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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PLANNED PARENTHOOD MID AND SOUTH MICHIGAN, a Michigan non-profit corporation,

Plaintiff,

vs.

SHRI SAI-KRISHNA GROUP, L.L.C., a Michigan limited liability company,

Defendant.

Civil Action No. 2011-119441-CH

Hon. James M. Alexander

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Alan M. Greene (P31984)
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Attorneys for Plaintiff
Dykema Gossett PLLC

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23781 Pointe O'Woods Court
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**Defendant's Pre-Answer Motions to Strike and for Summary Disposition**

Defendant Shri Sai-Krishna Group, L.L.C., a Michigan limited liability company ("**Defendant**"), by its undersigned attorney and under MCR 2115(B), moves the court to enter an order striking the Factual Background and Count 1 of the complaint (the "**Complaint**") of Plaintiff Planned Parenthood Mid And South Michigan, a Michigan non-profit corporation ("**Plaintiff**"), based upon the following grounds:

1. The Factual Background and Count 1 of the Complaint fail to include separate paragraphs, each limited to a single set of circumstances, and consequently fail to comply with MCR 2.113(E)(2).

2. The Factual Background and Count 1 of the Complaint fail to segregate claims by separate transactions and occurrences, and consequently fail to comply with MCR 2.113(E)(3).

3. The Factual Background and Count 1 of the Complaint state conclusions of law rather than making statements of fact, and consequently fail to comply with MCR 2.115(B).

4. Paragraph 31 of the Complaint fails to state specific allegations necessary reasonably to inform the Defendant of the nature of the claim, and consequently fails to comply with MCR 2.111(B)(1).

Defendant, by its undersigned attorney and under MCR 2.116, moves the court to enter an order of summary disposition dismissing parts of Count 1, all of Count 2, and all of Count 3 of the Complaint, based upon the following grounds:

5. Parts of Count 1, all of Count 2, and all of Count 3 of the Complaint are barred by immunity provided by law, thereby warranting summary disposition under MCR 2.116(C)(7).

6. Count 2 and Count 3 of the Complaint fail to state a claim on which relief can be granted, thereby warranting summary disposition under MCR 2.116(C)(8).

Date: July 13, 2011

Respectfully Submitted,

*/s/ James L. Carey*

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

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| PLANNED PARENTHOOD MID AND SOUTH MICHIGAN, a Michigan non-profit corporation,<br><br>Plaintiff,<br><br>vs.<br><br>SHRI SAI-KRISHNA GROUP, L.L.C., a Michigan limited liability company,<br><br>Defendant. | Civil Action No. 2011-119441-CH<br><br>Hon. James M. Alexander |

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**Brief in Support of**
**Defendant's Pre-Answer Motion to Strike and for Summary Disposition**

## I. Overview & Legal Standards

In the complaint (the "**Complaint**") filed by Plaintiff Planned Parenthood Mid and South Michigan ("**Plaintiff**"), Plaintiff has attempted to obscure the plain and simple controversy between the parties. The fundamental problem is that Plaintiff purchased land over which Defendant Shri Sai-Krishna Group, L.L.C. ("**Defendant**") has a restrictive covenant. Despite the presence of the restrictive covenant in the public land records, Plaintiff wants to do whatever it wishes with the land without considering the legal rights of Defendant. Plaintiff engaged in

subterfuge initially and, upon being called out, has resorted to confusion, ambiguity and unwarranted claims in the hope of trampling on Defendant's recorded interest in the land.

The Complaint seeks relief on three counts. Count I seeks a declaratory judgment on the applicability of a restrictive covenant to Plaintiff's real property. Count II alleges a slander of title to Plaintiff's real property as well as tortious interference with its use. Count III alleges a violation of the Americans With Disabilities Act, 42 USC 12101 *et seq.* (the "**ADA**")

Before Defendant can properly answer the allegations being made by Plaintiff, the Complaint needs significant editing. Unfounded and unwarranted allegations need to be dismissed. Confusing and ambiguous claims need be made clear. If Plaintiff properly addresses these matters now, we can focus this case on the real issues and avoid wasting time and resources. This motion seeks to clear away Plaintiff's attempt to confuse the true conflict and to manufacture controversies.

The legal standard for the court to consider when granting a motion to dismiss pursuant to MCR 2.116(C)(7) is that the contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant. *Patterson v. Kleiman*, 447 Mich 429, 434, n. 6; 526 NW2d 879 (1994). A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence, but is not required to do so. If such material is submitted, it must be considered, but the substance or content of the supporting proofs must be admissible in evidence. MCR 2.116(G)(5).

In considering the Defendant's motions under MCR 2.116(C)(8), all well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant. *Wade v. Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a

matter of law that no factual development could possibly justify recovery." *Id.* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

## II. Discussion of Grounds for Motions

### A. Strike Factual Background and Count I

MCR 2.115(B) governs motions to strike pleadings and it authorizes the relief sought in Defendant's motion. Repeatedly in the factual background (the "**Factual Background**") and Count I ("**Count I**") of the Complaint, Plaintiff reaches conclusions of law rather than stating the particular circumstances, transactions or occurrences of which Plaintiff is complaining. MCR 2.113(E)(3). In particular, and just to name the most egregious occurrences, paragraphs 12, 14, 18 and 20 (from the Factual Background), as well as paragraphs 25, 26, 27 and 28 (from Count I), state the conclusions of law that are to be brought before this court. Plaintiff is improperly using the Complaint to conclude that "medical office" is a permitted use under the restrictive covenant, rather than properly using the Complaint to clearly, concisely and directly state its cause of action.

The Michigan Supreme Court has directly addressed this point:

> We have repeatedly said, as we did in *Putnam v. Ernst*, 232 Mich. 682, 206 N.W. 527, 528, that in deciding cases involving restrictive covenants: "In the main, each case must be determined on its own facts."

*Jones v. Schaffer*, 332 Mich 190, 192; 50 NW2d 753, 754 (1952).

This need for factual interpretation by the courts in cases of restrictive covenants has consistently been applied in Michigan. It was highlighted as recently as last summer by the Michigan Court of Appeals. *Brown v. Martin*, 288 Mich App 727; 794 NW2d 857 (2010).

Plaintiff has repeatedly stated that their use will be medical office AND that medical office is included in the term "office" as used in the restrictive covenant. *See* Complaint ¶¶ 5 and 10. First, Defendant does not agree that "office", as used in the restrictive covenant, includes "medical office". Second, Defendant is very concerned that Plaintiff's use may be quite more than those associated with "medical office". That Plaintiff and Defendant disagree as to these legal conclusions is why the parties need guidance from the court.

Yet Plaintiff has inappropriately attempted to deal with these legal matters in the Factual Background and Count I. A motion to strike is the proper remedy for responding to a complaint that states conclusions of law rather than making statements of fact. *Kornicks v. Lindy's Supermarket*, 24 Mich App 668; 180 NW2d 847 (1970).[1]

Further, the Complaint seeks to confuse the fundamental issue of this case by weaving into the Factual Background and Count I the Dykema letter dated October 8, 2010. Complaint Exhibit C (the "**Dykema Letter**"). The factual and legal problems raised by the Dykema Letter are legion, and most of those matters are well beyond the scope of the motions now before the Court. But the legal issues and consequences of the Dykema Letter need to be addressed separately from the language of the restrictive covenant itself. The confusion and ambiguity caused by the interweaving of these matters warrant the striking of these sections of the complaint. Plaintiff is required to draft the Complaint paragraphs and counts clearly and SEPARATELY so that Defendant may property address each item. MCR 2.113(E)(2) and MCR 2.113(E)(3).

Finally, Complaint paragraph 31 states: "Defendant, by its actions, is estopped from asserting that medical office uses are prohibited by the Restrictive Covenant". This allegation is

[1] The *Kornicks* decision was decided under a previous version of the court rules, specifically the General Court Rules of 1963 Rule 115 (GCR 1963, 115). This case is instructive, however, because GCR 1963, 115 is substantially the same as MCR 2.1165. 1985 Staff Comments to MCR2.115.

far too vague for Defendant to understand the nature of the complaint alleged. Which actions of Defendant have brought about this estoppel argument? Is this just about the letter dated January 31, 2011 (Complaint Exhibit D) or is there more? The vagueness of this allegation requires it to be struck and a more definite statement be made. MCR 2.111(B)(1).

**B. Dismiss Parts of Count I, All of Count II, and All of Count III – Immunity**

There is only one legal issue in this case: whether Plaintiff can use its real estate in a way that violates the plain terms of the restrictive covenant. This restrictive covenant was recorded as a property interest running to Defendant before Plaintiff purchased the land in November 2010. Complaint Exhibit A. Now Plaintiff seeks a declaratory judgment construing the terms of the restrictive covenant in a way that would eviscerate Defendant's property right.

Prior to the date of purchase, Plaintiff engaged in subterfuge by concealing both its identity and its actual intended use of the property. In the Complaint, Plaintiff continues to engage in obfuscation regarding its intended use of the property. The intended use is the core of the actual controversy between the parties. Plaintiff has muddied the waters by making unwarranted claims that are not based in law or fact, and which have no relationship to the actual controversy.

The alleged wrongful conduct of Defendant is immune from suit by the protections of the First Amendment. *Noerr-Pennington* immunity stems from

> the First Amendment's protection of the right to petition the government, and the recognition that a representative democracy, such as ours, depends upon the ability of the people to make known their views and wishes to the government.

*Potters Med. Ctr. v. City Hosp. Ass'n*, 800 F2d 568, 578 (CA 6, 1986).

This doctrine, originally developed to protect parties from federal antitrust litigation, arose from two United States Supreme Court cases (*E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 US 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 US

657 (1965)) and has become commonly referred to as the *Noerr-Pennington* doctrine. The principal idea behind the Court's reasoning is "that parties who petition the government for governmental action favorable to them cannot be prosecuted." *Video Int'l Prod., Inc. v. Warner-Amex Cable Communications*, 858 F2d 1075, 1082 (CA 5, 1988). The Michigan Court of Appeals pointed out that this protection, as applied by federal courts, extends to "claims brought under federal and state laws" alike. *Arim v. Gen. Motors Corp.*, 206 Mich App 178, 191; 520 NW2d 695, 701 (1994). The *Akin* Court expressly recognized that "There is simply no reason that a common-law tort doctrine can any more permissibly abridge or chill the constitutional right of petition than can a statutory claim." *Id.*

As the Sixth Circuit of the United States Court of Appeals noted, "The plain language of the First Amendment makes clear that a petition triggers the amendment's protections." *Campbell v. PMI Food Equip. Grp.*, 509 F3d 776, 789 (CA 6, 2007). That court further held that the First Amendment protects the petitioning of "all departments of the Government", including those instances in which the petition concerns "a private citizen's business interest". *Holzemer v. Memphis*, 621 F3d 512, 521 (CA 6, 2010). Cognizant of this reality, courts routinely recognize that the *Noerr-Pennington* doctrine bars claims for "tortious interference". *Virtual Works, Inc. v. Network Solutions, Inc.*, 1999 WL 1074122 (ED VA, 1999) (unpublished opinion attached as Exhibit A).

Courts broadly extend this doctrine's First Amendment protection not only to the message and matter of a citizen petition but also to the petitioner's method. Conduct that appears even "reprehensible" in nature, while not applicable here, "would not strip the defendants of *Noerr-Pennington* protection". *Baltimore Scrap Corp. v. David J. Joseph Co.*, 81

F Supp 2d 602, 620 (D MD, 2000) *aff'd*, 237 F3d 394 (CA 4, 2001) (holding that even blatant anti-competitive intent behind petition of government does not vitiate *Noerr* immunity).

Count I of the complaint alleges that Defendant made "threats" against the Plaintiff's intended use of the property. Complaint ¶¶ 28 and 29 and Complaint Exhibit D (the "**Local Official's Letter**"). To the extent that any mention of procedural options was present in the Local Official's Letter, such mention was part of Defendant's "petition" that "trigger[ed] the [First] amendment's protections". *Campbell* at 789 (discussing what is protected petitioning under the First Amendment). Accordingly, to the extent that Count I of Plaintiff's Complaint seeks relief against the Defendant for conduct in petitioning the government (and specifically the City of Auburn Hills) such a claim is not actionable. Those aspects of Count I should be dismissed.

Count II of the complaint ("**Count II**") alleges slander of title and interference with lawful use of the property for the same conduct, *i.e.*, petitioning the government. Complaint ¶ 6. However, as demonstrated above, petitioning the government is constitutionally protected despite claims of "tortious interference". The protection applies even in the most egregious cases in which a citizen's "actions were unseemly, perhaps unethical" because such conduct still does "not rise to the level of fraud necessary to vitiate *Noerr* immunity". *Baltimore Scrap* at 617. Though the complaint lacks evidence of any insincerity by Defendant, the "bad faith" complained of (while denied) is still entitled to First Amendment protection. Complaint ¶ 34. The Local Official's Letter puts forth contractual concerns held by Defendant regarding its private "business interest". *Holzemer* at 521 (stating what is encompassed by the Petition Clause of the First Amendment). These concerns were further indicated by the Local Official's Letter with the mention of the "recorded property interest" possessed in the real estate at issue.

Complaint Exhibit D. Each of the local officials sent the letter have some licensing, regulatory, easement, or other governmental authority over the real estate containing the restrictive covenant. This group of government officials constitute the regulatory decision-makers from whom Plaintiff would need to obtain governmental approval and/or government action to use the land in violation of the restrictive covenant. Clearly Defendant's concern and motivation for addressing his local officials was genuine, "recorded," and protected. *Id.* Thus, the entirety of Count II complains of conduct completely protected by the First Amendment and must be dismissed.

In count III of the Complaint ("**Count III**"), Plaintiff claims Defendant violated Title III of the ADA by threatening enforcement of the restrictive covenant Defendant already had in place on the property. Complaint ¶ 41. The exact contours of this claim are difficult to discern. It is not entirely clear whether Plaintiff is claiming: (a) that the covenant is unenforceable because of the ADA; (b) that Defendant's stated disagreement with Plaintiff's construction of the covenant is itself a violation of the ADA; or (c) that Plaintiff's petition of the City of Auburn Hills is a violation of the ADA.

Regardless, no claim against Defendant exists for an alleged ADA violation. As with the prior counts of the Complaint, the constitutional right of private citizens to petition the government and the protection of that right under the *Noerr-Pennington* doctrine allow for any citizen to purposefully seek out local officials and be free from liability since "a petition triggers the amendment's protections". *Campbell* at 789. Therefore, regardless of Plaintiff's allegations as to the legitimacy of the restrictive covenant and Defendant's motives behind its enforcement, Defendant's actions are protected under the *Noerr* doctrine. The understanding that "the federal courts have by analogy applied [the *Noerr* doctrine] to claims brought under both state and

federal laws" indicates the illegitimate nature of Plaintiff's claim under the ADA here as well. To the extent that Count III seeks damages, including attorneys' fees, complaining of Defendant's conduct, those claims are void.

**C. Dismiss Count II - Failure to State a Claim Upon Which Relief Can Be Granted**

In addition to the First Amendment defenses asserted, Count II should also be dismissed as Plaintiff's claims do not meet the necessary elements of the tort. In slander of title claims, both at common law and under our statutory provisions, a plaintiff must demonstrate that "the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages." *B & B Inv. Grp. v. Gitler*, 229 Mich App 1, 8; 581 NW2d 17, 20 (1998). Here the Court need not go beyond the threshold elements of malice, falsity, and actual publication since all are lacking.

The only possible indication of malice presented in the Complaint is the claim that "Defendant's actions are in furtherance of a political agenda". Complaint ¶ 35. This mere allegation furthers the argument above that Plaintiff's claim attacks constitutionally protected conduct. How can the exercise of a constitutionally protected right be, by law, malice and tortuous? Truly, Plaintiff's concealing of its identity in communication with Defendant and asserting a claim here for damages seeks to create a controversy - and "malice" - where there is none. *Gitler* at 8.

As for falsity, nothing in the complained of conduct can remotely be considered a falsehood. The letter mentions Defendant's counsel, Defendant's recorded interest in the real property, Defendant's hope to avoid litigation, and Defendant's availability to communicate both with government officials and Plaintiff. Complaint Exhibit D. The Complaint is utterly devoid of any allegation of any false statement purportedly by Defendant.

To publish is to "prepare and issue (printed material) for PUBLIC distribution or sale" or, alternatively, "to bring to the PUBLIC attention". The American Heritage Dictionary (2006) (emphasis added). The Local Official's Letter was addressed to ten persons, all of which were governmental individuals or departments. Complaint Exhibit D. This seems to parallel the allowed petition in *Holzemer* that "was aimed directly at a city councilman and involved no public complaint or statement". *Holzemer* at 522-23 (differentiating the permitted petition's Petition Clause coverage from that of the Free Speech clause). The content of Defendant's letter, regardless of substance, was never "published" as required for slander of title. *Gitler* at 8. Count II fails to state a claim upon which relief can be granted.

**D. Dismiss Count III – Failure to State a Claim Upon Which Relief Can Be Granted**

Plaintiff has erroneously asserted an ADA violation. The provision of the ADA pled in the Complaint has no application to Defendant. Plaintiff specifically seeks to invoke the ADA's prohibition that "No individual shall be discriminated against … by any person who owns, leases (or leases to), or operates a place of public accommodation". Complaint ¶ 39 (quoting 42 USC 12182(a)). To be clear, Plaintiff does not allege that Defendant's operation and use of its own property violates some ADA prohibition. Rather, Plaintiff seems to truly be alleging that Defendant's objection to Plaintiff's possible use of Plaintiff's property violates the ADA because some of Plaintiff's patients are "disabled". It is also important to note that Plaintiff does not allege Defendant is acting with some animus to the disabled. Rather, Plaintiff seeks to assert a claim for an ADA violation because Plaintiff does not discriminate on the basis of disability in the operation of its business.

If such a claim were true, then any land use restriction upon any entity would be void under the ADA (assuming that, as in the vast majority of instances, the entity did not

discriminate against the disabled). Obviously, such a construction of the statute is ridiculous. If not, any person objecting to a new Wal-Mart location would violate the ADA because Wal-Mart serves disabled customers. Yet, that is exactly what Plaintiff asserts here.

Plaintiff completely ignores the plain language and intent of the ADA which is to prohibit discrimination ON THE BASIS of disability. Courts have stated one of the *prima facie* elements of an ADA claim is that a plaintiff is "subjected to unlawful discrimination as the RESULT OF his disability." *Gordon v E.L. Hamm & Assocs.*, 100 F3d 907, 910 (CA 11, 1996) (emphasis added). Where discrimination occurs that is not connected to a disability, the statute does not apply. For example, a female police officer who was discharged sued under the ADA. Her claim failed for lack of standing. *Thompson v. City of Arlington,* 838 F Supp 1137 (ND TX, 1993). In dismissing the police officer's claim, the court stated:

> plaintiff is incorrect as a matter of law in her allegation that City's allegedly wrongful conduct directed against her violates the ADA if, as she has specifically alleged, the conduct was engaged in because of her sex and in retaliation for her protests regarding demands that health information be made available to City.

*Thompson* at 1152.

Plaintiff asserts without substantiation that "Defendant's wrongful attempt to enforce the restrictive covenant as a means to bar medical services to which it objects constitutes discrimination on the basis of a disability". Complaint ¶41. In this allegation, Plaintiff assumes that because some of its patients have disabilities, Defendant's actions constitute discrimination against them. Plaintiff takes a giant leap in claiming that Defendant's enforcement of the covenant is because of some disability. Plaintiff has not even named a disability that Defendant is discriminating against. Plaintiff merely alleges some of its patients are handicapped or disabled. Complaint ¶ 41. This absence of a specified disability and the generalized nature of the claim clearly indicate that there is no alleged discrimination based on a disability. Plaintiff

does not have standing to sue under the ADA because it has not alleged any discriminating ON THE BASIS of a disability.

Aside from the fact that Plaintiff's construction of the ADA would wreck havoc on all land use regulations, Plaintiff's pled theory of recovery is not applicable because Defendant is not the type of "person" this provision is regulating. Defendant does not own the property at issue. Defendant does not lease the property itself, nor does it lease the property to anyone. Also, Defendant cannot be said to operate the property. As admitted by Plaintiff, the only relation to the property Defendant is exercising in the case at hand is the restrictive covenant that came with the acquisition of its own, separate property. Complaint ¶ 41. That can hardly be considered "operate[ing] a place of public accommodation" under 42 USC 12182(a). In a similar vein, a franchisor "possess[ing] veto power over proposed plans and modifications" of a franchise building "does not constitute operating for purposes of the Americans with Disabilities Act." *Neff v. Am. Dairy Queen*, 879 F Supp 57, 60 (WD TX, 1994). Franchisors have significant, influential, and potentially profitable control flowing up a chain of command, yet are not deemed "operating" under the ADA. Defendant, on the other hand, has no profit potential from the property and complete independence from the property's owner. This clearly demonstrates, to an even greater extent, the absence of operational culpability found in *Neff.*

Defendant is instead comparable to a defendant deemed outside the terms of the ADA. The "only evidence of record" concerning the defendant's possible status as an adherent to the ADA in that case was that the defendant "possess[ed] a permit from Phoenix, which is the owner and operator" of a public place. *Adiutori v. Sky Harbor Int'l Airport*, 880 F Supp. 696, 704 (D AZ, 1995) *aff'd*, 103 F3d 137 (CA 9, 1996). The presence of that permit, much like the presence of the restrictive covenant here, without more, is not enough to make someone an operator under

42 USC 12182(a) - especially when, as is the case here, "the plaintiff does not explain how [Defendant] fits into that definition". *Id.*

While it is possible for organizations to sue under the ADA, Plaintiff has no organizational standing on its own. As discussed above, Plaintiff does not have, nor has Plaintiff alleged, a palpable injury to itself based upon a disability. Further, Plaintiff has no associational standing on behalf of its patients because it has not presented any members who would have standing under the ADA.

As stated in *MX Group, Inc. v City of Covington*, 293 F3d 326, 332-333 (CA 6, 2002), organizational standing on behalf of an organization requires a palpable injury. Plaintiff has not plead an injury to itself that is recognized for standing under the ADA. Plaintiff's ADA claim only mentions discrimination against its patients. Complaint ¶ 41. The Complaint contains other references to property interference, but this does not establish a palpable injury under the ADA.

Beyond just showing members who are disabled, for an organization to have "representational standing", the organization must also show that its "members would have standing to sue on their own". *Kessler Inst. for Rehabilitation v Mayor of Essex Fells*, 876 F Supp 641, 656 (D NJ, 1995). Plaintiff has not pled that it is a membership organization. Plaintiff has not alleged that an actual patient has been discriminated against or even mentioned any complaints from potential patients. When a hotel owner wanted to force his co-owner to make improvements that would accommodate disabled persons, the court stated that:

> It [plaintiff] does not claim to represent a group of disabled individuals. Most importantly, plaintiff has not been subject to complaints by any group of individuals who would be protected under the statute.

*Council of Co-owners of Ashford Med Ctr v Mendez*, 913 F Supp 99, 103 (D PR, 1995).

Beyond these basic failures of Plaintiff to state a claim upon which relief can be granted, an organization that seeks to sue under the ADA must also satisfy prudential limitations. *Pa.*

*Prot. & Advocacy v Houston*, 136 F Supp 2d 353, 361 (ED PA, 2001). The US Supreme Court has recognized several prudential limitations where the exercise of court jurisdiction is not appropriate for an organization claiming harm on behalf of others. *Warth v Seldin*, 422 US 490 (1975).

> The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action' ... Apart from this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the courts' decisional and remedial powers. First, the Court has held that when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. ... Without such limitations - closely related to Art. III concerns but essentially matters of judicial self-governance - the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights.

*Warth* at 499-500 (citations omitted).

Planned Parenthood has not sufficiently pled discrimination on the basis of disability because its allegation is too generalized. "An organization does not possess standing simply because it has an ideological or abstract social interest that is adversely affected by the challenged action." *Kessler Inst. for Rehabilitation v Mayor of Essex Fells*, 876 F Supp 641, 656 (D NJ, 1995). Plaintiff has asserted no grounds to permit it to bring an ADA claim.

## III. Conclusion

Plaintiff has failed to comply with the court rules regarding its presentation of the Factual Background and Count 1. These items should be struck in their entirety requiring Plaintiff to submit an amended complaint addressing the appropriate matters in the proper way.

Three separate and individual legally-sufficient bases exist to dismiss significant portions of the Complaint. First, the *Noerr-Pennington* doctrine confers immunity on those who petition the government, requiring the dismissal of Count II in its entirety, and requiring dismissal of parts of Counts I and III. Second, Plaintiff has no standing to sue under the ADA, requiring the dismissal of Count III in its entirely. Third, Plaintiff's claims in Counts II and III are not actionable according to the necessary elements of those claims, requiring the dismissal of Counts II and III in their entirety for failing to state any claims upon which relief can be granted.

Date: July 13, 2011

Respectfully Submitted,

*/s/ James L. Carey*

James L. Carey (P67908)
Attorney for Defendant
23781 Pointe O'Woods Court
South Lyon, Michigan 48178
248.605.1103

**Exhibit A to**
**Brief in Support of Defendant's Motion to Strike and for Summary Disposition**

1999 WL 1074122
Only the Westlaw citation is currently available.
United States District Court, E.D. Virginia.

VIRTUAL WORKS, INC., Plaintiff,
v.
NETWORK SOLUTIONS, INC., Volkswagen of America, Inc., and Volkswagen AG, Defendants.

VOLKSWAGEN AG and Volkswagen of America, Inc., Counterclaim Plaintiffs,
v.
VIRTUAL WORKS, INC., Counterclaim Defendant.

No. CRIM. A. 99-1289-A.
Nov. 23, 1999.

**Opinion**

***ORDER***

HILTON, J.

*1 This matter comes before the Court on various motions of the parties.

The Defendant Network Solutions, Inc. moves the Court to dismiss the Amended Complaint for failure to state a claim upon which relief could be granted. Plaintiff alleges it has a contract with Network Solutions, Inc. for the registration and use of the Internet domain name VW.NET and that Network Solutions, Inc. breached the contract by threatening to suspend the registration unless the Plaintiff filed to determine the ownership of the domain name. Plaintiff alleges damages and costs as a result. However, the contract between the parties requires this very action in the event of a dispute between the domain name registrant and the owner of a federally registered trademark owner. This Defendant is a neutral party as to the dispute regarding ownership of the mark. This Defendant has taken no action to suspend the use of the domain name and represents to the Court that it will take no action other than to abide by a Court Order regarding ownership of the mark. The Plaintiff states no claim for damages.

The Volkswagen Defendants move to dismiss the tortious interference claim of the Plaintiff as it fails to state a claim upon which relief can be granted. The Plaintiff fails to state any claim for cognizable damage or injury. Plaintiff continues to use the domain name VW.NET. Also, the Defendants have the right to protect their make and the *Noerr-Pennington* Doctrine confers immunity on the trademark holder for its actions to protect the mark. Plaintiff's tortious interference claim should be dismissed.

The Volkswagen Defendants and Counterclaim Plaintiffs move for a Preliminary Injunction enjoining the use of the domain name VW.NET. The domain name has been registered and in use for approximately three (3) years. The Volkswagen Counterclaim Plaintiffs have had knowledge of its use and have taken no action. They make no showing of any irreparable harm and their motion for a Preliminary Injunction should be denied, and it is hereby

ORDERED that Defendant Network Solutions, Inc.'s Motion to Dismiss is GRANTED, that Defendant Volkswagen's Motion to Dismiss is GRANTED, and that Defendant Volkswagen's Preliminary Injunction is DENIED.

Approved, SCAO

Original - Court file
1st copy - Assignment clerk/Extra
2nd copy - Friend of the court/Extra
3rd copy - Opposing party
4th copy - Moving party

| STATE OF MICHIGAN Sixth JUDICIAL CIRCUIT JUDICIAL DISTRICT Oakland COUNTY | NOTICE OF HEARING AND MOTION | CASE NO. 2011-119441-CH Hon. James M. Alexander |
|---|---|---|

Court address: 1200 North Telegraph Road, Dept. 404, Pontiac, Michigan 48341-0404

Court telephone no.: (248) 858-0582

| Plaintiff name(s) | Defendant name(s) |
|---|---|
| PLANNED PARENTHOOD MID AND SOUTH MICHIGAN | SHRI SAI-KRISHNA GROUP, L.L.C. |
| Plaintiff's attorney, bar no., address, and telephone no. | Defendant's attorney, bar no., address, and telephone no. |
| Alan M. Greene (P31984), Krista L. Lenart (P59601)<br>39577 Woodward Avenue, Suite 300<br>Bloomfield Hills, Michigan 48304<br>(248) 203-0700 | James L. Carey P67908<br>23781 Pointe O'Woods Court<br>South Lyon, Michigan 48178<br>(248) 605-1103 |

v

## NOTICE OF HEARING

1. Motion title: Defendant's Pre-Answer Motions to Strike and for Summary Disposition

2. Moving party: Defendant

3. This matter has been placed on the motion calendar for:

| Judge | Bar no. | Date | Time |
|---|---|---|---|
| Hon. James M. Alexander | P23289 | 09/07/2011 | 8:30 am |
| Hearing location: ☑ Court address above ☐ | | | |

4. If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

## MOTION

Defendant's Pre-Answer Motions to Strike and for Summary Disposition

07/13/2011
Date

*/s/ James L. Carey*
Signature

## CERTIFICATE OF MAILING

I certify that on this date I served a copy of this notice of hearing and motion on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).

Date

Signature

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PLANNED PARENTHOOD MID AND SOUTH MICHIGAN, a Michigan non-profit corporation,

Plaintiff,

vs.

SHRI SAI-KRISHNA GROUP, L.L.C., a Michigan limited liability company,

Defendant.

Civil Action No. 2011-119441-CH

Hon. James M. Alexander

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**Proof of Service**

The undersigned certifies that on this date he served a copy of the following documents upon the attorneys of record and parties appearing *in pro per* in the above action by electronic service to each last known e-mail address through the Tyler Odyssey File & Serve (formerly known as Wiznet) application as required by the mandatory efiling pilot project to which this case is assigned, in accordance with MCR 2.107(C)(4), the Oakland County Circuit Court Administrative Order ("**AO**") 2007-3, and the AO 2010-3:

(a) Defendant's Pre-Answer Motions to Strike and for Summary Disposition;

(b) Brief in Support of Defendant's Pre-Answer Motions to Strike and for Summary Disposition;

(c) Notice of Hearing; and

(d) Proof of Service.

Date: July 13, 2011

Respectfully Submitted,

*/s/ James L. Carey*

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