

SECRET WARDLE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JAMILA YOUMANS,
individually and as representative of a class of
similarly-situated persons and entities,

Plaintiff,

v

Case No. 2016-152613 CZ
Hon. Daniel P. O'Brien

CHARTER TOWNSHIP OF BLOOMFIELD,
a municipal corporation,

Defendant.

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**DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED CLASS ACTION
COMPLAINT**

Now comes Defendant, CHARTER TOWNSHIP OF BLOOMFIELD, by and through its attorneys, SECRET WARDLE, and for its answer to the Plaintiff's First Amended Class Action Complaint filed by Plaintiff, JAMILA YOUMANS, states as follows:

1. In answer to the statements contained in paragraph 1 of the Plaintiff's amended complaint, Defendant states that this action claiming to challenge the retail water rates in Bloomfield Township is either based on gross misrepresentations of actual facts or incomplete and/or inadequate research. The Township water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains.

2. In answer to the statements contained in paragraph 2 of the Plaintiff's amended complaint, Defendant states that there are no components included in the rates for "Rate Overcharges," "General Fund Support Charge," "OPEB Charge," or "Public Fire Protection Charges" as those terms are used in the Plaintiff's pleading. The Township water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains. The rates are fees for services provided and not taxes designed to generate revenue for the Township's general fund.

3. In answer to the statements contained in paragraph 3 of the Plaintiff's amended complaint, Defendant states that the paragraph grossly misrepresents the analysis to distinguish a fee from a tax articulated in *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998). Defendant again states that there are no components as alleged by the Plaintiff included in the rates. The Township water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the

system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains. The rates are fees for services provided and not taxes designed to generate revenue for the Township's general fund. Finally, an application of the true *Bolt* analysis to the actual components of the water and sewer fees will lead to the conclusion that the fees do not violate Article 9, Section 31 of the Michigan Constitution of 1963.

4. In answer to the statements contained in paragraph 4 of the Plaintiffs amended complaint, Defendant denies the allegation as the Township water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains.

5. In answer to the allegations contained in paragraph 5 of the Plaintiff's amended complaint, Defendant admits the allegation accurately reflects the Court's present ruling.

6. In answer to the allegations contained in paragraph 6 of the Plaintiff's amended complaint, Defendant admits that the Defendant is located within Oakland County.

7. In answer to the allegations contained in paragraph 7 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statement contained in the paragraph and in further answer states that Article 9, Section 32 of the Michigan Constitution of 1963 provides for maintenance of an original actions to enforce the Headlee Amendment in the Court of Appeals.

8. In answer to the allegations contained in paragraph 8 of the Plaintiff's amended complaint, Defendant admits it maintains and operates a water supply system and that it buys water from the Southeast Oakland County Water Authority. The Township further admits that

Plaintiff has received water service from the Township and has paid for at least some of the service provided but neither admits nor denies the balance of the allegations contained in this paragraph as it lacks sufficient information necessary to form a belief as to the truth of the allegation.

9. In answer to the allegations contained in paragraph 9 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as pled.

10. In answer to the allegations contained in paragraph 10 of the Plaintiff's amended complaint, Defendant admits that it establishes its own water and sewer rates and that it sets those rates in order to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the water and sewer system, but neither admits nor denies the balance of the allegations contained in this paragraph as it lacks sufficient information necessary to form a belief as to the truth of the allegation.

11. In answer to the allegations contained in paragraph 11 of the Plaintiff's amended complaint, Defendant states that the statute speaks for itself but denies the statute's application to the Defendant and in further answer states that its water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains.

12. In answer to the allegations contained in paragraph 12 of the Plaintiff's amended complaint, Defendant denies the application of MCL §123.141 as Plaintiff has failed to allege any material facts to establish the actual cost of providing the service.

13. In answer to the allegations contained in paragraph 13 of the Plaintiff's amended complaint, Defendant admits that it operates a sewage disposal system and that it is a member of the Oakland County Water Resources Commission. The Defendant further states that its ordinances, including Sec. 38-288 and its Water and Sewer Ordinance, speak for themselves but neither admits nor denies the balance of the allegations contained in this paragraph as it lacks sufficient information necessary to form a belief as to the truth of the allegation.

14. In answer to the allegations contained in paragraph 14 of the Plaintiff's amended complaint, Defendant admits that it establishes water and sewer rates from time to time but denies the balance of the allegations contained in this paragraph as untrue.

15. In answer to the allegations contained in paragraph 15 of the Plaintiff's amended complaint, Defendant admits it maintains a Water and Sewer Enterprise Fund and prepares financial statements for the fund.

16. In answer to the allegations contained in paragraph 16 of the Plaintiff's amended complaint, Defendant states that its Water and Sewer Fund's financial statements speak for themselves and show that the Township's water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system.

17. In answer to the allegations contained in paragraph 17 of the Plaintiff's amended complaint, Defendant states that the report and memo referenced in the paragraph speak for themselves.

18. In answer to the allegations contained in paragraph 18 of the Plaintiff's amended complaint, Defendant denies the allegations in this paragraph as untrue, affirmatively alleges that the Plaintiff failed to conduct an adequate investigation into the factual basis for the allegation,

specifically denies that the referenced manual is binding authority in this State, and affirmatively alleges that the financial information that was available to the Plaintiff prior to the filing of both the original complaint and/or the amended complaint does not support the Plaintiff's allegation of even partial double counting of capital costs.

19. In answer to the allegations contained in paragraph 19 of the Plaintiff's amended complaint, Defendant states the referenced publication speaks for itself but specifically denies that the referenced manual is binding authority in this State, and affirmatively alleges that the financial information that was available to the Plaintiff prior to the filing of the original complaint and/or the amended complaint established that that the Township's water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system.

20. In answer to the allegations contained in paragraph 20 of the Plaintiff's amended complaint, Defendant denies the allegations in this paragraph as untrue, specifically denies that the referenced unpublished decisions are binding authority in this State, and affirmatively alleges that the financial information that was available to the Plaintiff prior to the filing of the original complaint and/or the amended complaint does not support the Plaintiff's allegation of a cost component in the rates to finance future improvements to the water and sewer system as this allegation is objectively false.

21. In answer to the allegations contained in paragraph 21 of the Plaintiff's amended complaint, Defendant denies it is accumulating cash reserves beyond what is necessary to ensure the continued provision of water and sewer service to its existing customers and affirmatively alleges that its water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the

system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains.

22. In answer to the allegations contained in paragraph 22 of the Plaintiff's amended complaint, Defendant denies the allegation in this paragraph that "Rate Overcharges" are incorporated into the Rates and/or that each member of the class paid and Rate Overcharges as untrue.

23. In answer to the allegations contained in paragraph 23 of the Plaintiff's amended complaint, Defendant denies the conclusory allegation in this paragraph is supported by any material fact as there is not even a general allegation regarding the value of any "substantial services" provided by the Water and Sewer Fund to the General Fund nor any allegation of the value of any services provided by the General Fund to the Water and Sewer Fund, the only allegation is the Plaintiff counsel's conclusion that the rates include the invented "General Fund Support Charge" and the conclusory allegation is objectively false.

24. In answer to the allegations contained in paragraph 24 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue.

25. In answer to the allegations contained in paragraph 25 of the Plaintiff's amended complaint, Defendant denies the allegation as the Township does compensate the Water and Sewer Enterprise Fund for any water used by the Township for its own purposes and incorporated the compensation into the rates for each year, thus the customers do not pay for the water used by the Township for its own purposes, Plaintiff's conclusory allegation is objectively false.

26. In answer to the allegations contained in paragraph 26 of the Plaintiff's amended complaint, Defendant states that the memorandum attached as Exhibit F to the amended

complaint and referenced in this paragraph speaks for itself, denies the allegation that the Township uses 7% of the water received from SOCWA for its own purposes and neither admits nor denies the balance of the allegations as it lacks information upon which to form a belief as to the truth of the allegations and leaves Plaintiff to her proofs. In further answer, the Township denies that Exhibit F, p. 2, of the Plaintiff's First Amended Class Action Complaint contains any determination by the Township that 7% of the water purchased from SOCWA is used by the Township itself as the allegation is a gross misrepresentation of the text and is a deliberate distortion of the language of the exhibit.

27. In answer to the allegations contained in paragraph 27 of the Plaintiff's amended complaint, Defendant denies the allegation that the unquantified "significant portion" of the 7% unmetered water is attributable to the Township's own facilities as alleged by the Plaintiff, nor is the Township recovering sewage disposal costs associated with the 7% unmetered water estimate and in further answer the Township affirmatively states that the Water and Sewer Fund is compensated in an amount proportionate to the amount of water the Township may consume for its own purposes and for the sewer services it utilizes for its own purposes.

28. In answer to the allegations contained in paragraph 28 of the Plaintiff's amended complaint, Defendant admits it has an Engineering and Environmental Services Department (EESD) and that it provides services to other departments of the Township and in further answer states that the EESD also receives services from other departments of the Township and that the EESD 2014 Annual Report speaks for itself.

29. In answer to the allegations contained in paragraph 29 of the Plaintiff's amended complaint, Defendant denies the characterization of the EESD duties alleged in this paragraph as Plaintiff has no actual knowledge of the EESD's duties or what percentage of those duties are

water and sewer related, and in further answer states that the EESD employees' pay is proportional to the services they provide to the Water and Sewer Enterprise Fund.

30. In answer to the allegations contained in paragraph 30 of the Plaintiff's amended complaint, Defendant denies the allegation as stated in this paragraph as untrue.

31. In answer to the allegations contained in paragraph 31 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue and affirmatively allege that the conclusory and speculative statements in this paragraph are devoid of factual support and are either based upon an inadequate investigation prior to filing the pleading or evidence a deliberate effort to mislead.

32. In answer to the allegations contained in paragraph 32 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements made in this paragraph as they are incomprehensible as stated in that there is no description of the "phantom expenses" other than the rent charged (which judging from its name is not "phantom"), there is no citation to the "cost allocation principles" stated, nor any basis provided for the statement that only the Township's annual depreciation expense may be allocated to the Water and Sewer Fund, but to the extent this paragraph contains any allegation of fact instead of vague and unsupported statements, it is denied as untrue.

33. In answer to the allegations contained in paragraph 33 of the Plaintiff's amended complaint, Defendant denies the allegation as untrue.

34. In answer to the allegations contained in paragraph 34 of the Plaintiff's amended complaint, Defendant is required to fund presently earned benefits to its employees, including presently earned Other Post-Employment Benefits (OPEB) to some of its employees.

35. In answer to the allegations contained in paragraph 35 of the Plaintiff's amended complaint, Defendant denies the Plaintiff's incorrect characterization of the OPEB costs as "future OPEB" costs, denies the Plaintiff's incorrect characterization of the source of the funds transferred to the dedicated trust account for Water and Sewer employees only, and specifically denies the allegation that OPEB costs have nothing to do with the current operational costs of the Water and Sewer system as untrue.

36. In answer to the allegations contained in paragraph 36 of the Plaintiff's amended complaint, Defendant denies the Plaintiff's incorrect characterization of the OPEB costs as "future OPEB" costs as untrue and specifically denies that the referenced unpublished decisions are binding authority in this State.

37. In answer to the allegations contained in paragraph 37 of the Plaintiff's amended complaint, Defendant denies the conclusory statements contained in this paragraph as wholly unsupported by the facts available to the Plaintiff prior to filing the amended complaint.

38. In answer to the allegations contained in paragraph 38 of the Plaintiff's amended complaint, Defendant denies the allegation that "most fire hydrants are rarely used" as it constitutes a basic misunderstanding of the purpose and function of hydrants as a critical component of a water delivery system, therefore the statement contained in this paragraph is denied as untrue.

39. In answer to the allegations contained in paragraph 39 of the Plaintiff's amended complaint, Defendant admits it has less than 3,000 hydrants as a component of its water delivery infrastructure, but neither admits nor denies the balance of the allegations contained in this paragraph as Plaintiff's vague and unquantified statements regarding the "facilities that are sized larger than necessary" as it fails to specify what facilities are the subject of the statement, nor

does it specify the current size of these unspecified facilities, nor specifically what size Plaintiff contends is “necessary.”

40. In answer to the allegations contained in paragraph 40 of the Plaintiff’s amended complaint, Defendant states that the general fire protection services applicable to the general Township population are 100% funded by Public Safety millage approvals by the Township electors, Defendant further denies that the Court of Appeals dissent in *Bolt v City of Lansing*, 221 Mich App 79, 91; 561 N.W.2d 423 (1997) was adopted by the Supreme Court majority in *Bolt v City of Lansing*, 459 Mich. 152; 587 N.W.2d 264 (1998)¹ and specifically denies that the parenthetical quote from the Court of Appeals dissent included in this paragraph of the amended complaint appears anywhere in the Supreme Court’s majority opinion.

41. In answer to the allegations contained in paragraph 41 of the Plaintiff’s amended complaint, Defendant admits that the allegation contained in this paragraph contains an incomplete quotation from the March 24, 2016 Memorandum from Wayne Domine and Tom Trice to Leo Savoie, which is attached as Exhibit F to the first amended complaint and which speaks for itself, Defendant denies the balance of the statements contained in this paragraph as untrue.

42. In answer to the allegations contained in paragraph 42 of the Plaintiff’s amended complaint, Defendant denies each and every statement in this paragraph as gross, and seeming intentional, misrepresentations of the actual facts.

¹ Footnote 2 of the amended complaint falsely claims the Judge Markman dissent in the Court of Appeals decision *Bolt v City of Lansing*, 221 Mich App 79, 88; 561 NW2d 423 (1997), “ultimately was adopted by the Supreme Court majority.” In fact, only a portion of the Markman decision was found persuasive and quoted in the Supreme Court decision, 459 Mich. 163-165. The majority opinion then quotes the Judge Markman dissent one other time, 459 Mich. 166. The quotation included in the parenthetical statement in paragraph 40 of the Amended Complaint, however, was not adopted nor found persuasive by the Supreme Court majority, and was not adopted, found persuasive, quoted, or even specifically referenced anywhere in the Supreme Court opinion.

43. In answer to the allegations contained in paragraph 43 of the Plaintiff's amended complaint, Defendant denies the allegation as untrue.

44. In answer to the allegations contained in paragraph 44 of the Plaintiff's amended complaint, Defendant denies the application of the cited statute, which regulates the repayment of revenue bonds, to the Township as it does not use revenue bonds to finance any portion of its water and sewer infrastructure improvements and in further answer denies that the Township is receiving water and sewer services without compensating the Water and Sewer Enterprise Fund in an amount proportional to the value of the commodity consumed for its own purposes.

45. In answer to the allegations contained in paragraph 45 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue.

46. In answer to the allegations contained in paragraph 46 of the Plaintiff's amended complaint, Defendant denies the allegation as untrue.

47. In answer to the allegations contained in paragraph 47 of the Plaintiff's amended complaint, Defendant denies that the decision in *Bolt* is the sole authority on the *Headlee Amendment* in the State and further states that the Supreme Court opinion speaks for itself.

48. In answer to the allegations contained in paragraph 48 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue.

49. In answer to the allegations contained in paragraph 49 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue, nor is this conclusory statement an allegation of fact as there is no information included anywhere in the first amended complaint to ascertain what the amount of "The Charges" is, nor is the amount of the "necessary costs of the use of the Township's water supply and sewer services" determined, so there is no factual support for the conclusory statement contained in this paragraph.

50. In answer to the allegations contained in paragraph 50 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue.

51. In answer to the allegations contained in paragraph 51 of the Plaintiff's amended complaint, Defendant states the cited ordinance sections speak for themselves.

52. In answer to the allegations contained in paragraph 52 of the Plaintiff's amended complaint, Defendant admits the amended complaint alleges a class action in addition to Plaintiff's individual claim and admit the Court has already certified the class over the Defendant's objections.

53. In answer to the allegations contained in paragraph 53 of the Plaintiff's amended complaint, Defendant admits the Court has already certified the class over the Defendant's objections.

54. In answer to the allegations contained in paragraph 54 of the Plaintiff's amended complaint, Defendant admits the Court has already certified the class over the Defendant's objections.

55. In answer to the allegations contained in paragraph 55 of the Plaintiff's amended complaint, Defendant admits the Court has already certified the class over the Defendant's objections but denies the Township has acted wrongfully as untrue.

56. In answer to the allegations contained in paragraph 56 and each subpart a. – g. of the Plaintiff's amended complaint, Defendant admits the Court has already certified the class over the Defendant's objections.

57. In answer to the allegations contained in paragraph 57 of the Plaintiff's amended complaint, Defendant admits the Court has already certified the class over the Defendant's

objections, but the Township denies the balance of the allegations contained in this paragraph as untrue.

58. In answer to the allegations contained in paragraph 58 of the Plaintiff's amended complaint, Defendant admits the Court has already certified the class over the Defendant's objections but the Township denies the balance of the allegations contained in this paragraph as untrue.

59. In answer to the allegations contained in paragraph 59 of the Plaintiff's amended complaint, Defendant incorporates by reference each of the responses to the preceding paragraphs as if fully set forth herein.

60. In answer to the allegations contained in paragraph 60 of the Plaintiff's amended complaint, Defendant admits the allegation contained in this paragraph.

61. In answer to the allegations contained in paragraph 61 of the Plaintiff's amended complaint, Defendant admits the allegation contained in this paragraph but denies it is doing so.

62. In answer to the allegations contained in paragraph 62 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue.

63. In answer to the allegations contained in paragraph 63 of the Plaintiff's amended complaint, Defendant denies the conclusory allegations contained in this paragraph and each of its subparts, a.-f., as untrue and in further answer affirmatively alleges that the first amended complaint: contains no factual allegations in support of the speculative and conclusory allegations it contains; is based upon non-authoritative sources and/or non-binding precedents; and contains incomplete quotations or distortions seemingly designed to mislead.

64. In answer to the allegations contained in paragraph 64 of the Plaintiff's amended complaint, Defendant states that the *Bolt v City of Lansing* opinion speaks for itself and denies

that the Court of Appeals dissent was adopted by the Supreme Court, only a portion was adopted and the portion quoted by Plaintiff from the Court of Appeals dissent was not adopted by the Supreme Court in *Bolt v City of Lansing*, 459 Mich. 152; 587 N.W.2d 264 (1998). Further, the Plaintiff has incorrectly cited the quotation, which is actually found at 221 Mich App 99.

65. In answer to the allegations contained in paragraph 65 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue.

66. In answer to the allegations contained in paragraph 66 of the Plaintiff's amended complaint, Defendant admits the Amended complaint requests an award of attorney fees but deny that the case was filed in accordance with Article 9, Section 32 of the Michigan Constitution of 1963 and thus attorney fees should not be awarded.

67. In answer to the allegations contained in paragraph 67 of the Plaintiff's amended complaint, Defendant admits Plaintiff seeks a refund but denies any refund is appropriate.

68. In answer to the allegations contained in paragraph 68 of the Plaintiff's amended complaint, Defendant incorporates by reference each of the responses to the preceding paragraphs as if fully set forth herein.

69. In answer to the allegations contained in paragraph 69 of the Plaintiff's amended complaint, Defendant admits that its water and sewer rates are reasonable.

70. In answer to the allegations contained in paragraph 70 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue and specifically denies that the first amended complaint contains any factual support of illegal or improper expenses in the Township's water and sewer rates.

71. In answer to the allegations contained in paragraph 71 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it

states a legal conclusion but to the extent allegations of fact are included they are denied as an express contractual relationship precludes an implied or quasi contractual claim such as assumpsit.

72. In answer to the allegations contained in paragraph 72 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are denied as an express contractual relationship precludes an implied or quasi contractual claim such as assumpsit.

73. In answer to the allegations contained in paragraph 73 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue and in further answer states that its water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains.

74. In answer to the allegations contained in paragraph 74 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue.

75. In answer to the allegations contained in paragraph 75 of the Plaintiff's amended complaint, Defendant incorporates by reference each of the responses to the preceding paragraphs as if fully set forth herein.

76. In answer to the allegations contained in paragraph 76 of the Plaintiff's amended complaint, Defendant states that the Revenue Bond Act and MCL §141.118 speaks for itself.

77. In answer to the allegations contained in paragraph 77 of the Plaintiff's amended complaint, Defendant denies the conclusory allegations contained in this paragraph as untrue and unsupported by any facts.

78. In answer to the allegations contained in paragraph 78 of the Plaintiff's amended complaint, Defendant denies the conclusory allegations contained in this paragraph as untrue and unsupported by any facts.

79. In answer to the allegations contained in paragraph 79 of the Plaintiff's amended complaint, Defendant denies the conclusory allegations contained in this paragraph as untrue and unsupported by any facts.

80. In answer to the allegations contained in paragraph 80 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are denied as an express contractual relationship precludes an implied or quasi contractual claim such as assumpsit.

81. In answer to the allegations contained in paragraph 81 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are denied as an express contractual relationship precludes an implied or quasi contractual claim such as assumpsit.

82. In answer to the allegations contained in paragraph 82 of the Plaintiff's amended complaint, Defendant denies the conclusory allegations contained in this paragraph as untrue and unsupported by any facts.

83. In answer to the allegations contained in paragraph 83 of the Plaintiff's amended complaint, Defendant denies the conclusory allegations contained in this paragraph as untrue and unsupported by any facts.

84. In answer to the allegations contained in paragraph 84 of the Plaintiff's amended complaint, Defendant incorporates by reference each of the responses to the preceding paragraphs as if fully set forth herein.

85. In answer to the allegations contained in paragraph 85 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue and in further answer states that its water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary.

86. In answer to the allegations contained in paragraph 86 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are neither admitted nor denied as the Township won't speculate on the purpose behind legislation.

87. In the answer to the allegations contained in paragraph 87 of the Plaintiff's amended complaint, Defendant denies the conclusory allegations contained in this paragraph as untrue and unsupported by any facts.

88. In answer to the allegations contained in paragraph 88 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are denied as an

express contractual relationship precludes an implied or quasi contractual claim such as assumpsit.

89. In answer to the allegations contained in paragraph 89 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are denied as an express contractual relationship precludes an implied or quasi contractual claim such as assumpsit and the Township denies it has collected amounts in excess of the amounts it is legally entitled to collect.

90. In answer to the allegations contained in paragraph 90 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue and in further answer states that its water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary.

91. In answer to the allegations contained in paragraph 91 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue.

92. In answer to the allegations contained in paragraph 92 of the Plaintiff's amended complaint, Defendant denies the allegations contained in this paragraph as untrue.

93. In answer to the allegations contained in paragraph 93 of the Plaintiff's amended complaint, Defendant states the cited ordinances speak for themselves.

94. In answer to the allegations contained in paragraph 94 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue.

95. In answer to the allegations contained in paragraph 95 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue.

96. In answer to the allegations contained in paragraph 96 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are denied as an express contractual relationship precludes an implied or quasi contractual claim such as assumpsit and the Township denies it has collected amounts in excess of the amounts it is legally entitled to collect.

97. In answer to the allegations contained in paragraph 97 of the Plaintiff's amended complaint, Defendant neither admits nor denies the statements set forth in this paragraph as it states a legal conclusion but to the extent allegations of fact are included they are denied as an express contractual relationship precludes an implied or quasi contractual claim such as assumpsit and the Township denies it has collected amounts in excess of the amounts it is legally entitled to collect.

98. In answer to the allegations contained in paragraph 98 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue and in further answer states that its water and sewer rates are calculated to generate sufficient revenue to cover the budgeted expenses that represent the actual costs incurred by the Township in operating the system and the Plaintiff's First Amended Class Action Complaint fails to allege any material facts in support of the conclusory allegations to the contrary that it contains.

99. In answer to the allegations contained in paragraph 99 of the Plaintiff's amended complaint, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, THE CHARTER TOWNSHIP OF BLOOMFIELD, respectfully requests that this Honorable Court deny Plaintiff any judgment and instead award Defendant its costs and attorney fees incurred as a result of this action, and such other relief as the Court determines to be appropriate.

Respectfully submitted,

SECRET WARDLE

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January 9, 2017

AFFIRMATIVE DEFENSES

Now comes Defendant, THE CHARTER TOWNSHIP OF BLOOMFIELD, by and through its attorneys, SECRET WARDLE, and for its affirmative defenses to the amended complaint filed by Plaintiff, JAMILA YOUMANS, states as follows:

1. Plaintiff's Amended complaint was not filed according to the requirements of Article IX, Section 32 of the Michigan Constitution of 1963, thus no attorney fee award is allowed.
2. Plaintiff's Amended complaint fails to state a claim upon which relief can or may be granted.

3. Plaintiffs' claims and causes of action alleged in Plaintiffs' Amended complaint are barred in whole or in part by the applicable Statute of Limitations.
4. Plaintiff has failed to state or support a claim for injunctive relief.
5. Plaintiff's amended complaint is barred in whole or in part by the equitable doctrines of laches, estoppel, and/or unclean hands.
6. Plaintiff has failed to state or support a claim for declaratory relief.
7. There is no actual controversy giving rise to an actionable claim.
8. Defendant's water and sewer rates are reasonably proportionate to the actual costs of providing water and sewer services.
9. That Defendant's water and sewer rates/charges constitute valid regulatory service user fees for voluntary water and sewer consumption that are reasonably proportionate to the cost of providing a municipal water and sewer service.
10. Plaintiff's claims are barred in whole or in part due to Plaintiff's failure to exhaust administrative remedies.
11. That the allegations set forth in Plaintiff's Amended complaint misstates and misrepresents Defendant's actual costs, expenditures, projects and revenues relative to providing water and sewer service to Defendant's water and sewer customers, Plaintiff in particular.
12. Defendant's water and sewer charges were authorized by law prior to the enactment of the Headlee Amendment and, therefore, do not require voter approval.
13. Defendant is a governmental agency and therefore immune from tort liability and resulting monetary relief and damages as alleged in Plaintiffs' Amended complaint pursuant to the Michigan Governmental Tort Liability Act, MCL 691.1407, et. seq.

14. Plaintiffs' Amended complaint fails to plead facts in avoidance of governmental immunity and otherwise fails to state a claim falling within the scope of a recognized exception to governmental immunity under the Governmental Tort Liability Act, MCL 691.1407, et seq.

15. That Plaintiff's claims, causes of action and/or remedies are barred in whole or in part by the doctrines of governmental and/or sovereign immunity.

16. That the infrastructure projects, work, improvements and repairs alleged as improperly funded with water and/or sewer revenues were reasonably related to water and sewer projects that are part of the actual cost of providing water and sewer services.

17. That all alleged water/sewer charges and/or assessments collected by Defendant deemed as taxes under the Headlee Amendment, if any, are within limits provided by law and/or Charter and have otherwise received proper voter approval as required by the Headlee Amendment, *Constitution 1963, Article 9, Sections 25-31*.

18. Plaintiff's claims are frivolous and/or interposed for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

19. Plaintiff's cause of action is barred in total, or at least in part, based on her failure to comply with MCR 2.113(F).

20. Plaintiff's cause of action is barred in total, or at least in part, because Plaintiff lacks standing to assert a cause of action.

21. That *MCL 123.141* does not create or authorize a claim and/or a remedy for a refund or other monetary award/relief.

22. That Defendant's water and sewer rates/charges constitute a valid user fee, not a tax subject to the requirements of the Headlee Amendment, *Constitution 1963, Article 9, Sections 25-31*, as amended.

23. Plaintiff's cause of action is barred in total, or at least in part, by one or more of the affirmative defenses as set forth in MCR 2.116(C)(7), and any and all documents evidencing the same are in the possession of the Plaintiff.

24. At all relevant times, Defendant's water and sewer rates were lawfully established by properly adopted and duly noticed resolutions following public hearing, without objection by Plaintiff.

25. That the claims, causes of action and remedies alleged in Plaintiff's Amended complaint presents issues of first impression that, if granted, would work an undue hardship on Defendant therefore warranting only prospective application of any relief granted by this Court.

26. Plaintiff, as a user of Defendant's water and sewer services, receives a direct and measurable individual benefit from Defendant's provision of water and sewer services.

27. Plaintiff has suffered no damages.

28. Plaintiff has failed to mitigate her damages.

29. Plaintiff's claims for a refund fail where Plaintiff, as a taxpayer, will ultimately fund any refund thereby creating an inequitable undue hardship to Defendant without a corresponding benefit to Plaintiff or any potential class.

30. Plaintiff has failed to allege facts sufficient to overcome the presumption that the Township's Water and sewer charges are valid fees under Michigan law.

31. No refund of the disputed fees is warranted.

32. Plaintiff's claims are barred to the extent that Plaintiff or any members of the proposed class have not paid the disputed fees.

33. Plaintiff's claims are barred in whole or in part by the doctrine of waiver and/or acquiescence.

SECRET WARDLE

34. Plaintiff's claims are barred in whole or in part by the doctrine of voluntary payment to the extent the Plaintiff has paid for the services provided.

35. Plaintiff's claims for a refund will fail where Plaintiff and the proposed class, as taxpayers, will ultimately fund any refunds, thereby creating an undue hardship to Defendant.

36. The form of Plaintiffs Amended complaint is improper due to lack of compliance with MCR 2.111(A)(1) ("each allegation of a pleading must be clear, concise, and direct").

37. The form of Plaintiff's Amended complaint is improper due to lack of compliance with MCR 2.113(E)(2) ("The content of each paragraph must be limited as far as practicable to a single set of circumstances").

38. The cited sections of the Revenue Bond Act may not apply to the Defendant as Defendant has not issued any Revenue Bonds.

39. The Plaintiff's Amended complaint is not well grounded in fact, representing either an intentional misrepresentation of fact or a lack of a reasonable inquiry into the factual basis for the allegations.

40. The relief sought in the Plaintiff's Amended complaint is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

Defendants reserve the right to raise additional affirmative defenses as they become known to the Defendant through the course of further discovery and/or research.

Respectfully submitted,

SECRET WARDLE

BY: /s/ Dennis R. Pollard
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January 9, 2017

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