

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARS AREA SCHOOL DISTRICT,	:	
SOUTH SIDE AREA SCHOOL DISTRICT, and	:	CIVIL ACTION
LIGONIER VALLEY SCHOOL DISTRICT	:	
	:	
Plaintiffs	:	
	:	
v.	:	Case No. 2:24-cv-01396-NR
	:	
THE PENNSYLVANIA SCHOOL	:	Electronically Filed
BOARDS ASSOCIATION,	:	
	:	The Honorable J. Nicholas Ranjan
Defendant	:	

**ANSWER WITH AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS TO FIRST AMENDED COMPLAINT**

Defendant The Pennsylvania School Boards Association (“PSBA”), through its undersigned counsel, files this Answer with Affirmative Defenses and Counterclaims to Plaintiffs Mars Area School District’s (“Mars”), South Side Area School District’s (“South Side”), and Ligonier Valley School District’s (“Ligonier”) (collectively, Ligonier, Mars, and South Side shall hereinafter be referred to as “Plaintiffs”) Amended Complaint, and in support thereof avers as follows:

Introduction

1. Admitted in part and denied in part. It is admitted that copyright disputes exist between PSBA and Plaintiffs regarding model codes authored by PSBA. To the extent that this paragraph is construed to mean that such model codes have been substantively changed by Plaintiffs or that the model codes are no longer the property of PSBA after Plaintiffs adopt the same, these averments are denied.

2. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. The

policies referenced by Plaintiffs are direct copies of PSBA's copyrighted work. Moreover, Plaintiffs each agreed to the terms of a Policy Maintenance Program Participation Agreement (the "Policy Agreement"), which clearly outlines the restrictions on use of PSBA's Model Policies and use of the same after the Policy Agreement expires or is terminated. PSBA is fully within its rights to enforce protection of its own work product and enforce a valid contract to which the Plaintiffs voluntarily agreed (and have now breached).

3. Admitted in part and denied in part. It is admitted that PSBA sent the letters attached to the Complaint as Exhibits One, Two, and Three. By way of further answer, these letters are documents which speak for themselves and any characterizations inconsistent with the documents are denied.

4. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. PSBA is certainly entitled to protection of its copyrights and enforcement of the Policy Agreement. Paragraph 2, above, is incorporated herein by reference.

5. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia v. Pub. Resource.Org, Inc.*, 590 U.S. 255 (2020). However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. By way of further answer, the materials at issue were not authored by any of the Plaintiffs – rather, they were authored by PSBA and explicitly copied by Plaintiffs. It is specifically denied that any limitations to PSBA's copyright protections apply to this action.

6. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required.

To the extent a response is required, the averments in this paragraph are denied. By way of further answer, the materials at issue were not authored by any of the Plaintiffs – rather, they were authored by PSBA and explicitly copied by Plaintiffs. It is specifically denied that the government edicts doctrine applies to the Plaintiffs’ actions or that any limitations to PSBA’s copyright protections apply to this action.

7. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. By way of further answer, the materials at issue were not authored by any of the Plaintiffs – rather, they were authored by PSBA and explicitly copied by Plaintiffs. It is specifically denied that any limitations to PSBA’s copyright protections apply to this action.

8. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. By way of further answer, the materials at issue were not authored by any of the Plaintiffs – rather, they were authored by PSBA and explicitly copied by Plaintiffs. It is specifically denied that any limitations to PSBA’s copyright protections apply to this action.

9. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. By way of further answer, the materials at issue were not authored by any of the Plaintiffs – rather, they were authored by PSBA and explicitly copied by Plaintiffs. It is specifically denied that any limitations to PSBA’s copyright protections apply to this action.

10. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. By way of further answer, the materials at issue were not authored by any of the Plaintiffs – rather, they were authored by PSBA and explicitly copied by Plaintiffs. It is specifically denied that any limitations to PSBA’s copyright protections apply to this action.

11. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. By way of further answer, the materials at issue were not authored by any of the Plaintiffs – rather, they were authored by PSBA and explicitly copied by Plaintiffs. It is specifically denied that any limitations to PSBA’s copyright protections apply to this action.

12. Admitted that Plaintiffs have accurately quoted PSBA’s website.

13. Admitted that Plaintiffs have accurately taken a screenshot of PSBA’s website.

14. Admitted. By way of further answer, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

15. Admitted. By way of further answer, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

16. Admitted. By way of further answer, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

17. Admitted. By way of further answer, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

18. Denied. Copyright protections exist at the moment a work is created, whether or not the same is registered with the United States Copyright Office. PSBA in fact has copyright registrations of several of its Model Policies, including those at issue in this action. Moreover, Paragraph 2, above, is incorporated herein by reference.

Parties

19. Admitted, upon information and belief.

20. Admitted, upon information and belief.

21. Admitted, upon information and belief.

22. Admitted.

Jurisdiction and Venue

23. Admitted.

24. Admitted in part and denied in part. It is admitted that this Court has the power to grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. To the extent that this paragraph is construed to mean that Plaintiffs are entitled to relief under the same, the remaining averments in this paragraph are denied.

25. Admitted.

Applicable Law¹

26. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the legal authorities cited herein. It is denied that any such references support Plaintiffs' legal theories in this matter, or support granting the relief sought.

¹ PSBA utilizes the headings in Plaintiffs' Amended Complaint for consistency and ease of reference only. PSBA does not agree with the characterization of the headings nor any arguments made in the same.

27. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the legal authorities cited herein. It is denied that any such references support Plaintiffs' legal theories in this matter, or support granting the relief sought.

28. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the legal authorities cited herein. It is denied that any such references support Plaintiffs' legal theories in this matter, or support granting the relief sought.

29. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the legal authorities cited herein. It is denied that any such references support Plaintiffs' legal theories in this matter, or support granting the relief sought.

30. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the legal authorities cited herein. It is denied that any such references support Plaintiffs' legal theories in this matter, or support granting the relief sought.

31. Denied. The averments in this paragraph contain conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. PSBA specifically denies that the principles in *Georgia* apply to this matter. Indeed, the works at issue here were not authored by any of the Plaintiffs – they were authored by PSBA and merely copied by Plaintiffs.

32. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. PSBA specifically denies that the principles in *Georgia* apply to this matter. Indeed, the works at issue here were not authored by any of the Plaintiffs – they were authored by PSBA and copied by Plaintiffs.

33. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the Pennsylvania's Constitution. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

34. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the Pennsylvania's Constitution. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

35. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

36. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

37. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

38. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

39. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

40. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

41. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

42. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote the School Code. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

Factual Background

43. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. Whether school boards perform “legislative functions” is a question of law.

44. Admitted.

45. Admitted.

46. Admitted.

47. Admitted.

48. Admitted, upon information and belief.

49. Denied. After a reasonable investigation, PSBA is unaware of the veracity of the averments in this paragraph. As such, the averments in this paragraph are denied.

50. Admitted.

51. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. PSBA has not committed any violation of law, nor is Mars entitled to any relief.

52. Admitted.

53. Admitted.

54. Admitted.

55. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. PSBA has not committed any violation of law, nor is South Side entitled to any relief.

56. Admitted.

57. Admitted.

58. Admitted.

59. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. PSBA has not committed any violation of law, nor is Ligonier entitled to any relief.

60. Admitted. By way of further answer, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

61. Admitted. By way of further answer, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

62. Admitted. By way of further answer, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

63. Denied. PSBA authored the PSBA Materials and is entitled to copyright protection from the moment the PSBA Materials were created. Further, PSBA holds copyright

registrations for certain PSBA Materials. Moreover, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

64. Denied. Plaintiffs have infringed on PSBA's copyrights. PSBA authored the PSBA Materials and is entitled to copyright protection from the moment the PSBA Materials were created. Further, PSBA holds copyright registrations for certain PSBA Materials. Moreover, this paragraph refers to documents which speak for themselves. Any characterizations inconsistent with the documents are denied.

65. Admitted in part and denied in part. It is admitted that Plaintiffs pass school district policies. However, to the extent that this paragraph is construed to mean that Plaintiffs' policies hold the force of law or that Plaintiffs are entitled to the relief requested herein, the remaining averments are denied.

66. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. Paragraph 2, above, is incorporated herein by reference.

67. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. Paragraph 2, above, is incorporated herein by reference.

68. Denied. The services provided by PSBA are outlined in the Policy Agreement, which speaks for itself. PSBA authored certain Model Policies which school districts were permitted to use, so long as they agreed to the Policy Agreement. PSBA was not hired to author policies on behalf of Plaintiffs, nor was PSBA ever acting on their behalf, nor did PSBA ever assign authorship or ownership of the PSBA Materials to Plaintiffs. School districts were permitted to amend the Model Policies as each saw fit for its purposes. Plaintiffs, however, did

not materially amend the Model Policies authored by PSBA. Instead, Plaintiffs wholesale copied PSBA's Model Policies and adopted them as their own. Even after the term of the Policy Agreement ended, Plaintiffs continued to outright copy and use PSBA's Model Policies. Indeed, the Board President of Ligonier spoke at a public meeting after Ligonier was no longer a member of PSBA in which he admitted that he merely copied and pasted PSBA's Model Policies, boasting that he saved the school district thousands of dollars by stealing PSBA Materials.

69. Denied. The averments in this paragraph are conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. *Georgia*, and the government edicts doctrine, does not apply to the instant matter because, among other reasons, the policies at issue were authored by PSBA. PSBA incorporates its response to paragraph 68, above, as if fully set forth herein.

70. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. *Georgia*, and the government edicts doctrine, does not apply to the instant matter because, among other reasons, the policies at issue were authored by PSBA.

71. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. *Georgia* does not apply to the instant matter because, among other reasons, the policies at issue were authored by PSBA.

72. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required.

To the extent a response is required, the averments in this paragraph are denied. *Georgia* does not apply to the instant matter because, among other reasons, the policies at issue were authored by PSBA.

73. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote *Georgia*. However, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. *Georgia* does not apply to the instant matter because, among other reasons, the policies at issue were authored by PSBA.

74. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. *Georgia* does not apply to the instant matter because, among other reasons, the policies at issue were authored by PSBA. PSBA certainly may own and copyright its own Model Policies. None of the policies at issue were promulgated by Plaintiffs. Instead, Plaintiffs wholesale copied PSBA's Model Policies. PSBA incorporates its response to paragraph 68, above, as if fully set forth herein.

75. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. *Georgia* does not apply to the instant matter because the policies at issue were authored by PSBA. PSBA certainly may own and copyright its own Model Policies. None of the policies at issue were promulgated by Plaintiffs. Instead, Plaintiffs wholesale copied PSBA's Model Policies. PSBA incorporates its response to paragraph 68, above, as if fully set forth herein.

76. Denied as stated. PSBA is not required to “regularly” register with the United States Copyright Office. Moreover, PSBA has since updated its copyright registrations for certain of the PSBA Materials.

77. Denied. This paragraph refers to a written document which speaks for itself. Any characterizations inconsistent with the document are denied. By way of further answer, PSBA is not required to register with the United States Copyright Office but has recently updated its copyright registrations.

78. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

79. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

80. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied. By way of further response, the consideration received by Plaintiffs is clear – they were permitted to use PSBA’s policies and also utilize certain other PSBA services and programs. Whether they actually used those services and programs is irrelevant to the question of whether adequate consideration was received by Plaintiffs.

81. Admitted in part and denied. It is admitted that Plaintiffs accurately quote the Policy Agreement. By way of further answer, this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

82. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

83. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

84. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

85. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

86. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

87. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

COUNT I
Plaintiffs v. Defendant
Declaratory Judgment

88. PSBA incorporates its responses to paragraphs one through 87, above, as if fully set forth herein.

89. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote, in part, 28 U.S.C.S. § 2201. It is denied that Plaintiffs are entitled to any form of relief under same.

90. Admitted in part and denied in part. It is admitted that Plaintiffs accurately quote, in part, 28 U.S.C.S. § 2201. It is denied that Plaintiffs are entitled to any form of relief under same.

91. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

92. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

93. Denied. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, the averments in this paragraph are denied.

WHEREFORE Defendant PSBA requests that the Court enter judgment in its favor and against Plaintiffs, dismiss the Complaint, and award all other relief as is just and proper.

AFFIRMATIVE DEFENSES

94. PSBA incorporates its responses to paragraphs one through 93, above, as if fully set forth herein.

95. Plaintiffs have failed, in whole or in part, to state a claim under the Declaratory Judgment Act upon which relief can be granted.

96. Plaintiffs cannot demonstrate a case or controversy.

97. Plaintiffs cannot demonstrate that their respective Policy Agreements were not supported by consideration.

98. Plaintiffs cannot demonstrate that the Policy Agreements were void *ab initio*.

99. Plaintiffs' claims are barred by the doctrine of unclean hands.

100. Plaintiffs' claims are barred by the doctrine of waiver.

101. The Policy Agreements are valid contracts.

102. Each of the Plaintiffs agreed to their respective Policy Agreements.

103. Each Plaintiff is bound by the terms of their Policy Agreement.

104. Each Plaintiff is in breach of their respective Policy Agreements.

105. When the Plaintiffs executed their respective Policy Agreements, they agreed that PSBA owned copyrights in the PSBA Materials and PSBA would provide certain policy services

and Model Policies, which the Plaintiffs were permitted to use and modify as their policies only during the term of the Policy Agreements.

106. Each of the Plaintiffs did, in fact, receive access to the PSBA Materials and a number of other products and services from PSBA.

107. Each of the Plaintiffs copied, almost in their entirety, many of PSBA's Model Policies, and published the same as their own policies.

108. While Mars, Ligonier and Southside copied PSBA's Model Policies during the term of their Policy Agreements, Ligonier made additional unauthorized copies of content that contained PSBA's Model Policies after the term of its Policy Agreement.

109. Ligonier cut and pasted the contents of policies it adopted during the term of the Policy Agreement, which were direct or near direct copies of the PSBA Model Policies, alleged doing so "rewrote" those policies, and applied its own false copyright notice prior to displaying those allegedly rewritten policies on Ligonier's website.

110. Ligonier's Board President admitted that he directly copied PSBA's materials at a public school board meeting, recounting that he "rewrote" a district policy by simply copying and pasting a PSBA's model policy onto district letterhead and thereby saved the school district the cost of executing another Policy Agreement with PSBA.

111. Despite clear language in the Policy Agreement that once the Policy Agreement is expired the school district is no longer permitted to continue using PSBA's materials, Plaintiffs continue to use the PSBA Model Policies as their own policies and as the basis for policies in the future.

112. Under the Policy Agreement, each of the Plaintiffs agreed that

The PSBA policy guides, administrative regulations templates, PNN and PNN+, including but not limited to text, formatting, style,

design, numbering system and editorial enhancements (the “PSBA copyrighted materials”) are works of authorship subject to copyright owned by PSBA, and as to which PSBA reserves all rights pertaining and appurtenant to such copyright. YOU agree that you will treat the PSBA copyrighted materials in a manner consistent with such copyright and the permissions provided to YOU in this Agreement. YOU are not permitted to reproduce, distribute, share, circulate, transmit, display, adapt or permit access to the PSBA copyrighted materials except in accordance with the provisions of this agreement.

Policy Agreement at 5.

113. The Policy Agreement further states that

Only for so long as YOU maintain your participation in the Policy Maintenance program or as applicable the Administrative Regulations Program, YOU may use the formatting, style, design, numbering system, editorial enhancements and content originating with a PSBA policy guide or administrative regulation template in maintaining your policies and administrative regulations, including use of that formatting, style, design, numbering system and editorial enhancements in the development and maintenance of locally developed policies and administrative regulations not otherwise based upon or originating with PSBA policy guides or administrative regulations templates.

Policy Agreement at 5-6.

114. PSBA authored the PSBA Materials.

115. PSBA had copyrights in the PSBA Materials from the moment they were created.

116. “A ‘copyright’, as a right, vests immediately upon the creation of the work.”

Brownstein v. Lindsay, 742 F.3d 55, 66 (3d Cir. 2014) (citing 17 U.S.C. § 201(a)).

117. “For this reason, a copyright must not be confused with the act of registering that right.” *Id.*

118. PSBA has now also registered the copyrights for certain of the PSBA Materials, including several of the Model Policies copied by Plaintiffs.

119. Plaintiffs have continued their unauthorized use of the PSBA Materials without any payment for the same.

120. Permitting Plaintiffs to copy and adapt the PSBA Materials permits Plaintiffs to disregard their contractual obligations to PSBA and will encourage all school districts across the Commonwealth to do the same, essentially rendering PSBA's business obsolete.

121. PSBA has meticulously developed, researched, drafted, and modified its policies and materials over decades to ensure that the PSBA Materials are up to date.

122. Plaintiffs' copying of the same without payment is entirely unjust and completely disregards PSBA's copyrights.

123. PSBA will be harmed if Plaintiffs' breach of their respective Policy Agreements continues.

124. The government edicts doctrine does not support the relief requested by Plaintiffs.

125. Plaintiffs are not entitled to the award of any relief, whether equitable or monetary damages, including but not limited to declaratory or injunctive relief, attorneys' fees, costs, or compensatory damages.

WHEREFORE Defendant PSBA requests that the Court enter judgment in its favor and against Plaintiffs, dismiss the Complaint, and award all other relief as is just.

COUNTERCLAIMS

126. PSBA incorporates paragraphs one through 125, above, as if fully set forth herein.

Introduction

127. PSBA has worked tirelessly for over 100 years to provide Pennsylvania's school districts with sound guidance and model policies to ensure compliance with education laws and to assist school districts in providing the best possible education for their students.

128. Plaintiffs, however, seek to take advantage of PSBA's decades of research, analysis, and drafting by claiming authorship of PSBA's Model Policies, which each of the Plaintiffs simply copied and pasted as their own, which they have continued to use, display and disseminate without continuing to compensate PSBA for such rights.

129. Despite agreeing to contract terms stating that Plaintiffs may not continue to use PSBA's policies and guidance after Plaintiffs are no longer members of PSBA, Plaintiffs seek to have the Court ratify their breach of contract and essentially render PSBA's business obsolete.

130. PSBA requests that the Court require Plaintiffs to comply with their contractual obligations and enforce PSBA's copyrights in materials which it has developed for decades.

Parties

131. PSBA is a Pennsylvania non-profit organization with its offices located at 400 Bent Creek Boulevard, Mechanicsburg, Pennsylvania 17050.

132. Mars is a Pennsylvania school district with its offices located at 545 Route 228, Mars, Pennsylvania 16046.

133. South Side is a Pennsylvania school district with its offices located at 4949 State Route 51, Hookstown, Pennsylvania 15050.

134. Ligonier is a Pennsylvania school district with its offices located at 339 West Main Street, Ligonier, Pennsylvania 15658.

Jurisdiction

135. This Court has jurisdiction pursuant to 28 U.S.C. § 1367, 17 U.S.C. § 101 et seq., and 17 U.S.C. § 1202.

Factual Background

136. PSBA, founded in 1895, serves Pennsylvania’s school districts by providing school boards across the Commonwealth with services, support and counsel to ensure that the school boards are in compliance with Pennsylvania and federal law to maintain the best learning environment for Pennsylvania’s students.

137. PSBA is a voluntary membership association which individual school districts, like Plaintiffs, elect to join to receive the services offered by PSBA.

138. The terms of the membership are governed by a PSBA Policy Maintenance Program Participation Agreement (the “Policy Agreement”).

139. PSBA offers, among other things, the use of Model Policies, guidance, summaries, and other materials (the “PSBA Materials”), to its members for an annual membership fee.

140. The PSBA Materials are meticulously researched, drafted, developed, and updated by multiple members of PSBA, including legal counsel, to ensure that the PSBA Materials are up to date with the most recent laws and court decisions that affect school districts across the Commonwealth.

141. The PSBA Materials include PSBA’s policy guides, which contains hundreds of templates setting forth recommended policy language developed by PSBA to assure that the governmental responsibilities of school entities can be fulfilled in a manner that reflects recommended practices and complies with legal standards and limitations. Together, these recommended polices are referred to as the “Model Policies.”

142. PSBA owns six copyright registrations for specific Model Policies, including PSBA’s policies for “Screening and Evaluation for Students with Disabilities,” “School Vehicle

Drivers,” “Threat Assessment,” “Maintaining Professional Adult & Student Boundaries,” “Discipline of Student Convicted & Adjudicated of Sexual Assault,” and “District Social Media.” A true and correct copy of the Copyright Registrations for the PSBA Model Policies are attached as Exhibits One through Six, respectively.

143. PSBA’s subscribers may use the PSBA Materials as the basis for their district policies and administrative regulations.

144. However, former PSBA subscribers are not permitted to continue to use the PSBA Materials once their subscription is terminated.

145. Doing so violates the terms and conditions of a district’s Policy Agreement.

146. Mars entered into a Policy Agreement with PSBA on August 2, 2023 for the July 1, 2023 through June 30, 2024 program year. A true and correct copy of the Mars Policy Agreement is attached as Exhibit Seven.

147. South Side entered into a Policy Agreement with PSBA on July 13, 2023 for the July 1, 2023 through June 30, 2024 program year. A true and correct copy of the South Side Policy Agreement is attached as Exhibit Eight.

148. Ligonier entered into a Policy Agreement with PSBA on July 21, 2021 for the July 1, 2021 through June 30, 2022 program year an agreement which continued its term thereafter until termination. A true and correct copy of the Ligonier Policy Agreement is attached as Exhibit Nine.

149. Under the Policy Agreement, each of the Plaintiffs agreed that

The PSBA policy guides, administrative regulations templates, PNN and PNN+, including but not limited to text, formatting, style, design, numbering system and editorial enhancements (the “PSBA copyrighted materials”) are works of authorship subject to copyright owned by PSBA, and as to which PSBA reserves all rights pertaining and appurtenant to such copyright. YOU agree that you

will treat the PSBA copyrighted materials in a manner consistent with such copyright and the permissions provided to YOU in this Agreement. YOU are not permitted to reproduce, distribute, share, circulate, transmit, display, adapt or permit access to the PSBA copyrighted materials except in accordance with the provisions of this agreement.

Policy Agreement at 5.

150. Agreement section 2(e) further states:

Only for so long as YOU maintain your participation in the Policy Maintenance program or as applicable the Administrative Regulations Program, YOU may use the formatting, style, design, numbering system, editorial enhancements and content originating with a PSBA policy guide or administrative regulation template in maintaining your policies and administrative regulations, including use of that formatting, style, design, numbering system and editorial enhancements in the development and maintenance of locally developed policies and administrative regulations not otherwise based upon or originating with PSBA policy guides or administrative regulations templates.

Policy Agreement at 5-6.

Mars' Breach of the Policy Agreement

151. Mars, during the term of its Policy Agreement, wholesale copied and pasted the PSBA Model Policies to adopt as its own.

152. Mars made few if any changes to the PSBA Model Policies before adopting the same.

153. PSBA marks the PSBA Model Policies with the notice: "© [year] PSBA" or "Copyright [year] PSBA."

154. The policies that Mars copied from PSBA do not include PSBA's copyright notice which appeared on the PSBA Model Policy.

155. Mars then terminated its Policy Agreement in June of 2024.

156. Upon termination of the Policy Agreement, PSBA reminded Mars of its obligations under the Policy Agreement via email, specifically noting that Mars was not to continue to reproduce, circulate, display, or adapt any of the PSBA Materials or Model Policies.

157. Mars continued to display and circulate the PSBA Model Policies on its website.

158. After failing to comply with the terms of the Policy Agreement, PSBA sent a cease and desist letter again requesting that Mars comply with the terms of the Policy Agreement.

159. Mars failed to do so and, instead, filed the instant lawsuit.

South Side's Breach of the Policy Agreement

160. South Side, during the term of its Policy Agreement, wholesale copied and pasted the PSBA Model Policies to adopt as its own.

161. South Side made few if any changes to the PSBA Model Policies before adopting the same.

162. The policies that South Side copied from PSBA do not include PSBA's copyright notice which appeared on the model PSBA policy.

163. South Side then terminated its Policy Agreement in June of 2024.

164. Upon termination of the Policy Agreement, PSBA reminded South Side of its obligations under the Policy Agreement via email specifically noting that South Side was not to continue to reproduce, circulate, display, or adapt any of the PSBA Materials or Model Policies.

165. South Side continued to display and circulate the PSBA Model Policies on its website.

166. After failing to comply with the terms of the Policy Agreement, PSBA sent a cease and desist letter again requesting that South Side comply with the terms of the Policy Agreement.

167. South Side failed to do so and, instead, filed the instant lawsuit.

Ligonier's Breach of the Policy Agreement

168. Ligonier, during the term of its Policy Agreement, wholesale copied and pasted the PSBA Model Policies to adopt as its own.

169. Ligonier made few if any changes to the PSBA Model Policies before adopting the same.

170. The policies that Ligonier copied from PSBA do not include PSBA's copyright notice which appeared on the model PSBA policy.

171. Ligonier then terminated its Policy Agreement in July of 2024.

172. Upon termination of the Policy Agreement, PSBA reminded Ligonier of its obligations under the Policy Agreement via email, specifically noting that Ligonier was not to continue to reproduce, circulate, display, or adapt any of the PSBA Materials or Model Policies.

173. Ligonier continued to display and circulate the PSBA Model Policies on its website.

174. After failing to comply with the terms of the Policy Agreement, PSBA sent a cease and desist letter again requesting that Ligonier comply with the terms of the Policy Agreement.

175. Well after terminating its agreement with PSBA, Ligonier wholesale copied and pasted policies that were copied from the PSBA Model Policies to adopt as its own – including, ironically, Ligonier Policy 814 regarding the proper use of Copyright Material.

176. At Ligonier's regular meeting on August 12, 2024, Donald Gilbert, Board President, admitted "I went ahead and took one of the policies this evening. It took me a grand total of 20 seconds to rewrite one of the policies because all I had to do was copy and paste it onto a district letterhead...that we do not have to pay PSBA for ever again."

177. Gilbert's statements are documented starting at approximately minute 51 of a recording of the August 12, 2024 meeting publicly available on YouTube at <https://www.youtube.com/watch?v=yuhPndrLHWs>.

178. Ligonier placed a notice at the bottom of one or more of these copied policies in the format of "© 2024, Ligonier Valley School District. All Rights Reserved".

179. The notice placed by Ligonier contains copyright management information in the nature of the purported author and/or copyright claimant of the policies bearing that notice.

180. Ligonier does not have a copyright in policies it copied from the PSBA Model Policies nor is it the author or copyright claimant of content it copied from the PSBA Model Policies.

181. The copyright management information provided by Ligonier on the policies it copied from PSBA is false.

182. Separately, Ligonier is also distributing that false copyright management information through publication on its website of policies it copied from PSBA.

183. Ligonier knew it was providing and distributing false copyright management information in the policies it copied from PSBA and did so with the intent to induce, enable, facilitate or conceal infringement.

184. The policies that Ligonier copied from PSBA do not contain PSBA's copyright notice.

185. When Ligonier copied and pasted the policies based on PSBA's Model Policies into its alleged "rewritten" version without also including PSBA's copyright notice, Ligonier intentionally removed PSBA's copyright management information.

186. Separately, Ligonier also distributed the policies it copied from PSBA knowing that PSBA's copyright management had been removed without authority of PSBA.

187. Ligonier knew, or had reasonable grounds to know, that removing PSBA's copyright management information would induce, enable, facilitate or conceal an infringement of the PSBA Model Policies.

188. After failing to comply with the terms of the Policy Agreement, PSBA sent a cease and desist letter again requesting that Ligonier comply with the terms of the Policy Agreement.

189. Ligonier failed to do so and, instead, joined the instant lawsuit.

Damages

190. If Plaintiffs, and other school districts across the Commonwealth, are permitted to use the PSBA Materials and claim them as their own, Plaintiffs are essentially taking PSBA's decades of carefully crafted and considered research and development for free, rendering PSBA's business obsolete, and would put many people out of work.

191. Plaintiffs cannot be permitted to disregard the terms to which they voluntarily agreed, which included express recognition of PSBA's copyrights, to avoid payment of fees to PSBA for its valuable services and materials.

192. As a result of each Plaintiffs' breach, PSBA has suffered harm in the form of infringement of its copyrights.

193. PSBA is entitled to its actual damages and/or statutory damages under 17 U.S.C. § 504 and 17 U.S.C. § 1202.

COUNT I
BREACH OF CONTRACT
PSBA v. All Plaintiffs

194. PSBA incorporates paragraphs 126 through 193, above, as if fully set forth herein.

195. Each of the Plaintiffs entered into a valid Policy Agreement with PSBA, as set forth above and which are attached as Exhibits Seven through Nine.

196. Each Policy Agreement states that, in exchange for an annual membership fee, Plaintiffs may have access to and publish, reproduce, distribute, and/or adapt the PSBA Materials for their own use.

197. Upon termination of each Policy Agreement, however, Plaintiffs must cease all reproduction, distribution, and/or adaptation of the PSBA Materials.

198. Each of the Plaintiffs terminated their respective Policy Agreements.

199. Despite this, each Plaintiff continues to use, reproduce, display, distribute, and/or adapt the PSBA Materials, including the PSBA Model Policies.

200. Each Plaintiff has breached their respective Policy Agreement.

201. As a result of Plaintiffs' breaches, PSBA has suffered harm in the infringement of its copyrights in the PSBA Materials, the PSBA Model Policies as well as other damages to be determined at trial.

WHEREFORE, PSBA requests that the Court enter judgment in its favor and against Plaintiffs, award statutory damages under 17 U.S.C. § 504 and 17 U.S.C. § 1202, award all actual damages incurred by PSBA, award preliminary and permanent injunctive relief requiring

Plaintiffs to cease the copying, distribution, and adaptation of the PSBA Model Policies, dismiss Plaintiffs' Amended Complaint, and award all other relief as is just and proper.

COUNT II
COPYRIGHT INFRINGEMENT – 17 U.S.C. § 101 et seq.
PSBA v. All Plaintiffs

202. PSBA incorporates paragraphs 126 through 201, above as if fully set forth herein.

203. PSBA is the author of the PSBA Model Policies.

204. PSBA owns valid copyright registrations for the PSBA Model Policies. Exhibits One through Six.

205. Each of the Plaintiffs copied, in whole or in part, the PSBA Model Policies and published the same on their websites.

206. After termination of their respective Policy Agreements, however, none of the Plaintiffs are permitted to copy, distribute, display, or adapt the PSBA Model Policies.

207. Nevertheless, Plaintiffs continue to copy, distribute, display, and adapt the PSBA Model Policies without permission.

208. As a result of Plaintiffs' continued and unauthorized use of the PSBA Model Policies, Plaintiffs have infringed on PSBA's copyrights to the PSBA Model Policies.

209. Plaintiffs continue to use the PSBA Model Policies knowingly and willfully.

210. PSBA is entitled to actual damages or statutory damages up to \$150,000 per occurrence.

211. PSBA cannot calculate its actual damages with certainty, as infringement of PSBA's copyrights and continued use of the PSBA Model Policies, is not readily calculated.

WHEREFORE, PSBA requests that the Court enter judgment in its favor and against Plaintiffs, award statutory damages under 17 U.S.C. § 504 and 17 U.S.C. § 1202, award all

actual damages incurred by PSBA, award preliminary and permanent injunctive relief requiring Plaintiffs to cease the copying, distribution, and adaptation of the PSBA Model Policies, dismiss Plaintiffs' Amended Complaint, and award all other relief as is just and proper.

COUNT III
VIOLATION OF DIGITAL MILLENIUM COPYRIGHT ACT (DMCA), 17 U.S.C. § 1202
PSBA v. Ligonier Valley School District

212. PSBA incorporates paragraphs 126 through 211, above, as if fully set forth herein.

213. After terminating its agreement with PSBA, Ligonier copied, reformatted, transmitted and displayed one or more policies that are direct copies of the PSBA Model Policies.

214. Ligonier placed a notice at the bottom of one or more of these copied and allegedly "rewritten" policies in the format of "© 2024, Ligonier Valley School District. All Rights Reserved".

215. The notice placed by Ligonier contains copyright management information in the nature of the purported author and/or copyright claimant of the policies bearing that notice.

216. Ligonier does not have a copyright in policies it copied from the PSBA Model Policies nor is it the author or copyright claimant of content it copied from the PSBA Model Policies.

217. The copyright management information provided by Ligonier on the policies it copied from PSBA is false.

218. Ligonier is also distributing that false copyright management information through publication on its website of policies it copied from PSBA.

219. Ligonier knew it was providing and distributing false copyright management information in the policies it copied from PSBA and did so with the intent to induce, enable, facilitate or conceal infringement.

220. PSBA marks its copyrighted policies with the notice: “© [year] PSBA” or “Copyright [year] PSBA.”

221. The policies that Ligonier copied from PSBA do not contain PSBA’s copyright notice.

222. When Ligonier copied and pasted the PSBA Model Policies into its alleged “rewritten” version without also including PSBA’s copyright notice, Ligonier intentionally removed PSBA’s copyright management information.

223. Separately, Ligonier also distributed and displayed the policies it copied from PSBA knowing that PSBA’s copyright management had been removed without authority of PSBA.

224. Ligonier knew, or had reasonable grounds to know, that removing PSBA’s copyright management information would induce, enable, facilitate or conceal an infringement of PSBA’s copywritten policies.

225. Ligonier’s actions constitute providing false copyright management information in violation of 17 U.S.C. § 1202(a) as to each policy containing such false copyright management information.

226. Ligonier’s actions also constitute removal or alteration of copyright management information in violation of 17 U.S.C. § 1202(b) as to each policy from which PSBA’s copyright management information has been removed.

227. PSBA is entitled to actual damages, or at its election, statutory damages in an amount between \$2,500 and \$25,000 for each violation of 17 U.S.C. § 1202.

WHEREFORE, PSBA requests that the Court enter judgment in its favor and against Plaintiffs, award statutory damages under 17 U.S.C. § 504 and 17 U.S.C. § 1202, award all actual damages incurred by PSBA, award PSBA's attorney's fees under 17 U.S.C. § 505 and 17 U.S.C. § 1203, award preliminary and permanent injunctive relief requiring Plaintiffs to cease the copying, distribution, and adaptation of the PSBA Model Policies, dismiss Plaintiffs' Amended Complaint, and award all other relief as is just and proper.

COUNT IV
UNJUST ENRICHMENT
PSBA v. All Plaintiffs
(Pleaded in the alternative)

228. PSBA incorporates paragraphs 126 through 227, above, as if fully set forth herein.

229. PSBA is the author of the PSBA Model Policies.

230. PSBA has spent decades of time and energy developing the PSBA Model Policies.

231. Plaintiffs, after the term of their respective Policy Agreements expired, continue to use the PSBA Model Policies without payment for the same.

232. Plaintiffs appreciated the benefit as Plaintiffs are continuing to use licensed materials in the form of the adopted PSBA Model Policies for free and do not have to put any time or effort into drafting the same.

233. Retention of this benefit without payment for the same would be unjust.

234. The benefit of the use of the PSBA Model Policies is equal to the value of PSBA's annual membership fee for as long as the Plaintiffs continue to use the PSBA's Materials.

235. As a result of Plaintiffs' unauthorized use of the PSBA Materials, PSBA has suffered damages in the form of at least one year's worth of membership fees from each of the Plaintiffs.

WHEREFORE, PSBA requests that the Court enter judgment in its favor and against Plaintiffs, award statutory damages under 17 U.S.C. § 504 and 17 U.S.C. § 1202, award all actual damages incurred by PSBA, award preliminary and permanent injunctive relief requiring Plaintiffs to cease the copying, distribution, and adaptation of the PSBA Model Policies, dismiss Plaintiffs' Amended Complaint, and award all other relief as is just and proper.

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Dated: December 2, 2024

*Attorney for Defendant, The Pennsylvania
School Boards Association*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document on all counsel through the Court's ECF filing system.

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