

C A M P A I G N F O R

ACCOUNTABILITY

January 14, 2019

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Re: Request for Termination of Michigan's Contract with Real Alternatives

Dear Governor Whitmer, Attorney General Nessel, and Auditor General Ringler:

Campaign for Accountability (“CfA”) respectfully requests that you investigate and terminate Michigan’s contract with Real Alternatives’ (“RA”), a non-profit organization that receives state funding to run the Michigan Pregnancy and Parenting Support Program (the “MPPSP”).¹ RA appears to be misusing taxpayer money while failing to deliver the health services that it has agreed to provide to Michigan women and children.

Background

RA was formed in Pennsylvania in 1996. The organization’s only office is its Harrisburg, Pennsylvania headquarters, where it is run by Kevin Bagatta, RA’s president and CEO. Bagatta

¹ Part II, Section (V)(A) of the MPPSP Agreement allows for either party to terminate the contract, without cause, upon 30 days written notice to the other party. *See* Ex. A (MPPSP 2014 Grant Agreement, at 14, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-pl>.

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is a Pennsylvania attorney who became RA's CEO by answering a 1995 newspaper advertisement seeking a director to start a Pennsylvania-wide government-funded anti-abortion program, which became RA.²

In 1997, RA entered a contract with the State of Pennsylvania to administer the state's alternatives to abortion program, which is substantially similar to the MPPSP. RA continues to be the sole administrator of Pennsylvania's program, and receives almost \$7 million a year from Pennsylvania.³ Because of RA's experience with the Pennsylvania program, other states, including Indiana and Michigan, selected it to implement their own alternatives to abortion programs.⁴ Pennsylvania, however, has remained RA's main contract and is worth millions more than RA's other contracts combined. RA's leadership remains fully in Pennsylvania.

On June 13, 2013, Michigan passed an omnibus appropriations bill that included a \$700,000 appropriation for MPPSP for fiscal year 2014. To effectuate the legislation, the Michigan Department of Health and Human Services ("HHS")⁵ entered into a contract with RA to oversee the MPPSP, which began to run on October 1, 2013, the start of Michigan's 2014 fiscal year. The parties amended and extended the original contract seven times before allowing it to expire in September 2017. *See* Appendix 1, MPPSP Agreements and Amendments Table, outlining RA's MPPSP agreements and their corresponding amendments. RA and HHS then signed a new contract—currently in effect—for the 2018 fiscal year. In total, RA has received approximately \$2.6 million from Michigan tax payers for its administration of the MPPSP program.

RA implements the MPPSP by recruiting crisis pregnancy centers—which counsel women not to have abortions—as service providers.⁶ RA's agreements with these service providers specify that they must not provide or refer women to other clinics for abortions or even discuss contraception, and that the service providers will not be reimbursed by RA for "the provision, referral, or advocacy" of any kind of contraception.⁷

RA's management of the MPPSP has been plagued by inefficiency and self-enrichment. First, RA misallocates MPPSP funding, prioritizing payments for its executives and ineffective advertising

² ZENIT Daily Dispatch, *Finding Real Alternatives to Abortion: Interview with Official of Pro-Life Government-Funded Agency*, ETERNAL WORLD TELEVISION NETWORK (Apr. 19, 2007), available at <https://www.ewtn.com/library/PROLIFE/zaltabort.HTM>.

³ *See* Ex. B at 4-5 (Real Alternatives Financial Statements with Supplementary Information, Statement of Activities for 2014 and 2015), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p38>; Ex. C at 4-5 (Real Alternatives Financial Statements with Supplementary Information, Statement of Activities for 2015 and 2016), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p79>.

⁴ Real Alternatives, *History*, available at <https://www.realalternatives.org/history/>.

⁵ HHS was created in April 2015 via a merger of the then Department of Human Services and Department of Community Health. RA's initial contract with the state, signed in 2013, was at the time countersigned and administered by the Department of Community Health.

⁶ RA is the sole entity that oversees and directly collects state money under the MPPSP. *See* Ex. A at 2-3 (MPPSP 2014 Grant Agreement, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1>.

⁷ *Id.*, Statement of Work § 6(e).

instead of providing services to Michigan women. RA withholds 3% of the MPPSP funding intended for the service providers for RA's own private use, even though RA's administrative expenses are separately provided for in the MPPSP contract. Further, RA's executive salaries and bloated advertising expenses have depleted resources intended to fund MPPSP services for Michigan women. Second, RA has lied to Michigan governmental officials and provided false pretenses for its receipt of MPPSP funds. Third, RA has consistently failed to satisfy its agreement with HHS. Many fewer women have received MPPSP services than the agreed upon target numbers. Further, RA has failed to report to HHS the referrals for additional prenatal, pediatric, medical, and social services made by MPPSP service providers, despite the requirement under the MPPSP agreements.⁸

Real Alternative's Improper Use of MPPSP Funds

Real Alternatives' Self Enrichment

RA is the sole administrator of Pennsylvania's alternatives to abortion program. In 2016, Pennsylvania's Auditor General (the "PA Auditor") opened an investigation into RA's invoicing and reimbursement procedures, as well as the overall effectiveness of RA's operations. The PA Auditor discovered that RA was siphoning additional state funds into its own coffers, beyond those administrative fees already paid by Pennsylvania.

The audit revealed that RA had reimbursed its service providers for only 97% of the program services they provided, withholding the remaining 3% for itself as a "Program Development and Advancement Fee." RA explained that the purpose of this 3% fee was to "promote the development and expansion of Real Alternatives initiatives . . . both locally and nationally."⁹ RA had not previously disclosed the existence of this 3% fee to Pennsylvania, nor to any other state in which RA had contracts.¹⁰ RA's service providers generally believed that the fee was a requirement to do business with RA.¹¹

The Pennsylvania Auditor concluded RA's siphoning of roughly \$500,000 in taxpayer funds for the generic purpose of promoting and advancing RA's own development was improper. Rather than engage in a lengthy, tax-funded legal action, Pennsylvania changed the terms of its agreement with RA to mandate that RA reimburse its service providers for 100% of the value of the services

⁸ *Id.*, Statement of Work §§ 8(e), 8(k).

⁹ Pennsylvania Department of the Auditor General, *Auditor General DePasquale Says Audit Stopped Abuse of State Funds by Abortion Alternative Provider Real Alternatives* (Sept. 19, 2017), available at <http://www.paauditor.gov/press-releases/auditor-general-depasquale-says-audit-stopped-abuse-of-state-funds-by-abortion-alternative-provider-real-alternatives>. RA successfully sued Pennsylvania to maintain the privacy of its records regarding how the funds collected from the 3% fee were used. See, Marie McCullough, *Dispute Questions Anti-Abortion Group's Use of Taxpayer Dollars*, THE PHILADELPHIA INQUIRER (Mar. 16, 2018), available at <http://www.philly.com/philly/health/real-alternatives-audit-department-human-services-taxpayer-money-20180316.html>.

¹⁰ *Id.*

¹¹ Molly Born, *State to Begin Audit of Abortion-Alternative Group*, PITTSBURGH POST-GAZETTE (Sept. 26, 2016), available at <http://www.post-gazette.com/news/state/2016/09/26/State-to-begin-audit-of-abortion-alternative-group/stories/201609260035>.

they provided.¹² RA agreed to comply with the mandate, but then began requiring the service providers to sign additional, separate agreements, to which Pennsylvania was not a party, requiring the service providers to remit a 3% fee back to RA after receiving the 100% reimbursements.¹³ Thus, while RA is technically in compliance with Pennsylvania's new requirement, functionally RA continues to siphon Pennsylvania taxpayers' money into its own coffers.

Like Pennsylvania's program, Michigan's MPPSP also provides for administrative expenses.¹⁴ This has not prevented RA from skimming additional funds. RA's MPPSP contract does not contain any reference to a 3% Program and Development fee, either as a part of or separate from the 10 to 15% of the MPPSP funding dedicated to covering RA's administrative expenses. Nevertheless, RA's financial statements confirm that a portion of Michigan taxpayers' dollars, like Pennsylvania's, are being pocketed by RA for the organization's private use, specifically including 3% for "Program Advancement and Development."¹⁵ It is unclear whether RA is making 97% reimbursements to Michigan service providers while withholding 3% of the reimbursement amount, or reimbursing the full 100% while requiring Michigan service providers to pay RA a 3% fee via separate agreements. Regardless, RA is converting Michigan taxpayer money designated for serving women and children to its own private account for an unspecified use.

Michigan should not do business with an organization that demands a 3% payment in addition to the administrative expenses the state already covers under the MPPSP.

*Real Alternatives Increased Executive Salaries
Despite Failing to Satisfy MPPSP Agreements*

From the start, RA's primary focus has been to ensure its executives are highly compensated, rather than to implement and expand the MPPSP.¹⁶ Under the original contract, only 2.34% of the organization's budget was allocated for executive salaries.¹⁷ When amended ten months later to

¹² Kate Giammarise, *Officials: State-Funded Anti-Abortion Group Does Not Have to Return Fees*, PITTSBURGH POST-GAZETTE (Mar. 27, 2018), available at <http://www.post-gazette.com/news/state/2018/03/27/Pennsylvania-DHS-won-t-see-funds-back-from-anti-abortion-group-Real-Alternatives/stories/201803260122>.

¹³The new contract between DHS and RA "merely says the company must pay its subcontractors without any deduction," and DHS "decided not to recoup the contested taxpayer funds because that would require a protracted lawsuit using taxpayer funds." See McCullough, *supra* note 9.

¹⁴ See, e.g., Ex. A at 20 (MPPSP 2014 Grant Agreement, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1>.

¹⁵ RA refers to its 3% fee in these statements as a "Program Advancement and Development" Agreement or Fee, depending on the year the statements reference. See Ex. B at 4-5 (Real Alternatives Financial Statements with Supplementary Information, Statement of Activities for 2014 and 2015), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p38>; Ex. C at 4-5 (Real Alternatives Financial Statements with Supplementary Information, Statement of Activities for 2015 and 2016), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p79>.

¹⁶ See, e.g., Ex. D at 3-5 (Emails between RA President K. Bagatta and HHS, sent in July and August 2015), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p121>.

¹⁷ Ex. A at 20-22 (MPPSP 2014 Grant Agreement, Budget, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1>.

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extend the performance period by three months without any funding increase,¹⁸ the budget for executive salaries almost doubled to 4.43%, even as the overall budget for salaries dipped slightly.¹⁹ In sum, the amendment resulted in more Michigan taxpayer money for RA executives and less to provide services to Michigan women.

By 2018, when RA was negotiating its second contract with HHS, executive pay had ballooned to account for 7.31% of the total budget, more than triple the percent of the 2014 budget so dedicated.²⁰ RA received \$50,000 less in its 2018 MPPSP contract than its original 2014 contract. Nevertheless, RA president's MPPSP salary—which constitutes only a small fraction of the president's annual total compensation from RA, some \$280,468 in FY 2015²¹—grew from \$8,200 to \$20,500 and the vice president in charge of operations saw a similar salary increase, from \$8,200 to \$17,000.²² These salary increases do not coincide with a corresponding increase in services by RA; the targets of women served and patient visits have remained the same since 2013. Given the increased executive salaries, however, fewer resources are now dedicated to achieving these targets.

Real Alternatives' Ineffective Advertising Wastes Michigan Taxpayer Money

Throughout RA's administration of the MPPSP, RA has budgeted money for advertising. In its initial statement of work, RA budgeted \$13,000 for "Services Advertising," and noted that "[a]dvertising is imperative to inform women that there [is] this program in the state of Michigan to help them."²³ RA repeatedly sought increases to the amount of funding allocated to advertising,²⁴ yet RA never managed to achieve its target participation rates.

In 2014 RA stated "[a] stronger advertising strategy is needed" and proposed a "relatively inexpensive[]" way would be to place ads for RA's hotline in buses, since "[RA's] client takes

¹⁸ See App. 1 (MPPSP Agreements and Amendments Table).

¹⁹ Ex. E at 3-5 (Amendment 1, MPPSP 2014 Grant Agreement, Revised Budget, Sept. 10, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html> - p128.

²⁰ Ex. F at 31-35 (MPPSP 2018 Grant Agreement, Budget, Oct. 1, 2017), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html> - p135.

²¹ See RA's FY 2015 Form 990, at 7, available at https://pp-990.s3.amazonaws.com/2017_03_EO/23-2868660_990_201606.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAI7C6X5GT42DHYZIA%2F20181107%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20181107T220342Z&X-Amz-Expires=1800&X-Amz-SignedHeaders=host&X-Amz-Signature=3e68f0adf79a3f6623dfaf37637596a9ad74b9cf9137b65eb38c561deade0862.

²² Compare Ex. A at 21-22 (MPPSP 2014 Grant Agreement, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html> - p1, with Ex. F at 32 (MPPSP 2018 Grant Agreement, Oct. 1, 2017), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html> - p135.

²³ Ex. A at 28 (MPPSP 2014 Grant Agreement, Program Description and Work Plan, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html> - p1.

²⁴ Ex. G (Emails between RA Vice President of Operations T. Lang and HHS employees, sent on February 2, 2016), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html> - p172; Ex. H (Emails between RA President K. Bagatta and HHS employees, sent on June 9, 2016), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html> - p176.

public transportation.”²⁵ As Michigan officials noted, RA “may again be relying on experience from Texas and Pennsylvania that may not prove as useful in Michigan” when pinning its advertising strategy on buses given that “Michigan is such a ‘car state’” and the bus system, even around Detroit, does not have high ridership.²⁶ Furthermore, as HHS recognized, the bus advertisements that RA did suggest made no mention of the Michigan service providers involved in MPPSP.²⁷ RA’s generic bus advertisements, which could have run anywhere in the country, contained no Michigan-specific information, instead providing only RA’s national hotline and website.²⁸ Over a year after RA had begun administering the MPPSP, RA had failed to develop an advertising campaign specific to and appropriate for Michigan.

Similarly, in 2017, RA’s contract included an additional \$50,000, all of which, the organization sought to spend on advertising.²⁹ RA advocated spending the entire increase on Google ads—an advertising strategy suggested to RA by HHS in 2014—rather than use any of it to provide services to Michigan women.³⁰ HHS rejected this plan, allowing RA to devote only 20% of the additional funding, equal to \$10,000, to extra advertising.³¹ The additional Google advertising did not result in any discernable increase of women being served.

Real Alternatives Lied to Michigan Government Officials

In August 2013, RA submitted a draft work plan proposal to HHS in which it claimed to have received “3 perfect Department of Public Welfare Contract Compliance Audits” and “2 perfect Pennsylvania Comptroller Multi-Year Contract Compliance Audits” for its Pennsylvania programming.³² Yet when CfA requested copies, neither Pennsylvania’s Department of Health and Human Services³³ nor its Office of the Budget Agency could provide any such audits.³⁴ The

²⁵ Ex. I at 4 (RA’s Proposed Adjustments to MPPSP, sent to HHS on Dec. 31, 2014), *available at* <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p181.

²⁶ Ex. J at 1-2 (Internal HHS email from B. Derman to K. Broessel and P. Dobyne Dunbar discussing RA’s proposed program adjustments, sent Jan. 27, 2015), *available at* <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p186.

²⁷ *Id.*; *see also* Ex. I at 4 (RA’s Proposed Adjustment to MPPSP, sent to HHS on Dec. 31, 2014), *available at* <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p181.

²⁸ Ex. I at 4 (RA’s Proposed Adjustment to MPPSP, sent to HHS on Dec. 31, 2014), *available at* <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p181.

²⁹ *See* App. 1 (MPPSP Agreements and Amendments Table).

³⁰ Ex. H (Emails between RA President K. Bagatta and HHS employees, sent on June 9, 2016), *available at* <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p176.

³¹ *Id.*

³² Ex. K at 29 (RA presentation titled *Pennsylvania’s Pregnancy and Parenting Support Program*, sent to HHS on Aug. 30, 2013), *available at* <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p190.

³³ Pennsylvania’s Department of Public Works is now the Department of Health and Human Services. *See*, Larkin Page-Jacobs, *It’s Official: The PA Department of Public Welfare Is Now the Department of Human Services*, 90.5 WESA PITTSBURGH’S NPR NEWS STATION (Nov. 24, 2014), *available at* <http://www.wesa.fm/post/its-official-pa-department-public-welfare-now-department-human-services#stream/0>.

³⁴ *See* Ex. L (Letter from Pennsylvania Department of Health and Human Services to CfA, Apr. 9, 2018 (attaching the Audit Report of Real Alternatives, Apr. 25, 2016)), *available at* <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p211; Ex. M

Pennsylvania Department of Health and Human Services explained that it does not conduct “Contract Compliance Audits.” In fact, the department’s only completed audit related to RA was the report questioning RA’s 3% fee, issued almost three years after RA reported to Michigan about receiving three perfect Contract Compliance Audits.³⁵ Similarly, the Office of the Budget Agency informed CfA that it possessed only an unissued, draft audit of RA covering the period from July 1, 1998 to June 30, 1999, but had conducted no “multi-year contract compliance audits.”³⁶

Real Alternatives Relied on Junk Science

RA claimed in its Program Description and Work Plan (attached to the 2014 MPPSP contract), that it would improve women’s health by lowering Michigan’s abortion rate.³⁷ RA asserted that abortions cause breast cancer, ergo by lowering abortion rates in Michigan, RA would decrease the incidence of breast cancer in the state.³⁸ RA appears to have ignored the entire body of medical literature debunking a causal relationship between abortion and incidence of breast cancer.³⁹ Instead, RA mischaracterized several unrelated or inconclusive studies and cited medically inaccurate articles championed by anti-choice advocates as support for this claim. For example, RA cited “The Breast Cancer Epidemic: Modeling and Forecasts Based on Abortion and Other Risk Factors,” published in the *Journal of American Physicians and Surgeons*,⁴⁰ a small professional organization of doctors with a history of aggressively pushing politically conservative causes.⁴¹

Notably, according to the Michigan Department of Health and Human Services, the number of abortions performed in 2013 and 2017—26,120 and 26,594, respectively⁴²—were “about the

(Letter from Pennsylvania’s Office of the Budget Agency to CfA, Apr. 9, 2018), *available at* [https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/ - p239](https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p239).

³⁵ Ex. L (Letter from Pennsylvania Department of Health and Human Services to CfA, Apr. 9, 2018 (attaching the Audit Report of Real Alternatives, Apr. 25, 2016)), *available at* [https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/ - p211](https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p211).

³⁶ Ex. M (Letter from Pennsylvania’s Office of the Budget Agency to CfA, Apr. 9, 2018), *available at* [https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/ - p239](https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p239).

³⁷ Ex. A at 27 (MPPSP 2014 Grant Agreement, Program Description and Work Plan, Oct. 1, 2013), *available at* [https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/ - p1](https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1).

³⁸ *Id.* at 34 n.3.

³⁹ The American Cancer Society *See, e.g., Abortion and Breast Cancer Risk*, THE AMERICAN CANCER SOCIETY (June 19, 2014) (“Linking these topics creates a great deal of emotion and debate. But scientific research studies have not found a cause-and-effect relationship between abortion and breast cancer.”), *available at* <https://www.cancer.org/cancer/cancer-causes/medical-treatments/abortion-and-breast-cancer-risk.html>.

⁴⁰ *See* Ex. A at 34 n.3 (MPPSP 2014 Grant Agreement, Program Description and Work Plan, Oct. 1, 2013), *available at* [https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/ - p1](https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1).

⁴¹ *See* Barry Meier, *Vocal Physicians Group Renews Health Law Fight*, THE NEW YORK TIMES (Jan. 18, 2011) (“Its internal periodical has published studies arguing that abortion increases breast cancer risks, a tie rejected by an expert panel of the National Cancer Institute.”), *available at* <https://www.nytimes.com/2011/01/19/business/19physicians.html>.

⁴² Michigan Department of Health and Human Services, Table A: Number, Ratio and Rate of Reported Induced Abortions Occurring in Michigan, 1982-2017, *available at* https://www.mdch.state.mi.us/pha/osr/abortion/Tab_A.asp

same.”⁴³ At the same time, again according to Michigan health officials, among Michigan women, “breast cancer is the most common newly diagnosed cancer.”⁴⁴ In 2013, 7,676 Michigan women were diagnosed with breast cancer and the state estimated 8,160 new cases would be diagnosed in 2017.⁴⁵ Thus, RA’s efforts in Michigan have led neither to a decrease in abortion nor—as ridiculous as the suggestion was—the incidence of breast cancer.

RA Consistently Fails to Satisfy the Terms of the Agreement

Real Alternatives Does Not Properly Refer Women to Alternate Pregnancy Resources

RA fails to fulfill the plainly stated terms of the MPPSP contract, which require RA to refer its clients to pregnancy and prenatal service providers. While negotiating the MPPSP agreement, HHS urged RA to set up procedures for referring women under the federally-funded and state-managed Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) and Michigan’s self-funded Maternal Infant Health Program (“MIHP”) to ensure that women receiving MPPSP services also received other necessary and related services.⁴⁶ Emails obtained by CfA through open records requests show that RA adamantly resisted HHS’s suggested referral terms,⁴⁷ insisting, despite HHS refutations, that the entities administering WIC and MIHP also provide abortion services and contraception.⁴⁸ Eventually the parties settled on MPPSP contract language stating that RA would:

Provide referrals to other available community services to support pregnant women who are experiencing unplanned/crisis pregnancies, including referrals for prenatal and pediatric care, medical care, social services, and other supports as required and available.⁴⁹

⁴³ Michigan Department of Health and Human Services, Characteristics of Induced Abortions Reported in Michigan, available at <https://www.mdch.state.mi.us/pha/osr/abortion/summary.asp>.

⁴⁴ Michigan Department of Health and Human Services, Breast Cancer in Michigan Fact Sheet, April 2017, available at https://www.michigan.gov/documents/mdch/BreastCaFactSheet_497915_7.pdf.

⁴⁵ *Id.*

⁴⁶ Ex. N (Internal HHS email recapping contracting problems with RA, sent Mar. 11, 2014); available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p245>.

⁴⁷ Ex. O at 1 (Internal HHS emails discussing inclusion of WIC and MIHP referral requirements from Nov. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p247>; Ex. P (Internal HHS emails discussing the status of the RA contract from Dec. 17-18, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p254>.

⁴⁸ *Id.*; Ex. Q at 1 (Internal HHS email regarding RA’s refusal to work with the MIHP and WIC programs from Jan. 13, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p257>; Ex. R at 1 (Internal HHS email regarding issues that arose during RA’s pilot year, including RA’s ability to track referrals, sent Mar. 4, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p261>; Ex. N (Internal HHS email recapping contracting problems with RA, sent Mar. 11, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p245>.

⁴⁹ Ex. A at 16 (MPPSP 2014 Grant Agreement, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1>; Ex. F at 25 (MPPSP 2018 Grant Agreement, stating that RA’s service providers must “maintain and use a pro-life referral list,”

The statement of work further provided:

Each [service provider] must have the appropriate referral resources to serve clients with essential and beneficial referrals including... [r]eferrals for prenatal and pediatric care . . . [r]eferrals for medical care . . . [r]eferrals for social services organizations and support services such as WIC, or other nutrition programs; MIHP, or other home visiting programs....⁵⁰

The statement of work also required RA to report, by type, the number of service provider referrals it made to the women that it served, as RA had previously stated it could do.⁵¹

Notwithstanding the contract, HHS's intent, or RA's prior assertions that the organization was capable of tracking and reporting the types of referrals being made,⁵² it does not appear that RA tracked and/or reported any referrals made through the MPPSP program despite including a so-called "Counseling/Referral Client Summary" with each quarterly report submitted to HHS.⁵³ In violation of RA's contractual obligations, this summary fails to differentiate between the counseling sessions provided by the MPPSP service providers and the services, if any, for which their clients may have been referred, or even specify whether or not such contractually required referrals were made at all.

Real Alternatives Consistently Fails to Meet Program Goals

RA repeatedly failed to meet its own projections for implementing the MPPSP and providing services to Michigan women. RA failed to meet its targets regarding the number of women the organization would serve, the time frame within which those women would be served, the number of service providers that it would recruit, and the time period within which it would recruit them.

The 2013 MPPSP agreement expected service providers to conduct 8,000 individual visits and serve a total of 2,000 Michigan women within FY 2014.⁵⁴ Yet during FY 2014, RA only managed to oversee a mere 785 visits and serve only 403 women.⁵⁵ When RA fell far short of its promised targets, the MPPSP contract had to be amended repeatedly to allow RA a second year to assist the

Oct. 1, 2017), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p135>.

⁵⁰ Ex. A at 17 (MPPSP 2014 Grant Agreement, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1>.

⁵¹ *Id.* at 18-19; Ex. F at 29-30 (MPPSP 2018 Grant Agreement, Oct. 1, 2017), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p135>.

⁵² Ex. R at 1 (Internal HHS email regarding issues that arose during RA's pilot year, including RA's ability to track referrals, sent Mar. 4, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p261>.

⁵³ See, e.g., Ex. S at 47-48 (RA's Q1 2018 Status Report), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p264>; see also Ex. N (Internal HHS email recapping contracting problems with RA, sent Mar. 11, 2014); available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p245>.

⁵⁴ Ex. A (MPPSP 2014 Grant Agreement at 17, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1>.

⁵⁵ Ex. T at 5 (RA's Q3 2014 Status Report), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p334>.

number of women that should have been served in the initial year of the program.⁵⁶ In its third year, RA agreed to conduct 12,000 individual visits and serve 4,500 Michigan women,⁵⁷ but again failed, requiring three more amendments to the contract that doubled RA's performance period before the targets were met.⁵⁸ RA has repeatedly required HHS to lengthen its runway in order for it to meet the service requirements under the MPPSP Agreement.

At the outset of the pilot program, RA was expected to oversee at least 32,000 visits and provide services to at least 8,000 women within the first four years of the MPPSP program.⁵⁹ Instead, RA reached little over half of those number, with only 19,753 individual visits and 5,104 Michigan women—only 3,234 of whom were pregnant—receiving services.⁶⁰ The targets for the 2018 MPPSP contract remain the same as those in 2013, demonstrating that RA has been unable to expand its reach in the intervening years.

In the 2013 work plan proposal submitted to HHS, RA projected partnering with up to ten Service Provider Contractors in fiscal year 2014 and up to twenty-five by the end of fiscal year 2015.⁶¹ In reality, it appears that RA enlisted only three Service Provider Contractors in fiscal year 2014.⁶² RA attempted to downplay this shortfall in its communications with HHS by conflating the number of Service Provider Contractors and the number of service provider sites.⁶³ But RA cannot obfuscate that it had only seven Service Provider Contractors in its Michigan network as of March 31, 2018, two-and-a-half years after RA was to have made twenty-five such partnerships.⁶⁴

⁵⁶ See App. 1 (MPPSP Agreements and Amendments Table).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ These projections are calculated based upon the targets agreed upon for the pilot year of the program, when 8,000 visits and 2,000 Michigan women were to be served. These estimates may even be on the low end of what would have been expected at the MPPSP's outset because, once established, RA should have been able to expand the amount of services rendered beyond those projected for the first year of its contract.

⁶⁰ Ex. U at 5 (RA's Q3 2017 Status Report), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p375>.

⁶¹ Ex. K at 37 (RA presentation titled *Pennsylvania's Pregnancy and Parenting Support Program*, sent to HHS on Aug. 30, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p190>.

⁶² See Ex. V at 1 (MPPSP status update email sent from RA President K. Bagatta to HHS on June 24, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p477>; Ex. W at 5 (RA's Q2 2014 Status Report), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p481>; Ex. T at 5 (RA's Q3 2014 Status Report), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p334>.

⁶³ In June 2014, RA told HHS that it hoped to have 14 Service Provider sites, run by only 5 Service Provider Contractors, by the end of fiscal year 2014 and that it "[would] meet the contract goal of 10-20 Service Provider sights," without mentioning the stated targets for Service Provider Contractors that RA would. See Ex. V at 1 (MPPSP status update email sent from RA President K. Bagatta to HHS on June 24, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p477>.

⁶⁴ Ex. S at 60 (RA's Q1 2018 Status Report), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p264>.

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RA initially stated that its low participation numbers were in keeping with its roll-out in Pennsylvania,⁶⁵ but by 2015 RA had to concede that “Michigan Service providers [*sic*] were much slower to respond to the program” than service providers had been in other states.⁶⁶ Whatever the reason, RA has consistently failed to meet its targeted number of Service Provider Contractors, its targeted number of visits and women served, and its targeted budgets. As a direct result of these failures, RA has served several thousand fewer Michigan women than expected under the MPPSP contracts.

Violations of Michigan Law

Embezzlement of Public Funds

Under Michigan law, a person who is an agent of a government entity and who “takes or secretes with the intent to convert to his or her own use without the consent of his or her principal, any money. . . of his or her principal that has come to that person’s possession or that is under his or her charge or control by virtue of his or her being an agent. . . is guilty of embezzlement.”⁶⁷ Similarly, an agent of a person holding public office in Michigan, “who knowingly and unlawfully appropriates to his own use, or the use of any other person, the money or property received by him in his official capacity or employment, of the value of 50 dollars or upwards, shall be guilty of a felony, punishable by imprisonment.”⁶⁸

Via its Program and Development fee, RA appears to be embezzling for its own private use 3% of the MPPSP funds meant to compensate the service providers for the services that they are providing to Michigan women. Such “failure, neglect, or refusal . . . to pay, deliver, or refund” the Michigan taxpayer money entrusted to RA and earmarked for the service providers “is prima facie proof of intent to embezzle.”⁶⁹ RA has not disclosed the existence nor the purpose of this 3% Program and Development fee to HHS. However, RA’s statements about the same 3% fee in Pennsylvania indicate that it is meant to “promote the development and expansion of Real Alternatives initiatives . . . both locally and nationally.”⁷⁰ Thus, it appears RA’s leadership is intentionally converting and/or appropriating this Michigan funding for RA’s own use.

⁶⁵ Ex. X at 1 (Email from RA President K. Bagatta to HHS regarding expanding RA’s service area in Michigan, sent on Apr. 8, 2014), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p538>.

⁶⁶ Ex. D at 3 (Email from RA President K. Bagatta to HHS, sent Aug. 11, 2015), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p121>.

⁶⁷ Depending on the value of the embezzled money and the status of the victim as a nonprofit corporation or charitable organization, a person found guilty of embezzlement can be fined up to three times the value of the embezzled money and/or imprisoned. MCL § 750.174.

⁶⁸ MCL § 750.175.

⁶⁹ See *People v. Miller*, 2011 Mich. App. LEXIS 1740, at *4 (Mich. Ct. App. Oct. 4, 2011) (omission in original) (citing MCL § 750.174(10)).

⁷⁰ Pennsylvania Department of the Auditor General, *Auditor General DePasquale Says Audit Stopped Abuse of State Funds by Abortion Alternative Provider Real Alternatives* (Sept. 19, 2017), available at <http://www.paauditor.gov/press-releases/auditor-general-depasquale-says-audit-stopped-abuse-of-state-funds-by-abortion-alternative-provider-real-alternatives>.

Misappropriation of Public Funds

Michigan law permits Michigan residents and tax payers to “institute suits or actions at law or in equity on behalf of or for the benefit of the treasurer of such political subdivision, for an accounting and/or the recovery of funds or moneys misappropriated or unlawfully expended by any public officer, board or commission of such political subdivision” after first instituting a demand on the public officer, board or commission whose duty it is to maintain such a unit.⁷¹

RA’s continuous attempts to use funding—which is earmarked for pregnancy counseling services for Michigan women and children—for executive compensation and the undisclosed 3% Program and Development fee appear to constitute misappropriations of MPPSP funding provided by tax payers. Michigan taxpayers, therefore, could institute an action for an accounting or recovery of these misappropriated funds.

It need not fall to Michigan taxpayers to hold state contractors responsible. Your offices all have the jurisdiction and authority to prevent this misappropriation and recover misspent funds. The MPPSP clearly states the “agreement may be terminated by either party by giving thirty (30) days written notice to the other party stating the reasons for termination and the effective date.”⁷² Former Governor Snyder previously proposed reducing RA’s funding.⁷³ Governor Whitmer should exercise her executive authority and direct HHS to terminate the MPPSP agreement.⁷⁴ In addition, Attorney General Nessel should investigate whether RA has misused public funds in violation of Michigan law,⁷⁵ and Auditor General Ringler should conduct thorough financial and performance audits of RA to account for RA’s use of its public funds.

⁷¹ MCL § 129.61.

⁷² Ex. A at 14 (MPPSP 2014 Grant Agreement, Oct. 1, 2013), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p1>.

⁷³ See *Department of Health and Human Services FY 2017-18 Decision Document* at 175, HOUSE FISCAL AGENCY (Apr. 21, 2017), available at https://www.house.mi.gov/hfa/Archives/PDF/DHHS_DecDoc_Boilerplate_Part2_Hse_Subcmte_fy17-18.pdf; *Department of Health and Human Services FY 2018-19 Final Decision Document* at 104, HOUSE FISCAL AGENCY (July 18, 2018), available at https://www.house.mi.gov/hfa/PDF/Summaries/DHHS_Final_DecDoc_Part1_Appropriations_fy2018-19.pdf.

⁷⁴ In February 2018 former Governor Snyder announced that his administration was not extending its contract with Trinity Food Services, the private company handling food service in Michigan’s correctional facilities, after determining that his administration’s experiment with privatization of this service had not been “successful.” See *Snyder Plans to End Private Prison Food Service*, CBS DETROIT (Feb. 7, 2018), available at <https://detroit.cbslocal.com/2018/02/07/snyder-plans-to-end-private-prison-food-service/>. Michigan’s contract with RA has been similarly unsuccessful, and Governor Whitmer should ensure that RA’s contract is also terminated.

⁷⁵ Former Attorney General Schuette’s investigation into the Flint water crisis resulted in his office bringing several lawsuits. See Kayla Ruble, *Michigan Attorney General Sues Companies Linked to Flint Water Crisis*, VICE NEWS (June 22, 2016), available at https://news.vice.com/en_us/article/pa4wng/michigan-attorney-general-sues-three-companies-linked-to-flint-water-crisis. Attorney General Nessel should similarly investigate RA and bring whatever lawsuits are appropriate.

False Pretenses with the Intent to Defraud

Under Michigan law, it is a crime to “with the intent to defraud or cheat make[] or use[] false pretense[s]” in order to “obtain from a person any money or personal property or the use of any instrument, facility, article, or other valuable thing or service.”⁷⁶ Larceny by false pretenses is established when (1) the defendant used a pretense or made a false statement relating to either past or then existing facts and circumstances, (2) knowing it was false, (3) with the intent to defraud someone, (4) which was relied upon by the accuser, (5) causing the accuser to lose money or other valuable thing, (6) that had a market value of over \$100 at the time of the crime.⁷⁷ Furthermore, Michigan courts have found that a defendant’s intent to defraud can be inferred from the facts and circumstances presented, and that “minimal circumstantial evidence is sufficient.”⁷⁸

RA’s false statement that it received five “perfect” audits from Pennsylvania state agencies, appears to constitute such false pretenses. RA knew that no Pennsylvania agency had conducted even a single audit of the organization at the time RA made the claim it had been audited five times. RA made the claim specifically to buttress its credibility with HHS. It seems likely HHS relied on RA’s misrepresentations when awarding grants of well over \$100 to RA. Finally, by failing to deliver services to the number of women required by the terms of the agreement with HHS, the state of Michigan lost taxpayer funds.

Breach of Contract

The MPPSP agreement entered into by HHS and RA is a “bargained for exchange of obligations entered into by choice by parties who have mutually agreed to all essential terms” that governs their relationship, making it a contract under Michigan law.⁷⁹ RA has breached this contract by failing to fulfill its obligations. According to Michigan law, a contract is breached when the terms of the contract require a certain action, that action is not performed as obligated, and that failure of performance causes injury.⁸⁰

The MPPSP contract requires that Michigan women receiving services from MPPSP service providers be properly referred to other appropriate service providers in Michigan, but there is no record indicating RA made such referrals. RA’s contract also included a workplan identifying

⁷⁶ MCL § 750.218(1)(c).

⁷⁷ See *People v. Hardrick*, 2017 Mich. App. LEXIS 2087, at *6-8 (Mich. Ct. App. Dec. 19, 2017) (holding that defendant made false statements which he plausibly knew to be false) (citing *People v. Lueth*, 253 Mich. App. 670, 680-81, 660 N.W.2d 322, 331 (Mich. Ct. App. 2002)).

⁷⁸ *People v. Schmidt*, 2012 Mich. App. LEXIS 1545, at *3-4 (Mich. Ct. App. Aug. 7, 2018) (finding that evidence of defendant’s behavior prior to a house’s sale was sufficient to support jury’s determination that defendant had intent to defraud at the time of closing).

⁷⁹ See, e.g., *Button Realty v. Charter Commerce & Country Hills Dev.*, 2011 Mich. App. LEXIS 1637, *17-18 (Sep. 22, 2011); *Ford Motor Co. v. Bruce Twp.*, 264 Mich. App. 1, 12; 689 N.W. 2d. 764 (2004), *rev’d on other grounds*, 475 Mich. 425 (2006).

⁸⁰ See, e.g., *Farha v. Cogent Healthcare of Mich.*, 164 F. Supp. 3d 974, 986 (E.D. Mich. 2016); *I.B. Mini-Mart II v. JSC Corp.*, No. 09-030208-CZ, 2011 Mich. App. LEXIS 681, *6-7 (Mich. Ct. App. Apr. 14, 2011); *Synthesis Spine Co, LP v. Calvert*, 270 F. Supp. 2d 939, 942-43 (E.D. Mich. 2003); *In re Brown*, 342 F.3d 620, 628 (6th Cir. 2003) (construing Michigan law).

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program performance goals. Falling far short of these goals, RA has required HHS to approve several amendments to the MPPSP contract providing RA with an ever-extending timeframe in which to satisfy the terms of the contract.⁸¹ RA's failures to satisfy the agreed upon terms have resulted in fewer Michigan women receiving diminished MPPSP services than originally bargained for, which is a clear injury to Michigan citizens.

Conclusion

The facts reveal that over the course of nearly five years of administering the MPPSP, and despite receiving \$2.6 million in Michigan taxpayer funds, RA has delivered few services to Michigan residents. RA initially promised to serve 2,000 women within a single year of the contract, but in practice only 3,771 pregnant women have received services over the first four and a half years that the MPPSP contracts have been in place.⁸² Michigan should immediately terminate RA's contract and direct the money designated for RA to be rerouted to an organization with a demonstrated ability to serve the women and children of Michigan.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alice C.C. Huling".

Alice C.C. Huling
Counsel

⁸¹ See App. 1 (MPPSP Agreements and Amendments Table).

⁸² Ex. S at 60 (RA's Q1 2018 Status Report), available at <https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/-p264>.

Appendix 1

Table 1: MPPSP Agreements and Amendments

Agreement/ Amendment	Performance Period	Amount of State Funding Provided	Number of Clients to be Served	Number of Visits to be Conducted
2014 Grant Agreement¹	FY 2014	\$700,000	2,000 clients	8,000 visits
Amendment 1²	Extended agreement to Jan. 1, 2015	No additional funding	No additional clients to be served	No additional visits to be conducted
Amendment 2³	Extended agreement through FY 2015	No additional funding	No additional clients to be served	No additional visits to be conducted
Amendment 3⁴	Through FY 2015	No additional funding	No additional clients to be served	No additional visits to be conducted
Amendment 4⁵	Extended agreement through FY 2016	\$1,500,000 (Provided an additional \$800,000 in funding)	4,500 clients (Required an additional 2,500 clients be served)	12,000 visits (Provided an additional 4,000)
Amendment 5⁶	Through FY 2016	No additional funding	No additional clients to be served	No additional visits to be conducted
Amendment 6⁷	Extended agreement to Dec. 31, 2016	\$1,550,000 (Provided an additional \$50,000 in funding)	No additional clients to be served	No additional visits to be conducted
Amendment 7⁸	Extended agreement through FY 2017	\$1,950,000 (Provided for an additional \$400,000 in funding)	No additional clients to be served	No additional visits to be conducted
2018 Grant Agreement⁹	New agreement for FY 2018	\$650,000	2,000 clients	8,000 visits

¹ See Ex. A (MPPSP 2014 Grant Agreement, at 14, Oct. 1, 2013), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p1.

² See Ex. E (Amendment 1, MPPSP 2014 Grant Agreement, Sept. 10, 2014), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p128.

³ See Ex. Y (Amendment 2, MPPSP 2014 Grant Agreement, Feb. 24, 2015), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p542.

⁴ See Ex. Z (Amendment 3, MPPSP 2014 Grant Agreement, Apr. 28, 2015), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p546.

⁵ See Ex. AA (Amendment 4, MPPSP 2014 Grant Agreement, Sept. 8, 2015), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p552.

⁶ See Ex. BB (Amendment 5, MPPSP 2014 Grant Agreement, Mar. 15, 2016), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p574.

⁷ See Ex. CC (Amendment 6, MPPSP 2014 Grant Agreement, June 29, 2016), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p596.

⁸ See Ex. DD (Amendment 7, MPPSP 2014 Grant Agreement, Dec. 28, 2016), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p607.

⁹ See Ex. F (MPPSP 2018 Grant Agreement, Oct. 1, 2017), available at

<https://www.documentcloud.org/documents/5674632-RA-Mich-Letter-Exhibits-Merged.html/> - p135.