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August 28, 2020

Sent Via Hand-Delivery

Eileen Bridges, Clerk
Knox County Superior Court
62 Union Street
Rockland, Maine 04841

Re: Town of Rockport v. Maine School Administrative District 28, et al.
Knox County Superior Court

Dear Ms. Bridges:

Please find enclosed, for filing with the Court, Plaintiff's Complaint and Civil Summary Sheet.

Please also find enclosed a check payable to the Court, in the amount of \$175.00, in payment of the Complaint filing fee.

Thank you for your attention to this filing.

Very truly yours,

A handwritten signature in black ink that reads 'Eben M. Albert' followed by a stylized flourish.

Eben M. Albert

EMA/jjc
Enclosures

08/27/20
2818

KNOX COUNTY SUPERIOR COURT

BERNSTEIN SHUR
CHECK NO.: 154640

DATE	INVOICE NUMBER	ACCOUNT#	DESCRIPTION	MATTER #	AMOUNT
08-27-20	082720			005031-00032 PRS	175.00
TOTAL:					175.00

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

BERNSTEIN SHUR
100 Middle Street
P.O. Box 9729
Portland, Maine 04104-5029

NORWAY SAVINGS BANK
2112
PORTLAND, ME 04101

CHECK NO.: 154640

DATE	08/27/20
NET AMOUNT	\$175.00

PAY ONE HUNDRED SEVENTY-FIVE AND 00/100 DOLLARS

TO THE ORDER OF
KNOX COUNTY SUPERIOR COURT
62 UNION ST.
ROCKLAND, MAINE 04841

James H. Shaw

TWO SIGNATURES REQUIRED ON AMOUNTS OVER \$1,000.

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈ 154640 ⑈ ⑆ 2112745151 ⑆ 870 212587 3 ⑈



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MAINE JUDICIAL BRANCH

This summary sheet and the information it contains do not replace or supplement the filing and service of pleadings or other papers as required by the Maine Rules or by law. This form is required for the Clerk of Court to initiate or update the civil docket. The information on this summary sheet is subject to the requirements of M. R. Civ. P. 11.

I. COUNTY OF FILING OR DISTRICT COURT JURISDICTION (“X” the appropriate box and enter the County or location)

- Superior Court County: Knox
 District Court Location (city/town): _____

Initial Complaint: A complaint filed as an original proceeding. A filing fee is required.

Third-Party Complaint: An original defendant’s action against a third party that was not part of the original proceeding. A filing fee is required.

Cross-Claim: An original defendant’s claim against another original defendant. No additional fee is required.

Counterclaim: An original defendant’s claim against an opposing party. No additional fee is required.

Reinstated or Reopened Case: Money Judgment Disclosures or post-judgment motions.

II. NATURE OF THE FILING

- Initial Complaint
 Third-Party Complaint
 Cross-Claim or Counterclaim
 Reinstated or Reopened case: Docket Number: _____

If filing a second or subsequent Money Judgment Disclosure, give the docket number of the first disclosure.)

III. REAL ESTATE OR TITLE TO REAL ESTATE IS INVOLVED

IV. MOST DEFINITIVE NATURE OF ACTION

(“X” in ONE box. If the case fits more than one nature of action, select the one that best describes the cause of action.)

GENERAL CIVIL

Personal Injury Torts

- Property Negligence
 Auto Negligence
 Medical Malpractice
 Product Liability
 Assault/Battery
 Domestic Tort
 Other Negligence
 Other Personal Injury Tort

Non-Personal Injury Torts

- Libel/Defamation
 Auto Negligence
 Other Negligence
 Other Non-Personal Injury Tort

Contract

- Contract

Declaratory/Equitable Relief

- General Injunctive Relief
 Declaratory Judgment
 Other Equitable Relief

Constitutional/Civil Rights

- Constitutional/Civil Rights

Statutory Actions

- Unfair Trade Practice
 Freedom of Access
 Other Statutory Action

Miscellaneous Civil

- Drug Forfeiture
 Other Forfeiture/Property Libel
 Land Use Enforcement (80K)
 Administrative Warrant
 HIV Testing
 Arbitration Awards
 Appointment of Receiver
 Shareholders’ Derivative Action
 Foreign Deposition
 Pre-Action Discovery
 Common Law Habeas Corpus
 Prisoners Transfers
 Foreign Judgments
 Minor Settlements
 Other Civil

REAL ESTATE

Title Actions

- Quiet Title
 Eminent Domain
 Easement
 Boundary

Foreclosures

- Foreclosure (Diversion eligible)
 Foreclosure (ADR exempt)
 Foreclosure (Other)

Miscellaneous Real Estate

- Equitable Remedy
 Mechanics Lien
 Partition
 Adverse Possession
 Nuisance
 Abandoned Road
 Trespass
 Other Real Estate

SPECIAL ACTIONS

- Money Judgment Disclosure

APPEALS (ADR EXEMPT)

- Governmental Body (80B)
 Administrative Agency (80C)
 Other Appeal

CHILD PROTECTIVE CUSTODY

- Non-DHHS Protective Custody

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MAINE JUDICIAL BRANCH

V. M.R. Civ. P. 16B ALTERNATIVE DISPUTE RESOLUTION (ADR)

I certify that pursuant to M.R. Civ. P. 16B(b), this case is exempt from a required ADR process because ("X" one box below):

- It falls within an exemption listed above (it is an appeal or an action for non-payment of a note in a secured transaction).
The plaintiff or defendant is incarcerated in a local, state, or federal facility.
The parties have participated in a statutory pre-litigation screening panel process with (name of panel chair) that concluded on (date of panel finding - mm/dd/yyyy)
The parties have participated in a formal ADR process with (name of neutral) on (date - mm/dd/yyyy)
The plaintiff's likely damages will not exceed \$30,000, and the plaintiff requests an exemption.
The action does not include ADR pursuant to M.R. Civ. P. 16(a)(1).
There is other good cause for an exemption and the plaintiff has filed a motion for exemption.

VI. PARTY AND ATTORNEY CONTACT INFORMATION

If you need additional space, list additional parties on an attachment and note "see attachment" in the appropriate section.

Please note: If a party is a government agency, use the full agency name or the standard abbreviation. If the party is an official within a government agency, identify the agency first and then the official, giving both name and title.

(a) PLAINTIFF(S)

("X" the box below to indicate the party type associated with the filing)

- Plaintiff(s)
Third-Party Plaintiff(s)
Counterclaim Plaintiff(s)
Cross-Claim Plaintiff(s)

Is the plaintiff a prisoner in a local, state, or federal facility? Yes No

Name (first, middle initial, last): Town of Rockport
Mailing address (include county): 101 Main Street
Rockport, Maine 04856
Telephone: 207-236-0806
Email:

Name (first, middle initial, last):
Mailing address (include county):
Telephone:
Email:

(b) ATTORNEY(S) FOR PLAINTIFF(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL plaintiffs, specify which plaintiff(s) the listed attorney(s) represents.

Name and bar number: Eben M. Albert, Bar No. 4311
Firm name: Bernstein Shur
Mailing Address: P.O. Box 9729
Portland, Maine 04104
Telephone: 207-774-1200
Email: ealbert@bernsteinshur.com

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MAINE JUDICIAL BRANCH

Name and bar number: Phillip R. Saucier, Bar No. 9837; William J. Wahrer, Bar No. 6179
Firm name: Bernstein Shur
Mailing Address: P.O. Box 9729
Portland, Maine 04104
Telephone: 207-774-1200
Email: psaucier@bernsteinshur.com; wwahrer@bernsteinshur.com

(c) DEFENDANT(S)

("X" the box below to indicate the party type associated with the filing)

- [X] Defendant(s)
[] Third-Party Defendant(s)
[] Counterclaim Defendant(s)
[] Cross-Claim Defendant(s)

Is the defendant a prisoner in a local, state, or federal facility? [] Yes [X] No

Name (first, middle initial, last): Maine School Administrative District 28
Mailing address (include county): 7 Lions Lane
Camden, Maine 04843 (Knox County)
Telephone: 207-236-3358
Email:

Name (first, middle initial, last): Town of Camden
Mailing address (include county): 29 Elm Street
Camden, Maine 04843 (Knox County)
Telephone: 207-236-3353
Email:

(d) ATTORNEY(S) FOR DEFENDANT(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: E. William Stockmeyer, Bar No. 3309 (Attorney for MSAD 28)
Firm name: Drummond Woodsum
Mailing Address: 84 Marginal Way, Suite 600
Portland, Maine 04101
Telephone: 207-253-0585
Email: billstockmeyer@dwm.com

Name and bar number: William S. Kelly, Bar No. 7077 (Attorney for Town of Camden)
Firm name: Kelly & Collins, LLC
Mailing Address: 96 High Street
Belfast, Maine 04915
Telephone: 207-338-2702
Email: kellylaw@bluestreakme.com

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MAINE JUDICIAL BRANCH

(e) PARTIES IN INTEREST

Name (first, middle initial, last): _____
Mailing address (include county): _____

Telephone: _____
Email: _____

Name (first, middle initial, last): _____
Mailing address (include county): _____

Telephone: _____
Email: _____

(f) ATTORNEY(S)

If there are multiple attorneys, indicate the lead attorney. *If all counsel do not represent ALL parties in interest, specify which parties in interest the listed attorney(s) represents.*

Name and bar number: _____
Firm name: _____
Mailing Address: _____
Telephone: _____
Email: _____

Name and bar number: _____
Firm name: _____
Mailing Address: _____
Telephone: _____
Email: _____

VII. RELATED CASE(S) IF ANY

Case name: _____
Docket Number: _____
Assigned Judge/Justice: _____

Date (mm/dd/yyyy): 08/28/2020

► Eben M. Albert / DAS
Signature of Plaintiff or Lead Attorney of Record

Eben M. Albert
Printed Name of Plaintiff or Attorney

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STATE OF MAINE
Knox, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. __

THE TOWN OF ROCKPORT, a duly)
organized and existing municipal)
corporation located in the County of Knox)
and State of Maine,)

Plaintiff,)

v.)

MAINE SCHOOL ADMINISTRATIVE)
DISTRICT 28, a duly organized and)
existing regional school unit in the County)
of Knox and State of Maine,)

and)

THE TOWN OF CAMDEN, a duly)
organized and existing municipal)
corporation located in the County of Knox)
and State of Maine,)

Defendants.)

COMPLAINT

Plaintiff the Town of Rockport (“Rockport”), by and through counsel, complains as follows against Defendants Maine School Administrative District 28 (“MSAD 28”) and the Town of Camden (“Camden”):

The Parties

1. Rockport is a duly organized and existing municipal corporation located in the County of Knox and State of Maine.

2. MSAD 28 is a duly organized and existing regional school unit in the County of Knox and State of Maine.

3. Camden is a duly organized and existing municipal corporation located in the County of Knox and State of Maine.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under 4 M.R.S. § 105(1), 14 M.R.S. § 6051, and 14 M.R.S. §§ 5951–63.

5. Venue is proper under 14 M.R.S. § 501 because Rockport and Defendants are municipal or quasi-municipal entities located in Knox County.

Factual Background

History of MSAD 28

6. MSAD 28 was organized in 1964 as a school administrative district comprising Camden and Rockport.

7. On November 20, 1964, the Maine State Board of Education issued MSAD 28 a Certificate of Organization to become an operational school administrative district effective November 30, 1964.

8. In 1994, following a statutory school board reapportionment process, the Maine State Board of Education issued MSAD 28 a new Certificate of Organization.

9. Pursuant a non-codified public law enacted in 2007, Public Law 2007, ch. 240, § XXXX-36, as amended, the Maine State legislature restructured the Maine public school system effective July 1, 2009.

10. Pursuant to this public law, school administrative districts that had not reorganized into regional school units through merger and adoption of a reorganization plan were reformulated into regional school units but were still permitted to use the title “school administrative district.”

11. As a result, there are two types of regional school units in Maine: (1) regional school units that were formed through voter approval of a reorganization plan combining one or more school administrative districts into a regional school unit; and (2) regional school units that were reformulated pursuant to Public Law 2007, ch. 240, § XXXX-36, as amended.

12. MSAD 28 is the latter, as it did not participate in the statutory process to form a regional school unit through merger and adoption of a reorganization plan, and is therefore considered a regional school unit doing business as a school administrative district (hereinafter a “school district” or “district”).

13. In 2009, consistent with its reformulation to a regional school unit, the Maine State Board of Education issued MSAD 28 a new Certificate of Organization, which is its current Certificate of Organization (the “2009 Certificate of Organization”).

School Funding in Maine

14. In Maine, school funding is based on an Essential Programs and Services model, as set forth in 20-A M.R.S. ch. 606-B.

15. Essential Programs and Services (“EPS”) are those educational resources that qualify for state funding and are considered necessary to ensure the opportunity for all students to meet established educational standards.

16. The EPS formula establishes the statutory apportionment of state and local funding for EPS costs for school districts including MSAD 28.

17. School districts may also raise additional money supported by purely local funds for educational purposes, as discussed in more detail below.

18. Absent a contrary private and special law adopted prior to January 1, 2004, the statutory apportionment between member municipalities of a school district's share of the EPS allocation is determined as follows:

- a. The Commissioner of the Department of Education determines the school district's "total cost of education," which represents the costs that qualify for state subsidy purposes but does not include other local costs of education supported by additional local funds.
- b. The Commissioner then determines each member municipality's "total cost of education," based on the school district's "total cost of education" multiplied by the percentage that the municipality's most recent calendar year average pupil count is to the district's most recent calendar year average pupil count.
- c. The Commissioner next determines the amount derived by multiplying the municipality's "property fiscal capacity"—a measure of its state-certified property valuation—by a statewide "full-value education mill rate."
- d. The municipality's contribution to the municipality's total cost of education is the lesser of the amounts referenced in subparagraphs (b) and (c), above.
- e. If the amount referenced in subparagraph (c) is greater, then the State contributes the difference between the amounts referenced in (c) and (b) as a subsidy.
- f. If the amount referenced in subparagraph (b) is greater, then the municipality qualifies to receive a minimum receiver adjustment, which lowers the municipal contribution.

19. Both Camden and Rockport qualify as minimum receivers.

20. Every year, each regional school unit receives a spreadsheet known as an “ED 279,” which sets forth the various amounts that make up the EPS funding formula for that year.

21. Pursuant to 20-A M.R.S. § 1481-A, in addition to the state and local EPS contributions set forth above, school districts may raise money supported by additional local funds for purposes of establishing and maintaining public schools, erecting buildings and providing equipment for educational purposes.

22. Pursuant to 20-A M.R.S. § 1481-A(2-A), for those school districts like MSAD 28 that were reformulated into regional school units pursuant to P.L. 2007, ch. 240, § XXXX-36, as amended, the cost sharing formula for this additional local share “must be in accordance with section 1301,” i.e. 20-A M.R.S. § 1301 (“Section 1301”).

23. Section 1301 provides, in relevant part:

The costs of operating a school administrative district must be shared among all municipalities within the district in one of the following ways.

A. Under a property valuation method, municipalities in a district shall share costs in the same proportion as each municipality’s fiscal capacity as defined in section 15672, subsection 23 is to the district's fiscal capacity.

B. Under an alternate plan approved by the state board and by a vote of the legislative bodies of the school administrative units forming the district and based on:

- (1) The number of resident pupils in each town;
- (2) The fiscal capacity of each member municipality as defined in section 15672, subsection 23;
- (3) Any combination of subparagraphs (1) and (2); or
- (4) Any other factor or combination of factors that may, but need not, include subparagraphs (1) and (2).

24. MSAD 28 has never requested or received approval from the Maine State Board of Education regarding any alternate plan to raise school funds as specified in Section 1301.

25. MSAD 28 has never submitted an alternate plan to be voted on by the legislative bodies of its district.

26. In accordance with Section 1301, MSAD 28's 2009 Certificate of Organization provides:

The member municipalities of Regional School Unit No. 28 are required to share costs and issue their warrants for the assessments authorized at the annual budget meeting for the required local contribution based on 20-A M.R.S.A. Chapter 606-B and for additional local share, if any, based on:

- State valuation.
- The number of resident pupils in each town.
- Alternate plan -- ___ based on State valuation and ___ based on number of pupils.
- Specify _____

27. Accordingly, pursuant to Section 1301 and MSAD 28's Certificate of Organization, MSAD's 28 cost sharing formula for the additional local share must be based on a property valuation method using each municipality's property fiscal capacity.

MSAD 28's Wrongful Overassessment of Additional Local Funds from Rockport

28. In 2015, Rockport's municipal valuation decreased as a result of a townwide reassessment.

29. Rockport staff, who relied upon MSAD 28 to advise as to the proper application of the funding formula, subsequently inquired of MSAD 28 whether this reduced valuation would have any effect on the school assessment.

30. MSAD 28 incorrectly advised Rockport that there was no effect on the school assessment.

31. After a subsequent increase in Camden's property valuation, MSAD 28 again incorrectly advised Rockport on one or more occasions that there was no effect on the school assessment formula from changes in assessment.

32. Rockport reasonably relied upon these representations by MSAD 28 as the body that applies the funding formula, and that has expertise in and authority over it.

33. In fact, it is now known that, for a number of years, MSAD 28 had been incorrectly apportioning the additional local assessment between Camden and Rockport based on pupil count rather than property valuation.

34. This incorrect apportionment resulted in Rockport drastically overpaying its share of the additional local funds revenue for a number of years, and Camden drastically underpaying its share.

35. For instance, as shown on MSAD 28's ED 279 for the fiscal year 2019-2020, Rockport's pupil count was approximately forty-seven percent (47%) of MSAD 28's total pupil count, but Rockport's property valuation was only approximately forty-two percent (42%) of MSAD 28's total property valuation.

36. For fiscal year 2019-2020, MSAD 28's overassessment of Rockport amounts to no less than four hundred fifty thousand, five hundred thirty-one dollars and forty-one cents (\$450,531.41).

37. Each year, MSAD 28 issued its warrant to Rockport's assessor with the incorrect assessment amount, at which point Rockport was statutorily required to assess that amount upon the taxable estates in the municipality and remit it to MSAD 28 in monthly installments.

38. Rockport was not aware that MSAD 28 was using an incorrect apportionment formula or that it was overpaying its proper additional local share.

39. MSAD 28 repeatedly and incorrectly assured Rockport that the assessments were correct notwithstanding the changes in Camden and Rockport's valuations, and these assurances

were made with knowledge of the falsity or in reckless disregard of the truth or falsity of the statement.

40. In short, Rockport has been significantly overpaying its statutory share of MSAD 28's additional local revenue, and Camden has been underpaying.

Rockport is Informed of the Incorrect Assessments

41. According to MSAD 28, its newly hired business manager recently noticed discrepancies between Excel spreadsheets used by MSAD 28's business office to determine assessment amounts and results based on his own mathematical calculations.

42. As a result, MSAD 28 engaged attorney E. William Stockmeyer to advise MSAD 28 as to the proper cost sharing method.

43. On July 29, 2020, Attorney Stockmeyer produced a memorandum advising MSAD 28 *inter alia* that it "should apportion the additional local funds tax revenue between [Rockport and Camden] using the towns' property valuation percentages, and applying for that purpose the 'property fiscal capacity' valuations shown on the ED 279."

44. Rockport received a copy of Attorney Stockmeyer's memorandum on July 30, 2020, which was its first formal notification of MSAD 28's improper assessments of additional local funds based on pupil count rather than property valuation.

45. On or about August 3, 2020, MSAD 28 publicly released a press release entitled "MSAD #28 Identifies Cost Sharing Error in Town Assessments," in which MSAD 28 acknowledged using an incorrect formula to allocate the additional local portion of the district's assessments between Camden and Rockport.

46. The press release admitted that MSAD 28 had applied the incorrect formula over the course of a number of years.

47. For the fiscal year 2020-2021, MSAD 28 has indicated it will apportion additional local funds revenue based on property valuation.

48. The number of years in which overpayments were made, and the amounts of such overpayments, is still being investigated.

49. MSAD 28's repeated use of an incorrect allocation formula to determine the additional local share of revenue constitutes a series of *ultra vires* acts, which were beyond the legal authority of MSAD 28 pursuant to applicable statutory law and its Certificate of Organization.

50. As set forth above, Rockport has suffered significant harm as a result of the actions and omissions described herein over a number of years.

51. The overpayments to MSAD 28 over a number of years resulted in a loss of funds to Rockport that could have been used for other town funding priorities such as road repairs and public infrastructure improvements, and with the passage of time Rockport now has to spend more to address such matters than if the wrongfully over-assessed funds had been available to Rockport to make incremental investments over time.

52. As a result, Rockport continues to suffer significant harm from the over-assessments by MSAD 28.

COUNT I
Declaratory Judgment and Supplemental Relief, 14 M.R.S. §§ 5951–63

53. Rockport repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

54. Pursuant to the Declaratory Judgments Act, 14 M.R.S. §§ 5951–63, this Court has the “power to declare rights, status and other legal relations whether or not further relief is or could be claimed.”

55. Pursuant to 14 M.R.S. § 5954, any person “whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

56. In addition, 14 M.R.S. § 5960, entitled “Supplemental relief,” provides: “Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.”

57. As set forth above, MSAD 28 applied an incorrect allocation formula by basing additional local revenue on pupil count rather than property valuation, which has resulted in Rockport overpaying its statutory share of MSAD 28’s additional local revenue.

58. This incorrect allocation constitutes a violation of applicable statutory law and MSAD 28’s Certificate of Organization.

59. The incorrect allocation was *ultra vires* and beyond MSAD 28’s legal authority.

60. Rockport is entitled to a declaration that, for purposes of the local additional portion of MSAD 28’s assessments, the apportionment of costs between Rockport and Camden must be based on property valuation and not pupil count, and that MSAD 28’s assessments of local additional revenues based on pupil count violated applicable statutes and MSAD 28’s Certificate of Organization and was *ultra vires*.

61. Rockport is entitled to an order, as supplemental relief pursuant to 14 M.R.S. § 5960, requiring Camden and/or MSAD 28 to reimburse or credit Rockport for all its overpayments to MSAD 28 resulting from incorrect assessments of additional local revenues.

COUNT II **Unjust Enrichment**

62. Rockport repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

63. Rockport's overpayment of its share of MSAD 28's additional local revenue over a number of years due to MSAD 28's incorrect assessment formula conferred significant benefits upon MSAD 28 and Camden.

64. MSAD 28 and Camden had knowledge of and were aware of the benefits conferred by Rockport's payments to MSAD 28.

65. Under the circumstances, it would be inequitable and unjust for MSAD 28 and Camden to retain the benefits conferred by Rockport's overpayments without reimbursement to Rockport of their value.

66. Rockport is entitled *inter alia* to a constructive trust against Defendants and restitution of the total amount of the overpayments it made to MSAD 28, plus interest.

COUNT III
Restitution of Monies as a Result of Mistake

67. Rockport repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

68. By applying an incorrect assessment formula and apportioning the additional local portion of MSAD 28's revenues between Camden and Rockport based on pupil count rather than property valuation, MSAD 28 over-assessed and overcharged Rockport significant amounts, to the benefit of MSAD 28 and Camden.

69. Accordingly, Rockport has made significant overpayments to MSAD 28 as a result of mistake, and is entitled to restitution as a result of mistake.

70. The overpayments made by Rockport are public monies.

71. Rockport is entitled *inter alia* to a constructive trust against Defendants and restitution of the total value of the overpayments to MSAD 28, plus interest.

COUNT IV
Conversion

72. Rockport repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

73. Rockport, at all material times, has had a property interest in the amounts overpaid to MSAD 28 due to the improper assessments on Rockport.

74. Rockport had a right to possession of these amounts at the time each overpayment was made, and continues to have a right to possession of these amounts because such assessments violated applicable statutes and MSAD 28's Certificate of Organization, and were *ultra vires*.

75. A demand is not necessary in this case because the incorrect assessments were *ultra vires* and therefore the overpayments were retained unlawfully, and/or any demand requirement is satisfied or futile because MSAD 28 has admitted the assessments were incorrect and the Parties have discussed the matter, but no money has been returned.

76. Camden participated in and benefitted from the conversion of Rockport's money, as Rockport's overpayments resulted in corresponding underpayments by Camden over a number of years, for which Rockport has not been compensated.

77. Rockport is entitled *inter alia* to a constructive trust against Defendants and restitution of the total value of the overpayments to MSAD 28, plus interest.

COUNT V
Money Had and Received

78. Rockport repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

79. As a result of MSAD 28's incorrect assessments to Rockport and Camden's resulting underpayments, Defendants have received and/or are in possession of funds which, in equity and good conscience, Defendants should be required to pay to Rockport.

80. Rockport is entitled *inter alia* to a constructive trust against Defendants and restitution of the total value of the overpayments to MSAD 28, plus interest.

COUNT VI

In the Alternative, And Only to the Extent Applicable, Review of Governmental Action Pursuant to M.R. Civ. P. 80B

81. Rockport repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

82. Based on the facts and circumstances set forth above, the relief sought by Rockport in this matter is not in the nature of relief that is subject to Maine Rule of Civil Procedure 80B ("Rule 80B"), nor is review pursuant to Rule 80B appropriate or required in this matter.

83. Review pursuant to Rule 80B would not provide an adequate remedy for the damages suffered by Rockport and does not constitute an exclusive remedy under the circumstances of this case.

84. For avoidance of doubt, to the extent any relief to which Rockport is or may be entitled, or which Rockport seeks herein, is subject to Rule 80B, then Rockport respectfully requests such review pursuant to Rule 80B.

85. To the extent review pursuant to Rule 80B is appropriate, extraordinary circumstances exist which permit the Court to consider all instances and all years in which an improper assessment was made.

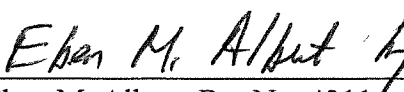
PRAYER FOR RELIEF

WHEREFORE, Rockport respectfully requests that the Court enter judgment in its favor,
and:

- A. Enter a declaratory judgment declaring that, for purposes of the local additional portion of MSAD 28's assessments, the apportionment of costs between Rockport and Camden must be based on property valuation and not pupil count, and that MSAD 28's assessments of local additional revenues based on pupil count violated applicable statutes and MSAD 28's Certificate of Organization and was *ultra vires*;
- B. Order, as supplemental relief pursuant to 14 M.R.S. § 5960, that Camden and/or MSAD 28 reimburse or credit Rockport for all for all its overpayments to MSAD 28 resulting from incorrect assessments of additional local revenues, with interest;
- C. Order restitution and/or damages in the amount of Rockport's overpayments of additional local revenues to MSAD 28, with interest;
- D. Order a constructive trust against Defendants in the amount of Rockport's overpayments of additional local revenues to MSAD 28, with interest; and
- E. Award Rockport such additional relief as justice requires, including costs, reasonable attorneys' fees, and interest.

Dated: August 28, 2020

Respectfully submitted,


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