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

TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST, Plaintiff/Counter-Defendant, v. LYONS TOWNSHIP HIGH SCHOOL DIST. 204, Defendant/Counter-Plaintiff.	Case No. 13 CH 23386 Hon. Sophia H. Hall **Jury Trial Demanded**

NOTICE OF FILING

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PLEASE TAKE NOTICE that on June 29, 2015, we filed with the Clerk of the Circuit Court of Cook County, Illinois, County Department, Chancery Division, **Response To Motion To Dismiss First Amended Verified Counterclaim**, a copy of which was E-Mailed to you on June 26, 2015.

By: _____
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RESPONSE TO MOTION TO DISMISS
FIRST AMENDED VERIFIED COUNTERCLAIM

Defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 ("District 204"), responds as follows to "Township Trustees' Motion to Dismiss First Amended Verified Counterclaim: ("Motion"), filed by plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST ("TTO"):

INTRODUCTION

District 204 filed its First Amended Verified Counterclaim ("Counterclaim") on April 24, 2015, alleging the following counts against the TTO: (I) Breach of Contract; (II) Declaratory Judgment; (III) Accounting; (IV) Quantum Meruit – Pled in the Alternative; and (V) Unjust Enrichment – Pled in the Alternative. The Counterclaim arises out of District 204's years-long agreements and course of dealing with the TTO, during which District 204 performed millions of dollars in services for the TTO with its complete knowledge, urging, and consent. The TTO intentionally and in bad faith waited until more than fifteen years after the inception of the parties' agreements before raising any objection to their terms, all along accepting the benefits of District 204's efforts. The TTO provides no justification for its dilatory conduct, but now asks

the Court to declare that District 204 deserves no credit for the millions of dollars in services it provided at the TTO's behest.

Notwithstanding the TTO's unreasonable and inexcusable delay in making any claim, it also wishes to take unfair advantage of the passage of time, the fading of memories, and the difficulty of locating decades-old documentation. The TTO seizes upon the extreme prejudice it purposely caused to District 204 by improperly urging this Court to examine the Counterclaim through what can only be described as either a heightened fraud-pleading standard or a summary judgment evidentiary standard. Neither is applicable here. The TTO also improperly relies heavily on unpled and highly-disputed "facts" to contest District 204's claims. Consideration of those "facts" and the various exhibits the TTO inappropriately attaches to its Motion is not permitted.

Faced with mounting political and media pressure calling for dissolution of the TTO, it is readily apparent that the TTO wishes to avoid having to acknowledge reality by answering District 204's well-pled Counterclaim. District 204's pleading more than sufficiently establishes each cause of action. Further details about the parties' claims and defenses will be learned during the course of discovery. The Court should deny the TTO's Motion.

LEGAL STANDARD

While the TTO has not properly complied with Section 2-619.1, as discussed below, the bulk of its Motion is apparently based on Section 2-615. A court considering a motion to dismiss brought pursuant to Section 2-615 must construe the pleading being attacked in a light most favorable to the non-movant, and must draw all reasonable inferences in favor of the non-movant. *Doe-3 v. McLean Cnty. Unit Dist. No. 5 Bd. of Dirs.*, 2012 IL 112479, ¶ 16. The Court must also accept all well-pleaded facts as true. *King v. First Capital Fin Servs. Co.*, 215 Ill. 2d 1,

11 (2005). Importantly, the non-movant is not required to plead evidence tending to support its allegations. *Chandler v. Ill. Cent. RR.*, 207 Ill. 2d 331, 348 (2003). Applying this liberal pleading standard, the Court should deny the TTO's Motion.

ARGUMENT

I. THE MOTION MUST BE DENIED BECAUSE IT FAILS TO COMPLY WITH 735 ILCS 5/2-619.1.

The TTO purports to bring a Motion based on sections 2-615 and 2-619 of the Code of Civil Procedure, but fails to follow the strictures of section 2-619.1, which governs combined motions. Section 2-619.1 states in pertinent part:

> A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based.

715 ILCS 5/2-619.1. As the court in *Howle v. Aqua Illinois, Inc.*, 2012 IL App (4th) 120207, ¶¶ 73-75, observed:

> Because section 2-619.1 of the Code explicitly requires that a motion combining both sections 2-615 and 2-619 (1) *must* be in parts, (2) *must* 'be limited to and shall specify that it is made under' either sections 2-615 or 2-619, and (3) *must* 'clearly show the points or grounds relied upon under the [s]ection upon which it is based,' **trial courts should not—and need not—accept for consideration combined motions under section 2-619.1 that do not meet these statutory requirements**. To avoid unnecessary complications and confusion (see *Higgins*), trial courts should *sua sponte* reject such motions and give the defendants who filed them the opportunity (if they wish) to file a section 2-619.1 motion that meets the statutory requirements.

(emphasis added) (holding that the motion to dismiss should have been denied for its failure to comply with Section 2-619.1).

The TTO's Motion is not properly organized in parts according to which Section of the Code applies. The Motion's sections are not limited to consideration only of Section 2-615 or 2-619 arguments. The motion also does not "clearly show the points or grounds relied upon under

the Section upon which it is based," but instead vaguely states that the TTO relies upon the affidavit of Susan Birkenmaier, its recently-resigned Treasure for "a few arguments," and that those arguments are "being brought under Section 2-619."[1] The TTO's failure to comply with Section 2-619.1 has prejudiced District 204's ability to respond to the Motion. The Court should deny the Motion on that basis alone.

II. THE MOTION IMPROPERLY PRESENTS UNPLED "EVIDENCE."

The Motion also improperly relies heavily on unpled, supposed "facts" and documentary evidence in an attempt to defeat District 204's Counterclaim. Even if the TTO had raised a proper Section 2-619 argument in its Motion, it is well-established that "affirmative matter" raised pursuant to Section 2-619(a)(9) "must be something more than evidence offered to refute a material fact alleged in the complaint." *Provenzale v. Forister*, 318 Ill. App. 3d 869, 878, 743 N.E.2d 676 (2d Dist. 2001) (reversing trial court's dismissal order and holding defendants' motions to dismiss that "presented evidentiary material going to the truth of the allegations contained in the complaint" were "improper because a motion pursuant to either section 2-615 or section 2-619 concedes the truth of all well-pled allegations in the complaint."). Indeed, "[a] section 2-619 motion is properly used to raise affirmative matters that negate the claim, *not to challenge the essential allegations of the plaintiff's cause of action*." *Id.* (emphasis added).

The TTO's Motion includes numerous unpled and disputed "facts" regarding Healy, the TTO's efforts to recover insurance proceeds, and the status of those recovered funds, which rightfully belong to the TTO's member school districts. *See* Mot. at p. 10. The Motion also includes extensive consideration of unpled and disputed "facts" regarding the TTO's financial records, audits, encryption of its databases, communications with District 204 regarding financial

[1] The TTO also refers to the "standard governing a Section 2-319 [sic] motion to dismiss." *See* Mot. at p. 10, n. 6.

records, and the purported value of the services District 204 provided to the TTO. *Id.* at pp.12-15. Furthermore, the TTO attaches four documents to its Motion (see Exhibits 1 and 2) in an effort to contest the *factual basis* of District 204's claims. The TTO cannot challenge the facts alleged in the Counterclaim by relying on its own unpled and disputed "facts," an affidavit of Ms. Birkenmaier, or cherry-picked communications taken out of context. All such arguments, and the Exhibits, are impermissible and must be stricken and disregarded.

III. THE COUNTERCLAIM ALLEGES BREACH OF CONTRACT.

The Counterclaim more than sufficiently alleges breach of contract. To state a claim for breach of contract, a party must allege: (1) the existence of a valid contract; (2) breach by the opposing party; and (3) resulting damages. *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 78. The Counterclaim, the factual allegations of which the Court must accept for purposes of the Motion, alleges each of these elements with respect to the parties' agreements regarding audit expenses and *pro rata* share payments. The TTO does not challenge the existence of the contracts, but instead argues there were no breaches, there are no damages, and that the contracts were unlawful. The TTO is incorrect on each point. Simply stated, the parties entered into a valid contract and performed under it for more than a decade before the TTO purported to abandon its contractual obligations.

A. The Counterclaim Alleges One or More Breaches.

The TTO's Motion contends that the Counterclaim does not allege the TTO breached either the agreement regarding audit expenses or the agreement regarding setoffs for *pro rata* share expenses. To the contrary, the Counterclaim specifically alleges the TTO breached the *pro rata* share agreement by failing to provide District 204 with the agreed offsets toward its annual *pro rata* share of Treasurer's office expenses. *See* Compl. at ¶ 95(b). The TTO had a contractual obligation to provide District 204 with annual offsets equal to the value of the services District

204 performed for the TTO each year. *Id.* at ¶ 51. The TTO's failure to perform that obligation under the parties' agreement regarding *pro rata* expenses plainly constitutes a breach. Similarly, the TTO's refusal to acknowledge its agreed obligation to pay audit expenses District 204 incurred on the TTO's behalf constitutes a breach.

The TTO also contends the parties' agreements are not alleged to have included "an obligation to give notice of termination," and that "[a]lleging a party breached an unknown and unspecified contract provision does not state a cause of action." *See* Mot. at 5. Thus, the TTO apparently believes it was free to terminate the agreement at any time without notifying District 204 of that decision. The Motion cites no supporting authority for that argument, and otherwise fails to establish that the TTO could terminate the parties' agreements without even telling District 204 it was doing so. The TTO provided District 204 with notice on or about April 19, 2013 that it was terminating the agreements. *See* Compl. at ¶ 94. The TTO further breached the parties' agreement regarding *pro rata* share expenses and audit expenses to the extent it unilaterally terminated the agreements prior to April 19, 2013, and failed to inform District 204 of that decision despite knowing that District 204 was continuing to perform pursuant to the agreements.

B. The Counterclaim Alleges Damages.

Without citation to any authority, the TTO next argues there was no breach of contract because the Counterclaim does not allege the TTO was required to reimburse District 204 in cash when the value of District 204's services exceeded its *pro rata* share of expenses. *See* Mot. at 6. The TTO's argument misses the point. The TTO had a contractual obligation to provide District 204 with *millions of dollars* in offsets based on the value of the services District 204 performed on the TTO's behalf. Those are real, concrete damages. Simply because the TTO has a

competing claim does not negate District 204's contractual (and equitable) right to receive the offsets the parties negotiated and agreed upon.

C. The TTO's Trustees Did Not Violate the School Code by Entering into the Agreements with District 204.

Dollars are fungible. The TTO's Motion loses sight of that fact, and departs on a tangent about the agreements being unenforceable because they supposedly "excus[e] District 204 from paying for its own annual audit" or "its *pro rata* share of the Treasurer's expenses of office" as required by the School Code. *See* Mot. at 7-8. Nothing could be further from the truth.

As an initial matter, the Counterclaim does *not* allege the TTO agreed to reimburse District 204 for *District 204's own* audit expenses. Instead, the Counterclaim alleges the TTO agreed to cover the cost of the audit expenses District 204 incurred because of the work it performed on behalf of the TTO. As such, those audit expenses were wholly attributable to the TTO and its activities—not District 204's independent or unrelated activities. To the extent the TTO argues otherwise, those arguments directly contradict the allegations of the Counterclaim and cannot be considered. In addition, and contrary to the TTO's arguments, Section 3-7 does *not* "provide[] that each school district is to pay for its own audit." *See* Mot. at 7. Rather, Section 3-7 simply states that "[e]ach school district shall . . . cause an audit of its accounts to be made . . . ." *See* 105 ILCS 5/3-7. Payment is not discussed, although that issue is irrelevant in light of the fact that District 204 incurred the audit expenses by virtue of its performance of services on behalf of the TTO.

Nor does the Counterclaim allege the parties' other agreement "excused District 204 from paying its *pro rata* share of the Treasurer's expenses of office," as the TTO claims. Instead, District 204 funded its *pro rata* share in part through the value of the services it performed for the TTO with its agreement and full understanding. District 204's services saved the TTO

millions of dollars, as the TTO would have had to perform the same services had District 204 not agreed to do so. *See* Countercl. at ¶¶ 91-92. The TTO provided District 204 with annual invoices for *pro rata* share Treasurer's office expenses, and District 204 provided the TTO with annual invoices for the services it performed on behalf of the TTO. District 204, with the TTO's agreement and understanding, then paid the TTO the difference between the two numbers. Whether District 204 provided millions of dollars in services or that same amount in cash for the TTO to expend on exactly the same services, District 204 fulfilled its obligation to pay its *pro rata* share of the TTO's Treasurer's office expenses.

In no way can the TTO rationally characterize the parties' business arrangement as District 204 being "excused" from any *pro rata* share obligation. If District 204 were being "excused" from that obligation, it would have ceased providing services on behalf of the TTO, demanded the TTO begin providing those services, and then refused to contribute any amount toward the annual *pro rata* share of the Treasurer's office expenses. That did not occur.

D. Healy Had Actual Authority to Enter into the Agreements.

The TTO contends the Counterclaim does not allege breach of contract because Healy supposedly did not have actual authority to enter into the agreements. That is a highly-disputed fact question not appropriate for consideration at this stage of the litigation. Furthermore, the Counterclaim specifically alleges Healy *did* have such authority. *See* Compl. at ¶ 42. Healy discussed the agreement with the Trustees, who approved it prior to March 22, 2000, when Healy, on behalf of the Trustees, adopted and accepted the agreement. *Id.* at ¶¶ 41-42. District 204 inquired about Healy's authority, and repeatedly received confirmation that Healy had discussed the agreement with the Trustees, that the Trustees had knowledge of the nature and details of the agreement, and that they supported and approved it. *Id.* at ¶ 42. The Trustees

delegated authority to Healy to enter into, and perform under, the agreement on behalf of the Trustees. *Id.* at ¶ 43. The parties' course of dealing over the next fourteen years, during which time the TTO never attempted to terminate, modify, question, or dispute the agreement, further confirmed the TTO's understanding and acceptance of the agreement. *Id.* at ¶¶ 43, 59, 61-67.

The TTO further argues that Section 8-7 of the School Code did not permit Healy to enter into the agreement. *See* Mot. at 6-7. It is not necessary for the Court to reach that argument in light of the Counterclaim's allegations that the TTO's Trustees provided Healy with *actual* authority to enter into the agreements. Setting aside his actual authority, the TTO's argument is unsupported and not persuasive. The TTO claims that Section 8-7 includes a list of the "only" contracts the Treasurer is permitted to enter, but the language of the statute does not include that limiting language. *See* 105 ILCS 5/8-7. Furthermore, the agreements with District 204 are arguably "[r]egarding the deposit, redeposit, . . . or withdrawal of school funds . . . with other . . . school treasurers . . . ." *Id.* The TTO provides no legal authority and little analysis, instead simply concluding that Section 8-7 is exhaustive and could never include the types of agreements at issue in this lawsuit. The TTO's arguments are not persuasive or supported and should be rejected.

E. Healey Alternatively Had Apparent Authority to Bind the TTO.

While the Court need not reach this argument given the alleged existence of actual authority, Healey, the chief executive of the Treasurer's office, also had apparent authority to bind the TTO. The TTO relies on *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, for the proposition that no public entity can ever convey apparent authority to its agents. *See* Resp. at 7. *Patrick* held that equitable estoppel did not apply to a *municipality* because the plaintiff failed to allege facts showing that the relevant city officials had actual authority to act. *Id.* at ¶ 42. The TTO is not a municipality. Unlike the sprawling bureaucracy of a large

municipality, the TTO's Treasurer's office consisted of a small handful of employees supervised and directed by Healy. The Trustees provided Healy with substantial discretion to conduct the business of the Treasurer's office, and they relied on Healy to serve as the TTO's chief point of contact with member school districts. *See* Compl. at ¶¶ 11-14. In addition, the Counterclaim alleges the Trustees purposely and intentionally cloaked Healy, as the Treasurer and primary communication interface for the Trustees, with apparent authority. *Id.* at ¶ 46. Given that *Patrick* does not address these circumstances, the Court should permit the parties to engage in discovery regarding Healy's authority and revisit the issue at a later stage in the litigation when a factual record is better developed.

Each of the TTO's arguments regarding the agreements between the TTO and District 204 fails. The Counterclaim more than sufficiently satisfies the applicable, liberal pleading standard. The Court should deny the Motion.

IV. THE COUNTERCLAIM ALLEGES PROPER DECLARATORY RELIEF.

The Counterclaim properly seeks seven different declaratory judgments that will resolve discrete portions of the parties' dispute. The TTO attacks the requested declaratory relief by improperly relying on unpled "facts" and misconstruing applicable law.

A. The Declarations Regarding the Parties' Agreements Are Valid.

The TTO first contends that the declarations prayed for in the Counterclaim relating to the parties' agreements (see Prayer for Relief, paragraphs (1)(a) through (c)) are improper for the same reasons it seeks dismissal of District 204's breach-of-contract claim (*i.e.*, Count I). *See* Mot. at 8-9. For the same reasons the TTO's Motion fails regarding Count I, as discussed in Section III above, the TTO's arguments regarding the requested declaratory relief must also fail. The TTO offers no other objection to the requested declarations.

B. The Declaration Regarding Interest Underpayments Is Proper.

The TTO next argues that if the Court were to issue a declaratory judgment that the TTO has improperly withheld from District 204 interest payments due and owing, that would not terminate any controversy. *See* Mot. at 9-10. Once again, the TTO is mistaken. Only the TTO has knowledge of the amount of overdue interest payments it has hidden and withheld from District 204. At the summary-judgment or trial stage, the Court will be able to determine the amount based on the evidence gathered during discovery. At that point, the declaratory judgment can and will include the amount the TTO is obligated to pay to District 204. The requested declaration is proper, particularly given the early stage of this litigation.

C. A Declaration that the TTO Must Pay District 204 Its Share of Insurance Proceeds Would Resolve that Dispute.

The TTO next attempts to impose a summary-judgment standard on District 204 by asserting disputed facts regarding whether a declaration may properly be issued in relating to the TTO's refusal to disclose or turn over insurance proceeds owned by its member school districts, including District 204 (see Prayer for Relief, paragraph 1(e)). The TTO provides a whole paragraph of unpled "facts" in support of its arguments. *See* Mot. at 10. Those purported facts, which are disputed, are not properly before the Court on a motion to dismiss. Nor can the TTO rely on a self-serving, inaccurate affidavit of its Ms. Birkenmaier. The TTO further contends that District 204 should have cited case law and statutes in its Counterclaim. *Id.* ("District 204 . . . has alleged no authority . . . ."). No such pleading requirement exists. Consideration of the merits of District 204's claim is not appropriate at this stage of the litigation. The Counterclaim alleges the TTO has collected insurance proceeds owned by its member school district, including District 204. The TTO offers no valid argument in seeking dismissal of this requested declaration because none exists.

D. A Declaration Requiring Reimbursement of Unlawful Expenditures Is Proper.

The TTO next contends that the nature of its expenditures is not subject to review because the School Code does not limit permissible expenses of the Treasurer's office. *See* Mot. at 11. While the TTO may believe that the School Code permits it to spend member school districts' funds on whatever extravagances it wishes, that is a disputed argument that will require consideration of facts learned in discovery. Furthermore, the School Code *does* list the expenses the TTO is permitted to incur, including: (1) "compensation of the treasurer"; (2) "cost of publishing the annual statement"; (3) "cost of a record book, if any"; and (4) "cost of dividing school and making plats." 105 ILCS 5/5-17. Nowhere does the School Code authorize the Trustees to hire a public-relations consultant to improve their own image and then charge those expenses to the many member school districts who have no desire to be associated with the TTO in the first instance. Similarly, the School Code does not permit the Trustees and Treasurer to incur duplicative expenses by abdicating their investment management responsibilities to third parties. Whether these and other expenses are oppressive, corrupt, fraudulent, of unjust (see Motion at 12) will be the subject of discovery.

In any event, fact-based disagreements over the merits of District 204's claims are inappropriate for consideration in connection with the Motion. The disputed affidavit of Ms. Birkenmaier regarding these expenses is wholly improper and never should have been attached to the TTO's Motion. That affidavit and the unpled "facts" therein and throughout the TTO's Motion must be disregarded. A declaratory judgment requiring the return of these unlawfully-expended funds is proper and would resolve the parties' dispute regarding this issue.

V. THE ACCOUNTING CLAIM SHOULD BE SUSTAINED.

Apparently recognizing its Motion cannot prevail based on the applicable pleading standard, the TTO resorts to reliance on unpled "facts" and disputed documents in an attempt to defeat District 204's Accounting claim (*i.e.*, Count III). The Counterclaim's well-pled allegations far exceed the pleading standard required for stating an accounting claim.

The TTO first argues District 204 has not demanded or been denied an accounting. The Counterclaim's well-pled allegations, all of which must be accepted as true for purposes of the Motion, directly contradict that argument. Those allegations include the following:

- Despite numerous requests, the TTO has failed to provide District 204 with requested financial data to verify or refute its claims. Without such information, including books and records, District 204 cannot ascertain what it is owed or the validity of the TTO's alleged claims. *See* Countercl. at ¶ 118.

- Much of the financial data in the TTO's possession is cryptically stored on a database the TTO created and continues to operate using specialty software. The TTO is the only party with knowledge of, and access to, the vast financial contents of that database. *Id.* at ¶ 119.

- District 204 has demanded from the TTO the books, records, and data necessary for conducting an accounting for the period of January 1, 1993 through the present, but the TTO has refused to hand over those books and records. *Id.* at ¶ 120.

- District 204 has requested that the TTO provide a full accounting for the period of January 1, 1993 through the present, but, to date, the TTO has failed to provide the requested accounting. *Id.* at ¶ 121.

- Instead, the TTO has only directed District 204 to public financial statements, which do not provide the data necessary for conducting a complete accounting, including all backup documents and the financial data located on the TTO's financial database. *Id.* at ¶ 122.

- District 204 propounded request to admit facts to the TTO in an attempt to learn additional information about the basis of the TTO's claims, but the TTO refused to admit or deny many of those requests, claiming that it lacked knowledge. *Id.* at ¶ 123.

These allegations more than sufficiently establish that District 204 has requested and been denied an accounting.

The TTO next argues that an accounting is not necessary, again relying on unpled "facts" and disputed documents. *See* Mot. at 13-14.[2] Those unpled "facts" misstate the factual and procedural background of the documents and data at issue, and must be disregarded. Any consideration of whether an accounting should be ordered based on purported evidence is not ripe at this time, and is entirely inappropriate at the motion-to-dismiss stage. While the Counterclaim's admitted allegations establish a strong likelihood that an accounting will ultimately be required, especially in light of the TTO's encrypted and inaccessible database information, along with its every-changing (at least four times to date) calculation of the amounts District 204 allegedly owes, the appropriateness of an accounting will be the subject of motion practice after more discovery proceeds.

VI. DISTRICT 204'S ALTERNATIVELY-PLED QUANTUM MERUIT AND UNJUST ENRICHMENT CLAIMS ARE PROPERLY PLED.

The TTO next argues that District 204's claims for quantum meruit and unjust enrichment (Counts IV and V, pled in the alternative) should be dismissed, based almost exclusively on the TTO's contention that the parties' agreements are void. *See* Mot. at 14-15. As discussed in Section III above, the agreements are not void or contrary to any statute.

The only other argument the TTO makes in seeking dismissal of Counts IV and V is, yet again, improperly based on unpled "facts" and unsupported conclusions inappropriate for consideration on a motion to dismiss. The TTO asserts it was "not enriched, unjustly or otherwise." *See* Mot. at 15. TTO's beliefs regarding the value of the services District 204

[2] Even if Exhibit 2 were properly before the Court (which is not the case) and constituted the full extent of District 204's prior requests (it does not), six months have passed since that renewed request was made, and the accounting still has not been conducted and the records have not been turned over.

provided are irrelevant, as are the unsupported and contested "facts" the TTO asserts in support of its argument. *Id.* The Counterclaim, which is all that is at issue, alleges District 204 provided the TTO with millions of dollars in services on the behalf of the TTO. *See* Countercl. at ¶ 91. The Counterclaim further alleges District 204 did not perform those services gratuitously, that the TTO was enriched by the services, and that the TTO's retention of the benefit violates fundamental principles of justice, equity, and good conscience. *See* Countercl. at ¶¶ 141-143. Those allegations more than sufficiently state a claim.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that the Court enter an order: (1) denying the TTO's Motion in its entirety; (2) ordering the TTO to answer the First Amended Verified Counterclaim within twenty-eight days; and (3) granting such further relief as the Court deems just and reasonable.

Respectfully submitted,

By: _____
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