

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE ex rel. OHIO	)	Case No. 18 CV 007094
ATTORNEY GENERAL,	)	
	)	
Plaintiff,	)	Judge Kimberly Cocroft
	)	
vs.	)	
	)	
WILLIAM LAGER, et al.	)	
	)	
Defendants.	)	

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**MOTION OF SCHOOL DISTRICTS TO INTERVENE**

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Logan-Hocking Local School District Board of Education and the Dayton Public Schools Board of Education (the "School Districts") seek leave to intervene in this proceeding. A Brief in Support and a proposed Intervenors' Complaint is attached hereto.

There is ample cause for intervention. The School Districts' claims overlap with the claims being asserted by Attorney General Mike DeWine (the "AG") herein. Further, the Districts have considerable reservations about whether the AG will adequately represent their interests in this proceeding. The AG has been a solid supporter of charter schools, including ECOT, for many years, at a great cost to all public schools in Ohio, and especially to the Logan-Hocking Local and Dayton Public Schools. While examples of the AG's enthusiastic promotion of charter schools are too copious to list here, some more glaring illustrations of his patronage are:

- In November of 2014, School Choice Ohio thanked AG DeWine for his part in making Ohio “one of the nation’s school choice leaders.”<sup>1</sup>
- DeWine accepted the maximum campaign donation allowed under election law from Defendant William Lager in June of 2015.<sup>2</sup>
- DeWine has a history of not pursuing all potential avenues of recovery against other charter school operators who have generously donated to the Republican party

There is no question that the AG is a friend of these institutions. For these reasons, and many others outlined in the accompanying Brief, the AG is not an adequate representative of the School Districts’ interests herein.

**Respectfully submitted,**

**COHEN ROSENTHAL & KRAMER LLP**

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<sup>1</sup> <https://schoio.org/home/blog/2014/11/10/ohioans-elect-school-choice-proponents/>

<sup>2</sup> <https://www.sos.state.oh.us/campaign-finance/#gref>

BRIEF IN SUPPORT OF MOTION OF SCHOOL DISTRICTS TO INTERVENE

FACTUAL BACKGROUND

- ECOT overbilled the public on a massive scale. AG's Complaint, p. 1
- Real harm resulted from [the overbilling], as "every dollar of state funding ECOT received from overbilling came from" Ohio school districts. *Id.* at p. 2.
- The overbilling caused the loss of educational opportunities. Children in Ohio's schools "suffered real deprivations." *Id.*

The numbers lost by the School Districts to ECOT since 2012 are staggering. In that five-plus year time frame, ECOT received \$1,484,453 in monies that otherwise should have gone to the Logan Hocking Schools and more than \$20,000,000 that should have gone to the Dayton Public Schools. Since 2002 Logan Hocking has lost \$2,021,706 to ECOT.<sup>3</sup> It is obvious that the School Districts have an interest in the property and transactions that are the subject of this proceeding.

**A. Campaign money is a factor.**

Defendant William Lager has not only been a recent proponent of DeWine, his monetary support of the AG has been substantial. Lager donated the maximum amount allowed to Mike DeWine in June 2015.<sup>4</sup> Later in the same year Lager donated \$3,600 to DeWine's son, Patrick, in Patrick's campaign for the Ohio Supreme Court.<sup>5</sup>

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<sup>3</sup> See Logan-Hocking School District August 27, 2018 Resolution, p. 1, attached hereto as Exh. D.

<sup>4</sup> <https://www.sos.state.oh.us/campaign-finance/#gref>

<sup>5</sup> *Id.*

Moreover, DeWine's current running mate for the Ohio governor race, Jon Husted, received \$36,000 from Lager.<sup>6</sup> When Husted and DeWine joined forces, the money from Lager became part of DeWine's campaign fund. In addition to receiving large amounts of money from Lager, Husted also was awarded an honorary degree from ECOT and delivered ECOT's graduation address in 2007.<sup>7</sup>

**B. The AG deserted public schools in an earlier charter school mismanagement case which questioned the actions of a major Republican donor.**

*Hope Academy Broadway Campus, et al. v. White Hat Mgmt., LLC, et al.*, was filed in the Franklin County Common Pleas Court in 2010 (the "White Hat Action"),<sup>8</sup> by several community schools against several defendants, including the community schools' for-profit manager, White Hat Management, LLC, and the Ohio Department of Education ("ODE"). White Hat was founded and run by a major Republican contributor.<sup>9</sup> The AG represented ODE.

The White Hat Action, hotly contested from the start, wound its way to the Ohio Supreme Court in late 2013 to address questions related to the payment of public funds to a private entity operating a community school. *Hope Acad. Broadway Campus v. White Hat Mgmt., L.L.C.*, 145 Ohio St.3d 29, 2015-Ohio-3716, 46 N.E.3d 665, syll. Despite being a party to a case involving major issues about

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<sup>6</sup> *Id.*

<sup>7</sup> <http://www.dispatch.com/news/20180902/which-side-is-right-in-political-battle-over-ecot-blame>

<sup>8</sup> *Hope Academy Broadway Campus, et al. v. White Mgmt., LLC, et al.*, Franklin County Common Pleas Case No. 10CVC 05 7423

<sup>9</sup> [https://www.cleveland.com/metro/index.ssf/2013/07/white\\_hat\\_managements\\_ohio\\_cha.html](https://www.cleveland.com/metro/index.ssf/2013/07/white_hat_managements_ohio_cha.html)

school funding, the AG filed nothing in the White Hat appeal, not even an *amicus* brief.<sup>10</sup>

After delays relating to this and to another appeal, the community schools filed their Second Amended Complaint in the White Hat Action in September 2016, asserting claims for declaratory judgment, breach of contract, an accounting, injunctive relief and breach of fiduciary duty. The AG filed nothing in response to the Second Amended Complaint. The White Hat Action, set for trial in May 2019, will go forward without any assistance from the AG.

**C. The AG's vigilance in prosecuting this case pales in comparison to what he has done in other community school corruption cases.**

Unfortunately, ECOT is not the first community school in Ohio to betray its students; the AG has experience attempting to recover for students after the collapse of other charter schools in Ohio. In 2014 the AG asserted numerous claims against another community school, Value Learning and Teaching Academy ("VLT"), and officials of VLT in the Hamilton County Court of Common Pleas (the "VLT Action").<sup>11</sup> Neither VLT, nor any of the VLT officers sued by the AG, donated to Mr. DeWine, at least since 2012 when the Secretary of State began recording this information.<sup>12</sup>

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<sup>10</sup> See docket of Ohio Supreme Court Appeal Case No. 2013-2050.

<sup>11</sup> Due to an appeal, the VLT Action is still pending. See Hamilton County, Ohio Court of Common Pleas Case No. A140504.

<sup>12</sup> This information was uncovered in a review of public records. Affidavit of Ellen M. Kramer, attached hereto as Exh. A.

The AG's claims in the VLT Action resulted in a decision in the AG's favor in March of 2018. *Sun Bldg. Ltd., P'ship v. Value Learning & Teaching Acad.*, 2018 Ohio Misc. LEXIS 2 (March 26, 2018).<sup>13</sup> The breach of fiduciary duty claims in the VLT Action resulted in a judgment against Valerie and Clyde Lee for **all compensation paid to them** during the time they were in breach of their fiduciary duties. The AG also sought and was awarded treble damages against Valerie and Clyde Lee and Judy McConnell, the treasurer of VLT for violations of the Ohio Corrupt Practices Act.

The Lion of Judah Academy was another Ohio community school whose officers were the subject of a lawsuit by the AG who alleged misconduct (the "Lion Action").<sup>14</sup> Notably, the Ohio Secretary of State has no record of any officers of Lion of Judah donating to Mike DeWine.<sup>15</sup>

In the Lion Action, the AG's request for treble damages extended to **ten** of Lion of Judah's officers!<sup>16</sup> The AG also sought to recover **any money paid** pursuant to illegal contracts and **any compensation** paid to **all fiduciaries** of Lion of Judah.<sup>17</sup>

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<sup>13</sup> The AG's Complaint in the VLT Action is attached hereto as Exhibit B.

<sup>14</sup> The Lion Action was stayed soon after it was filed due to bankruptcy filings by a number of its officers.

<sup>15</sup> This information also was uncovered in a review of public records. Exh. B.

<sup>16</sup> The AG's Complaint in the Lion Action is attached hereto as Exhibit C.

<sup>17</sup> *Id.*

#### D. Ohio's Attorney General after 2018

Mike DeWine is running for Ohio governor, and will not be the AG next year. David Yost and Steven Dettelbach are running to be the next AG.

Mr. Yost was ECOT's commencement speaker on three separate occasions.<sup>18</sup> In 2016, while Ohio's State Auditor, Yost awarded ECOT his Auditor of State Award.<sup>19</sup> Altair Management and Lager each contributed \$2,500 to Yost's transition fund in 2014.<sup>20</sup> Lager contributed \$11,395 to Yost's campaign for State Auditor in 2010.<sup>21</sup>

#### LEGAL ARGUMENT STANDARD ON MOTION TO INTERVENE

Ohio Civil Rule 24, which governs intervention, is to be construed liberally in favor of intervening. *State ex rel. Merrill v. Ohio Dep't of Natural Res.*, 130 Ohio St.3d 30, 2011-Ohio-4612, 955 N.E.2d 935, ¶41 (citations omitted); *Ass'n of Cleveland Firefighters, Local 93 I.A.F.F. v. City of Cleveland*, 8<sup>th</sup> Dist. No. 106472, 2018-Ohio-2049, ¶29.

Regardless of the subsection of Rule 24 on which a request for intervention is premised, the request must be timely. *State ex rel. Montgomery v. City of Columbus*, 10<sup>th</sup> Dist. No. 02AP-963, 2003-Ohio-2658, ¶15; *Rimmer v. Citifinancial, Inc.*, 8<sup>th</sup> Dist. No. 106337, 2018-Ohio-2845, ¶24.

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<sup>18</sup> <http://www.dispatch.com/news/20170730/how-ecot-founder-william-lager-cooked-up-lucrative-charter-school>

<sup>19</sup> <https://www.cincinnati.com/story/news/politics/elections/2018/05/19/election-2018-and-ecot-why-charter-school-scandal-matters/609172002/>

<sup>20</sup> <https://www.sos.state.oh.us/campaign-finance/#gref>

<sup>21</sup> <https://www.followthemoney.org/show-me>

As the Motion to Intervene is filed approximately 4 weeks after this case was commenced, timeliness cannot reasonably be disputed.

**I. Civil Rule 24(A)(2) - Intervention as of right**

The Rule provides that anyone may intervene in an action “when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protected that interest, unless the applicant’s interest is adequately represented by existing parties.” Civ. R. 24(A)(2).

A request to intervene pursuant to Rule 24(A)(2) will be granted if the applicant shows: 1) that the party has an interest relating to the property or transaction that is the subject of the action; 2) the party is so situated that disposition of the action may, as a practical matter, impair or impede the party’s ability to protect its interest; and 3) the party’s interest is not adequately represented by the existing parties. *Ass’n of Cleveland Firefighters, Local 93 I.A.F.F. v. City of Cleveland*, 8<sup>th</sup> Dist. No. 106472, 2018-Ohio-2049, ¶29 (citing *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 247, 1992-Ohio-20, 594 N.E.2d 616).

**A. The Attorney General’s Complaint demonstrates that the School Districts meet the first two requirements for intervention pursuant to Rule 24(A)(2).**

**1. The School Districts have an interest in the property and transactions that are the subject of this action.**

According to the Complaint filed by the Attorney General and which commenced this action:

- ECOT overbilled the public on a massive scale. Complaint, p. 1

- Real harm resulted from [the overbilling], as “every dollar of state funding ECOT received from overbilling came from” Ohio school districts. *Id.* at p. 2.
- The overbilling caused the loss of educational opportunities. Children in Ohio’s schools “suffered real deprivations.” *Id.*

The School Districts have lost massive amounts of funding to ECOT since 2012.

It is clear that the School Districts have an interest in the property and transactions that are the subject of this proceeding.

**2. Disposition of this action may impair the School Districts’ ability to protect their interests.**

R.C. § 3314.074 dictates the manner in which the assets of a closed community school must be distributed. Following distributions to the retirement funds of school employees and to the school’s private creditors, any remaining funds are for the public school districts of students enrolled in that community school. R.C. § 3314.074(A). *See also* Complaint, p. 23. Thus, the statute authorizes distribution to public school districts only after school employee retirement funds and private creditors are paid.

School districts have a fiduciary duty to act in the best interests of the students, parents and taxpayers of their districts. *See, e.g., In re Removal of Kuehnle*, 12<sup>th</sup> Dist. No. CA2004-09-034, 161 Ohio App. 3d 399, 2005-Ohio-2373, 83 N.E.2d 1173, ¶180. Thus, the intervening School Districts have a duty to ascertain that the claims in this proceeding are pursued to the fullest extent of the law. The manner in which these claims are disposed of may impair the School Districts’ ability to protect their constituents.

The School Districts have a significant interest in the ultimate disposition of this action.

**B. The Attorney General cannot adequately represent the School Districts.**

Intervention pursuant to Rule 24(A)(2) is appropriate if the proposed intervenor's interest is not adequately represented by existing parties. Although the burden of proving inadequate representation by an existing party is on the party seeking intervention, that burden is minimal. *State ex rel. Walgate v. Kasich*, 2012 Ohio Misc. LEXIS 5354 (Franklin Cty. Comm. Pleas 2012) (citing *Fairoview Gen. Hosp. v. Fletcher*, 69 Ohio App.3d 827, 835, 591 N.E.2d 1312 (10<sup>th</sup> Dist. 1990)); *Tomcany v. Range Constr.*, 11<sup>th</sup> Dist. No. 2003-L-071, 2004-Ohio-5314, ¶30 (citations omitted).

A trial court should ask the following in determining whether this minimal burden is met:

Are the [interests] of a present party in the suit sufficiently similar to that of the absentee such that the legal arguments of the latter will undoubtedly be made by the former, (2) is the present party capable and willing to make such arguments, and (3) if permitted to intervene, would the intervenor add some necessary element to the proceeding which would not be covered by the parties in the suit?

*Tomcany*, 2004-Ohio-5314 at ¶30 (citations omitted).

A government agency charged by law with representing the interests of a proposed intervenor will usually be deemed adequate to represent the proposed intervenor's interest. *Montgomery*, 2003-Ohio-2658 at ¶26 (citing *Mausolf v. Babbit* (8<sup>th</sup> Cir. 1996), 85 F.3d 1295, 1303) (additional citation omitted). *See also Clarke v. Warren Cty. Bd. Of Comm'rs*, 12<sup>th</sup> Dist. No. CA2000-01-009, 2000 Ohio App. LEXIS 4199 (citations

omitted). This presumption may be overcome by demonstrating adversity of interest, collusion or nonfeasance. *Montgomery*, 2003-Ohio-2658 at ¶25; *Clarke*, 2000 Ohio App. LEXIS at \*8.

Nonfeasance is the omission of an act which a person ought to do or the failure to act when a duty exists. *Teagardin v. Metal Foils, LLC*, 11<sup>th</sup> Dist. No. 2001-L-235, 2003-Ohio-1975, ¶11; *Betkoski v. Council of Norton*, 2004 Ohio Misc. LEXIS 1893, \*7 (Summit Cty. Comm. Pleas 2004) (citation omitted). An adverse interest is an interest that is opposed or contrary to that of someone else. *Black's Law Dictionary* 10<sup>th</sup> ed. (2014).

The Attorney General is not an adequate representative of the School Districts. The AG has already demonstrated that he is unwilling to make all of the legal arguments needed to capably advocate for the School Districts. Further, the AG's past behavior demonstrates both nonfeasance and an adversity of interest with respect to all public school districts in this state.

Evidence of the AG's nonfeasance and adverse interests are shown below.

**1. Defendant William Lager's campaign donations to AG DeWine and his family members compromise the AG.**

Defendant William Lager has not only been a recent proponent of DeWine, his monetary support of the AG, the AG's son and the AG's current running mate has been substantial.

The School Districts are skeptical that DeWine can suddenly forget his cozy relationship with Lager and ECOT, and ably represent students at Ohio public schools.

The fact that DeWine recently donated his contributions to charity should not change this analysis. The School Districts do not believe that DeWine will pursue their claims with the utmost dedication and conviction that an attorney should employ against a very recent and lavish supporter of not only the AG, but also the AG's current running mate and son.

**2. DeWine has a history of inadequately representing Ohio Public School Districts.**

The School Districts' wariness of DeWine as their advocate is based on prior experience.

The White Hat Action is one example. The AG never filed a motion to withdraw in that case, which would have been public record. Instead he quietly dropped out by failing to file an *amicus* brief with the Ohio Supreme Court and, more recently, by ignoring the Second Amended Complaint. As a result, the White Hat Action, set for trial in May 2019, will go forward without the AG's involvement.

**3. The AG's inadequate representation of the School Districts in this proceeding is glaringly apparent when the current complaint is compared with those the AG has filed against some other dishonest charter schools.**

Despite his recent success against VLT, the AG's claims against ECOT are much less aggressive than those he pursued in VLT. For example,

- The breach of fiduciary duty claims in the VLT Action resulted in a judgment against Valerie and Clyde Lee for **all compensation paid to them** during the time they were in breach of their fiduciary

duties. In contrast, the breach of fiduciary duty claim against Bill Lager merely seeks to recover profits Lager received from Altair Learning Management I, Inc. and IQ Innovations, LLC. The AG does not seek other compensation paid to Lager, or any other officers of ECOT. The Intervenor's Complaint, in contrast, includes these allegations.

- The AG sought and was awarded treble damages against Valerie and Clyde Lee and Judy McConnell, the treasurer of VLT for violations of the Ohio Corrupt Practices Act. Despite his success in the VLT Action, the AG only requests "possible" treble damages against Bill Lager, and not against ECOT's treasurer or anyone else associated with ECOT. The Intervenor's Complaint includes all of the named defendants on this claim.

As he had in the VLT Action, the AG sought treble damages for Corrupt Practices Act violations in the Lion Action. In Lion, the AG's request for treble damages extended to ten of Lion of Judah's officers! The AG also sought to recover any money paid pursuant to illegal contracts - not just profits received on those contracts - and further sought the recovery of any compensation paid to all fiduciaries of Lion of Judah.

In the current proceeding involving ECOT, the AG alleges almost identical claims to those alleged in Lion of Judah. Despite the similarity of the allegations, the AG only seeks to recover money paid pursuant to illegal contracts; the AG is

not asking to recover any other compensation paid to Lager or any other fiduciaries of ECOT. Moreover, in stark contrast to the complaints the AG filed in VLT and Lion of Judah, the only defendant from which the AG seeks treble damages is Bill Lager.

The School Districts' fear that Mike DeWine will not adequately represent their interests is already being realized. Despite everything that has transpired with the closure of ECOT and the wide-reaching financial and academic fiasco resulting from ECOT's demise, Mike DeWine has chosen to pursue a much gentler approach with ECOT than he did with other corrupt community schools involving a much smaller number of students. As the School Districts are only entitled to distributions after school employees' retirement funds and ECOT's creditors are paid, the recovery of treble damages from as many bad actors as possible is a crucial issue in this proceeding.

The AG is not and will not adequately represent the School Districts in this proceeding.

**4. The Rules of Professional Conduct preclude the AG from representing the School Districts.**

The Ohio Rules of Professional Conduct ("Prof. Conduct Rules") preclude the AG from representing the School Districts in this proceeding.

According to Prof. Conduct Rule 1.7(a)(2), a conflict of interest arises if there is a "substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited

by the lawyer's responsibilities to ... a third person or by the lawyer's own personal interest." Prof. Conduct Rule 1.7(b) prohibits a lawyer from representing a client if a conflict would be created, unless the lawyer will be able to provide competent and diligent representation to the client and the client gives informed written consent. Rule 1.11(d) requires attorneys who serve in public office to comply with Rule 1.7.

The AG and one of his possible successors have personally aligned themselves with Ohio charter schools for years. The Prof. Conduct Rules forbid the AG from representing the School Districts in this proceeding unless the School Districts give informed written consent, which the School Districts adamantly decline to give.

**5. The fact that DeWine will not be the AG in 2019 does not change this analysis.**

Mike DeWine is running for Ohio governor, and will not be the AG next year. It is not known if the next Ohio Attorney General will be David Yost or Steven Dettelbach. If Mr. Yost is elected, the School Districts will continue to have grave concerns about inadequate representation in this case.

**II. Permissive Intervention - Civil Rule 24(B)**

Intervention also may be approved "'when [the] applicant's claim or defense and the main action have a question of law or fact in common.'" *State ex rel. Merrill v. Ohio Dep't of Natural Res.*, 130 Ohio St.3d 30, 39, 2011-Ohio-4612, 955 N.E.2d 935, ¶43 (quotation omitted). When there is a claim that shares a

common question of law or fact with the main action and intervention will not unduly delay or prejudice the adjudication of the rights of the original parties, the requirements for permissive intervention are met. *Id.* at ¶45. *See also Freedom Mortg. Corp. v. Milhoan*, 7<sup>th</sup> Dist. No. 13 CO 15, 2014-Ohio-881, ¶59.

The claims proposed by the School Districts overlap with those asserted by the AG in many respects. Both the School Districts and the AG are seeking to recover monies improperly paid to ECOT, and officers of ECOT, during ECOT's existence.

### CONCLUSION

- It is undisputed that the School Districts have claims against ECOT and several, if not all, of its officers.
- The School Districts have a duty to protect their students, parents and taxpayers.
- The AG has a long and well-documented history of protecting ECOT.
- The AG's pattern of siding with ECOT is already in evidence by the insubstantial complaint filed to commence this proceeding.

The School Districts meet all of the requirements for both intervention as of right, and permissive intervention. Based on the foregoing, the School Districts motion to intervene in this proceeding must be granted.

Respectfully submitted,

**COHEN ROSENTHAL & KRAMER LLP**

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CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of September, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties who have made an appearance by operation of the Court's electronic filing system and those parties may access the filing through the Court's system. I hereby certify that a copy of the foregoing was sent by regular U.S. mail to the following:

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/s/ Ellen M. Kramer  
One of the Attorneys for Movants

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE ex rel. OHIO	)	Case No. 18 CV 007094
ATTORNEY GENERAL, et al.,	)	
	)	
Plaintiff,	)	Judge Kimberly Cocroft
	)	
vs.	)	
	)	
WILLIAM LAGER, et al.	)	<b><u>JURY DEMAND</u></b>
	)	<b><u>ENDORSED HEREON</u></b>
Defendants.	)	

**INTERVENORS' COMPLAINT FOR RECOVERY OF PUBLIC FUNDS**

"It is pretty well settled under the American system of government that a public office is a public trust, and that ... public money ... under the control of such officer or officers constitute a trust fund, for which the official as trustee should be held responsible to the same degree as the trustee of a private trust fund." *Twp. of Crane v. Secoy*, 103 Ohio St. 258, 259-260 (1921).

ECOT was a public school and hence a public office. It was entrusted with immense amounts of public money, most of which came from other public schools. Those who operated ECOT were subject to the same fiduciary duties as the trustee of a private trust. The most fundamental of those duties is the duty of loyalty – to avoid *any* situation where they would be tempted to profit improperly from their position of trust.

The folks who ran ECOT yielded to that temptation. William Lager, ECOT's founder and public face, also founded companies that made millions of dollars doing

business with that public school. Other ECOT officials stood by, or actively participated, as ECOT overbilled the public on a massive scale to keep the money flowing.

Real harm resulted from that – every dollar of state funding ECOT received from overbilling came from school districts in this State. *See* R.C. 3314.08. The numbers are staggering. The overbilling totaled more than \$79,640,000 just since July of 2017 and had real impacts on real districts.

As a result of these ECOT charges, the Logan-Hocking Local School District lost \$1,484,453 since 2012, and the City of Dayton Public Schools lost in excess of \$20,000,000 in the same time frame (collectively, the Logan-Hocking Local School District and the City of Dayton Public Schools will be referred to as the “School Districts”). The overbilling is more than numbers on a ledger sheet – they are concrete educational opportunities lost. Real kids suffered real deprivations.

This case seeks to hold those responsible for those injuries accountable by applying well settled legal principles that exist to address the types of abuse underlying this case. The context may be different, but the principles are the same – those who abuse positions of trust must be held accountable.

The School Districts, which have authority to bring these claims under O.R.C. §§ 3313.17 and 3313.46, plead and allege as follows:

### **Community Schools Generally**

1. A “community school” is a school created by a contract between a “governing authority” and a supervisory entity known as a “sponsor.” They are commonly referred to as charter schools.

2. A community school's governing authority is a multi-member board. It has roughly the same authority over the community school that a board of education has over a school district.
3. Although a community school must be structured as a R. C. Chapter 1702 corporation, it is a public body. A community school is a public school, a public office, and a political subdivision.
4. Community schools operate on two types of public monies:
  - a. State operating funds. Those funds are transferred from the traditional school districts where the community schools' students reside.
  - b. Federal grant funds. The Ohio Department of Education ("ODE") receives a finite amount of federal grant funds for distribution to all schools. Portions are allocated to individual community schools based on the individual school enrollment and other factors.
5. A community school receives a set amount of state operating funds for each 920 hours of instruction in which its students participate. Each unit of 920 hours is known as a "full time equivalency," or "FTE." A community school obtains those funds by submitting monthly enrollment reports to ODE through an electronic system known at various times as "EMIS," "CSADM," and "SOES." Those funds are transferred to the community school on a monthly basis.
6. ODE periodically reviews each community school's records to determine whether they document the school's entitlement to the amount of state operating funds transferred pursuant to the school's requests. That process is commonly

referred to as an “FTE Review.” If ODE determines that the community school cannot document its entitlement to all the funds it has received, ODE issues a determination of how much the community school is unable to document, calculates how much the school was overpaid, and begins collecting the overpayment. Community schools may appeal such determinations. Such appeals are commonly referred to as “FTE Appeals.” If an FTE Appeal is pursued:

- a. A hearing officer is appointed to preside over an administrative hearing on the issues raised by the community school.
  - b. At that hearing the community school is represented by counsel, may submit witness testimony and documentary evidence, and may cross examine ODE’s witnesses. The community school may also file pre- and post- hearing briefs. A record of proceedings is created.
  - c. The hearing officer issues a written report and recommendation to the State Board of Education.
  - d. The community school may file written objections to the report and recommendation.
  - e. The State Board of Education ultimately decides the appeal, determining the amount of any overpayment. That decision is final.
7. A community school obtains federal grant funds through an electronic system known as “CCIP.” That is a multi-step process:

- a. The school identifies the grants it wishes to pursue and submits electronic applications for those grants. Those applications set out the amounts sought, describe the proposed uses of the grant funds, and propose budgets for the use of grant funds. ODE reviews the applications and, if the grant is approved, establishes the amount of grant funds the school will be awarded.
  - b. The school draws down specific amounts of grant funds during the life of the grant by drafting and submitting project cash requests, commonly known as "PCRs." A school usually makes multiple PCRs during the life of the grant.
  - c. After the school draws down all grant funds, the school prepares and submits a final expenditure report, commonly referred to as an "FER."
8. Community schools sometimes contract with private companies to manage all or part of their operations. Such companies are referred to as "operators" or "management companies." Operators/management companies sometimes assist the community schools they contract with in accessing State operating funds and/or federal grant funds, or perform those functions themselves on behalf of those community schools.
9. Because community schools are public bodies and operate on public funds, they are subject to statutes and common law doctrines protecting public funds:

- a. Community schools are subject to R.C. Chapters 117 and 149, the chapters of the Revised Code that control the records, finances, and audits of publicly funded entities.
  - b. Members of a community school's governing authority, its officers, employees, agents, and authorized representatives are public officials for purposes of R.C. 9.39, R.C. 102.03, and R.C. 2921.42.
  - c. Officers, employees, agents, and authorized representatives of community schools are fiduciaries of their schools.
10. Ohio community schools serve more challenged students than do schools on average. Community schools generally also have fewer resources to devote to their students than traditional schools.

**Parties and Relevant Persons/Entities**

11. The Electronic Classroom of Tomorrow ("ECOT") is a community school organized under R.C. Chapter 3314.
- a. As a community school, ECOT is a political subdivision and its property is public property.
  - b. ECOT's operations were formally suspended on or about January 19, 2018.
  - c. This Court appointed an Interim Special Master to protect ECOT's assets in Franklin County Common Pleas Case No. 18 CV 00324. A true, complete, and accurate copy of the order making that appointment is attached to the Complaint which commenced this action (the "Original Complaint") as Exhibit 1.

12. William Lager (“Lager”) was ECOT’s founder and was actively involved in and on behalf of ECOT throughout its entire existence, as discussed more fully below.
13. Altair Learning Management I, Inc. and its predecessor Altair Learning Management LLC (collectively “Altair”) are private, for profit, companies that managed significant portions of ECOT’s operations. Altair served as ECOT’s operator/management company at all times relevant to this case. Lager had a significant ownership interest in Altair and was its chief executive officer at all times relevant to this case.
14. IQ Innovations, LLC (“IQ”) is a private, for profit, company that contracted to provide ECOT with curricular materials and related service. Lager had a significant ownership interest in IQ and was its chief executive officer at all times relevant to this case.
15. Rick Teeters (“Teeters”) was ECOT’s superintendent.
16. Michele Smith (“Smith”) was ECOT’s treasurer.
17. Christopher Meister (“Meister”) was ECOT’s vice president of accounting.
18. Ann Barnes (“Barnes”) was ECOT’s EMIS director.
19. Regina Lukich (“Lukich”) was ECOT’s director of federal programs.
20. Travelers Casualty and Surety Company of America (“Travelers”) issued a bond or bonds guaranteeing the faithful performance of Smith’s duties as ECOT’s treasurer, and is sued on those bonds.

21. The School Districts bring this case to recover public funds wrongfully paid out by ECOT and wrongfully received by ECOT, Lager, Altair, IQ, and the other Defendants herein.
22. Lager conceived of ECOT and brought it into existence. His actions in that regard included:
  - a. Developing the concept of delivering K-12 educational services throughout the state via the internet.
  - b. Developing ECOT's name.
  - c. Formulating the business plan for ECOT, including sources of capitalization.
  - d. Pursuing a charter for ECOT, first with ODE and ultimately receiving a charter with an entity now known as the Educational Service Center of Lake Erie West ("ESCLEW").
  - e. Recruiting the members of ECOT's governing authority.
  - f. Recruiting and supervising ECOT's key staff.
  - g. Selecting and/or developing curricular materials for ECOT.
  - h. Searching for and negotiating with vendors who would provide necessary goods and services to ECOT.
  - i. Representing ECOT in interactions with the press and the general public.
23. ECOT entered into a preliminary agreement with ESCLEW's predecessor to obtain a charter in February of 2000. It received its first charter from ESCLEW's predecessor in April of 2000.

24. Lager continued to be intimately involved in ECOT's operations after it was chartered and operating:
  - a. He was personally involved in many aspects of ECOT's day-to-day operations, including curricular matters, budgeting, and staffing.
  - b. He represented ECOT in its interactions with ODE, the Auditor of State, ESCLEW and its predecessor, and other state and federal governmental entities regarding such matters as ECOT's public funding.
  - c. He exercised influence on ECOT's staffing.
  - d. He exercised influence over which vendors ECOT did business with and on what terms.
25. Lager regularly represented ECOT in the media, to government officials, and to the general public throughout the time that ECOT operated.
26. Although ECOT had the legal ability to control Lager's actions on its behalf, and was aware of Lager's actions on its behalf, it never objected to those actions. To the contrary, those actions continued, without interruption, for more than 17 years.
27. Lager was also an owner, member, and key officer of Altair. Altair had a series of contracts with ECOT. There were two types of contracts.
28. The first type of contracts between Altair and ECOT were management agreements. There were four such agreements:
  - a. A Management Agreement effective from May 16, 2000 through June 30, 2003.

- b. An Amended and Restated Management Agreement effective from July 1, 2003, through June 30, 2006.
  - c. An Amended and Restated Management Agreement effective from July 1, 2006, though April 30, 2009.
  - d. A Management Agreement effective from May 1, 2009, through ECOT's closure (collectively "the Management Agreements"). Copies of those contracts are attached to the Original Complaint as, collectively, Exhibit 4.
29. The Management Agreements, among other things:
- a. Expressly designated Altair's members as agents of ECOT.
  - b. Authorized Altair to make multiple actions on behalf of ECOT including contracting, supervising key educational staff, public relations, managing ECOT's compliance with its charter, and helping manage ECOT's compliance with applicable law.
  - c. Gave Altair responsibility in a number of ECOT's core functions as a public school, including the setting of ECOT's educational program, budgeting, and overall finances.
  - d. Directly involved Altair in ECOT's public funding by, among other things, involving Altair in ECOT's grant funding, budgeting, tracking, and reporting on ECOT's funding. The Management Agreements made Altair "primarily responsible for [ECOT's] fiscal management and performance[.]"

30. The second type of contracts between Altair and ECOT were licensing agreements. There were two such contracts:
  - a. A License Agreement effective from September 1, 2005, through June 30, 2006.
  - b. A License Agreement effective from July 1, 2006, through June 30, 2009. (the "Altair License Agreements"). True, complete, and accurate copies of those contracts are attached to the Original Complaint as, collectively, Exhibit 5.
31. ECOT's Internal Revenue Service form 990s report that it paid Altair at least \$76,672,930.18 pursuant to the Management Agreements and the Altair License Agreements between July 1, 2000, and June 30, 2017. ECOT likely paid Altair additional funds after June 30, 2017. Further, ECOT likely paid Altair significant funds during fiscal year 2002, a year for which ECOT did not file a form 990.
32. Lager was also an owner and key officer of IQ. IQ had a series of contracts with ECOT whereby it licensed curricular materials and agreed to provide services to ECOT. Those contracts were:
  - a. A License Agreement entered into May 1, 2009.
  - b. A First Amendment to License Agreement, entered into June 22, 2010.
  - c. A Second Amendment to License Agreement, entered into on May 22, 2012.
  - d. A Purchased Services Agreement, entered into on January 1, 2014.

Those contracts are collectively referred to as “the IQ Contracts.” True, complete, and accurate copies of the IQ contracts are attached to the Original Complaint as, collectively, Exhibit 6.

33. The IQ contracts required ECOT to transfer set percentages of ECOT’s state operating funds to IQ. ECOT’s filings with the Internal Revenue Service report that it paid IQ at least \$122,595,383 pursuant to those contracts between May 1, 2009, and June 30, 2017. ECOT likely paid IQ additional funds after June 30, 2017.

**ECOT’s FTE Reviews and FTE Appeals for the  
2015-2016 and 2016-2017 School Years**

34. ODE conducted an FTE Review of ECOT for the 2015-2016 school year. It determined that ECOT could not document any basis for 58.8% of the payments it requested and received from ODE pursuant to R.C. 3314.08. ODE therefore determined that ECOT must return those funds.
35. ECOT took a FTE Appeal from the results of the 2015-2016 FTE Review. The issues raised in that FTE Appeal were exhaustively litigated. The administrative hearing proceeded over the course of 10 days. ECOT produced seven witnesses and had 2,305 exhibits entered into evidence. On May 10, 2017, the hearing officer issued a report and recommendation concluding that ECOT could not document bases for between \$60,054,630 and \$64,054,630 of the funds it received. A true, complete, and accurate copy of that report and recommendation is attached to the Original Complaint as Exhibit 7.
36. ECOT filed written objections to the May 10, 2017, report and recommendation, but the State Board of Education accepted the report and recommendation and

found that ECOT must return \$60,350,791 of the State operating funds that it received during the 2015-2016 school year. That was 55.4% of what it received for that year. A true, complete, and accurate copy of the State Board of Education's resolution on this matter is attached to the Original Complaint as Exhibit 8.

37. ODE conducted an FTE Review of ECOT for the 2016-2017 school year. It determined that ECOT could not document any basis for 18.5% of the payments it requested and received from ODE pursuant to R.C. 3314.08. ODE therefore determined that ECOT must return \$19,295,957.70 of those funds.
38. ECOT took an FTE appeal from the results of the 2016-2017 FTE review. The issues raised in that FTE Appeal were exhaustively litigated. The administrative hearing proceeded over the course of three days. ECOT produced multiple witnesses and had multiple exhibits entered into evidence. ECOT filed post hearing briefs. On January 22, 2018, the hearing officer issued a report and recommendation concluding that ECOT had received \$19,295,957.70 it was not entitled to, an 18.5% overpayment. A true, complete, and accurate copy of that report and recommendation is attached to the Original Complaint as Exhibit 9.
39. ECOT filed written objections to the January 22, 2018, report and recommendation, but the State Board of Education accepted the report and recommendation and found that ECOT must return \$19,295,957.70 of the State operating funds it received during the 2016-2017 school year. A true, complete, and accurate copy of the State Board of Education's resolution on this matter is attached to the Original Complaint as Exhibit 10.

40. The State Board of Education's resolution of ECOT's 2015-2016 and 2016-2017 FTE Appeals are final under R.C. 3314.08.

**ECOT's Insolvency and Suspension**

41. ODE began enforcing the State Board of Education's findings, described above, by reducing the State operating funds otherwise due ECOT. ECOT began experiencing financial difficulties.
42. ECOT's sponsor, ESCLEW, therefore suspended ECOT's operations pursuant to R.C. 3314.072, effective January 19, 2018.
43. ECOT's sponsor filed an action to obtain the appointment of a receiver to protect ECOT's assets. That action is pending as Case No. 18CV00324 before this Court. The Court appointed an interim special master to protect ECOT's assets. ODE formally notified the Interim Special Master of the claims resulting from ECOT's 2015-2016 and 2016-2017 FTE Appeals.
44. The most recent state audit of ECOT, covering the year ending June 30, 2017, reported that ECOT's liabilities far exceeded its assets. The interim special master appointed in Case No. 18CV000324 reported that in February of 2018, ECOT had a total of \$2,268,602 on deposit. ECOT therefore no longer has the funds it received as a result of its unsupported requests for State operating funds, as determined in the FTE Reviews and FTE Appeals described in above.
45. On July 25, 2018, this Court entered an order assigning certain claims to the State.

**Count I**  
**(Public Official Strict Liability against Defendants Lager, Altair, Teeters, Smith**  
**Meister, Barnes, and Lukich)**

46. The School Districts hereby restate and reallege all matters set out in paragraphs 1 through 45 above as if they were fully set forth in this paragraph.
47. R.C. 9.39 and Ohio common law make a public official strictly and personally liable for all unauthorized disbursements of a public office's money if the official is directly involved in the receipt or collection of the office's public money or has supervisory authority over those involved in those activities.
48. A community school is a public office.
49. Employees, officers, agents, and authorized representatives of community schools are public officials.
50. All the money involved in the following transactions were either State operating funds transferred pursuant to R.C. 3314.08 or federal grant funds:
- a. The overpayments determined in the 2015-2016 and 2016-2017 FTE Appeal (paragraphs 34-39 above).
  - b. The payments made pursuant to the IQ Contracts (paragraphs 31 and 32 above and paragraphs 75-80 below).

The funds are now gone, having been disbursed without authority of law.

51. Lager was a public official of ECOT, within the meaning of R.C. 9.38(A) and R.C. 117.01(E) in several independently sufficient respects.
52. Lager was an officer of ECOT because:

- a. He was a public officer of ECOT under common law standards because he exercised control over ECOT's public property, over the performance of ECOT's public functions, and over ECOT's exercise of the sovereign authority delegated to it as part of the State's program of education, both directly and through Altair, as summarized in paragraphs 21, 23-25, and 28 above.
  - b. He was a de facto officer because he repeatedly represented himself as an officer or executive of ECOT in disclosures mandated by R.C. 3517.10(E)(2).
53. Lager was an agent of ECOT because:
- a. He was ECOT's promoter based on the actions summarized above, and a promoter is an agent of the entity he promotes.
  - b. He was expressly designated as an agent of ECOT through the Altair Management Agreements. The Management Agreements designated members of Altair as agents of ECOT, and Lager was a member of Altair.
  - c. Independent of the express designation just discussed, Altair was an agent of ECOT and was a fiduciary of ECOT as its operator. Lager was a subagent of Altair, and as such, he was an agent of ECOT.
  - d. Lager took multiple actions on behalf of ECOT over an extended period of time, as summarized in paragraphs 23-25 and 28 above. ECOT could have prevented that, but did not.

54. Lager was an authorized representative of ECOT for the reasons summarized in paragraphs 23-25 above.
55. Lager was involved in the receipt and collection of ECOT's public monies in various ways, including:
  - a. Working with ODE and the Auditor of State to determine the enrollment figures driving ECOT's public funding and in negotiating resolutions of disputes about ECOT's enrollment funding.
  - b. Repeatedly engaging with state officials to encourage the State to continue to fund ECOT.
  - c. Upon information and belief, as Altair's CEO Lager supervised staff members of Altair and/or ECOT who were directly involved in ECOT receiving and collecting public funds.
  - d. Upon information and belief, Lager actively devised strategies to protect ECOT's continued public funding after ODE began actions that lead to the 2015-2016 and 2016-2017 FTE Reviews and Appeals
56. Altair was an agent and authorized representative of ECOT because it took multiple actions on behalf of ECOT and served as ECOT's operator, some of which are summarized in paragraphs 27, 28, and 30 above.
57. Altair was involved in the receipt and collection of ECOT's public monies in multiple ways. Those included assisting ECOT in purportedly complying with the laws and regulations controlling state operating funds, assisting ECOT in obtaining federal grant funds, and monitoring ECOT's public funding on behalf

of ECOT's governing authority, and participating in ECOT's budgeting and spending of those public monies.

58. Rick Teeters was an employee, an officer, and/or an authorized representative of ECOT. He was ECOT's superintendent. He represented ECOT in connection with ECOT's federal grant funding.
59. Teeters was involved in the receipt or collection of ECOT's public money. He was directly involved in ECOT obtaining federal grant funds.
60. Michele Smith was an employee, an officer, and/or an authorized representative of ECOT. She was ECOT's treasurer and was authorized to sign checks on behalf of ECOT. She also represented ECOT in connection with federal grant funds.
61. Smith was involved in the receipt or collection of ECOT's public money. She was directly involved in ECOT obtaining federal grant funds. Upon information and belief, the State alleges that she had authority to and did access the accounts receiving ECOT's public funds by signing checks drawn on those accounts during that time.
62. Ann Barnes was an employee, an officer, and/or an authorized representative of ECOT. She was ECOT's EMIS Director.
63. Barnes was involved in the receipt or collection of ECOT's public money. She participated in and/or supervised the submissions to ODE that resulted in ECOT receiving state operating funding pursuant to R.C. 3314.08.
64. Regina Lukich was an employee, an officer, and/or an authorized representative of ECOT. She was ECOT's Director of Federal Funds.

65. Lukich was involved in the receipt or collection of ECOT's public money. She participated in and/or supervised ECOT's efforts to draw upon federal grant funds.
66. Christopher Meister was an employee, an office, and/or an authorized representative of ECOT. He was ECOT's vice president for finance.
67. Meister supervised ECOT staff members/representatives who were involved in the receipt or collection of ECOT's public money. More specifically, he supervised Barnes and Lukich, who, respectively, were involved in ECOT obtaining operating funds pursuant to R.C. 3314.08 and federal grant funds.
68. Lager, Altair, Teeters, Smith, Meister, Barnes, and Lukich are therefore each strictly liable for all improper disbursements of ECOT's public funds made during the times that they were public officials of ECOT and involved in the receipt or collection of ECOT's public moneys. Those improper disbursements include, but are not limited to:
  - a. All funds ECOT improperly received pursuant to R.C. 3314.08, as determined in the 2015-2016 and 2016-2017 FTE Appeals, that have not been preserved, plus costs, interest, and attorney fees;
  - b. All amounts paid pursuant to the IQ Contracts, as discussed in paragraphs 31, 32 above and paragraphs 75-80 below.
  - c. All amounts paid pursuant to the Altair Management and Licensing Agreements, as discussed in paragraphs 27, 28, and 29 above.

**Count II**  
**(Breach of Fiduciary Duty by William Lager)**

69. The School Districts restate and reallege the matters set out in paragraphs 1 through 68 above as if they were fully set forth in this paragraph.
70. Lager was a fiduciary of ECOT in several independently sufficient ways:
- a. Lager was ECOT's promoter because of the actions summarized in paragraph 21 above.
  - b. Lager was expressly designated as an agent of ECOT through the Management Agreements. The Management Agreements designated members of Altair as agents of ECOT, and Lager was a member of Altair.
  - c. Independent of the express designation just discussed, Altair was an agent of ECOT and was a fiduciary of ECOT as its operator. Lager was a subagent of Altair, and as a subagent of Altair, Lager shared Altair's fiduciary duties towards ECOT.
  - d. He was a public officer of ECOT under common law standards because he exercised control over ECOT's public property, over the performance of ECOT's public functions, and over ECOT's exercise of the sovereign authority delegated to it as part of the State's program of education, both directly and through Altair, as summarized in paragraphs 22, 23, 24, and 28 above.
  - e. He was a de facto officer of ECOT because he repeatedly represented himself as an officer or executive of ECOT in disclosure mandated by R.C. 3517.10(E)(2).

71. As a fiduciary, Lager had a duty of loyalty to ECOT. That fiduciary duty prohibited him from doing business with ECOT, either directly or through companies he had substantial interests in.
72. Lager violated his fiduciary duty of loyalty by doing business with ECOT through Altair via the Altair License Agreements described in paragraph 29 above.
73. Lager independently violated his fiduciary duty of loyalty by doing business with ECOT through the IQ Contracts described in paragraphs 31 and 32 above and paragraphs 75-80 below.
74. The School Districts therefore are entitled to recover from Lager all profits he received from the Altair License Agreements and the IQ Contracts. Further, Lager holds all property purchased with those profits as constructive trustee for ECOT. The School Districts there are entitled to recover any compensation paid to Lager during the period of time that he was in violation of his fiduciary duties.

### **Count III**

#### **(Recovery of public funds paid IQ and Altair on contracts violating R.C. 2921.42)**

75. The School Districts hereby restate and reallege the matters set out in paragraphs 1 through 74 above as if they were fully set forth in this paragraph.
76. ECOT was a political subdivision because it was a community school.
77. Lager was public official of ECOT within the meaning of R.C. 2921.01(A) in several independently sufficient respects:

- a. He was an officer of ECOT for the reasons summarized in paragraph 52 above, ECOT was a political subdivision, and an officer of a political subdivision is a public official pursuant to R.C. 2921.01(A)
  - b. He was an agent of ECOT for the reasons summarized in 53 above, ECOT was a political subdivision, an agent of a political subdivision is a public official pursuant to R.C. 2921.01(A).
78. The IQ and Altair Contracts were public contracts within the meaning of R.C. 2921.42(I) because they were for the purchase or acquisition of property and/or services by ECOT and ECOT was a political subdivision.
79. Lager had an interest in the IQ and Altair contracts because he was an owner and officer of IQ and Altair.
80. All of the IQ and Altair contracts were therefore void under R.C. 2921.42(H), and ECOT is entitled to recover from IQ and Altair all funds paid pursuant to such contracts.

#### **Count V**

##### **(Damages under the Ohio Corrupt Practices Act, R.C. 2923.34)**

81. The School Districts hereby restate and reallege all matters set out in paragraphs 1 through 80 above as if they were fully set forth in this paragraph.
82. ECOT was an enterprise within the meaning of R.C. 2923.31(C). That status had at least three independently sufficient bases. First, ECOT was a corporation. Second, as a community school ECOT was a governmental agency. Third, ECOT was a legal entity.

83. ECOT was also a person within the meaning of R.C. 2923.31(G) and R.C. 1.59(C) because it was a corporation.
84. IQ was also a person within the meaning of R.C. 2923.31(C) in at least two independently sufficient respects. First, it was a corporation or group of corporations. Second, it was a group of persons associated in fact with a common purpose: to do business with a school.
85. Altair was also a person within the meaning of R.C. 2923.31© in at least two independently sufficient respects. First, it was a corporation or group of corporations. Second, it was a group of persons associated in fact with a common purpose; to do business with a school.
86. William Lager, Rick Teeters, Christopher Meister, Regina Lukich, Ann Barnes and Michelle Smith are each individuals and hence persons within the meaning of R.C. § 2923.31(G).
87. Lager, Teeters, Meister, Lukich, Barnes and Smith each participated in a pattern of corrupt activity, and conspired with each other to participate in a pattern of corrupt activity, within the meaning of R.C. § 2923.31(E) and (I)(2)(a), in that they were aware of and approved the IQ and Altair Contracts.
88. The IQ and Altair Contracts were a pattern of corrupt activity, within the meaning of R.C. 2923.31(E) and (I)(2)(a), in that:
  - a. They each violated R.C. 2921.42 and there were more than two such contracts.

- b. The IQ and Altair Contracts were not isolated actions, but were part of a pattern in that:
  - i. Each had the same purpose (to transfer ECOT's public funds to a private entity controlled by Lager).
  - ii. Each had similar results (ECOT's public funds were diverted to the use of a private entity controlled by Lager).
  - iii. Each had a common participant (Lager).
  - iv. Each had similar victims (ECOT, its students, the school districts whose funds were transferred to ECOT, and those districts' students).

Although the IQ and Altair Contracts were similar in the ways just recited, they were not a single event. Instead, they were separate agreements with separate subjects and terms, and upon information and belief, they were approved by separate votes of ECOT's governing authority at separate meetings.

- 89. The pattern of activity described in the immediately preceding paragraph was conducted in connection with an enterprise: ECOT.
- 90. ECOT was injured by that pattern of corrupt activity because it paid millions of dollars pursuant to contracts that were void as a matter of law pursuant to R.C. 2921.42(H).
- 91. Lager, Teeters, Meister, Lukich, Barnes and Smith are individuals and hence persons within the meaning of R.C. 2923.31(G).

92. Lager, Teeters, Meister, Lukich, Barnes and Smith were associated with ECOT as employees, officers, agents, and public officers of ECOT.
93. Lager, Teeters, Meister, Lukich, Barnes and Smith each participated in a pattern of corrupt activity and conspired with each other to participate in a pattern of corrupt activity, within the meaning of R.C. 2923.31(E) and (I)(2)(a), in that:
- a. They participated in ECOT entering into and performing multiple Contracts with IQ and Altair that violated R.C. 2921.42.
  - b. Lager received proceeds from the IQ and Altair Contracts, either directly or indirectly, and upon information and belief, invested those proceeds, either directly or indirectly, in various types of property, including interests in multiple companies, real property in Ohio and Florida, multiple automobiles, and multiple boats.
94. R.C. 2923.34(E) therefore makes Lager, Teeters, Meister, Lukich, Barnes and Smith liable to ECOT for three times the amount paid pursuant to the IQ and Altair Contracts, plus costs, interest and attorney's fees.

**Count VI**  
**(Claim on Bond against Travelers)**

95. The School Districts hereby restate and reallege all matters set out in paragraphs 1 through 91 above as if they were fully set forth in this paragraph.
96. Travelers issued a bond guaranteeing faithful performance of Michele Smith duties as ECOT's treasurer. A copy of that bond is attached as Exhibit 13 hereto.

97. Smith did not faithfully perform her duties as ECOT's treasurer because she allowed or participated in the improper dispositions of public funds entrusted to ECOT as summarized in paragraphs 50 and 68 above.
98. Travelers is therefore liable to ECOT for the penal amount of its bond.
99. The School Districts believe but have not yet been able to verify, that other bonds and insurance policies may have been issued for ECOT's protection concerning other officials. It reserves the right to assert claims on those bonds and policies as they are discovered.

**WHEREFORE the School Districts pray that:**

A. As to Count I:

1. That judgment be entered against Lager, Altair, Teeters, Smith, Meister, Barnes, and Lukich, jointly and severally, in amounts equal to:
  - a. Unpaid portions of the amounts ECOT was found liable for in the 2015-2016 and 2016-2017 FTE Appeals, and
  - b. The payments made on the IQ Contracts during their respective times as public officials of ECOT; and

B. As to Count II:

1. An accounting be had establishing all payments and other property Lager received from Altair and IQ while in violation of his fiduciary duty of loyalty to ECOT and the disposition of such funds and property; and
2. That Lager be ordered to disgorge all compensation he received from ECOT and the Altair License Agreements and the IQ Contracts; and

3. To the extent that any payments he received from the Altair License Agreements and the IQ Contracts can be traced into any other property owned by Lager, that property be declared to be held in constructive trust for the benefit of ECOT.

C. As to Counts III:

1. Judgment be entered against IQ and Altair in an amount equal to all amounts it received from ECOT pursuant to all IQ and Altair Contracts.

D. As to Count IV:

1. Judgment be entered against Lager, Teeters, Meister, Lukich, Barnes and Smith in an amount equal to all amounts ECOT paid pursuant to all IQ and Altair Contracts, subject to possible trebling pursuant to R.C. 2923.34(E).
2. Judgment be entered against Lager, Teeters, Meister, Lukich, Barnes and Smith for all costs, interest and attorney's fees incurred by the School Districts in this proceeding.

E. As to Count V:

1. Judgment also be entered against Travelers for the full penal amount of the bond or bonds it issued to ECOT.

F. As to all counts:

1. That all amounts recovered be distributed pursuant to R.C. 3314.074 under this Court's supervision, either in this case or Case No. 18CV00324.
2. That it be granted all other relief that is appropriate.

Respectfully submitted,

**COHEN ROSENTHAL & KRAMER LLP**

/s/ Ellen M. Kramer

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**JURY DEMAND**

The School Districts demand a trial by jury of all eligible claims and issues.

/s/ Ellen M. Kramer

Ellen M. Kramer