herein, the obligation of the Treasurer is, in pertinent part, to take custody of public funds for the benefit of the districts it serves (with such funds coming from property taxes and other sources), invest those funds for the benefit of these districts, and pay such amounts to those persons and entities as it is lawfully instructed to pay by the districts it serves, whether such payments are for payroll or other purposes.

11. The obligation of the Treasurer to serve the financial needs of these districts, including managing the public funds upon which they depend and paying their bills, enables the districts to fulfill one of the most important public obligations of government: the obligation to educate. It is the public policy of the State of Illinois, as expressed through Article X, Section I of its Constitution, that “[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capabilities.”

12. Pursuant to Section 8-17 of the School Code, the Treasurer is to receive public funds, including property taxes, and hold those funds for the benefit of the school and other educational districts it serves in furtherance of their obligation to provide for the education of students within Lyons Township.

13. Pursuant to Section 8-7 of the School Code, the Treasurer is, “the only lawful custodian of all school funds.”

14. Section 8-6 of the School Code requires that the Treasurer “have custody of the school funds and shall keep in a cash book separate balances.”

15. In accordance with Section 8-6, the Treasurer is required to maintain cash balances, by fund, for each district which it serves and the Treasurer is obligated to reconcile such balances with the respective cash balances shown by each district.

16. Section 8-17 of the School Code also imposes upon the Treasurer the responsibility for all receipts, disbursements, and investments arising out of the operation of all the school districts being served by the Treasurer.

17. With respect to paying such amounts as each district may owe, Section 8-16 of the School Code requires that the Treasurer make payment on behalf of the districts it serves out of the funds allocated to such districts, but “only upon an order of the school board signed by the president and clerk or secretary or by a majority of the board”

18. Sections 10-18 and 10-20.19 of the School Code provide further detail as to the procedure to be followed in submitting the above orders for payment. The form of order is specifically provided for in Section 10-18.

19. Section 10-20.19 also allows a board to choose to substitute a certified copy of the portions of the board minutes, properly signed by the secretary and president, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the Treasurer, and to what budgetary item each payment shall be debited. That certified copy provides “full authority” to the Treasurer to make the payments. A voucher system may also be used so long as it provides the same information.

20. In order to make payments as lawfully instructed by the districts which it serves, the Treasurer utilizes what are called “Agency Accounts” at local banks.

21. When a district has provided lawful instruction to the Treasurer to issue payment, the Treasurer effectuates the payment drawing on the appropriate Agency Account.

22. Agency Accounts are funded by transfer from other accounts in the custody of the Treasurer and maintained and utilized by the Treasurer to hold funds belonging to multiple districts and for which there is not an immediate need. The funds in the Agency Account, both before and after they arrive in the Agency Account, remain in the custody of the Treasurer.

23. The districts do not have signatory power on the Agency Accounts, with the exception of certain revolving and flex-spending accounts not at issue in this litigation. The Treasurer has signatory power on the Agency Accounts.

**DISTRICT 204'S FAILURE TO PAY FOR ITS *PRO RATA* SHARE OF THE
TREASURER'S OPERATIONAL EXPENSES**

24. The Treasurer has its own costs to run its office and provide its financial services to the districts it serves, including the Treasurer's compensation and expenses of the Treasurer's office. The Treasurer pays these operating expenses from its General Fund, which is funded through each district's Agency Account as alleged more fully below.

25. Section 8-4 of the School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office."

26. Pursuant to Section 8-4 of the School Code, each district's *pro rata* share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such . . . district."

27. This statutory formula obligates the districts with the most money to pay the largest proportion of the costs. For example, if a district is allocated twenty-five percent of all public funds handled by the Treasurer, then it is required by the School Code to pay twenty-five percent of the Treasurer's operating expenses.

28. This statutory formula is mandatory and can only be changed by the General Assembly. No district may unilaterally decide it does not wish to pay its *pro rata* share, nor may any private agreements be made between public bodies in violation of the School Code. A district is required to pay the amount calculated and has no statutory authority to deduct any of its own expenses from its *pro rata* share it owes.

29. In accordance with the statutory requirements of the School Code, on an annual basis the Treasurer determines District 204's *pro rata* share of the Treasurer's operation expenses and submits an invoice to District 204 for payment thereupon.

30. As alleged more particularly above, in order for District 204 to pay these invoices, District 204 would lawfully issue an order or voucher to the Treasurer for payment (or submit a certified copy of the school board minutes approving payments). The Treasurer would then transfer, via check, the funds from the appropriate Agency Account to its General Fund.

31. Prior to fiscal year 2000, District 204 paid the full amount of the invoices submitted for its *pro rata* share.

32. In fiscal years 2000 through 2002, the Treasurer submitted invoices totaling \$538,431 to District 204 for its *pro rata* share. For these fiscal years, however, District 204 paid only \$157,262 for its *pro rata* share.

33. In fiscal years 2003 through 2013, the Treasurer submitted invoices totaling \$2,397,189 to District 204 for its *pro rata* share. District 204, however, failed to pay any portion of the amount it owed, except for one payment of \$149,551.

34. District 204's payment of \$149,551 was for fiscal year 2013 and was made on October 8, 2014, after Township Trustees filed its original Verified Complaint for Declaratory Relief and while Township Trustees were in the process of drafting this Verified Amended

Complaint for Declaratory Relief. District 204's payment was drawn from an Agency Account at the First National Bank of La Grange.

35. In total, for fiscal years 2000 through 2013, the amount of District 204's unpaid *pro rata* share totals \$2,628,807, taking into account the payment just received.

36. District 204's failure to pay its *pro rata* share in full has created a deficit. As custodian for the districts, the Treasurer has not incurred a loss – the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

37. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts the Treasurer serves will not suffer harm.

THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204

38. Sections 8-7 and 8-8 of the School Code govern the depositing and investing of school funds.

39. Pursuant to Section 8-7, the Treasurer is “permitted to (i) combine moneys from more than one fund of a single school district for the purpose of investing such funds, and (ii) join with township and school treasurers, community college districts and educational service regions in investing school funds, community college funds and educational service region funds.”

40. Section 8-7 of the School Code further provides, “When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall 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 fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired.”

41. Pursuant to the authority of the School Code, the Treasurer comingles funds for investment purposes from the districts it serves and allocates the interest earned on these investments among the districts.

42. The Treasurer allocates interest on a quarterly basis or as more frequently as is appropriate.

43. When the Treasurer allocates interest to a particular district (and when the Treasurer allocates the principal amongst the comingled funds) the Treasurer does so by making a journal entry. The Treasurer, in essence, makes an entry in its records that the district has been allocated a certain amount of interest generated by the comingled funds. The Treasurer does not write a check to the district, or otherwise physically turn custody of the interest over to the district. The interest stays in the custody of the Treasurer.

44. In fiscal years 1995 through 2012, the Treasurer erroneously allocated \$1,574,636.77 in interest on investments to District 204.

45. This over-allocation to District 204 necessarily means that the other districts which the Treasurer serves have been correspondingly under-allocated investment income. The Treasurer has not incurred a loss – the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

46. To the extent District 204 has been over-allocated this interest, it means the other districts have necessarily been under-allocated interest. The Treasurer anticipates that once this interest is able to be properly reallocated among the districts, as examples, LaGrange School District 102 would get allocated approximately \$265,626 in interest and Argo Community High School District 217 would get allocated approximately \$319,077 in interest.

47. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of reallocating interest so that the other districts it serves will not suffer harm.

DISTRICT 204'S NON-PAYMENT OF ITS OWN AUDIT EXPENSES

48. Article 3, Section 7 of the School Code requires that each school district have an audit of its accounts completed at least once a year by a person who is lawfully qualified to practice public accounting in Illinois. Further requirements regarding a school district's obligation to undertake annual audits are included in the Illinois Administrative Code.

49. These audits are ordered by and undertaken for the benefit of each individual district. Each individual district is, therefore, obligated to pay for its own audit expenses. Typically, the auditing firm that each district elects to use submits an invoice to that district and the district arranges for such invoice to be paid in the same way the district would arrange for any other account payable to be paid.

50. Thus, the district would ordinarily issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the Treasurer would sign a check prepared by the district and drawn on that district's Agency Account.

51. Between 1993 and 2012, District 204 engaged Baker Tilly and/or its predecessor-in-interest to provide these audit and other professional services, including, but not limited to, preparation of audited financial statements and independent auditor's reports.

52. District 204's auditors sent their invoices to District 204.

53. Between 1993 and 2012, each district except District 204 paid for its audit through their Agency Account. The Treasurer did not pay for the districts' audits from its General Fund.

54. Between 1993 and 2012, however, the Treasurer improperly advanced money from its General Fund and paid \$511,068.60 for District 204's audit expenses.

55. The Treasurer has requested that District 204 reimburse the costs of District 204's audit expenses from 1993 to 2012, but District 204 has failed and refused to do so.

56. Since 2012, District 204 has paid its own audit expenses.

57. Because the Treasurer's General Fund is funded by the *pro rata* payment of all of the districts the Treasurer serves, the practical effect of District 204's failure and refusal to pay for its own audit expenses is that all of the other districts have to absorb the cost of District 204's audits.

58. In order to reimburse the Treasurer, District 204 would need only issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the funds would be taken from District 204's Agency Account. The funds at issue remain and have always been within the Treasurer's custody.

59. The Treasurer has not incurred a loss through District 204's failure and refusal to pay for its own audit expenses – the other fourteen districts it serves have incurred a loss to the

detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

60. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts it serves will not suffer harm.

THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT

61. An actual controversy exists between Township Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

WHEREFORE, Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully prays that this Court enter a declaratory judgment in its favor and against the Defendant, Lyons Township High School District No. 204 and that this Court make the following findings as a matter of law:

A. Under Section 8-4 of the School Code, District 204 is required to pay its *pro rata* share of the Treasurer's compensation and expenses;

B. Between 2000 and 2013, District 204 has failed to pay its *pro rata* share of the Treasurer's compensation and expenses as required by Section 8-4 of the School Code; District 204's unpaid share of its *pro rata* share of the Treasurer's compensation and expenses for fiscal years 2000 through 2013 is \$2,628,807, or such other amount as may be proven at trial;

C. The Township Trustees are authorized to have the Treasurer debit \$2,628,807, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to

District 204, or from funds otherwise allocated to District 204, in payment of District 204's *pro rata* share of the Treasurer's compensation and expenses incurred during fiscal years 2000 through 2013;

D. In the fiscal years 1995 through 2012, District 204 was erroneously allocated \$1,574,636.77, or such other amount as may be proven at trial, of interest on investments to which it was not entitled

E. The Township Trustees are authorized to reallocate the \$1,574,636.77 erroneously allocated to District 204 and properly allocate that sum amongst the districts;

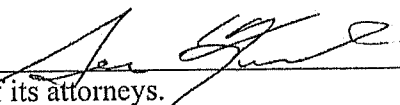
F. District 204 is obligated to pay \$511,068.60, or such other amount as may be proven at trial, in audit expenses that were incurred by the audits that District 204 performed and that was paid by the Treasurer from the Treasurer's General Fund;

G. The Township Trustees are authorized to have the Treasurer debit \$511,068.60, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to District 204, or from funds otherwise allocated to District 204, in payment of District 204's audit expenses; and

H. Such other findings as may be equitable and appropriate.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

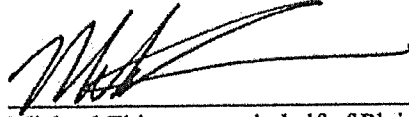
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Service by e-mail will be accepted.

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Complaint for Declaratory Relief are true and correct.

Dated: 10-21-14

A handwritten signature in black ink, appearing to read 'Michael Thiessen', written over a horizontal line.

Michael Thiessen, on behalf of Plaintiff

EXHIBIT

4

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,)	
)	
Plaintiff and Counter-Defendant,)	No. 13 CH 23386
)	
v.)	Hon. Sophia H. Hall
)	
LYONS TOWNSHIP HIGH SCHOOL)	Calendar 14
DISTRICT 204,)	
)	
Defendant and Counter-Plaintiff.)	

DEFENDANT AND COUNTER-PLAINTIFF LT'S FIRST AMENDED AFFIRMATIVE DEFENSES TO THE TTO'S FIRST AMENDED COMPLAINT, AND LT'S SECOND AMENDED COUNTERCLAIM (VERIFIED)

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT") asserts the following First Amended Affirmative Defenses to the First Amended Complaint of Plaintiff Township Trustees of Schools Township 38 North, Range 12 East ("the TTO"); and the following Second Amended Counterclaim.

**First Amended Affirmative Defenses
To First Amended Complaint**

Factual Background: Payments for LT's Business Functions

1. During the period of time relevant to this case, from 1992 through 2012, LT and the TTO had a difficult and, at times contentious, relationship. LT had little faith or trust in the competence and integrity of the TTO to perform its statutorily mandated functions. The TTO objected to providing meaningful information and supporting documentation to LT concerning the investment funds that the TTO managed, the expenses that the TTO incurred, and the many questions that LT and other member districts raised about the TTO's operations.

WHEREFORE, LT respectfully asks this Court to enter judgment in its favor and against the TTO, deny the TTO any recovery under the First Amended Complaint, and award LT its costs of suit.

Second Amended Counterclaim

1. LT is a public school district organized under the laws of the State of Illinois with a principal office located in LaGrange, Cook County, Illinois.

2. The TTO is a local public entity organized under the law of the State of Illinois with a principal office located in LaGrange, Cook County, Illinois.

3. The TTO has three elected Trustees. The Trustees select a salaried Treasurer.

4. The Treasurer manages the TTO's office, supervises its support staff, and interfaces with the school districts that are members of the TTO.

5. LT is a member district of the TTO. LT's membership in the TTO is mandated by state statute.

6. The TTO holds the funds (received through taxes and other sources) belonging to LT and the other member school districts ("the Other Districts"). The TTO pools the funds of the member districts together and invests those funds on behalf of LT and the Other Districts.

7. During all relevant times through about August 2012, Robert Healy served as Treasurer of the TTO.

Count I: Setoff

8. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses and paragraphs 1-7 of the Counterclaim as set forth above.

9. In the First Amended Complaint, the TTO contends that LT did not pay in full the invoices that the TTO sent LT from 2000 to 2012 for LT's pro rata share of the TTO's expenses. Implicit in the First Amended Complaint is a refusal to acknowledge that the TTO and LT agreed in 2000, and reaffirmed in each subsequent year through 2012, that the TTO would pay the costs of LT's business functions and offset those costs against the pro rata invoices.

10. In its other pleadings in this case, the TTO has claimed that the parties' agreement on the payment of LT's business functions is illegal and unenforceable.

11. The TTO's position on this agreement is wrong. As detailed above, in 2000, the TTO and LT knowingly entered into a valid and binding written agreement, approved by both boards, in which the TTO agreed to pay the costs of LT's business expenses as set forth in the 2/29/2000 Memo (Exhibit B).

12. In each subsequent year from 2001 to 2012, the TTO and LT reaffirmed this agreement when LT presented the TTO with a written statement of the annual costs that it proposed the TTO would pay (Exhibit C). In each of those years, the TTO accepted those amounts, as well as LT's offset of those amounts against the annual pro rata expense invoice that the TTO provided to LT. The boards of both parties provided their consents to this arrangement.

13. In 2013, the TTO terminated this arrangement. LT does not contest the TTO's right to terminate in 2013 for 2013 fiscal year. LT does not assert any claims or seek any damages relating to the TTO's 2013 termination.

14. Under the circumstances of this case, LT is entitled to a setoff, in the amounts set forth in the memoranda attached as Exhibit A, which cover the years 2000 through 2012, against any claim of the TTO relating to the alleged non-payment of the TTO's pro rata expense invoices from 2000 to 2012.

15. In asserting this claim for setoff, LT does not seek any affirmative recovery of damages against the TTO.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count I, and award LT its costs of suit.

Count II: Breach of Fiduciary Duty

16. LT incorporates by reference the allegations in paragraphs 1-7 of the Counterclaim as set forth above.

17. During the relevant period, in accordance with state law requirements, the TTO purchased fidelity bonds that applied to Healy's service as Treasurer ("the Bonds").

18. Liberty Mutual Insurance Company and The Hanover Insurance Company (a/k/a Massachusetts Bay Insurance Company) issued the Bonds to the TTO.

19. Through their pro rata share payments of the TTO's expenditures, LT and the Other Districts paid the premiums on the Bonds.

20. After Healy resigned from the TTO in 2012, the TTO learned that Healy had stolen more than \$1 million through wrongful wire transfers of funds from the TTO's bank and through wrongful payments for sick and vacation days. This money that Healy stole was money that the TTO held in trust for LT and the Other Districts.

21. In 2013, the State of Illinois charged Healy with the crime of Theft in Excess of \$1 million, a Class X felony. Healy pled guilty and received a sentence of nine years in prison.

22. The TTO made claims on the Bonds. The TTO's claims alleged that Healy had stolen more than in excess of \$1 million through wrongful wire transfers of funds from TTO's bank and through wrongful payments for sick and vacation days.

23. The TTO recovered \$1,040,000 on its claims on the Bonds.

24. In an affidavit filed in this case and dated June 5, 2015, the current Treasurer of the TTO, Dr. Susan Birkenmaier, claimed that \$1,040,000 in recoveries on the Bonds “has been set aside while Township Trustees continue their efforts to recover additional sums.” Birkenmaier further claimed that the TTO can apply the \$1,040,000 recovery “to pay unrelated expenses of the Treasurer’s office”; that the TTO can “otherwise” use the money in an unspecified manner “in accordance with Illinois law”; and that the TTO has no obligation to allocate the recoveries on the Bonds amongst its member districts.

25. Since June 5, 2015, the TTO has not distributed to LT any of the recoveries on the Bonds, or explained why it has not made this distribution to LT.

26. The TTO serves as the fiscal agent of LT and the Other Districts with respect to its possession and investment of the funds of LT and the Other Districts, and as such, owes fiduciary duties to LT.

27. Among the purposes of the Bonds was to protect LT and the Other Districts from losing money as a result of theft by the Treasurer of the TTO.

28. The \$1,040,000 in recoveries on the Bonds is money that rightly belongs to LT and the Other Districts, and that must be used to compensate LT and the Other Districts for Healy’s theft of their funds.

29. LT’s share of the \$1,040,000 recoveries on the Bonds is determined by its pro rata ownership of the pooled investment fund at the time of the recoveries, which was approximately 25 percent.

30. Despite LT’s repeated demands to the TTO for payment of LT’s share of the recoveries on the Bonds, the TTO still has refused to make payment.

31. The TTO has no legal right, as the fiduciary agent of LT, to take LT's share of the recoveries on the Bonds and spend that money on expenses unrelated to the misconduct of Healy that gave rise to the claims on the Bonds.

32. The TTO's refusal to pay to LT its share of the recoveries on the Bonds is a breach of the TTO's fiduciary duties owed to LT. This breach directly and proximately caused injury to LT in the form of lost funds of about \$250,000.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count II; award LT compensatory damages in the amount of LT's rightful share of the \$1,040,000 payments on the Bonds; and award LT its costs of suit.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL
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