

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

CYNTHIA ANN MAZUR,

Defendant.

Supreme Court Case No.  
2014-9290

Court of Appeals Case No.  
2013-317447

Lower Court Case No.  
2012-243299-FH  
Hon. Colleen O'Brien

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**DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF PURSUANT TO THE  
COURT'S OCTOBER 23, 2014 ORDER REGARDING IMMUNITY  
PURSUANT TO MCL §333.26424(g) and/or MCL §333.26424(i)**

**NOW COMES** Defendant-Appellant, Cynthia Ann Mazur, by and through her attorney, David Adam Rudoil, and hereby submits her Supplemental Brief Pursuant To The Court's October 23, 2014 Order Regarding Immunity Pursuant To MCL §333.26424(g) And/Or MCL §333.26424(i), as follows:



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**NOW COMES** Defendant-Appellant, Cynthia Ann Mazur, by and through her attorney, David Adam Rudoil, and hereby submits her Supplemental Brief Pursuant To The Court's October 23, 2014 Order Regarding Immunity Pursuant To MCL §333.26424(g) And/Or MCL §333.26424(i), as follows:

## **INTRODUCTION**

The Court has directed the parties to submit supplemental briefs on the sole issue of whether Defendant-Appellant Cynthia Mazur ("Cynthia") is entitled to immunity under §4 of the Michigan Medical Marihuana Act, specifically §MCL 333.26424(g) and/or MCL §333.26424(i), where her spouse was a registered qualifying patient and primary caregiver under the Michigan Medical Marihuana Act ("the Act"), but his marijuana-related activities inside the family home were not in full compliance with the Act. Accordingly, although Cynthia continues to assert that her husband's marijuana activities were in full compliance with the Act, the following argument assumes, *arguendo*, that full compliance was lacking.<sup>1</sup> For the following reasons, Cynthia respectfully submits that she is entitled to immunity under both MCL §333.26424(g) and §MCL 333.26424(i).

## **RELEVANT FACTS**

Cynthia is the wife of David Mazur ("David"), and the couple reside in their longtime home where the unannounced police raid of David's marijuana growing operation occurred. The record reflects that Cynthia vehemently objected when David proposed to engage in marijuana activities at their home, and only acceded after consultation with counsel, who assured her that said

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<sup>1</sup> The record does not reflect that Cynthia herself was ever in the presence of any marihuana activities that did not comply with the Act.

activities were safe and legal, and that she would not get into any legal trouble as a result of them. TRANSCRIPT CITE GOES HERE.

Thereafter, Cynthia's total undisputed alleged involvement regarding David's marijuana activities consisted of providing him with "sticky notes" upon which she wrote the dates of harvest of some of his marijuana plants. She had no other involvement whatsoever regarding David's marijuana activities at their home. TRANSCRIPT CITE.

On the day of the police raid of their home, the Mazurs were hastily and unexpectedly called to the home of David's elderly father, who was suffering from a critical medical condition. In their haste to assist David's father, they allegedly inadvertently left the usually locked door to the basement (where the marijuana growing operation resided) unlocked.<sup>2</sup> Furthermore, although the parties dispute whether the garage door was unlocked, some marijuana plants were drying below a vehicle in the home's garage. TRANSCRIPT.<sup>3</sup>

For the following reasons despite the above (disputed) minor violations of the Act, Cynthia respectfully submits that she should be granted immunity pursuant to MCL §333.26424(g) and/or MCL §333.26424(i).

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<sup>2</sup> The issue of whether the basement door was locked is similarly disputed. TRANSCRIPT.

<sup>3</sup> Cynthia asserts that the police used a battering ram to gain entry to the garage door, which was locked. The People assert that the door was unlocked. TRANSCRIPT.

## ARGUMENT

### 1. **MCL §333.26424(i) Immunity.**

MCL §333.26424(i) provides:

**A person** shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, **solely for being in the presence or vicinity of the medical use<sup>4</sup> of marihuana in accordance with this act,<sup>5</sup> or for assisting a registered qualifying patient with using or administering marihuana.** *Id.* (emphasis added).

§333.26424(i) thus features two types of immunity: (a) “mere presence” or “vicinity” immunity, and (b) “assisting” use” or “administration of marihuana” immunity.<sup>6</sup> The Court of Appeals holding does not account for the sequential deployment of §§(g) and (i) immunity, as in the instant case.

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<sup>4</sup> Cynthia argues in her Application papers that she is not only a medical marihuana “caregiver,” but also a “user” of medical marihuana under MCL §333.26423(f), discussed, *infra*.

<sup>5</sup> The Court of Appeals’ ruling that Cynthia could not enjoy this type of immunity due to her husband’s convictions (Court of Appeals Opinion & Order, Page 4), fails to consider that said husband’s medical marihuana activities could be in conformity with **§333.26428** of the Act, as opposed to §§4(i). Since Cynthia was deprived of her §8 hearing, no evidence that her husband’s medical marihuana activities were in conformity with §8 was taken. Accordingly, at minimum, this Honorable Court should remand the matter to the trial Court with instructions to conduct the §8 hearing.

<sup>6</sup> As with MCL §333.26424(g), the second prong of §333.26424(i) (“assisting use” immunity) does not require medical marijuana use in conformity with the Act.

Although Cynthia asserts both types of §(i) immunity (“mere presence” immunity and “assisting use” immunity),<sup>7</sup> this Court’s directive to the parties regarding supplemental briefs appears to specifically request argument regarding the “mere presence” prong of MCL §333.26424(i).

### **1.1. MCL §333.26424(i) “Mere Presence” Immunity.**

Cynthia respectfully submits that family members of medical marijuana caregivers or users should not be subjected to prosecution for trivial or minor violations of the Act by the registered caregiver or user, as here. She asserts that perfect, “full” compliance with the Act by another person (in the case at bar, that person is her husband, with whom she lives) is impossibly beyond the control of a spouse and, absent divorce or separation, a spouse is exposed and fatally subjected to whatever minor violations may be present.

Moreover, a spouse is totally powerless to legally intervene and take steps to ensure that his or her spouse’s growing operation is in compliance with MCL §333.26424(a) and MCL §333.26424(b) because in order to do so, he or she would need to have access to the plants. If the spouse were permitted access to inspect the growing operation, he or she would be directly violating the “locked and enclosed facility” provisions of MCL §333.26424(a)<sup>8</sup>

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<sup>7</sup> The Court of Appeals erroneously mentioned that Cynthia singularly asserted “mere presence” immunity. People v Mazur, 2014 Mich. App. LEXIS 595, 2014 WL 1321014 (Mich. Ct. App. Apr. 1, 2014).

<sup>8</sup> MCL §333.26424(a) provides:

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A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an **enclosed, locked facility**. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. The privilege from arrest under this subsection applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient. Id.

and MCL §333.26424(b)<sup>9</sup> based on the definition of locked and enclosed facility contained in MCL §333.26423(d).<sup>10</sup>

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<sup>9</sup> MCL §333.26424(b) provides:

**A primary caregiver** who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, **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. The privilege from arrest under this subsection applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver. This subsection applies only if the primary caregiver possesses an amount of marihuana that does not exceed:

- (1) 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process; and
- (2) 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, 12 marihuana plants kept in an enclosed, locked facility; and
- (3) any incidental amount of seeds, stalks, and unusable roots. Id.

<sup>10</sup> MCL §333.26423(d) provides, in relevant part, as follows:

**"Enclosed, locked facility"** means a closet, room, or other comparable, stationary, and fully enclosed area equipped with **secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient....** Id. (emphasis added).

Concurrently, a spouse who, like Cynthia, did not take steps to inspect and ensure that her husband's medical marijuana growing operation was fully compliant with the Act, is at risk (and, in the case of Cynthia, has realized that risk) of criminal prosecution for simply being around a medical marijuana growing operation that, unbeknownst to her, was not fully compliant with the Act. Such a "Hobson's Choice" or "entrapment by estoppel" situation was not envisioned by the voters of the State of Michigan and, pursuant to the rules of statutory construction set forth herein, Cynthia urges this Honorable Court to simply apply the presumption of "medical use" set forth in MCL §333.26424(d), discussed, *infra*.

The same reasoning applies equally as well to the resident children of such caregivers or users.<sup>11</sup>

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Although the parties dispute whether the Mazur's basement door was locked, the record reflects that it is irrefutable that the said door at least featured a latching mechanism. TRANSCRIPT. Pursuant to the statutory construction rule of *ejusdem generis*, which provides that "the scope of a broad general term following a series of items is construed as including 'things of the same kind, class, character, or nature as those specifically enumerated . . .'" (see, e.g., People v Thomas, 263 Mich App 70, 76; 687 N.W.2d 598 (2004), quoting Weakland v Toledo Engineering Co, Inc., 467 Mich 344, 349; 656 N.W.2d 175 (2003), and Huggett v Dep't of Natural Resources, 464 Mich 711, 718-719; 629 N.W.2d 915 (2001), such a latch is an "other functioning security device[s]" and thus possesses the same legal quality as a "secured lock[]."

<sup>11</sup> This case is easily distinguishable from People v Watkins, 2011 Mich. App. LEXIS 1471 (August 11, 2011, Decided, No. 302558, No. 302559), where the adult son of the Defendant was also a registered medical marijuana user. In

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Watkins, the undisputed evidence regarding the number of plants and their storage led the Court to conclude that no reasonable jury could find that either defendant had established the elements of the immunity defense under §4 or the affirmative defense under §8. Accordingly, the Court upheld the trial court's grant of the Prosecutor's motion *in limine* to preclude defendants from presenting a defense under §4 or §8 of the Act. Id. In particular, the facts regarding plant storage in Watkins are diametrically opposite those present in the case at bar.

As set forth in Watkins, the arresting officer:

....saw one marijuana plant and three "starter clones" under a grow light in the home's sun room, which was directly behind the dining room. He found four or five more plants under grow lights in the family room and three or four hanging plants that were drying in a room by the kitchen. In a closet with no door that was across from Eric Watkins' [the son's] bedroom, [the arresting officer] saw four more plants and some grow lights. Another four or five plants and grow lights were in a room that contained two large safes. [The arresting officer's] search also revealed eight marijuana plants in a plastic zipper-style greenhouse in the back yard. In total, officers recovered 21 marijuana plants. None of the plants were locked up.

[The arresting officer] discovered approximately thirty-one guns, including shot guns, assault rifles, long bolt action rifles, and semi-automatic and revolver pistols in the safes. Ammunition cans containing approximately four to five thousands rounds were along the wall in the same room as the safes. [The arresting officer] recalled that he smelled marijuana throughout the house.

Inside Eric Watkins' bedroom, [the arresting officer] located a plastic baggy containing approximately one ounce of marijuana within one or two feet of two loaded semi-automatic pistols. [The arresting officer] also found an unloaded shotgun, approximately \$2,100 in cash, bail bonds credentials with Eric's picture and name, and cell phone bills establishing Eric's residency at the home. [The arresting officer] additionally discovered a burnt roach in a black Mazda, which was parked outside the house and registered to Eric. Id. at 2-3.

Even assuming, *arguendo*, that the basement door to the Mazur's home (where the growing operation was conducted) was unlocked on the date and time in question (the raid) due to the unexpected medical emergency, the basement satisfied the definition of "enclosed, locked facility" set forth in MCL §333.26423(d). The Mazur's basement is in complete contradistinction to the dog kennel that was found **not** to be an "enclosed locked facility" in People v King.<sup>12</sup>

## 1.2 MCL §333.26424(i) "Assisting Use" Immunity.

Cynthia asserts that her alleged activities regarding the "sticky notes" comprise "assisting [her husband David's] use" of medical marihuana. Cynthia asserts that her alleged provision of "sticky notes" to David constitutes the "medical use" of marijuana pursuant to MCL §333.26423(f), which provides:

**"Medical use" means** "the acquisition, possession, **cultivation, manufacture,** use, internal possession, delivery, transfer, or

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<sup>12</sup> In People v King, 291 Mich App 503, 511-12; 804 N.W.2d 911 (2011), *reversed and remanded by* People v Kolanek, 491 Mich 382, 817 N.W.2d 528 (2012), the Court observed:

As noted, the phrase "enclosed, locked facility" is defined by the MMMA to mean "a closet, room, or other enclosed area equipped with locks or other security devices . . . ." MCL 333.26423(c). As described earlier, defendant grew several marijuana plants in his backyard, within a chain-link dog kennel that was only partially covered on the sides with black plastic. The kennel had a lock on the chain-link door, but had no fencing or other material over the top, and it could be lifted off the ground. Id.

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." Id. (emphasis added).

Accordingly, Cynthia's husband David's medical marihuana cultivation is also a medical marihuana "use" and, therefore, so is Cynthia's alleged provision of "sticky notes" to him for that purpose. As such, the provision of "sticky notes" constitutes protected activity under MCL §333.26424(g).

Presumably, MCL §333.26424(g) was enacted to protect "head shops" that sell rolling papers, bongs and the like to customers who use medical marihuana after leaving the shop. Such businesses obviously have no control over whether the resulting use is "in conformity" with the Act. Accordingly, Defendant-Appellant Cynthia Mazur respectfully asserts that she should enjoy at least the same amount of immunity as such businesses, inasmuch as she could not assert control over her husband's medical marihuana activities without violating the Act. Since there is nothing in the record to suggest that she actually participated in the affixation of the "sticky notes" to any marihuana plants or otherwise participated in their cultivation, the analogy to the shop owner is appropriate.

## **2. MCL §333.26424(g) Immunity.**

MCL §333.26424(g) provides:

**A person** shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not

limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, **for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.** *Id.* (emphasis added).

MCL §333.26424(g) thus provides immunity from prosecution to “[a] person,” whether or not they are a caregiver, for the act of providing marihuana paraphernalia to either a registered qualifying patient **or** a registered primary caregiver.<sup>13</sup> Defendant-Appellant Cynthia Mazur asserts that she is entitled to this type of immunity regarding her alleged writing of dates on “sticky notes,” regardless of whether her husband’s marihuana activities were in full compliance with the Act.<sup>14</sup>

The Court of Appeals’ Opinion & Order holds that Cynthia’s provision of the “sticky notes” does not convey *carte blanche* immunity to all of her marihuana activity,<sup>15</sup> but only as regards their actual provision of the paraphernalia. Court of Appeals Opinion & Order, Page 3.<sup>16</sup> This holding is

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<sup>13</sup> At all times relevant hereto, Cynthia’s husband, David, was and is both a registered qualifying patient and a registered primary caregiver.

<sup>14</sup> Cynthia contends that her alleged actions were in furtherance of David’s compliance with the Act (i.e., that she was assisting him in complying with the Act).

<sup>15</sup> The record does not reflect that Cynthia engaged in any other marihuana-related activities.

<sup>16</sup> The Court of Appeals ruled:

especially curious because the alleged provision of “sticky notes” is the **only** alleged marihuana “activity” of Cynthia Mazur, other than her “mere presence” in the family home as the wife of David Mazur.

Unlike MCL §333.26424(i), MCL §333.26424(g) does not impose any requirement that the medical use of marihuana be in conformity with the Act. Accordingly, Defendant-Appellant Cynthia Mazur respectfully asserts that she should enjoy immunity under MCL §333.26424(g) regardless of whether her husband, David Mazur’s other marihuana activities are fully compliant with the Act.<sup>17</sup>

### **3. Statutory Interpretation Of The Immunity Statutes.**

In Pohutski v City of Allen Park, 465 Mich 675; 641 N.W.2d 219 (2002), this Court reviewed the Michigan rules of statutory interpretation, as follows:

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. DiBenedetto v West Shore Hosp., 461 Mich 394, 402; 605 N.W.2d 300 (2000); Massey v Mandell, 462 Mich 375, 379-380; 614 N.W.2d 70 (2000). We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Turner v Auto Club Ins Ass'n., 448 Mich 22, 27, 528 N.W.2d 681 (1995). Where the

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If a person provides a patient or caregiver with paraphernalia, it is only that isolated act of providing paraphernalia that cannot be penalized under MCL §333.26424(g), and not, as defendant by implication urges this Court to hold, all of the person’s marihuana-related activity. Id.

<sup>17</sup> Nevertheless, the presumption of MCL §333.26424(d), discussed, *infra*, that the use is both “medical” and “in conformity with the Act” should apply.

language is unambiguous, "we presume that the Legislature intended the meaning clearly expressed---no further judicial construction is required or permitted, and the statute must be enforced as written." DiBenedetto, 461 Mich at 402. Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature. See Lansing v Lansing Twp., 356 Mich 641, 649-650; 97 N.W.2d 804 (1959). When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence. "The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another." Robinson v Detroit, 462 Mich 439, 459; 613 N.W.2d 307 (2000). Similarly, we should take care to avoid a construction that renders any part of the statute surplusage or nugatory. In re MCI, 460 Mich at 414. Id.

Cynthia respectfully asserts that, applying the above rules to MCL §333.26424(i) and MCL §333.26424(g), the following analysis should apply.

**4. The Presumption of "Medical Use" Of MCL §333.26424(d) Should Apply To The Spouses And Children Of Qualifying Patients And Primary Caregivers.**

MCL §333.26424(d) provides:

***There shall be a presumption*** that a qualifying patient or primary caregiver is ***engaged in the medical use of marijuana in accordance with this act*** if the qualifying patient or primary caregiver:

- (1) is in possession of a registry identification card; and
- (2) is in possession of an amount of marijuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act. Id. (emphasis added).

Applying the rules of statutory construction as set forth herein, it is not necessary for this Honorable Court to judicially interpret MCL

§333.26424(d) in order to determine that Cynthia is entitled to immunity under MCL §333.26424(i) and MCL §333.26424(g). The statutory language is clear and unambiguous, and the people's intent is clearly expressed: persons who are "merely in the presence" of registered cardholders that possess no more than the permitted quantity of medical marijuana<sup>18</sup> should receive immunity from prosecution without intervention or further inquiry on their part.

However, to the extent that this Honorable Court determines that the presumption of medical use in conformity with the Act does **not** apply, or that there **is** ambiguity in the Act's statutory scheme, this Court may depart from a literal interpretation of unambiguous statutory language that produces an absurd and unjust result that is inconsistent with the purpose and policies of the statute. People v Bewersdorf, 438 Mich 55, 68 (1997). Moreover, Ballot initiatives, such as the Act, should be "liberally construed to effectuate their purposes" and to "facilitate rather than hamper the exercise of reserved rights by the people." Welch Foods v Attorney General, 213 Mich App at 461 (emphasis added). To the extent that the initiative contains any ambiguity, it must be constructed in light of the purpose of the initiative." Id. at 462.

Accordingly, if this Honorable Court determines that judicial construction **is** necessary, the Court should construe the Act in favor of immunity for

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<sup>18</sup> At least as far as is readily apparent to the person seeking immunity.

spouses and other family members of noncompliant qualifying patients and/or registered caregivers.

**CONCLUSION**

For the foregoing reasons, Defendant-Appellant Cynthia Ann Mazur respectfully requests that this Honorable Court determine that the spouses and/or other family members of registered qualifying patients and/or primary caregivers under the Michigan Medical Marihuana Act have immunity pursuant to MCL §333.26424(i) and/or MCL §333.26424(g) where the patient's or caregiver's marijuana-related activities inside the family home were not in full compliance with the Act.

Respectfully submitted,

  
\_\_\_\_\_  
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Attorney for Defendant-Appellant  
Cynthia Ann Mazur

DATED: November 20, 2014

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**PROOF OF SERVICE**

STATE OF MICHIGAN)

)ss

COUNTY OF OAKLAND)

I, Jeffrey S. Newton, declare, under penalty of perjury:

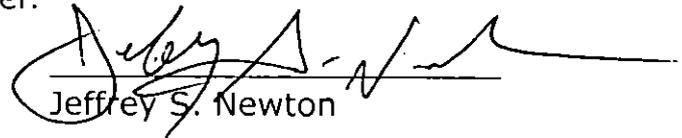
1. I am a legally competent adult over the age of eighteen (18) years of age. I am not a party to this Action. Unless stated as being based upon information and belief, all the facts herein are known to me personally and if called upon as a witness, I could and would competently testify thereto under oath.

2. On Thursday, November 20, 2014, I served the **Supplemental Brief** and **Proof of Service** relative thereto upon Shannon E. O'Brien, Esq. by depositing a copy of same into a sealed envelope with U.S. postage fully prepaid into the U.S. mail receptacle at the U.S. Post Office in Lansing, Michigan addressed to her at 1200 North Telegraph Road, Pontiac, MI 48341.

**FURTHER DEPENDENT SAYETH NOT.**

I declare, under penalty of perjury, that the foregoing is true to the best of my information, knowledge and belief.

DATED: November 20, 2014

  
Jeffrey S. Newton