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Via Hand-Delivery

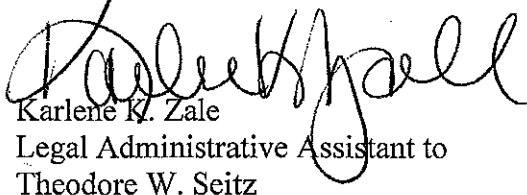
Clerk of the Court
Livingston County Circuit Court
204 S. Highlander Way, Ste. 4
Howell, MI 48843

Re: *Shoner, et al v. Charter Township of Brighton*
Case No. 16-29165-CZ

Dear Clerk:

Enclosed for filing is Defendant's Answer To Plaintiffs' First Amended Class Action Complaint and Affirmative Defenses, as well as Certificate of Service. Please file in your usual manner. Thank you.

Sincerely,



Karlene K. Zale
Legal Administrative Assistant to
Theodore W. Seitz

cc: Jamie K. Warrow (w/encl.)
Shawn Head (w/encl.)
John K. Harris (w/encl.)

STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

**DENNIS SHONER, and BARBARA
POTOCKI, individually, and as
representatives of a class of similarly-
situated persons and entities,**

Plaintiff,

v

**CHARTER TOWNSHIP OF BRIGHTON,
a municipal corporation,**

Defendant.

Case No. 16-29165-CZ

Hon. David J. Reader

Gregory D. Hanley (P51204)
Jamie K. Warrow (P61521)
Edward F. Kickham, Jr. (P70332)
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**DEFENDANT CHARTER TOWNSHIP OF BRIGHTON'S ANSWER TO PLAINTIFFS'
FIRST AMENDED CLASS ACTION COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant Charter Township of Brighton (the "Township"), by and through its attorneys,
answers Plaintiffs' First Amended Complaint and pleads its affirmative defenses as follows:

INTRODUCTION

1. The Township admits only that Plaintiffs have filed a First Amended Complaint and otherwise denies the allegations in this paragraph as untrue.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. The Township admits only that Plaintiffs' First Amended Complaint collectively refers to several items as "Overcharges," which the Township denies is an accurate term, and otherwise denies the allegations in this paragraph as untrue.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

JURISDICTION AND VENUE

14. The Township admits that Plaintiffs are users of the Sanitary Sewer System at issue and otherwise the allegations in this paragraph are denied as untrue.

15. Admitted.

16. The Township admits only that all parties are present in Livingston County, Michigan and the allegations in Plaintiff's First Amended Complaint occurred in Livingston County,

Michigan, and otherwise the allegations in this paragraph are denied.

GENERAL ALLEGATIONS CONCERNING THE “OVERCHARGES”

17. Denied.

18. Admitted.

19. The Township admits only that it maintains and operates Brighton Township’s sewer system, which provides disposal services to a portion of the Township’s residents and businesses; that Plaintiffs have received sewer service from the Township and have paid the O&M and debt service charges; and that Township Ordinance 22-07 speaks for itself and denies the remainder of this paragraph to the extent it is inconsistent with Township Ordinance 22-07 or the aforementioned admissions contained in this paragraph.

20. The Township admits only that Township Ordinance 22-17 speaks for itself and otherwise leaves Plaintiffs to their proofs.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. The Township admits only that the former Township Ordinance referenced speaks for itself and otherwise denies the remainder of this paragraph.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. The Township neither admits nor denies the allegations contained in this paragraph on the basis that it lacks a foundation on which to base a response.

35. The Township admits only that *Bolt v City of Lansing*, 459 Mich 152; 154, 587 NW2d 264 (1998) speaks for itself and otherwise denies the remainder of this paragraph to the extent that it is inconsistent with *Bolt*.

36. Denied.

37. Denied.

38. The Township admits only that Township Ordinance 22-07 speaks for itself and denies the remainder of this paragraph to the extent it is inconsistent with Township Ordinance 22-07 or the aforementioned admissions contained in this paragraph.

39. The Township admits only that Township Ordinance 22-17 speaks for itself.

40. The Township admits only that Township Ordinance 22-17 speaks for itself.

CLASS ALLEGATIONS

41. The Township admits only that Plaintiffs' First Amended Complaint, which Plaintiffs' purport to as being brought as a putative class action pursuant to MCR 3.50, is a written document, which speaks for itself and otherwise leaves Plaintiffs to their proofs.

42. Denied.

43. Denied.

44. Denied.

45. Denied as to this paragraph, including all subsections.

46. Denied.

47. Denied.

COUNT I
THE HEADLEE AMENDMENT

48. The Township incorporates each and every of its preceding responses as if fully set forth herein.

49. The Township admits only that the Michigan Constitution of 1963, including those portions known as the Headlee Amendment, speak for itself and otherwise leaves Plaintiffs to their proofs.

50. The Township admits only that Article 9, § 31 of the Michigan Constitution speaks for itself and otherwise leaves Plaintiffs to their proofs.

51. Denied.

52. Denied as to this paragraph, including all subsections.

53. Denied.

54. The Township neither admits nor denies this paragraph on the basis that it lacks a foundation on which to base a response.

55. Denied.

COUNT II
EQUAL PROTECTION GUARANTEES

56. The Township incorporates each and every of its preceding responses as if fully set forth herein.

57. Denied.

58. Denied.

59. Denied.

60. The Township admits only that 42 USC § 1983 speaks for itself and otherwise leaves Plaintiffs to their proofs.

61. Denied.

62. Denied.

63. Denied.

COUNT III
ACTION IN ASSUMPSIT (MONEY HAD AND RECEIVED)
SEWER RATES

64. The Township incorporates each and every of its preceding responses as if fully set forth herein.

65. The Township denies that any Michigan Court of Appeals case titled, *Mapleview Estates v Township of Brown Township* exists, and admits only that *Mapleview Estates v City of Brown City*, 258 Mich App 412; 671 NW2d 572 (2003), exists which speaks for itself.

66. Denied.

67. Denied.

68. The Township neither admits nor denies this paragraph on the basis that it alleges a conclusion of law to which no response is required. To the extent a response is required, the Township denies the remaining allegations in this paragraph.

69. The Township neither admits nor denies this paragraph on the basis that it alleges a conclusion of law to which no response is required. To the extent a response is required, the Township states that *Bond v Pub Schools of Ann Arbor School Dist*, 383 Mich 693; 178 NW2d 484 (1970) speaks for itself and otherwise leaves Plaintiffs to their proofs.

70. Denied.

COUNT IV
ACTION IN ASSUMPSIT (MONEY HAD AND RECEIVED)
TOWNSHIP ORDINANCE § 22-17

71. The Township incorporates each and every of its preceding responses as if fully set forth herein.

72. The Township admits only that Township Ordinance 22-17 speaks for itself and otherwise leaves Plaintiffs to their proofs.

73. Denied.

74. Denied.

75. The Township neither admits nor denies this paragraph on the basis that it alleges a conclusion of law to which no response is required. To the extent a response is required, the Township denies the remaining allegations in this paragraph.

76. Denied.

77. Denied.

COUNT V
DECLARATORY JUDGMENT INVALIDATING LIENS

78. The Township incorporates each and every of its preceding responses as if fully set forth herein.

79. The Township neither admits nor denies this paragraph on the basis that it alleges a conclusion of law to which no response is required. To the extent a response is required, the Township states that Township Ordinance 22-17 speaks for itself and otherwise leaves Plaintiffs to their proofs.

80. The Township neither admits nor denies this paragraph on the basis that it alleges a conclusion of law to which no response is required. To the extent a response is required, the

Township neither admits nor denies the remaining allegations in this paragraph on the basis that the form in which this paragraph is alleged is vague, ambiguous, and seemingly incomplete; thus, the Township lacks a foundation on which to base a response.

81. Denied.

PRAYER FOR RELIEF

The Township states only that Plaintiff's requested relief in sections A. through J. and additional sections mislabeled "I." and "J." (which should be consecutively labeled "K." and "L.") are denied.

WHEREFORE, Plaintiffs' requested relief should be denied and the Township awarded its costs and fees to defend this action.

AFFIRMATIVE DEFENSES

Defendant Charter Township of Brighton, states the following as Affirmative Defenses:

1. The First Amended Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' First Amended Complaint, and each purported claim therein, is barred in whole by the doctrine of laches.
3. Plaintiffs' claims are barred, in whole or in part, by all applicable statutes of limitation.
4. Plaintiffs' claims are barred, in whole or in part, by their unclean hands.
5. Plaintiffs' claims are barred, in whole or in part, because the relief requested violates the "Balance of Convenience"/"Balance of Equities" doctrine in that it would cause undue hardship to the Township, which encompasses all residents, and is otherwise unconscionable.

6. The First Amended Complaint, and each purported claim therein, is barred in whole or in part due to Plaintiffs failure to exhaust all administrative remedies.

7. Plaintiffs' claims are barred, in whole or in part, by a release executed by Plaintiffs relating to the claims alleged in Plaintiffs' First Amended Complaint.

8. The First Amended Complaint, and each and every purported claim alleged therein, is barred because Plaintiffs failed to mitigate or reasonably attempt to mitigate his or her damages, if any, as required by law.

9. The First Amended Complaint, and each and every purported claim alleged therein, is barred because Plaintiffs cannot meet the requirements of MCR 3.501.

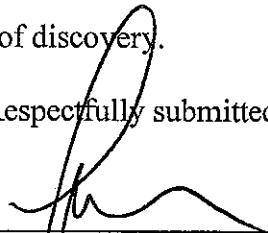
10. Plaintiffs are estopped from asserting claims that they were overcharged relating to the Sanitary Sewer System due to their own conduct.

11. Plaintiffs have waived, in whole or in part, any right to their requested relief in the First Amended Complaint.

12. Plaintiffs' claims are barred, in whole or in part, by the voluntary payment doctrine.

13. The Township reserves the right to submit such additional Affirmative Defenses that may appear appropriate at the conclusion of discovery.

Respectfully submitted,



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Erik A. Sedmak (P78282)

Dykema Gossett PLLC

Co-Counsel for Charter Township of Brighton

Capitol View Bldg.

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Dated: June 6, 2017

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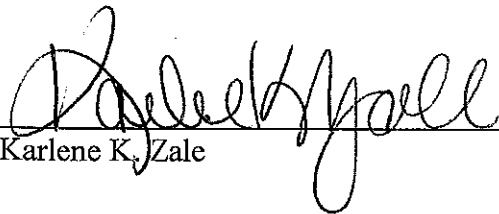
CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2017, I caused to have served, by first class mail, with postage prepaid, a copy of Defendant's Answer To Plaintiffs' First Amended Class Action Complaint and Affirmative Defenses, upon:

Gregory D. Hanley
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Karlene K. Zale

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