

IN THE COURT OF CLAIMS OF
THE STATE OF MICHIGAN

ASSOCIATED BUILDERS AND
CONTRACTORS, INC. OF MICHIGAN, and
DJ'S LAWN SERVICE, INC., d/b/a
DJ'S LANDSCAPE MANAGEMENT,

Plaintiffs,

Case No. _____

vs.

Hon.

GRETCHEN WHITMER, in her official
capacity as Governor of the State of Michigan,
DANA NESSEL, in her official capacity as
Attorney General of the State of Michigan, and
ROBERT GORDON, in his official capacity as
Director of the Michigan Department of Health
and Human Services,

Defendants.

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VERIFIED COMPLAINT

Plaintiffs Associated Builders and Contractors, Inc. of Michigan ("ABC") and DJ's Lawn Service, Inc., d/b/a DJ's Landscape Management ("DJ's Landscape") file this Complaint for declaratory judgment, injunctive relief, monetary damages, and other relief to vindicate their rights under the United States and Michigan Constitutions; to preserve their ability to safely provide services to their valued customers; to ensure that their businesses and

workers have the opportunity to earn a living; and to protect themselves from prosecution in connection with continued business operations, as detailed below:

1. The COVID-19 pandemic and its initial spread in the United States and Michigan represented an extraordinary challenge for the citizens of Michigan and its elected representatives. Initial projections based on some models projected widespread infection of the population that would overwhelm our hospitals and healthcare systems, resulting in a massive number of deaths. One model from the CDC projected between 160 to 214 million infections and between 200,000 to 1.7 million deaths nationwide.¹

2. No one disputes that, in March 2020, faced with these devastating projections, there was a need that called for swift executive action within the bounds of controlling constitutions and established law.

3. Many decisions made in immediate response to protect against the COVID-19 threat and the dire, potential public health crisis resulted in severe restrictions on the rights and liberties of both private individuals and businesses. Michigan was no exception.

4. Since early March 2020, Michigan Governor Gretchen Whitmer has taken unprecedented, unilateral executive actions in an effort to address the spread of the virus that causes COVID-19—declaring a state of emergency in the State of Michigan and justifying her restriction on rights and liberties based on the very important goal to “flatten the curve” and avoid overwhelming Michigan’s healthcare system and hospitals.

5. Thankfully, the goal of flattening the curve has been achieved, and the dire predictions of overwhelmed hospitals have not come to pass. During a press conference on Monday, April 27, 2020, Governor Whitmer acknowledged that the curve has flattened in

¹ Chas Danner, *CDC’s Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead*, N.Y. Magazine Intelligencer, updated Mar. 13, 2020, available at <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html>.

Michigan. Graphics depicted that while Governor Whitmer’s administration anticipated 220,000 patients being hospitalized without social distancing efforts, there had only been 3,000 hospitalizations as of April 27. That is less than 1.4% of the projected COVID-19 hospitalizations underlying the Governor’s declared states of emergency and disaster.

6. According to data released by the State of Michigan, hospitals in the state are well-stocked with over 2,200 available ventilators, nearly 1,000 available ICU beds, and more than 6,000 available hospital beds.²

7. There is no longer an emergency supporting unilateral executive action. Despite the flattening of the curve and businesses’ extraordinary efforts to reopen safely, the Governor has continued to use sweeping, unilateral power to implement severe restrictions that have not been vetted through the usual legislative and administrative processes or subjected to the checks and balances that characterize our order of government.

8. On May 7, 2020, Governor Whitmer announced a six-phase plan to reopen Michigan’s economy titled “MI Safe Start.” Governor Whitmer stated that Michigan was in the third phase, called the “Flattening” phase, in which “[c]ase growth is gradually declining.”³

9. But even in the Flattening phase, the reopening of the economy is strictly limited to only “[s]pecified lower-risk businesses with strict workplace safety measures.” Only in later phases does the Governor’s plan permit the retail sector, offices, restaurants, and bars to reopen.

² <https://www.michigan.gov/coronavirus/0,9753,7-406-98159-523641--,00.html> (last updated May 20, 2020).

³ MI Safe Start: A Plan to Re-Engage Michigan’s Economy, Gov. Gretchen Whitmer, available at https://content.govdelivery.com/attachments/MIEOG/2020/05/07/file_attachments/1446147/Governor%20Whitmer%27s%20MI%20Safe%20Start%20Plan.pdf (published May 7, 2020; last visited May 20, 2020).

10. In an effort to implement the “strict workplace safety measures” contemplated in the Flattening phase, the Governor exceeded her authority in issuing Executive Order 2020-96 and 2020-97.

11. Executive Order 2020-97 was issued by Governor Whitmer on May 21, 2020. (**Exhibit 1**). It went into effect immediately. Paired with Executive Order 2020-96 (**Exhibit 2**), Executive Order 2020-97 imposes extensive requirements upon “all businesses across the state” of Michigan, primarily requiring substantial modifications of workplace environments and protocols with the goal of minimizing the transmission of COVID-19 in the workplace.

12. Importantly, Executive Order 2020-97 asserts that the rules unilaterally issued by Governor Whitmer in Executive Order 2020-97 “have the force and effect” of a regulation that has gone through the formal notice-and-comment procedure mandated by the Administrative Procedures Act; that they “are fully enforceable” by the agencies “with responsibility for overseeing compliance with workplace health-and-safety standards;” and that a violation of Executive Order 2020-97 is a per se violation of the Michigan Occupational Safety and Health Act (“MIOSHA”), in particular MCL 408.1011(a), which requires that an employer must provide “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to an employee.” (**Exhibit 1**).

13. Governor Whitmer also issued Executive Directive 2020-06. (**Exhibit 3**). In Executive Directive 2020-06, the Governor stated her intent that “businesses must do their part to guarantee that the resumption of activities does not contribute to the virus’s spread . . .” (**Exhibit 3**) (emphasis added).

14. While Plaintiffs fully support the implementation of reasonable safety measures to ensure the health and well-being of their employees and customers, in issuing Executive Orders 2020-96 and 2020-97, the Governor effectively circumvented the proper legislative and administrative procedures.

15. The Governor's overreach will not be cabined any time soon without the Court's intervention. In the Governor's view, Michigan will not emerge from the shut-down and related restrictions in the near future. From the Governor's perspective, Michigan enters the sixth "Post-pandemic" phase only once the state has achieved "sufficient community immunity" and there is "high uptake of an effective therapy or vaccine." The mumps vaccine holds the record for the fastest ever approved vaccine—with development and approval in 4 years.⁴

16. Governor Whitmer's MI Safe Start Plan also warns that at any time, "it is also possible to move backwards"—and reenter earlier phases of the emergency—"if risk increases and if we stop adhering to safe practices." There is a real possibility that Governor Whitmer continues for many months, if not years, to enact measures that burden the rights and liberties of individuals and businesses without legislative or administrative input. Michigan is under an unlawfully re-declared state of emergency, with the Executive Branch dictating the law, and there is no end in sight.

JURISDICTIONAL ALLEGATIONS

17. Plaintiff Associated Builders and Contractors, Inc. of Michigan ("ABC") is a Michigan corporation with its principal place of business located at 118 W. Ottawa Street, Lansing, MI 48933.

⁴ Donald G. McNeil, Jr., *The Coronavirus in America: The Year Ahead*, New York Times, April 18, 2020, available at <https://www.nytimes.com/2020/04/18/health/coronavirus-america-future.html>.

18. ABC is a trade association representing more than 900 construction and construction-related firms through the State of Michigan and in bordering states. ABC's members include both unionized and non-union construction contractors who share a belief that construction work should be awarded to and performed by the lowest responsible bidder based upon merit. ABC employer members employ a combined workforce of more than 30,000 individuals. ABC's members have been injured by the unlawful acts of the Defendants, and the relief sought by ABC would redress its members' injuries.

19. Plaintiff, DJ's Lawn Service, Inc., d/b/a DJ's Landscape Management ("DJ's Landscape"), is a Michigan corporation with its principal place of business located at 4720 52nd Street SE, Grand Rapids, MI 49512.

20. DJ's Landscape employs approximately 200 workers and offers a complete spectrum of landscaping services to both residential and commercial clients that enhance the aesthetics, safety, and sanitation of its clients' properties.

21. Defendant Gretchen Whitmer is the Governor of Michigan and issued Executive Orders 2020-96 and 2020-97. She is being sued in her official capacity.

22. Defendant Dana Nessel is the Attorney General of Michigan and has authority to enforce Michigan law. She is being sued in her official capacity.

23. Defendant Robert Gordon is the Director of the Michigan Department of Health and Human Services. He is being sued in his official capacity.

24. Under MCL 600.6419(1)(a), this Court has subject matter jurisdiction over Plaintiffs' statutory and constitutional claims and authority to grant Plaintiffs' demand for monetary, equitable, and declaratory relief.

25. Also in accord with MCL 600.6419, venue is proper in this Court.

GENERAL ALLEGATIONS

State of Emergency Declarations

26. On March 11, 2020, Governor Whitmer issued Executive Order 2020-04, which proclaimed a state of emergency under both the Emergency Management Act, MCL 30.403, and the Emergency Powers of the Governor Act of 1945, MCL 10.31. (**Exhibit 4**).

27. Governor Whitmer's executive order identified the COVID-19 pandemic as the basis for her declaration of a state of emergency under both statutory regimes.

28. The Emergency Powers of the Governor Act provides that all orders and rules promulgated by the governor during the state of emergency "shall cease to be in effect upon declaration by the governor that the emergency no longer exists." MCL 10.31(2).

29. The Emergency Management Act provides that a governor's declaration of emergency may last only 28 days, after which "the governor shall issue an executive order or proclamation declaring the state of emergency terminated, unless a request by the governor for an extension of the state of emergency for a specific number of days is approved by resolution of both houses of the legislature." MCL 30.403(4).

30. On April 1, 2020, Governor Whitmer issued Executive Order 2020-33, which replaced Executive Order 2020-04, declared a state of emergency pursuant to the Emergency Powers of the Governor Act, and proclaimed a state of disaster and a state of emergency under the Emergency Management Act. (**Exhibit 5**). These declarations were based on the same circumstances—that is, the dangers posed by the virus that causes COVID-19—that formed the basis of Executive Order 2020-04.

31. On April 1, 2020, Governor Whitmer also requested that the Michigan Legislature extend the state of emergency by an additional 70 days, as contemplated by the Emergency Management Act.

Legislative Limits on the Governor's Authority

32. On April 7, 2020, the Michigan Senate and Michigan House of Representatives denied Governor Whitmer's request to extend the state of emergency for an additional 70 days. Instead, the Michigan Legislature extended the state of emergency declared by Governor Whitmer only until April 30, 2020, but not beyond.

33. Meanwhile, Governor Whitmer issued many additional executive orders, invoking emergency powers that the Governor claims flow from the state of emergency declared under Executive Orders 2020-04 and 2020-33. As of May 21, 2020, Governor Whitmer had issued more than 90 executive orders related to the COVID-19 pandemic, creating and changing substantive state law and regulations that impact and burden wide swaths of the economy and nearly every aspect of citizens' daily activities. A chart summarizing the substantive changes to the law imposed by Governor Whitmer's executive orders is attached as **Exhibit 6**.⁵

Stay-at-Home Orders

34. Along with her other executive orders, Governor Whitmer issued seven iterations of "Stay Home, Stay Safe" orders, specifically Executive Orders 2020-21, 2020-42, 2020-59, 2020-70, 2020-77, 2020-92, and 2020-96. Each of those orders imposes sweeping limitations on Michigan citizens' ability to travel and prohibits huge numbers of workers in Michigan from reporting to work.

35. On March 23, 2020, Governor Whitmer issued Executive Order 2020-21, citing as authority the Emergency Management Act and the Emergency Powers of the Governor Act. (**Exhibit 7**).

36. Executive Order 2020-21 went into effect on March 24, 2020. Among other restrictions, Executive Order 2020-21 restricts travel throughout the state and prohibits

⁵ The chart attached as Exhibit 6 was last updated as of 5 p.m. Eastern Time on May 20, 2020.

business operations “that require workers to leave their homes or places of residence” unless those workers are “critical infrastructure workers.” (*Id.* ¶ 4(a)). “Critical infrastructure workers” are defined as “those workers described” in a March 19, 2020 memorandum prepared by the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (the “March 19 CISA guidance”), along with a short list of other workers. (*Id.* ¶ 8). Executive Order 2020-21 imposes criminal penalties for willful violations of the order. (*Id.* ¶ 17).

37. On April 9, 2020, Governor Whitmer issued Executive Order 2020-42, attached as **Exhibit 8**, rescinding and replacing her previous stay-at-home order and extending the shutdown until April 30, 2020. Like the previous executive order, Executive Order 2020-42 prohibits in-person work by workers who are not “critical infrastructure workers” and imposes criminal penalties for willful violations of the order. (Exhibit 8, ¶¶ 4, 17).

38. Executive Order 2020-42 imposes significant restrictions that curtail basic liberties to a greater extent than were imposed by any other shutdown order issued by any other state. For example, under Executive Order 2020-42 large retail stores are prohibited from advertising almost all of their products and are also prohibited from selling products that are deemed nonessential, including materials related to the construction industry, such as paint, carpet, and flooring. Executive Order 2020-42 does not explain the rationale for prohibiting the purchase of these items, nor does it indicate how the prohibition of their sale was related to abating the emergency posed by COVID-19.

39. On April 24, 2020, Governor Whitmer issued Executive Order 2020-59, which became effective immediately and rescinded Executive Order 2020-42. (**Exhibit 9**).

40. Executive Order 2020-59 lifts certain business restrictions, permitting workers who are necessary to perform certain defined “resumed activities” to perform in-person

work. Those “resumed activities” are defined as: (a) workers who process or fulfill remote orders for goods for delivery or curbside pickup; (b) workers who perform bicycle maintenance or repair; (c) workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations; (d) maintenance workers and groundskeepers for places of outdoor recreation; and (e) workers for moving or storage operations. Businesses whose workers perform some “resumed activities” must implement enhanced social-distancing rules and measures listed in Sections 11(h) and 12 of Executive Order 2020-59. As with all of the other Stay Home, Stay Safe orders, a willful violation of Executive Order 2020-59 is a criminal misdemeanor.

41. On May 1, 2020, Governor Whitmer issued another update to the Stay Home, Stay Safe order, Executive Order 2020-70, which became effective immediately and rescinded Executive Order 2020-59. **(Exhibit 10)**.

42. Executive Order 2020-70 continues the restrictions of the previous Stay Home, Stay Safe orders, but lifts restrictions on additional “resumed activities,” including workers in the construction industry and the building trades, workers in the real-estate industry, workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections, and outdoor workers. In addition to the list of enhanced social-distancing rules and measures applicable to all resumed activities, construction businesses must implement other measures listed in Section 11(i) of Executive Order 2020-70.

43. On May 7, 2020, Governor Whitmer issued Executive Order 2020-77, which became effective immediately and rescinded Executive Order 2020-70. This order continued the restrictions of the previous Stay Home, Stay Safe orders, but permitted manufacturing workers to resume operations, subject to yet another set of enhanced workplace safety requirements listed in Section 11(k) of Executive Order 2020-77. **(Exhibit 11)**.

44. On May 18, 2020, Governor Whitmer issued Executive Order 2020-92, which became effective immediately and rescinded Executive Orders 2020-77 and 2020-90. (**Exhibit 12**). This order continued the restrictions of previous Stay Home, Stay Safe orders and allowed for the reopening of more industries and small gatherings in certain regions of the state. This order also incorporated the MIOSHA-enforced requirements of Executive Order 2020-91 (the precursor to Executive Order 2020-97). (**Exhibit 13**).

45. On May 21, 2020, Governor Whitmer issued Executive Order 2020-96, which became effective immediately and rescinded Executive Order 2020-92. This order continues the restrictions of previous Stay Home, Stay Safe orders, allows for small gatherings, and permits the the reopening of more industries on May 26 and May 29, 2020. This order also incorporates the MIOSHA-enforced requirements of Executive Order 2020-97. Executive Order 2020-96 is the controlling stay-at-home order as of the date of the filing of this complaint. As with all of the other Stay Home, Stay Safe orders, a willful violation of Executive Order 2020-96 is a criminal misdemeanor. (**Exhibit 2**).

46. The Governor’s Stay Home, Stay Safe Executive Orders have all included language stating that a willful violation will be a misdemeanor consistent with MCL 10.33 and MCL 30.405(3).

Executive Order 2020-97

47. Executive Order 2020-97, issued by Governor Whitmer on May 21, 2020, represents the grossest overstep yet of the Governor’s authority under the Emergency Management Act, MCL 30.403 (“EMA”), and the Emergency Powers of the Governor Act of 1945, MCL 10.31 (“EPGA”). Both of those Acts expressly limit any enforcement actions and penalties to those set forth in their text. Neither grants the Governor authority to adopt or pick a

different enforcement scheme or alter or modify the penalties available for a violation of any Executive Order lawfully issued under those laws.

48. The Governor attempts to re-write the EMA and EPGA and other laws. While basing her authority in the EMA and EPGA, the Governor patently exceeds any such authority by attempting to impose unsupported enforcement mechanisms and penalties that were not given to her by the legislature under either Act.

49. Section 11 of Executive Order 2020-97 asserts that the rules unilaterally issued by Governor Whitmer in Executive Order 2020-97 are as enforceable as a regulation that has gone through the formal notice-and-comment procedure mandated by the Administrative Procedures Act:

The rules described in sections 1 through 10 have the force and effect of regulations adopted by the departments and agencies with responsibility for overseeing compliance with workplace health-and-safety standards and are fully enforceable by such agencies. Any challenge to penalties imposed by a department or agency for violating any of the rules described in sections 1 through 10 of this order will proceed through the same administrative review process as any challenge to a penalty imposed by the department or agency for a violation of its rules. **[Exhibit 1.]**

50. Section 12 of Executive Order 2020-97 states that a violation of Executive Order 2020-97 is a per se violation of MCL 408.1011(a), which requires that an employer must provide “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to an employee.” Section 12 of Executive Order 2020-97 provides:

Any business or operation that violates the rules in sections 1 through 10 has failed to provide a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to an employee, within the meaning of the Michigan Occupational Safety and Health Act, MCL 408.1011. **[Exhibit 1.]**

51. Governor Whitmer also issued Executive Directive 2020-06. **(Exhibit 3)**. In Executive Directive 2020-06, the Governor stated her intent that “businesses must do their part to guarantee that the resumption of activities does not contribute to the virus’s spread . . .” **(Exhibit 3)** (emphasis added).

52. Executive Directive 2020-06 directs that “[e]ach department and agency with responsibility for enforcing workplace health-and-safety standards will monitor workplaces for compliance with the rules adopted in Executive Order 2020-91 and, as necessary, bring enforcement actions to ensure compliance.” **(Exhibit 3, § 1)**.

53. Executive Directive 2020-06 further directs that “[e]ach department and agency with responsibility for enforcing workplace health-and-safety standards will publicly post citations of those employers that fail to follow the rules adopted in Executive Order 2020-91, and will consider establishing a process to remove those public postings for employers that have demonstrated to the department’s or agency’s satisfaction that they have cured past violations and come into compliance.” **(Exhibit 3, § 4)**.

54. Executive Order 2020-97’s attempt to create enforceable agency rules under statutes other than the EMA and EPGA and to convert a violation of the Executive Order into an automatic violation of MIOSHA has enormous implications—because it is ultra vires, because it would result in the Governor having power to change unilaterally both acts, and because it vastly increases the severity of the offense.

55. Executive Order 2020-97 is predicated upon the Governor’s exercise of emergency powers under the EMA and the EPGA. Both the EMA and the EPGA provide that a willful violation of an executive order issued under the Governor’s emergency powers is punishable only as a “misdemeanor.” MCL 10.33; MCL § 30.405(3). Because neither the EMA

nor the EPGA expressly provides for a specific punishment to be imposed for the misdemeanor offenses outlined in the statutes, the maximum penalty under either statute is 90 days' imprisonment and a \$500 fine. MCL 750.504.

56. The penalties available for a violation under MIOSHA, however, are exponentially more severe. An employer who violates MIOSHA may be fined up to \$7,000 per violation per day, and an employer who willfully violates MIOSHA may be fined up to \$70,000 per violation. *See* MCL 408.1035(1)-(4), (6). If an employer willfully violates the act and causes the death of an employee, the employer may be guilty of a felony that is punishable by up to a year in prison and a \$10,000 fine—or, if it is the second conviction under the statute, by up to three years in prison, as well as a \$20,000 fine. *See* MCL 408.1035(5). Further, penalties may be imposed under MIOSHA even if a violation is not willful; as long as the employer commits a “serious” violation of MIOSHA, fines of \$7,000 per violation may be imposed. *See* MCL 408.1035(1).

Impact on Plaintiffs

57. Plaintiffs want to take all reasonable steps to ensure the safety of their employees and customers. But the current state of affairs is a legal minefield for well-intentioned businesses. If the Governor is permitted to commandeer MIOSHA enforcement mechanisms, even an inadvertent violation of any one of the laundry list of changing or unclear workplace requirements could result in hefty fines and lengthy terms of imprisonment.

58. The fines are not the only financial impact that Plaintiffs face. A MIOSHA citation has long-term ramifications for business prospects.

59. Construction contractors in Michigan, including ABC's members, must often disclose MIOSHA citations when bidding on a project. Businesses in the construction industry suffered financially from being forced to shutter their doors during the various stay-at-

home ordered, and just as they are able to pursue much-needed work, to lose opportunities for work would be financially devastating.

60. Likewise, DJ's Landscape's institutional clients may discontinue use of DJ's Landscape's services if DJ's Landscape receives a MIOSHA citation through an inadvertent violation of the Governor's unvetted list of safety requirements.

61. Moreover, the MIOSHA-enforced workplace requirements in Executive Order 2020-97 are not justified, as the Governor's own findings in her executive orders demonstrate.

62. DJ's Landscape has lawfully operated its outdoor business without the workplace requirements of Executive Order 2020-97 for nearly four weeks, since the Governor issued Executive Order 2020-59 on April 24, 2020. Executive Order 2020-59 permitted landscapers to operate with a more limited set of workplace safeguards addressed in paragraph 11 of that order. In that order, the Governor stated that she "[found] it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-42 [and] amend their scope" to allow landscapers to operate. In the nearly four weeks that have passed since that order took effect, the Governor has acknowledged the curve has flattened and the public health effort to manage the spread of the virus that causes COVID-19 is working. All the while, landscapers have safely operated without Executive Order 2020-91. There can be no emergency that justifies imposing the workplace requirements of Executive Order 2020-97 now, when the Governor found no need for them on April 24, 2020.

63. ABC's members have been lawfully operating since May 7, 2020, under Executive Order 2020-70. That order subjected construction firms to a set of workplace safety measures set forth in paragraph 11 of that order. Those are the measures that the Governor

considered “reasonable and necessary” for construction firms to operate safely as of May 1, 2020, when Executive Order 2020-70 was issued. They are measures that construction firms promoted and implemented. Weeks later, in spite of the fact that the public health situation has improved and construction firms have complied with the measures required under Executive Order 2020-70, the Governor is now attempting to unilaterally impose a more severe enforcement scheme not authorized by law.

CAUSES OF ACTION

Count I – Declaratory Judgment – Executive Order 2020-97 (Unlawful Exercise of Authority Under State Law)

64. Plaintiffs incorporate all preceding allegations.

65. Executive Order 2020-97 is unenforceable as written.

66. To the extent that Executive Order 2020-97 incorporates penalties under MIOSHA or any other regulatory statutes, it imposes penalties in Executive Order 2020-97 in excess of the statutory maximum.

67. The maximum statutory penalty for violation of an executive order issued under either the EMA or the EPGA is a 90-day misdemeanor and a \$500 fine.

68. Section 10.31 of the EPGA provides that “the governor may promulgate reasonable orders, rules, and regulations” during a valid declaration of emergency. MCL 10.31(1). Section 10.33 of the EPGA provides that “[t]he violation of any such orders, rules and regulations made in conformity with this act shall be punishable as a misdemeanor, where such order, rule or regulation states that the violation thereof shall constitute a misdemeanor.” MCL 10.33. The EPGA does not set forth any other permissible penalty for a violation of executive orders that are issued under the EPGA.

69. The EMA operates in the same way. MCL 30.405(1) permits the Governor, among other things, to “suspend” regulatory statutes and rules, and to control movement between quarantined areas. *Id.* Like the EPGA, the EMA specifically states that, “[a] person who willfully disobeys or interferes with the implementation of a rule, order, or directive issued by the governor pursuant to this section is guilty of a misdemeanor.” MCL 30.405(3).

70. Because the EMA nor the EPGA expressly provides for a specific punishment to be imposed for the misdemeanor offenses outlined in the statutes, the maximum penalty under either statute is 90 days’ imprisonment and a \$500 fine. MCL 750.504.

71. Contrary to both the EMA and the EPGA, Executive Order 2020-97 purports to incorporate penalties under MIOSHA (and any other regulatory framework relevant to workplace health-and-safety standards) that significantly exceed the maximum statutory penalty that is available under the EMA and the EPGA. Section 12 of Executive Order 2020-97 specifically states that a violation of Executive Order 2020-97 is a per se violation of MCL 408.1011(a), which requires that an employer must provide “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to an employee.” *Id.* A violation of MCL 408.1011(a) can result in a 3-year felony conviction and a \$70,000 fine. *See* MCL 408.1035(1)-(6). The penalties available under MIOSHA are exponentially more severe than the statutory maximum punishment that is permissible under the EMA and the EPGA.

72. Moreover, Executive Order 2020-97 violates the Administrative Procedures Act.

73. Section 11 of Executive Order 2020-97 also asserts that the rules unilaterally issued by Governor Whitmer in Executive Order 2020-97 are enforceable as a

regulation that has gone through the formal notice-and-comment procedure mandated by the Michigan Administrative Procedures Act (“APA”), MCL 24.201, *et seq.*

74. That is incorrect. The APA specifies the procedure for promulgating administrative rules. This procedure requires an intricate and formal process of administration rule-making that is initiated by MIOSHA as the agency entrusted with regulation in this space. There is no evidence or contention that MIOSHA was the entity responsible for promulgating the workplace standards found in Executive Order 2020-97 or that Executive Order 2020-97 was vetted through any of the procedures required by the APA.

75. If Executive Order 2020-97 is enforceable at all, it is enforceable only by virtue of the Governor’s emergency powers under the EMA and the EPGA. The Governor may not sidestep the APA’s process altogether and simultaneously create *ex nihilo* an administrative regulation that is enforceable under the APA. Essentially, the Governor is attempting to cherry-pick the most favorable provisions of the different avenues for promulgating and enforcing rules, while circumventing the protections in place to limit the government’s power.

	Executive Order	MIOSHA Enforcement
Statutory Authority	EMA and EPGA	MIOSHA and APA
Process	Declaration of state of emergency and issuance of EOs	APA notice and comment procedures
Maximum Penalty	Misdemeanor - 90 days’ imprisonment and \$500 fine	Felony - 3 years’ imprisonment and \$70,000 fine
Burden of Proof	Beyond a reasonable doubt	Preponderance of the evidence

76. Executive Order 2020-97 is also invalid because it purposes to require agency investigation, inspection, enforcement or adjudication for an alleged violation of EO 2020-97 or EO 2020-96 under the administrative review process, rather than in a court of law. That violates the EMA and the EPGA, which provide that a violation of an executive order

issued under an emergency declaration is a misdemeanor offense that must be proved in a court of law, not by an administrative agency.

77. Plaintiffs, as well as ABC's members, have suffered an injury traceable to the Defendants' unlawful actions in issuing and enforcing Executive Order 2020-97 and face the imminent threat of further injury. They must comply with requirements that have not been scrutinized by the Legislature or MIOSHA to determine their necessity, reasonableness, or feasibility. Plaintiffs also face the very real threat of an inadvertent violation of the long list of requirements under Executive Order 2020-97 that could result in excessively severe penalties.

78. Plaintiffs' injury, and the injuries of ABC's members, would be redressed by a declaratory judgment that Executive Order 2020-97 is unenforceable as written.

**Count II – Declaratory Judgment – Executive Order 2020-96
(Unlawful Exercise of Authority Under State Law)**

79. Plaintiffs incorporate all preceding allegations.

80. Executive Order 2020-96 is unenforceable, as the Governor has exceeded her authority under the EMA and EPGA by continuing to issue executive orders after the Legislature has declined to extend the state of emergency.

81. In Executive Orders 2020-4 and 2020-33, Governor Whitmer proclaimed states of emergency and disaster based on COVID-19 and stated that those proclamations would terminate when the emergency conditions no longer exist "consistent with the legal authorities upon which this declaration is based and any limits on duration imposed by those authorities," including Section 3 of the Emergency Management Act, which limits the Governor's authority to declare disasters or emergencies to 28 days. *See* MCL 30.403(3), (4).

82. To support an executive order, both the Emergency Management Act, MCL 30.403, and the Emergency Powers of the Governor Act, MCL 10.31, require the continuation of the previously proclaimed states of emergency or disaster.

83. The Emergency Powers of the Governor Act provides that all orders and rules promulgated by the governor during the state of emergency “shall cease to be in effect upon declaration by the governor that the emergency no longer exists.” MCL 10.31(2).

84. The Emergency Management Act provides that a governor’s declaration of emergency may last only 28 days, after which “the governor shall issue an executive order or proclamation declaring the state of emergency terminated, unless a request by the governor for an extension of the state of emergency for a specific number of days is approved by resolution of both houses of the legislature.” MCL 30.403(4) (emphasis added).

85. In issuing Executive Order 2020-33, Governor Whitmer invoked only a single emergency—the COVID-19 pandemic—as grounds for exercising her powers under the Emergency Management Act and the Emergency Powers of the Governor Act.

86. The Michigan Legislature did not approve Governor Whitmer’s request for an extension of the declaration of emergency beyond April 30, 2020. Accordingly, as a matter of law, the state of emergency must be terminated. *See* MCL 30.403. Governor Whitmer terminated the state of emergency and disaster declaration supporting Executive Order 2020-96 on April 30, 2020, by issuing Executive Order 2020-66. (**Exhibit 14**).

87. That declaration terminated and ended any emergency declaration under the Emergency Powers of the Governor Act and all “orders, rules and regulations” promulgated by the Governor based on that emergency “cease to be in effect” and “no longer exist[.]” *See* MCL 10.31(2). Any other interpretation of the Emergency Powers of the Governor Act would

not only render the Emergency Management Act entirely superfluous but would also violate the Separation of Powers Clause contained in Michigan's Constitution.

88. Both houses of the Michigan Legislature have declined to approve an extension of emergency or disaster as declared by the Governor beyond April 30, 2020, and the state of emergency has been terminated by the Governor. Accordingly, Executive Order 2020-96 is unenforceable.

89. After terminating the emergency underlying Executive Order 2020-59, Governor Whitmer issued an additional two Executive Orders on April 30, 2020, Executive Orders 2020-67 and 2020-68. (**Exhibits 15 & 16**). Those Orders purport to "continue a statewide emergency and disaster" under the Emergency Powers of the Governor Act and the Emergency Management Act and serve as the basis to support the Governor's position that her executive orders predicated on the terminated state of emergency remain enforceable.

90. The Orders constitute an attempt to "un-terminate" and negate the termination of the state of emergency that the Governor was required to end as a matter of law. They have not legal force or effect, and cannot void the termination of the state of emergency foundational to Executive Order 2020-96. The Governor cannot terminate the emergency as required by law and "un-terminate" it or declare it continued in the same breath without running afoul of the law upon which she relied to support her Executive Orders.

91. There is no new emergency and the Governor's attempts to circumvent state law cannot be sanctioned because they not only violate the Separation of Powers clause in the Michigan Constitution, but would also render the statutory language requiring legislative permission for an extension of a proclaimed state of emergency beyond 28 days superfluous. It is well-settled that statutes should be interpreted to be constitutional if such a construction is

permitted by the language and should not be interpreted to read out clear terms and provisions included in the enacted law

92. The Governor cannot unilaterally extend the states of emergency or disaster in contravention of the state laws that she relies on to justify her executive orders, including Executive Order 2020-96. Any contrary interpretation would violate basic principles of separation of powers. It would unlawfully permit the Governor to declare as many emergencies as she wanted, for as long as she wanted, without any legislative checks on the Governor's law-making by emergency executive order.

93. Further, to the extent that MCL 10.31 is the basis of the Governor's emergency declaration, it permits the Governor only to issue "reasonable" orders, rules, and regulations. As applied to Plaintiffs, Executive Order 2020-96 is an unreasonable regulation and is neither necessary nor permitted by MCL 10.31(1).

94. Plaintiffs, as well as ABC's members, have suffered an injury traceable to the Defendants' unlawful actions in issuing and enforcing Executive Order 2020-96 and face the threat of further injury. They face significant burdens in complying with the requirements of Executive Order 2020-96.

95. Even more troublesome is the Governor's warning that Michigan could move backwards in the phases of re-opening at any time if there is any uptick of cases. If Plaintiffs are forced to cease operations entirely, it would be financially ruinous to their businesses.

96. Plaintiffs' injuries, and the injuries of ABC's members, would be redressed by a declaratory judgment that Executive Order 2020-96 is unenforceable because the Governor exceeded her authority under the EMA and the EPGA.

97. Plaintiffs have no adequate remedy at law for this continuing unlawful action by the Defendants.

**Count III – Declaratory Judgment – Executive Order 2020-96
(Violation of Separation of Powers and Non-Delegation Clauses)
Michigan Constitution, Art. III, § 2, and Art. IV, § 1**

98. Plaintiffs incorporate all preceding allegations.

99. Executive Order 2020-96 is unconstitutional and unenforceable against the Plaintiffs because it is based on impermissible delegations of legislative authority in violation of the Michigan Constitution.

100. The Separation of Powers Clause in the Michigan Constitution provides that “[t]he powers of government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Const 1963, art III, § 2.

101. Article IV, Section 1 of the Michigan Constitution prohibits the delegation of “legislative power.” The essential purpose of this prohibition is to “protect the public from misuses of delegated power.” *Blue Cross and Blue Shield of Mich. v. Milliken*, 422 Mich. 1, 51 (1985).

102. A delegation of power through legislation cannot be lawful if it permits executive law-making. If a delegation of authority to the executive branch is not sufficiently specific and/or fails to establish prescribed boundaries, or if the executive branch acts beyond specific boundaries in the legislation, the executive’s actions will be constitutionally invalid.

103. Executive Order 2020-96 is unlawful and unenforceable because the Emergency Powers of the Governor Act, MCL 10.31, violates the Separation of Powers and the

non-delegation clauses to the extent that it is interpreted as a delegation to the Governor of total legislative power during a proclaimed emergency for an indefinite period of time.

104. The Emergency Powers of the Governor Act provides no standards to guide or allow a proper delegation of legislative authority to the executive branch. This delegation of authority is completely open-ended; it permits unbridled “law making” by the Governor. The statute has no temporal, durational, substantive, or legislative checks. It gives the Governor *carte blanche* to regulate and restrict all manner of economic activity, all human interactions, and all movement within the state. Accordingly, Executive Order 2020-96 and other executive actions predicated on this Act are not enforceable.

105. In the event that the Emergency Powers of the Governor Act does not facially violate the Separation of Powers and non-delegation clauses, Executive Order 2020-96 is unlawful and unenforceable because Governor Whitmer has applied any authority granted to her under the Emergency Powers of the Governor Act arbitrarily, unreasonably, and in violation of the Separation of Powers Clause. The Governor has also failed to comport with the terms of the Act.

106. Governor Whitmer explained in an interview on April 27, 2020 her view that “[w]e have to look at this [permitting Michigan businesses to resume operations] as a dial—not a switch, not on and off—but as a dial we can increase or decrease if necessary.” Deciding how, when, and what economic activity will be permitted and which Michigan citizens may engage in their rights to earn a living over a lengthy period of time is a legislative function, not an executive one.

107. Executive Order 2020-96 is also unlawful and unenforceable because the Emergency Management Act, MCL 30.403, violates the Separation of Powers and the non-

delegation clauses by giving the Governor total legislative power during a unilaterally-determined emergency for up to 28 days and thereafter with legislative approval.

108. The Emergency Management Act provides no standards to guide or allow a proper delegation of legislative authority to the executive branch; it permits unbridled “law making” by the Governor. This delegation of authority is completely unconstrained. It provides only a temporal check in requiring the Governor to terminate any declared emergency or disaster after 28 days unless both houses of the Michigan Legislature agree to extend the state of emergency or disaster. *See* MCL 30.403(3) & (4).

109. Even if the Emergency Management Act does not facially violate the Separation of Powers and non-delegation clauses, Executive Order 2020-96 is also unlawful and unenforceable because Governor Whitmer has applied any authority granted to her under the Emergency Management Act arbitrarily, unreasonably, and in violation of the Separation of Power clause. The Governor has also failed to comport with the terms of the Act.

110. Plaintiffs, as well as ABC’s members, have suffered an injury traceable to the Defendants’ unlawful actions in issuing and enforcing Executive Order 2020-96 and face the threat of further injury. They face significant burdens in complying with the requirements of Executive Order 2020-96.

111. Even more troublesome is the Governor’s warning that Michigan could move backwards in the phases of re-opening at any time if there is any uptick of cases. If Plaintiffs are forced to cease operations entirely, it would be financially ruinous to their businesses.

112. Plaintiffs’ injury, and the injuries of ABC’s members, would be redressed by a declaratory judgment that Executive Order 2020-96 is unenforceable because it is based on

impermissible delegations of legislative authority in violation of the Separation of Powers clause and the non-delegation doctrines under the Michigan Constitution.

113. Plaintiffs have no adequate remedy at law for this continuing unlawful action by the Defendants.

**Count IV – Violation of Due Process – Void for Vagueness
U.S. Constitution, Amendment XIV and 42 U.S.C. § 1983;
Michigan Constitution, Article I, § 17**

114. Plaintiff incorporates all preceding allegations.

115. Governor Whitmer’s MI Safe Start Plan also warns that at any time, “it is also possible to move backwards”—and reenter earlier phases of the emergency—“if risk increases and if we stop adhering to safe practices.”

116. To the extent that the Governor re-imposes the executive orders that barred Plaintiffs’ operations in whole or in part, those executive orders are void for vagueness.

117. A basic principle of due process is that an enactment is void for vagueness if its prohibitions are not clearly defined. Executive Orders 2020-59 and 2020-70 are unconstitutionally vague because they inappropriately chill protected conduct and invite selective enforcement.

118. The Orders do not give the Plaintiffs, or any other person of ordinary intelligence, a reasonable opportunity to know what is prohibited and to be able to act in accordance with the directives. The executive orders define critical infrastructure workers as those “who are necessary to sustain or protect life,” which “include *some* workers in each of” a number of business sectors. § 4(a), § 8 (emphasis added). Both facets of the definition are unclear.

119. The Orders do not provide any explicit standards for determining whether particular operations are or are not engaged in critical infrastructure activity. The Orders do not clarify why certain industries were declared to be critical infrastructure and others were not; instead, they simply reference a superseded list provided by CISA, reject the updated version of the CISA guidance, and add a handful of other workers deemed critical, such as insurance industry workers, labor union officials, and landscapers. The rationale for these decisions is entirely opaque. Nowhere do the Orders explain the reason for their differentiation between certain industries, explain why they continue to rely on superseded CISA guidance, or explain the standards to be applied by law enforcement officials when determining whether particular business operations fall within particular categories.

120. The office of Michigan's Attorney General has acknowledged that the standards adopted in the Orders are "difficult . . . to really wrap your arms around." The Attorney General's office has also indicated that it has attempted to clarify the meaning of the order with the Governor's office on an ad hoc basis. Neither the Governor nor the Attorney General has outlined the criteria under which those ad hoc determinations are evaluated.

121. The plain language of the Orders and the incorporated March 19 CISA guidance can be reasonably interpreted to permit the Plaintiffs to continue their operations. Yet, the FAQs related to the Orders purported to prohibit Plaintiffs' in-person operations.

122. The definition of critical infrastructure workers is confusing for the law enforcement personnel tasked with enforcing the executive order. Law enforcement agencies have been given no explicit standards to aid in their determinations of whether businesses are operating in accordance with the Orders, which invites arbitrary and discriminatory enforcement.

123. The continually changing FAQs found on the Governor’s website do not help. The meaning of the executive order turns on its plain language, not on extra-textual or after-the-fact statements, particularly when those statements change almost daily. The FAQs cannot alter, overcome, or conflict with the plain language in the Orders.

124. Further, the FAQs have morphed over time in ways that cannot be reconciled with the plain text of the Orders.

125. While Defendants have voluntarily ceased their prior actions in issuing and enforcing executive orders barring Plaintiffs’ in-person operations, Defendants have indicated that at any time they could return to the earlier phases of emergency in which Plaintiffs’ in-person operations would be barred.

126. The Orders are impermissibly and unconstitutionally vague as applied to the Plaintiffs and ABC’s members.

**Count V – Violation of Due Process – Procedural Due Process
U.S. Constitution, Amendment XIV and 42 U.S.C. § 1983;
Michigan Constitution, Article I, § 17**

127. Plaintiff incorporates all preceding allegations.

128. The mismatch between the authority to issue Executive Order 2020-97 and the threatened penalties violate Plaintiffs’ procedural due process rights.

129. Even in a pandemic, the Plaintiffs are entitled to the basic protections of due process. *See Friends of DeVito v. Wolf*, ___ A.3d ___, 2020 WL 1847100, at *19-21 (Pa. Apr. 13, 2020). “The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense

with fundamental constitutional guarantees which, it is feared, will inhibit governmental action.”
Id. at *19-20 (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 164–65 (1963)).

130. The formal notice-and-comment procedure mandated by the Michigan Administrative Procedures Act (“APA”), MCL 24.201, *et seq.*, is in place to ensure that Michigan’s citizens have their voices heard in the creation of agency regulation.

131. By imposing an agency regulation with the related heightened penalties through the issuance of an executive order, the Governor deprived Plaintiffs of the opportunity to weigh in on the necessity, reasonableness, and feasibility of the workplace requirements that were immediately imposed.

132. Plaintiffs, as well as ABC’s members, have suffered an injury traceable to the Defendants’ unlawful actions in that Plaintiffs are forced to comply with strict and unvetted standards without the opportunity to be heard in connection with that imposition. Moreover, Plaintiffs face the threat of prosecution if they are found to have even inadvertently violated the standards set forth in Executive Order 2020-97.

133. Plaintiffs’ injury, and the injuries of ABC’s members, would be redressed by the requested relief.

**Count VI – Violation of Due Process – Substantive Due Process
U.S. Constitution, Amendment XIV and 42 U.S.C. § 1983;
Michigan Constitution, Article I, § 17**

134. Plaintiff incorporates all preceding allegations.

135. To the extent that Executive Order 2020-96 is interpreted to bar some aspect of the Plaintiffs’ business operations, Executive Order 2020-96 violates the Plaintiffs’ substantive due process rights.

136. Two fundamental rights are implicated by Executive Order 2020-96—the right to intrastate travel and the right to practice one’s chosen profession. Enactments that directly curtail these fundamental rights are subject to strict scrutiny.

137. To satisfy strict scrutiny, the government must prove that the infringement of the Plaintiffs’ rights is narrowly tailored to serve a compelling state interest.

138. While the government can likely show that protection of public health in the face of a global pandemic is an important state interest, the facts do not support a finding that this interest is compelling after the curve has flattened, and the government has made no attempt to narrowly tailor Executive Order 2020-96 to serve that interest.

139. Executive Order 2020-96 specifically advises that it “must be construed broadly.” And while the executive order’s stated purpose is to limit person-to-person contact, there has been no demonstration of why the government must impose additional restrictions on Plaintiffs’ operations beyond those that were imposed in earlier stay-at-home orders. When the Governor allowed Plaintiffs to resume some level of in-person business activities in successive stay-at-home orders, she did not find it necessary to impose the requirements imposed by Executive Orders 2020-96 and 2020-97, and she has provided no rationale for why the requirements are necessary now when the curve has flattened.

140. Quarantine orders ordinarily require some degree of individualized analysis indicating that the particular individuals and operations quarantined pose an immediate and direct threat of contributing to the spread of an epidemic. The state has performed no analysis of whether the Plaintiffs’ operations pose any particular or unique threat of contributing to the spread of COVID-19, nor has there been any analysis of whether Plaintiffs’ operations are likely to contribute to the spread of the disease. Without some level of individualized assessment

that determines that Plaintiffs or their operations constitute a threat vector for COVID-19, the government cannot demonstrate that prohibiting their operations is narrowly tailored to achieve its public-health goals.

141. Plaintiffs, as well as ABC's members, have suffered an injury traceable to the Defendants' unlawful actions in that Plaintiffs are forced to operate at less than full capacity and under the severe restrictions imposed by Executive Orders 2020-96 and 2020-97.

142. Plaintiffs' injury, and the injuries of ABC's members, would be redressed by the requested relief.

**Count VII – Violation of the Commerce Clause
U.S. Constitution, Art. I, § 8, cl. 3 and 42 U.S.C. § 1983**

143. Plaintiff incorporates all preceding allegations.

144. To the extent that Executive Order 2020-96 is interpreted to bar any aspect of the Plaintiffs' operations, Executive Order 2020-96 violates the Commerce Clause of the United States Constitution.

145. Because the Commerce Clause reserves to Congress the power to regulate interstate and foreign commerce, individual states may not unduly regulate commerce.

146. The Plaintiffs' provision of goods and services impact the flow of interstate commerce, such that a regulation of the Plaintiffs' commercial activities is a regulation that impacts interstate commerce.

147. Executive Order 2020-96 unduly burdens interstate commerce in a manner that is excessive in relation to the alleged benefits of the executive order. Executive Order 2020-96 imposes enormous burdens on the Plaintiffs' provision of goods and services by prohibiting the Plaintiffs from fully engaging in their business operations.

148. The burden of this substantial regulation dwarfs its alleged benefits. Michigan's stated public-health goals are not advanced by prohibiting any portion the Plaintiff's operations because the Plaintiffs can conduct their operations in a manner that complies with Executive Order 2020-96's stated goals of eliminating person-to-person contact.

149. As applied to the Plaintiffs, Executive Order 2020-96 is therefore an undue burden upon interstate commerce in violation of the Commerce Clause.

150. Plaintiffs and ABC's members have suffered an injury traceable to the Defendants' unlawful actions in that Plaintiffs are forced to operate at less than full capacity and under the severe restrictions imposed by Executive Orders 2020-96 and 2020-97.

151. Plaintiffs' injury, and the injuries of ABC's members, would be redressed by the requested relief.

PRAYER FOR RELIEF

For the foregoing reasons, the Plaintiffs respectfully request that the Court enter a judgment against the Defendants and award Plaintiffs the following relief:

- a. A declaratory judgment that Executive Order 2020-97 is invalid because it (1) authorizes, permits, or incorporates investigator and enforcement mechanisms or penalties for violations of Executive Order 2020-97 or Executive Order 2020-96 beyond the provisions expressly set forth by the Legislature in the EPGA and the EMA, and (2) requires agency investigation, inspection, enforcement, or adjudication for an alleged violation of Executive Order 2020-97 or Executive Order 2020-96 under the administrative review process rather than in a court of law;
- b. A declaratory judgment that Executive Order 2020-96 is unenforceable as exceeding the Governor's statutory authority under state law;

- c. A declaration that Executive Orders 2020-96 and 2020-97, as applied to the Plaintiffs, violates the Michigan Constitution, the Fourteenth Amendments, and the Commerce Clause of the United States Constitution;
- d. Preliminary and permanent injunctive relief preventing the Defendants from enforcing Executive Orders 2020-96 and 2020-97;
- e. Damages for the violation of the Plaintiffs' constitutional rights, in an amount to be proven at trial;
- f. Costs and expenses of this action, including reasonable attorneys' fees; and
- g. Any further relief that the Court deems appropriate.

MILLER JOHNSON
Attorneys for Plaintiffs



Dated: May 21, 2020

By _____

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VERIFICATION

I, JEFFREY M. WIGGINS, declare as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the STATE DIRECTOR of Associated Builders and Contractors, Inc. of Michigan, and in that capacity, I am familiar with the business of Associated Builders and Contractors, Inc. of Michigan, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. I declare under penalty of perjury that the foregoing is true and correct.



Executed on: 5-21-2020

Subscribed and sworn to before me on
this 21st day of May, 2020

By: Patricia A. Emerson
Name: Patricia A. Emerson
Notary Public, Kent County, Michigan
My Commission Expires: 08.17.2020
Notarized using electronic/remote technology
pursuant to Michigan Executive Order 2020-74
Signatory's Location: Kent County, MI

VERIFICATION

I, David VanderSlit Jr., declare as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the President & CEO of DJ's Lawn Service, Inc., d/b/a DJ's Landscape Management, and in that capacity, I am familiar with the business of DJ's Lawn Service, Inc., d/b/a DJ's Landscape Management, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. I declare under penalty of perjury that the foregoing is true and correct.

David VanderSlit Jr.

Executed on: 5/21/2020

Subscribed and sworn to before me on
this 21st day of May, 2020

By: 
Name: Kirk Kahner
Notary Public, Kent County, Michigan
Acting in the County of Kent
My Commission Expires: 1/31/2022

KIRK KAHNER
Notary Public, State of Michigan
County of Kent
My Commission Expires Jan. 31, 2022