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VIA FACSIMILE

December 10, 2013

Ms. Rebecca Matoska-Mentink  
Kenosha County Circuit Court Clerk  
912 56<sup>th</sup> Street  
Kenosha, WI 53140

**RE: *Kristi LaCroix, et al. v. Kenosha Unified School District Board of Education, et al.***  
**Case No. 123-CV-1899**

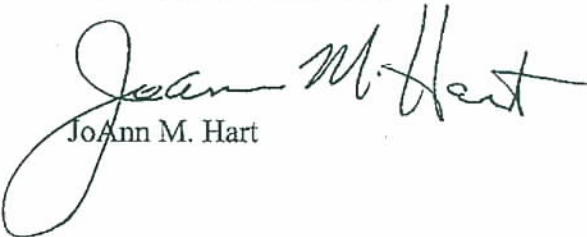
Dear Ms. Matoska-Mentink:

Enclosed for filing please find Defendants' Reply Brief in Support of Their Motion to Dismiss Plaintiff's Complaint.

Thank you for your attention to this matter.

Very truly yours,

BOARDMAN & CLARK LLP

  
JoAnn M. Hart

Enclosure

cc: Attorney Richard M. Esenberg  
Attorney Lester Pines

DER:bas

STATE OF WISCONSIN

CIRCUIT COURT

KENOSHA COUNTY

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KRISTI LACROIX and  
CARRIEANN GLEEMBOCKI,

Plaintiff,

Case No.: 13-CV-1899

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
BOARD OF EDUCATION, KENOSHA UNIFIED  
SCHOOL DISTRICT and KENOSHA EDUCATION  
ASSOCIATION BUILDING CORPORATION,  
d/b/a KENOSHA EDUCATION ASSOCIATION,

Defendants.

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**DEFENDANTS KENOSHA UNIFIED SCHOOL DISTRICT AND KENOSHA UNIFIED  
SCHOOL DISTRICT BOARD OF EDUCATION'S REPLY BRIEF IN SUPPORT OF  
THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

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In their brief in opposition to defendants Kenosha Unified School District and Kenosha Unified School District Board of Education's motion to dismiss their complaint, plaintiffs argue that Wisconsin's notice of claim statute, Wis. Stat. § 893.80(1d) does not apply to their claims in this case because plaintiffs are seeking a temporary injunction and because the District and Board knew that plaintiffs objected to collective bargaining. Plaintiffs' arguments fail. Plaintiffs cannot avoid the notice requirements by asking for temporary injunctive relief, and plaintiffs have not complied with the notice requirements. Accordingly, the Court should dismiss plaintiffs' claims for failure to satisfy the requirements of § 893.80(1d).

Plaintiffs also argue in their brief in opposition that they have not asserted a claim under Wisconsin's Open Meetings Law and thus, there is no need for the Court to dismiss that claim. However, in the complaint plaintiffs served on defendants, plaintiffs' "First Cause of Action"

seeks a declaration that the collective bargaining agreement "is unlawful, and therefore void, in that it violates Wis. Stat. §§ 111.70(2), 111.70(4)(mb), 111.70(4)(b), and 19.84." Plts.' Cpt. at 9. In their request for relief, plaintiffs seek a declaration that "the CBA is void because of the violation of *Wis. Stat. § 19.84*." *Id.* at 14. To the extent that plaintiffs are now seeking to withdraw those claims, the District and Board have no objection. Otherwise, the Court should dismiss the open meetings claims.

Finally, plaintiffs state in their brief in opposition that they have no objection to dismissal of the Board as a defendant in this action in light of the fact that plaintiffs' claims against the Board are redundant of its claims against the District. Plts.' Br. in Opp. at 7. Therefore, the District and Board respectfully request that the Board be dismissed from this case.

### ARGUMENT

Plaintiffs acknowledge that all claims are subject to the notice requirements of Wis. Stat. § 893.80(1d) unless: (1) there is a specific statutory scheme for which the plaintiff seeks exemption; (2) the enforcement of § 893.80(1d) would hinder a legislative preference for a prompt resolution of the type of claim under consideration; and (3) the purposes for which § 893.80(1d) was enacted would be furthered by requiring that a notice of claim be filed. Plts.' Br. in Opp. at 4. Plaintiffs proceed to argue that their claims satisfy this test because they are relying on a specific statutory scheme that allows immediate relief: Wisconsin's temporary injunction statute, Wis. Stat. § 813.02.

This argument fails. Plaintiffs have cited no case in which a court concluded that a party may be excused from complying with the notice statute if it requests temporary relief under § 813.02. This is likely because, if plaintiffs' argument was accepted, every time a party wanted to avoid the notice of claim statute, it could simply invoke the temporary injunction statute. Such an exception to the notice requirements would quickly swallow the general rule that "*no* action



may be brought" before complying with the notice statute. Wis. Stat. § 893.80(1d) (emphasis added).

In arguing that they are excused from complying with the notice statute, plaintiffs completely disregard the Wisconsin Supreme Court's most recent analysis of the statute in *E-Z Roll Off, LLC v. County of Oneida*, 2011 WI 71, 335 Wis. 2d 720, 800 N.W.2d 421. In that case, the Court explained that a party may be excused from the notice of claim requirements if its claims are brought pursuant to a statute that provides a "specific right to immediate injunctive relief." *Id.* at ¶ 26. The plaintiff in *E-Z Roll Off* had brought claims for damages and declaratory relief pursuant to Wisconsin's antitrust statute, Wis. Stat. § 133.18, and did not bring claims under the specific provisions of the antitrust statute allowing for injunctive relief. *Id.* at ¶ 28. The Court concluded that the plaintiffs' claims were not brought pursuant to a specific statutory scheme that provided for immediate relief that conflicted with the notice of claim statute. *Id.* at ¶ 29.

Like the plaintiffs' claims in *E-Z Roll Off*, plaintiffs' claims in this case are not brought pursuant to statutes that provide immediate injunctive relief. Plaintiffs' claims are based on Act 10, Wis. Stat. §§ 111.70(2), 111.70(4)(mb), 111.70(4)(b), and Wisconsin's antitrust law, Wis. Stat. § 133.03. The Wisconsin Supreme Court has decided already that claims brought pursuant to the antitrust laws (with the exception for claims brought under § 133.16) are subject to the notice of claim requirement, and plaintiffs do not argue that claims brought pursuant to Act 10 should be exempted from notice requirements. Wisconsin's temporary injunction statute does not provide the basis for plaintiffs' claims and cannot be used to avoid compliance with the notice of claim statute. The temporary injunction statute merely allows a court to order temporary relief to a party that has shown a likelihood of success on its underlying claims; the

party seeking temporary relief must point to some other legal basis for the claims underlying its request for temporary relief.

Plaintiffs' suggestion that they should be excused from complying with the notice requirements because the Board and District had "actual knowledge" of plaintiffs' claims is also unpersuasive. Plaintiffs are asking that the Court void a collective bargaining agreement ratified by the District on November 15, 2013. Plaintiffs contend that the District had notice of plaintiffs' claims based on a letter sent by the Wisconsin Institute for Law & Liberty, Inc. on November 12, 2013, before the agreement was ratified. This letter made no mention of plaintiffs in particular and did not state that plaintiffs would be filing a lawsuit seeking declaratory and injunctive relief. The letter was sent prior to the ratification of the collective bargaining agreement at issue in this case and, although it may have provided a warning that the Wisconsin Institute for Law & Liberty disagreed with the District's actions, it did not provide notice of plaintiffs' claims or requests for relief asserted in this case. Moreover, it did not contain an itemized statement of the relief sought, as required by Wis. Stat. § 893.80(1d)(b).

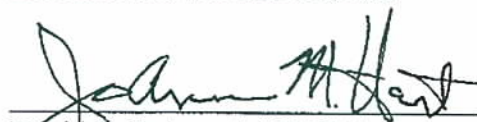
Further, plaintiffs have not shown a lack of prejudice to the District and Board. This letter is dated November 12, 2013, less than 10 days before plaintiffs filed this lawsuit. In light of this time frame, and the recent developments in the *Madison Teachers, Inc. v. Walker* case, plaintiffs' argument that the Board and District had adequate time to consider all of plaintiffs' claims fails. This case is not "identical" to the *Little Sissabagama Lake v. Town of Edgewater*, 208 Wis. 2d 259, 559 N.W.2d 914 (Ct. App. 1997) case, as plaintiffs argue. In *Little Sissabagama*, the court of appeals concluded that the plaintiff did not have to file a notice of claim before appealing a county board's tax determination under Wis. Stat. § 70.11(20). *Id.* at 263. The court noted that the tax statutes allowed for immediate appeals of tax determinations and also, the county had already considered and denied the plaintiff's claim. In this case, neither

Act 10 nor the antitrust laws allow for immediate action on plaintiffs' claims, and the District and Board has not already had ample time to consider and reject plaintiffs' claims.

For these reasons, the Court should grant plaintiffs' motion to dismiss this case.

Dated this 10th day of December, 2013

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