STATE OF MICHIGAN
IN THE 14th CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

CHARTER TOWNSHIP OF MUSKEGON, a Michigan charter township, Plaintiff, vs. GREATER MICHIGAN COMPASSION CLUB, DLARA Registration No. 70913L; DEREK STEPHEN ANTOL, a natural person; SAMANTHA JOSEPHINE CONKLIN, a natural person; SHAWN HOEFT, a natural person; RUSS BUYERS, a natural person; JORDAN MCKAY, a natural person; and JOHN DOE 1 - JOHN DOE 1000, natural persons, Defendants.	Case No. 11-_____-CZ Hon. _____ Muskegon County Circuit Court

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_____/

ORIGINAL COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this Complaint.

_____
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Counsel for Muskegon Charter Township

NOW COMES Plaintiff, the Charter Township of Muskegon, and for its Original

Complaint, under MCR 2.101(B), and 2.110, states as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Muskegon Charter Township ("Township"), is a Michigan charter township, presently organized under Act 39 of 1947, MCL 42.1 - 42.34. The Township's principal place of business is located at 1900 East Apple Avenue, Muskegon, MI 49442.

2. Muskegon Charter Township is not in any way opposed to the limited, and carefully circumscribed, public policy of enabling restricted use of marijuana for debilitating medical reasons only, subject to a limited statutory distribution system, that was actually approved by the voters of the State of Michigan when they adopted Initiated Law 1 of 2008, MCL 333.26421 - 333.26430. See MCL 333.26423(a); MCL 333.26424(f) (debilitating medical condition, not just any medical condition, is required as a prerequisite for participation as a patient in statutory system); see also Attorney General's Amicus Curiae Brief in Support of Plaintiff-Appellant (Mar. 25, 2011), *in* People v. McQueen, Docket No. 301951 (Mich. Ct. App. *filed* Jan. 5, 2011) (also advocating a common-sense, reasonable, and limited interpretation of Initiated Law 1), Exhibit 1.

3. As the Court will rapidly learn, however, this lawsuit is not about access of persons with genuine, debilitating medical conditions to marijuana. In actuality, the words "medicine" and "compassion" (as well as many other terms) have been abused by Defendant Greater Michigan Compassion Club ("Club") in an Orwellian,[1] doublespeak, sense to mean something else entirely.

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[1] See George Orwell, *The Principles of Newspeak*, *in* NINETEEN EIGHTY-FOUR, Appendix (1948), < http://www.newspeakdictionary.com/ns-prin.html >; Cf., THUCYDIDES, HISTORY OF THE PELOPONNESIAN WAR, Book III (Crawley Transl.), < http://en.wikisource.org/wiki/History_of_the_Peloponnesian_War/Book_3 > ("Words had to change their ordinary meaning and to take that which was now given them.").

4. Moreover, two key words are conspicuously absent from Initiated Law 1 of 2008 – namely, **profit** and **recreation** (as in, the marketing of recreational drugs for profit). Try as they might, the Defendants will not find either of those two words[2] (or any variant thereof) anyplace in the statute – and for a reason: Voters were assured in 2008 that, by approving Initiated Law 1, they were not approving a profit-driven recreational drug marketplace. The voters certainly did not approve a profit-driven recreational drug marketplace, when they passed Initiated Law 1.

5. Indeed, the contrary intent of the voters (i.e., the desire to prohibit for-profit sales of recreational drugs), is plainly evident on the face of the statute itself. See, e.g., MCL 333.26424(k) ("Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both, in addition to any other penalties for the distribution of marihuana.").

6. Defendant Club purports to be organized as a "nonprofit corporation" under Act 162 of 1982, MCL 450.2101 - MCL 450.3192. Its state corporate registration number with the Department of Licensing and Regulatory Affairs, is 70913L. The effort of Club and of other Defendants to brandish the label "nonprofit," is a deliberate and willful sham carried out with knowledge of the business reality of the Club's commercial operations, and with full knowledge that Directors and other employees of the Club profit handsomely from the Club's activities – so much so that several Club Directors, including but not necessarily limited to

[2]The word "non-profit" does appear one time in the statute, but in a context that is not materially related to any issues before this honorable Court.

Defendants Antol and Conklin, in fact depend on Club and its commercial activities as their primary source of household income.

7. The purpose of the Club's willful "nonprofit" sham is to evade taxes and other regulations, including without limitation the Township's business licensing requirements. Indeed, counsel for the Club already has attempted to argue in bad faith, and despite knowledge of the business reality of the Club's commercial operations, that the mere "nonprofit" label somehow exempts the Club from business licensing requirements in the Township, whether or not that label bears any relation to the underlying commercial reality.

8. Defendant Club and Defendants Antol and Conklin, on information and belief, presently intend that Antol and Conklin will continue to profit handsomely from Club's continued business operations, and to derive the vast majority of their household income from Club and its operations. Their stated objective, in communications with Township officials, is to expand club revenue, and the corresponding economic benefit to themselves.

9. Defendant Club can be served with Summons at its principal place of business, 2116 Apple Avenue, Suite B, Muskegon, MI 49442, with Defendant Antol serving as Registered Agent.

10. Defendant Club has not properly updated the address for its registered office for service of process, with the DLARA.

11. Defendant Derek Stephen Antol ("Antol") is a natural person who resides at 1504 Montgomery; Muskegon, MI 49442, and who may be served with Summons at that address. Defendant Antol is self-appointed as a Director of Defendant Club, and is self-identified as its "Executive Director / Treasurer."

12. Defendant Antol, on or about October 28, 2002, was sentenced by the

Muskegon County Circuit Court, based on a plea of guilty, to probation for delivery and manufacture of a controlled substance. See < http://www.state.mi.us/mdoc/asp/otis2profile.asp?mdocNumber=432925 >.

13. While on probation, in or about late 2005, Defendant Antol again commit a drug crime involving possession of a controlled substance, and accordingly was sent to prison. Id. Antol was discharged from prison on or about January 5, 2008. Id.

14. At or about the time that Defendant Club was formed, Defendant Antol attempted to form a commercial association in the minds of the Muskegon public (or, at the least, a certain commercially-significant segment of the Muskegon commercial market for cannabis and certain chemical substances therein) between his own activities (as well as related activities of some other named Defendants) and the registered trademark NORML® (U.S.P.T.O. Reg. No. 0997137), belonging to the National Organization for the Reform of Marijuana Laws ("NORML"). The organization with which Antol sought to associate his own activities and those of his associates and the Club, does not merely advocate the limited "medical" availability of marijuana, but rather, a completely different agenda, of which the voters in Michigan simply have never approved – namely, generalized legalization of recreational marijuana, regardless of alleged medical condition. On information and belief, Antol was instructed by NORML to stop associating his activities (and those of his associates and Club) with the NORML organization and/or the NORML® registered trademark.

15. On information and belief, Antol's agenda and that of the other named Defendants, is in reality, generalized legalization of recreational marijuana, to be sold for profit, while so-called "medical" advocacy is merely viewed as an intermediate step (or, even a "Trojan horse"), in the promotion of Defendants' long-term and widespread for-profit

legalization agenda. As stated on Club's official Website: "Ultimately, we fight to see the end of marijuana prohibition for ALL PEOPLE."

16. Defendant Samantha Josephine Conklin ("Conklin") is a natural person who resides at 1504 Montgomery; Muskegon, MI 49442 (the same address as Defendant Antol), and who may be served with Summons at that address.

17. Defendant Conklin also is self-appointed as a Director of Defendant Club, and is self-identified as its "Deputy Director/Donations Manager."

18. On information and belief, Defendants Conklin and Antol have deliberately engineered the Bylaws of Defendant Club, and its internal operating procedures, so that Antol and Conklin, along with hand-picked personal allies, always will remain in at least majority control of the Board of Directors (and, hence, the finances of the Club), such that the dues-paying Membership of Club will never be able to replace the full Board of Directors of Club, and thereby choose their own leadership.

19. Defendant Shawn Hoeft ("Hoeft"), a natural person, is a member of Defendant Club's Board of Directors and is self-identified as Club's "budtender." On information and belief, Defendant Hoeft was selected by Defendants Antol and Conklin, to serve on the Club's Board as an ally of Antol and Conklin, and to ensure that Antol/Conklin remain in majority control of Club and the financial proceeds of its for-profit business operations.

20. On information and belief, Defendant Hoeft resides in the County of Muskegon.

21. On information and belief, Defendant Hoeft personally profits from Club's commercial operations, by being paid for his services as "budtender," among other work performed on behalf of Club.

22. On information and belief, many if not most transactions involving surplus "caregiver" marijuana (see Paragraphs 43, 49-58, *infra*), conducted on the business premises operated by Club, i.e., 2116 Apple Avenue, Suite B, Muskegon, MI 49442, are handled on a cash basis.

23. On information and belief, at least some of the income received by Defendant Hoeft, relating to his Club activities (including, but not limited to activities as "budtender"), in calendar year 2010, has not fully been reported to the United States Internal Revenue Service, and to the Michigan Department of Treasury, for income tax purposes.

24. On information and belief, at least some of the income received by Defendant Hoeft, relating to his Club activities (including, but not limited to activities as "budtender"), in the first quarter of calendar year 2011, has not fully been reported to the United States Internal Revenue Service, and to the Michigan Department of Treasury, for income tax purposes.

25. On information and belief, proper withholding of payroll taxes and/or proper reporting of self-employment taxes, relating to Hoeft's Club-related activities and income, has not fully been done for 2010 and 1Q2011.

26. Defendant Russ Buyers ("Buyers"), a natural person, is a member of Defendant Club's Board of Directors and is self-identified as Club's "Head of Security." On information and belief, Defendant Buyers was selected by Defendants Antol and Conklin, to serve on the Club's Board as an ally of Antol and Conklin, and to ensure that Antol/Conklin remain in majority control of Club and the financial proceeds of its for-profit business operations.

27. On information and belief, Defendant Buyers resides in the County of

Muskegon.

28. On information and belief, Defendant Buyers personally profits from Club's commercial operations, by being paid for his services as "Head of Security," among other work performed on behalf of Club.

29. On information and belief, at least some of the income received by Defendant Buyers, relating to his Club activities (including, but not limited to activities as "Head of Security"), in calendar year 2010, has not fully been reported to the United States Internal Revenue Service, and to the Michigan Department of Treasury, for income tax purposes.

30. On information and belief, at least some of the income received by Defendant Buyers, relating to his Club activities (including, but not limited to activities as "Head of Security"), in the first quarter of calendar year 2011, has not fully been reported to the United States Internal Revenue Service, and to the Michigan Department of Treasury, for income tax purposes.

31. On information and belief, proper withholding of payroll taxes and/or proper reporting of self-employment taxes, relating to Defendant Buyers's Club-related activities and income, has not fully been done for 2010 and 1Q2011.

32. Defendant Jordan McKay ("McKay"), a natural person, is a member of Defendant Club's Board of Directors and is self-identified as Club's "Webmaster." On information and belief, Defendant McKay was selected by Defendants Antol and Conklin, to serve on the Club's Board as an ally of Antol and Conklin, and to ensure that Antol/Conklin remain in majority control of Club and the financial proceeds of its for-profit business operations.

33. On information and belief, Defendant McKay resides in the County of

Muskegon.

34. On information and belief, Defendant McKay personally profits from Club's commercial operations, by being paid for his services as "Webmaster," among other work performed on behalf of Club.

35. On information and belief, at least some of the income received by Defendant McKay, relating to his Club activities (including, but not limited to activities as "Webmaster"), in calendar year 2010, has not fully been reported to the United States Internal Revenue Service, and to the Michigan Department of Treasury, for income tax purposes.

36. On information and belief, at least some of the income received by Defendant McKay, relating to his Club activities (including, but not limited to activities as "Head of Security"), in the first quarter of calendar year 2011, has not fully been reported to the United States Internal Revenue Service, and to the Michigan Department of Treasury, for income tax purposes.

37. On information and belief, proper withholding of payroll taxes and/or proper reporting of self-employment taxes, relating to Defendant McKay's Club-related activities and income, has not fully been done for 2010 and 1Q2011.

38. On information and belief, the Club has eleven "employees" on its payroll, including seven (7) security personnel (i.e., Defendant Buyers and Defendants John Doe 1 to John Doe 6). On information and belief, during the Club's business hours – namely, 1:00 pm to 6:00 pm, seven days a week – four (4) of these paid security personnel are regularly present on the Club's business premises, carrying loaded firearms. On information and belief, the Club's security personnel each take home several hundred dollars, if not more than

a thousand dollars, a week in income in exchange for the security work they perform.

39. On information and belief, Club does not presently carry, and never has carried, liability insurance for its commercial operations at 2116 Apple Avenue, Suite B, Muskegon, MI 49442.

40. On information and belief, Club has not adequately provided workers' compensation coverage for its security and non-security employees/workers, as required by law, either in CY2010 or 1Q2011.

41. On information and belief, Club has not fully paid and reported payroll taxes for its employees/workers (including but not limited to security employees/workers) during CY2010 or 1Q2011.

42. On information and belief, to date, neither Club nor any of its participating "caregivers" has paid over any sales taxes at all to any government entity, either for commercial activity taking place in CY2010, or in 1Q2011.

43. On information and belief, Club and its management either do not presently maintain, or in the past have not adequately maintained, adequate business records for all transactions taking place on the Club's business premises – particularly in relation to cash transactions involving marijuana, a Schedule 1 controlled substance under state and federal law.

44. On information and belief, Defendants Antol and Conklin do not make financial reports, and never have made financial reports, either to Defendant Club's Board of Directors, or to Defendant Club's general membership. Defendants Antol and Conklin, on information and belief, keep most records of Defendant Club's commercial operations at their private residence, and do not make such records available for inspection either by

Defendant Club's general membership, or by other members of Defendant Club's Board of Directors.

45. Club's membership includes several individuals (all of whom, unless already named as Defendants, are hereby designated as "Doe" Defendants for purposes of this litigation), who have been issued "caregiver" credentials by the State of Michigan, under Initiated Law 1 of 2008. On information and belief, Defendant Conklin self-identifies as such a "caregiver." On information and belief, and based on Club's own Website, Defendant Hoeft (the Club's "budtender") also is reasonably believed to be likely to possess "caregiver" credentials.

46. Also, all non-caregiver "patient" members of Club, are hereby designated as "Doe" Defendants. The Club is not presently believed to have any members who are not either state-credentialed "caregivers," or credentialed "patients." However, to the extent that the Club admits as members, any persons who are still applying for patient or caregiver credentials, or who have never applied for such credentials, such potential additional club members, also are hereby designated as "Doe" defendants.

47. Initiated Law 1 of 2008 authorizes a "primary caregiver," with state-issued credentials, to "assis[t] a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this [A]ct," and do so for a maximum of five (5) "connected" patients. MCL 333.26424(b); MCL 333.26426(d) ("each qualifying patient can have no more than 1 primary caregiver, and a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana").

48. In order to assist the caregiver's maximum of five (5) patients, a caregiver is

permitted to cultivate "12 marihuana plants kept in an enclosed, locked facility," for "each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient" – in other words, a total of sixty (60) plants. MCL 333.26424(b)(2). Some caregivers also are certified patients, and at least argue that the combined status of patient/caregiver enables such individuals to keep a total of seventy-two (72) cultivated plants on hand.

49. The statute expressly states that "[a] registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana." However, conspicuously absent from this authorization to recover "compensation for costs" is any indication whatsoever that any caregiver can ever recover any **profit** or remuneration in excess of actual and demonstrable costs, even for the five (5) registered patients to whom a caregiver's statutory services remain expressly limited.

50. In other words, recovery of actual and demonstrable costs only "shall not constitute the sale of controlled substances," according to 333.26424(e), but any remuneration over and above the caregiver's cost, obviously was intended to be viewed differently, by law.

51. From a practical standpoint, sixty (60) or seventy-two (72) plants, often will produce a surplus of marijuana, over and above what a caregiver's authorized portfolio of five (5) or fewer state-approved patients will demand. Thus, even though the statute clearly does not contemplate for-profit transactions involving marijuana (medical, or otherwise), and also squarely prohibits sales directed to the illegal, recreational market, see MCL 333.26424(k) ("Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under this

act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both, in addition to any other penalties for the distribution of marihuana."), nevertheless the statute inadvertently creates a perverse situation in which caregivers will have every economic incentive, not to destroy their surplus product (which would be a legal approach for handling the surplus), but instead to evade the statute's express 5-patient limit, by "laundering" their surplus output for profit, into the illegal recreational market.

52. Satisfying this perverse economic incentive is the primary thing that Defendant Club has been created to accomplish, and constitutes the vast majority of the Club's regularly-conducted activity.

53. During Defendant Club's regular business hours (1:00 to 6:00, seven days a week), "caregivers" who are members of Club, have access to a Club-maintained marketplace, operated on Club's business premises, to sell their surplus drugs for profit.

54. Club does not purchase the surplus schedule-one drugs of member caregivers, directly, to resell them, but instead charges a 20% transaction fee, acting as a kind of broker or market-maker, between caregiver-members with a surplus, and other Club members who either (1) are <u>not</u> among any specific caregiver's quota of five (5) authorized patients; or (2) are not authorized by the state registration process to transact any business with the specific caregiver whose surplus product they purchase.

55. Any "patient" with state-issued credentials can become a Club member, and thereby gain purchasing access to the club-operated drugs marketplace. Club takes the position that such access entitles its patient-members to make purchases of marijuana, from a person or persons other than their designated caregiver (if any), subject only to Club-

imposed limits on quantity and frequency of purchases. Club also takes the position that caregiver-caregiver transactions can take place *via* this Club marketplace, even though the statute clearly contemplates transactions between a caregiver and the caregiver's five (5) designated patients, only, and not between or among multiple caregivers.

56. Such a member-patient of the Club, or participant in an extra-statutory caregiver-caregiver drugs transaction, when he or she makes a purchase of drugs on Club business premises, does not exchange money with a "caregiver" registered and authorized by the State of Michigan to provide any services to that specific patient or caregiver "customer." Indeed, the whole point of the Club marketplace is to enable member-caregivers to profit, by getting rid of the surplus that remains, after they already have satisfied their allowed five (5) patients' entire demand.

57. Transactions through the Club-operated marketplace, on average, are priced at $325.00 per ounce. This price is not in any way based on any specific member-caregiver's actual cost of cultivation, but has an awful lot to do with the street price of recreational drugs (i.e., it is just enough less than the customary street price, that a member-"patient" easily can turn a tidy profit by re-selling what has been purchased on the Club's business premises, elsewhere).

58. The Club will enable a member-patient to purchase as little as a gram of product, for $15.00. The Club has imposed limits on the amount of the drugs purchased by member-patients, and the frequency of such purchases, and has expelled members, precisely because the Club and its Board members recognize that they have a problem with people joining as members, primarily for the purpose of re-selling what they buy into the illegal recreational market.

59. The Club has not referred any expelled former members to law enforcement.

60. The Club's limits on the amount of purchases and the frequency of purchases, by patient-members, are ineffective actually to prevent product purchased through the Club's commercial marketplace, from finding its way into the profitable and illegal recreational market, but instead merely keeps such activity sufficiently dispersed, that it remains less likely that illegal activity by particular patient-members will draw adverse law enforcement attention.

61. Although the Club also purports to collect "sales tax" on drugs transactions taking place in its commercial marketplace, a Club representative recently has stated to Township officials that no such tax actually has been paid over to the State of Michigan.

62. The majority of the revenue and profit generated by the Club, comes from the collection of the 20% Club-imposed charge (call it what you will – consignment fee, surcharge, transactions cost, etc.), on each Club-mediated drugs transaction.

63. The Club also generates revenue and profit by selling baked goods containing marijuana and/or chemicals derived from the processing of marijuana plants.

64. The Club also sells marijuana paraphernalia (smoking pipes and atomizers, etc.), for a profit.

65. The vast majority of the revenues and profits generated by the Club are distributed to employees and/or Board members as personal compensation, in the form of salary, wages, or other personal compensation to them.

66. The Township is particularly interested, for obvious reasons, in the federal and state income tax disclosures (if any), of Defendants Antol and Conklin, and what has actually been paid in taxes by them for CY2010 and 1Q2011. The Township, under the

circumstances of this case, reasonably believes that this subject is an important and legitimate focus of discovery as part of the litigation process. The Defendants' other business and tax records (including but not limited to those of the Club and all "John Doe" defendants), also will be of great and continuing interest.

67. Under Michigan law, "nonprofit corporation" means "a corporation incorporated to carry out any lawful purpose or purposes not involving pecuniary profit or gain for its directors, officers, shareholders, or members."

68. Defendant Club is not even primarily "nonprofit," let alone exclusively so. Nor is Defendant Club incorporated to carry out any lawful purpose. Its primary purpose is obviously to violate the federal Controlled Substances Act of 1970, as amended, see 21 U.S.C. §§ 801-904, and the Michigan Health Code, as well as to violate both the letter and the spirit of Initiated Law 1 of 2008. Its business operations obviously are carried out for the primary purpose of generating "pecuniary profit or gain for its directors, officers . . . or members."

69. Assertions to the contrary by the Club, its Board of Directors, Officers, and members, are a willful farce and charade, engaged-in for the purpose of evading their legal obligations.

70. Township also reasonably questions whether all patient-members of Club actually suffer from "debilitating" medical conditions, as required by Initiated Law 1 of 2008.

71. The Michigan Department of Licensing and Regulatory Affairs ("DLARA"), or a predecessor agency, has received at least 128,908 original and renewal applications, for patients and caregivers, under Initiated Law 1 of 2008, since April 6, 2009.

72. According to a page maintained by DLARA, and viewed on May 4, 2011, 71,356 patient registrations had been issued, state-wide.

73. Digging down into the details, however, reveals a considerably more interesting picture of who is applying for patient credentials, and how those applications are getting approved.

74. According to the results of a review of DLARA statistics, conducted by the Detroit Free Press, and repeated in Crain's Detroit Business, see < http://www.crainsdetroit.com/article/20110423/STAFFBLOG05/110429986/medical-marijuana-potential-source-of-state-tax-revenue# >, "[a] majority of about 64,000 people authorized to use medical marijuana in Michigan have unspecified ailments," involving claimed "chronic pain, muscle spasms [or] nausea."

75. Of the 64,000 people issued marijuana credentials by the state, at the time the Free Press received its data, **only 1,400 credentialled patients applied due to cancer** (2.2% of registered patients, approximately), while **only 1,100 referenced Hepatitis C** as a justification for the medical use of marijuana (1.7% of statewide patients, approximately). Id. The meaning of "debilitating," at least in the minds of some certifying physicians, appears to be rather more elastic than most voters probably expected or anticipated.

76. Alarmingly, "about 45,000 patients," out of the 64,000 as to which the Free Press obtained DLARA data, "or about 70 percent of authorized medical-marijuana users in Michigan," applied based on certifications provided by one of only **fifty-five (55) physicians**. Seventy (70) percent! As of 2008, Michigan had 42,305 licensed physicians, of which 29,302 were active in providing patient care. See < http://www.mhc.org/file_archive/PhysicianProfileFINAL09_2.pdf >. The vast majority of

them have not certified a single patient for medical marijuana use (only 2,197 total physicians wrote one certification or more, according to the Free Press). Fifty-five is 0.19 percent (less than 2 in one thousand) of Michigan's 29,302 active, licensed physicians. These fifty-five (55) doctors account for the lion's share (70%) of medical marijuana certifications in Michigan.

77. Not surprisingly, Defendant Club has an established relationship with one of these "captive" physicians, who specialize in the issuance of marijuana certifications. Club's captive physician hails from Cadillac. Club steers prospective members to its captive physician, so as to enable them to obtain medical marijuana credentials.

78. Club periodically schedules "clinics" for members and prospective members, to meet with the Cadillac physician.

79. In order to create a perverse financial incentive for the physician, Defendant Club has an arrangement with the physician whereby the physician, or the Club, or both inform prospective Club members about a money-back guarantee. Everyone seeing the Club's captive physician must pay a fee for the screening services that are provided. However, if the physician declines to issue a certification for a particular individual, then the screening fee is fully refunded, and the physician receives no compensation for the time spent screening that particular candidate.

80. The result of a such contingent-fee "certification mill" arrangement, including the contingent-fee arrangement maintained by the Club, in terms of the rate at which the screening results in positive certifications (and, hence, income for a physician who had no prior physician-patient relationship with virtually all the candidates being screened), is entirely predictable.

81. The central lesson in this litigation is unsurprising: People, including physicians, and "caregivers" with surplus drugs, and also the Board, Officers, employees, and members of the Defendant Club, respond to economic incentives, including perverse ones. The trouble arises when they confuse what just happens to be economically expedient and profitable for them, or their preferred recreational activities, with something entirely different – namely, what the express language of the law (including Initiated Law 1 of 2008), actually authorizes.

COUNT ONE – VIOLATION OF TOWNSHIP ORDINANCE 16-C OF 1975

82. Township repeats and re-alleges Paragraphs 1-81, as if set forth verbatim herein.

83. Since 1975, the Township has had an ordinance requiring businesses each to obtain and periodically renew a business license, as a pre-condition for doing any business in the Township.[3] See Muskegon Charter Township Code of Ordinances, §§ 10-1 to 10-8. The Ordinance has not been amended since initial passage.

84. The Ordinance applies to any "trade, profession, work, commerce or other activity owned or operated for profit within the township, excluding however, political, charitable or religious establishments."

85. Although the Club contends that it is both "political" and "charitable" in nature, it is neither exclusively political, nor exclusively charitable. Indeed, most business that require licenses in the Township engage in some amount of political and/or charitable

[3] See MCL 42.15 ("The township board of any charter township may enact such ordinances as may be deemed necessary to provide for the public peace and health and for the safety of persons and property therein, and may by ordinance prescribe the terms and conditions upon which licenses may be granted, suspended, or revoked; and may in such ordinances require and exact payment of such reasonable sums for any licenses as it may deem proper.").

activity that is ancillary to their central profit-making function – and the Club is no different.

86. The Club's activities are primarily and predominantly profit-driven, and mere occasional or ancillary activity that might be characterized from time to time as "political" or "charitable," is not sufficient to exempt the Club from the Township's business licensing requirement.

87. Unless and until an organization has a business license, said organization, its workers and management, and its owners must refrain from doing business in the Township, or cease transacting business if they have started without proper licensing.

88. The Defendant Club is precisely such an organization, without a license, and therefore all Defendants must cease transacting business in the Township unless and until such a business license is properly obtained.

89. Under Section 10-6 of the Township Ordinance, "No license shall be issued by the licensing agent where the existing or proposed business would be illegal under any law or ordinance of the United States of America, the state, the county having jurisdiction thereof, or the township."

90. Without question, the central profit-making activity of the Club (namely, operating a drugs marketplace that routinely indulges in for-profit transactions between a caregiver and persons who are not among the five (5) state-authorized patients of that selling caregiver), not only violates both the letter and spirit of Initiated Law 1 of 2008, but also squarely violates the federal Controlled Substances Act of 1970, as amended, see 21 U.S.C. §§ 801-904, and Michigan's Public Health Code.

91. Absolutely nothing in Initiated Law 1 of 2008 requires the Township to issue a business license in the circumstances presented here. This is particularly so because

Defendant Club's primary commercial activity is extra-statutory, and is carried out in clear and willful defiance of the statutory requirements of Initiated Law 1 of 2008.

92. The Township is prohibited, by the terms of its own Ordinance, from issuing a business license to any of the Defendants for the overwhelming majority, if not all, of the drugs-related commercial activities conducted by the Club and/or by other Defendants. The sheer magnitude, volume, and willfulness of Club's and other Defendants' illegal conduct, precludes the Township from attempting to license only the legal parts, because of the reasonably foreseeable likelihood that Defendants would not confine their commercial activities merely to those which are lawful.

93. Each and all of the Defendants, individually and collectively, are squarely in violation of Ordinance 16-C of 1975, and therefore are subject to the corresponding remedies set forth in Section 10-8 of the Code of Ordinances.

94. Section 10-8 states,[4] "Any violation of this chapter or any part thereof shall be punishable by a fine as provided in Section 1-10 of this Code. In addition, the township specifically reserves the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction or other appropriate remedy to compel compliance with this article." Such a fine, under MCL 42.21(5), may not exceed $500.00 per violation.

95. Under the circumstances, each day of continued violation, by each individual Defendant conducting business, purchasing drugs, or working on Club business premises (or with any other Defendant anyplace within the Township), constitutes an additional violation, and subjects each Defendant participating in each daily violation, to an additional financial

[4] See MCL 42.21(3) ("The township board may adopt an ordinance that designates a violation of the ordinance as a municipal civil infraction and provides a civil fine for that violation.").

penalty.

96. At least as early as March 22, 2011, the Township notified the landlord of the Defendant Club, in writing, of the requirements of the business licensing ordinance, and demanded that all business operations of the Club halt immediately unless and until properly licensed. This message promptly was communicated by the landlord directly to the Club and its Board of Directors.

97. At least since April 1, 2011, Defendant Club, and all Defendants, individually and collectively, have been in willful and knowing violation of the Ordinance, and have therefore voluntarily subjected themselves (each Defendant, individually) to daily monetary consequences for each day that violations of the business licensing ordinance continue.

98. Wherefore, the Township respectfully prays for each Defendant to be required to pay a monetary penalty for each day that each such Defendant, on or after April 1, 2011, in active concert and participation with Club or with any of Club's employees or Board members, or any other Defendant, engaged in any Club-related business transaction anyplace within Muskegon Charter Township, including but not limited to the Club's principal place of business.

COUNT TWO – INJUNCTIVE RELIEF

99. Township repeats and re-alleges Paragraphs 1-98, as if set forth verbatim herein.

100 Not only does the Township's Code of Ordinances expressly provide for injunctive relief, for Code violations, but Section 10-8 also expressly authorizes injunctive relief in the event that the business licensing requirement is violated.

101. Defendants, and each of them, continue to be in active and knowing, willful

violation of the Township's long-standing business licensing ordinance.

102. The Township and the public have no adequate remedy at law.

103. The Township respectfully prays for a permanent injunction against each and all of the Defendants, prohibiting each and all of them on pain of contempt from engaging in any business transactions in the Township of Muskegon, without first obtaining a proper business license.

COUNT THREE – NUISANCE, MCL 600.3801

104. Township repeats and re-alleges Paragraphs 1-103, as if set forth verbatim herein.

105. The activities of each Defendant, including without limitation Defendant Club, and each of its employees and/or Directors, squarely violates MCL 600.3801,[5] and must be enjoined as a public nuisance. See also Exhibit 1, at 25-28.

106. The Township respectfully prays for a permanent injunction against each and all of the Defendants, individually and collectively, to abate and prohibit the public nuisance maintained by them in violation of Michigan law.

107. The Township also prays for the recovery of its reasonable costs and attorney fees incurred in the enforcement of this statute.

COUNT FOUR – NUISANCE ABATEMENT, MCL 600.2940

[5]Any building . . . or place used for the . . . unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of any controlled substance as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws . . . is declared a nuisance, and the furniture, fixtures, and contents of the building . . . or place . . . are also declared a nuisance, and all controlled substances and nuisances shall be enjoined and abated as provided in this act and as provided in the court rules. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any building, vehicle, or place used for any of the purposes or acts set forth in this section is guilty of a nuisance."

108. Township repeats and re-alleges Paragraphs 1-107, as if set forth verbatim herein.

109. Defendants' conduct, individually and collectively, constitutes a public nuisance that may be abated pursuant to MCL 600.2940.

110. The Township respectfully prays for any and all remedies available pursuant to said statute, including the recovery of reasonable costs and attorney fees.

COUNT FIVE – DECLARATORY JUDGMENT

111. Township repeats and re-alleges Paragraphs 1-110, as if set forth verbatim herein.

112. The statute in question, Initiated Law 1 of 2008, clearly is not intended to, and clearly does not, authorize any "caregiver" with state credentials, to make any profit from any statutory caregiving activity, or to receive any monies in excess of the caregiver's actual and demonstrable costs of providing services. There is no reasonable interpretation, and there never has been any reasonable interpretation, of the statutory language to support any other result.

113. Club's self-serving effort to re-interpret, and crucify, the express statutory text, to reach a result enabling profit to be generated by caregivers, has no reasonable basis in the statutory text or in law.

114. Even if there were two reasonable interpretations of the statutory text, still the Township's no-profit interpretation is more consistent with law, the will of the voters, and the applicable rules of statutory construction.

115. A live controversy exists between the Township and each and all the Defendants who are caregivers, as to the meaning of Initiated Law 1 of 2008.

116. The Township respectfully prays for a declaratory judgment that the Township's no-profit interpretation of the statutory text is the correct and controlling interpretation of Initiated Law 1 of 2008.

117. The Township also respectfully prays for injunctive relief against all Defendants, prohibiting each and all of them from engaging in any transaction between a patient and a caregiver, in which the caregiver receives any monetary or economic benefit or profit, over and above the caregiver's actual and demonstrable costs of providing caregiver services.

COUNT SIX – DECLARATORY JUDGMENT

118. Township repeats and re-alleges Paragraphs 1-117, as if set forth verbatim herein.

119. The statute in question, Initiated Law 1 of 2008, clearly is not intended to, and clearly does not, authorize any "caregiver" with state credentials, to offer, convey, sell, or transfer any marijunana or cannabis-containing material, or to provide any caregiver services, to any person other than that specific caregiver's allowed five (5) patients. And each such patient may transact medical marijuana business only with that patient's one (1) caregiver.

120. Club's self-serving effort to re-interpret, and crucify, the express statutory text, to reach a result enabling extra-statutory transactions by caregivers (most alarmingly, sales for a profit to patients and persons other than the caregiver's five (5) authorized patients), has no reasonable basis in the statutory text or in law.

121. Most importantly, Defendant Club's and Defendant Antol's, misplaced and self-serving reliance, out-of-context, on the definition of "medical use" in MCL 333.26423(e), is in error because it overlooks not only the requirement of interpretation of

the entire statute as a whole, but also overlooks the entire text of the definition itself: "(e) 'Medical use' means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." Simply put, this definition not only does not establish any substantive rule at all (the actual substantive rule is found in MCL 333.26424(b) ("[a] primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty . . . for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act"); see also MCl 333.26424(a) (similar qualification for patients' "medical use" that clearly and expressly prohibits extra-statutory transactions outside relationship between one caregiver and five (5) state-authorized patients)), but the definition read as a whole certainly cannot reasonably be read to establish an "everything goes" regime once someone obtains a patient registration card through the good offices of a captive physician – as Defendants Club and Antol, would have it.

122. Even if there were two reasonable interpretations of the statutory text, still the Township's interpretation is more consistent with law, the will of the voters, and the applicable rules of statutory construction.

123. A live controversy exists between the Township and each and all the Defendants, as to the meaning of Initiated Law 1 of 2008.

124. The Township respectfully prays for a declaratory judgment that the Township's interpretation of the statutory text (prohibiting all caregivers from delivering any

drug, product, or service, to "patients" other than the five (5) patients authorized for that specific caregiver, by the state), is the correct and controlling interpretation of Initiated Law 1 of 2008.

125. The Township also respectfully prays for injunctive relief against all Defendants, prohibiting each and all of them from engaging in any transaction between a patient and a caregiver, unless the patient at the time of the transaction is one of the five (5) patients to whom that the state specifically has authorized that caregiver to deliver services.

COUNT SEVEN – DECLARATORY JUDGMENT

126. Township repeats and re-alleges Paragraphs 1-125, as if set forth verbatim herein.

127. The statute in question, Initiated Law 1 of 2008, clearly is not intended to, and clearly does not, authorize any "patient-patient" transactions, without any state-authorized caregiver as part of the transaction. Nor is there any reasonable way to interpret the statute to allow any patient or caregiver to transact any marijuana business (whether money changes hands or not), with any person entirely outside the medical registration system (i.e., recreational users or resellers). Indeed, all transactions with the recreational population are clearly intended to be prohibited by the statute, and no authorization exists or could possibly be interpreted to exist in the statutory text, for any patient-patient transaction, sale or other transfer.

128. Club's self-serving effort to re-interpret, and crucify, the express statutory text, to reach a result enabling extra-statutory patient-patient, patient-recreational, or caregiver-recreational transactions or transfers (most alarmingly, sales for a profit, particularly to the recreational market), has no reasonable basis in the statutory text or in law.

129. Most importantly, Defendant Club's and Defendant Antol's, misplaced and self-serving reliance, out-of-context, on the definition of "medical use" in MCL 333.26423(e), is misplaced because it overlooks not only the requirement of interpretation of the entire statute as a whole, but also overlooks the entire text of the definition itself: "(e) 'Medical use' means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." Simply put, this definition not only does not establish any substantive rule at all (the actual substantive rule is found in MCL 333.26424(b) ("[a] primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty . . . for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act"); see also MCl 333.26424(a) (similar qualification for patients' "medical use" that clearly and expressly prohibits extra-statutory transactions outside relationship between one caregiver and five (5) state-authorized patients)), but the definition read as a whole certainly cannot reasonably be read to establish an "everything goes" regime once someone obtains a patient registration card through the good offices of a captive physician – as Defendants Club and Antol, would have it.

130. Even if there were two reasonable interpretations of the statutory text, still the Township's interpretation is more consistent with law, the will of the voters, and the applicable rules of statutory construction.

131. A live controversy exists between the Township and each and all the

Defendants, as to the meaning of Initiated Law 1 of 2008.

132. The Township respectfully prays for a declaratory judgment that the Township's interpretation of the statutory text (prohibiting all patient-patient, patient-recreational, and caregiver-recreational transactions and transfers), is the correct and controlling interpretation of Initiated Law 1 of 2008.

133. The Township also respectfully prays for injunctive relief against all Defendants, prohibiting each and all of them from engaging in any patient-patient, patient-recreational, and/or caregiver-recreational transaction or transfer, whatsoever.

COUNT EIGHT – ABATEMENT OF FIRE CODE VIOLATIONS

134. Township repeats and re-alleges Paragraphs 1-133, as if set forth verbatim herein.

135. The Club's business location at 2116 East Apple Avenue, Suite B, currently harbors multiple violations of the International Fire Code (adopted by the Township, by ordinance), and presents a dangerous situation and nuisance *per se*, that requires immediate abatement. The need for immediate abatement is particularly pronounced because of the mobility issues and disabilities of at least some of the members of the Club, who have visited and (unless abatement occurs) reasonably are believed likely to continue to visit the Club's business premises.

136. As a pre-condition for any patient-members of the Club to obtain "patient" credentials from the State of Michigan, they must obtain a medical certification that they suffer from a "debilitating medical condition." At least some subset of the "patient" population of the Club's membership includes people that actually do qualify as having genuine "debilitating" medical conditions.

137. Township personnel have observed a wheelchair present at the Club's business premises, which operates as a candid acknowledgement and tacit admission by the Club and its leadership, that the Club's business premises are visited often enough by disabled persons who require a wheelchair for mobility, that a wheelchair ought to be on hand.

138. The Township is gravely concerned about the possibility, or even likelihood, of a fire resulting from the Club's multiple fire code violations, and one or more disabled individuals (including, possibly, one or more individuals who require a wheelchair for mobility) confronting significant mobility challenges, in order to escape from fire and/or smoke.

139. The Club's business premises constitute a place of "public accommodation," subject to the requirements of the Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C. §§ 12101 - 12213. See 42 U.S.C. § 12181(7)(E), (F).

140. The Club's business operations at its principal location, are commercial in nature, and are "in commerce," as that term is used in the ADA, because of a substantial effect of the operations of the Club and similar entities, in Michigan and other states, upon interstate commerce. See Gonzalez v. Raich, 545 U.S. 1 (2005) (upholding federal power to regulate home-grown marijuana, even if such marijuana is never intended for sale) ("Congress can regulate purely intrastate activity that is not itself 'commercial,' in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity.").

141. The Club's business premises most emphatically are not compliant with the requirements of the ADA, or with published federal guidance on the subject of ADA compliance. In particular, the Club has not adequately fulfilled the requirements of 42

U.S.C. § 12182(b)(2)(A)(iii) and (iv), which specifically defines "discrimination" against persons with disabilities, to include:

> (iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden; or
>
> (iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable.

The Club's business premises and commercial operations violate the ADA in other respects as well, thereby resulting in discrimination against persons with disabilities, through the failure to remove known architectural and other barriers.

142. These ADA violations by the Club, relating to access and mobility issues for disabled persons, and known architectural barriers, gravely amplify the mortal risk associated with fire code violations on the Club's premises, and thereby make it all the more imperative that all such violations be abated immediately.

143. Township Ordinance 11-04, adopted March 7, 2011, and effective March 25,

2011, expressly and formally adopts the 2009 International Fire Code and applicable appendixes, published by the International Code Council, as the law of Muskegon Charter Township.

144. On or about Thursday, May 26, 2011, Second Lieutenant Jacob B. Grabinski, of the Muskegon Charter Township Fire Department, paid an official visit to Meier Cleaners Inc., at 2116 East Apple Avenue, Suite A, for the Township Fire Department's annual business survey. Meier Cleaners shares the same structure with the Club.

145. The structure is a single-story wood frame structure with a basement under Suite A and a crawl space under Suite B. Both tenants have access to the basement.

146. The Club has not had an inspection for fire code compliance – either prior to opening (which, again, was done without obtaining a business license or securing the necessary inspections) or at any time subsequent to opening.

147. While completing the Meier Cleaners survey, on May 26, 2nd Lt. Grabinski entered the basement if the structure, which is a shared space to which Meier Cleaners has access. At that time, he observed that the basement is being used by the medical marijuana operation.

148. On May 26, 2nd Lt. Grabinski noted several fire code violations. He observed a "hang-out" room, similar to a living room in someone's basement. There were two containers in the room that were growing Marijuana, as well as a wall display containing various bongs, and other accessories. There was also a table in the basement with two used candles, and a few stools around. The candles had apparently been used to make open flames inside the "hang-out" room.

149. There was a light odor of the reminisce of the candles. There was also an ash

tray on the table in the "hang-out" room.

150. Outside of the building itself, there were two "roach clips" in the parking lot, and numerous discarded smoking materials.

151. Meijer Cleaner workers reported that they personally smell odors, on a daily basis, coming from the Club's premises, that lead them to conclude that smoking of marijuana is occurring in the building, despite the assurances of Club staff to the contrary.

152. A follow-up inspection of the structure at 2116 East Apple, on May 31, 2011, revealed the following continuing violations of the International Fire Code, occurring in the basement of the structure, which is being used solely by the Club and not Meier Cleaners:

(a) No emergency lighting in the basement, in violation of IFC 1006.2;

(b) No exit signs posted anyplace in the basement, in violation of IFC 1030.4;

(c) No fire rated ceiling between the basement and Meier Cleaners, in violation of IFC 315.2.4;

(d) An extension cord was being used to connect a space heater to an electrical outlet, in violation of IFC 605.10.3;

(e) No fire extinguishers were present anyplace in the basement, in violation of IFC 906.1;

(f) Combustible material was being stored near the water heater, in violation of IFC 315.2.

Additionally, the Township inspector observed that Chapter 10 of the Michigan Building Code had been violated, because there presently exists no direct exit to the exterior of the building from the basement (in other words, a disabled person attempting to escape a fire in

the basement, would have an exceptionally difficult time exiting to the exterior of the structure), and that the Club's use of the basement – without making it accessible to people with disabilities – violates the Michigan Barrier Free Design Code.

153. A public nuisance is present at the structure in question, that includes fire hazards and other immediate threats to public health and safety.

154. The structure is being maintained by all Defendants, individually and jointly, in a manner that violates the Township's Code of Ordinances, including but not limited to the following codes, which have been adopted by reference:

a. Uniform Code for the Abatement of Dangerous Buildings;

b. International Fire Code;

c. Uniform Building Code;

d. Uniform Plumbing Code;

e. Uniform Electrical Code;

f. Uniform Housing Code.

155. This honorable Court has power, pursuant to the above-referenced codes, Township ordinances, MCL 600.2940, MCL 29.23, and MCL 125.486, to abate the nuisance, and to issue any orders that may be just and proper to protect and preserve public health and safety. Indeed, this honorable Court previously has issued an injunction, requiring the prompt evacuation of a non-compliant structure, in a very recent case, based on the exact same legal authority. See City of Muskegon Heights v. Kenneth Newell, Case No. 10-47522-CZ (14th Cir. Ct., Muskegon County) (pending).

156. Pursuant to the referenced legal authority, the Township respectfully seeks injunctive and other relief, for the abatement of a public nuisance and fire hazard that is

presently being maintained by each and all of the Defendants, individually and jointly, within Muskegon Charter Township.

PRAYER FOR RELIEF

Wherefore, premises considered, the Township respectfully prays for the following:

a. Daily monetary consequences for each and all Defendants, for the continued violation of the Township's business licensing ordinance;

b. Injunctive relief against each and all of the Defendants;

c. That the injunctive relief include the immediate evacuation of any portion of the premises at 2116 East Apple Avenue presently or formerly occupied or used by Defendant Club or any of its officers, directors, or members, and maintenance of such a state of evacuation of the premises until all Township ordinances are fully complied-with;

d. That the Court deem the portions of the structure in question, presently or formerly occupied or used by Defendant Club or any of its officers, directors, or members, to constitute a public nuisance, including fire hazards and other public safety hazards;

e. That the Court, accordingly, order the nuisance abated forthwith, at the expense of Defendant Club, and each of its officers or directors, jointly and severally;

f. That this honorable Court enter an immediate *ex parte* order, authorizing and directing Township (and, if necessary, County and

State) law enforcement officials to remove all persons from any portions of the building, presently or formerly occupied or used by Defendant Club or any of its officers, directors, or members, and to close said portions of the building so as to prevent re-entry, pending further order of the Court;

g. Declaratory Judgment as to the issues specified above in Counts Five, Six, and Seven;

h. Court costs;

i. Reasonable attorney fees; and

j. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated this __ day of June, 2011

By : _____

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