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January 10, 2024

HAND DELIVERY

Clerk of the Court
30th Judicial Circuit Court Ingham County
Veteran Memorial Courthouse
313 W. Kalamazoo Street
Lansing, MI 48933

RECEIVED
JAN 10 2024
DIV. 30TH CIRCUIT COURT

Re: Michigan Republican Party, et al v Michigan Republican Party Trust, et al
Case No.: 23-0845-CZ

Dear Clerk of the Court:

Please find attached (3) three copies of *Defendant Comerica Bank's Motion for Summary Disposition Under MCR 2.116 (C)(8) and (C)(10) in Lieu of Filing an Answer to Plaintiff's Complaint*. Please file the original in the usual manner, and return the (2) two copies – time stamped to the courier to be returned to my office. My office is also enclosing a check for the court's filing fee.

Should you have any questions, please reach out to my assistant, Christine Johnston ((248) 267-3288).

Sincerely,
Miller, Canfield, Paddock and Stone, P.L.C.

By: 
Scott R. Eldridge

SRE/cmj

Enclosure

cc: Judge Wanda Stokes, Ingham County Circuit Court
Daniel J. Hartman, Esq.
Jonathan Lauderbach, Esq.

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

MICHIGAN REPUBLICAN PARTY,
By Kristina Karamo in her official
capacity as Chairwoman of the
Michigan Republican State Central Committee,

Case No. 23-0845-CZ
Hon. Wanda Stokes

Plaintiff,

v.

MICHIGAN REPUBLICAN PARTY TRUST, &
COMERICA BANK, a Michigan Banking Corporation,

Defendants.

RECEIVED

JAN 10 2024

30TH CIRCUIT COURT

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NOTICE OF HEARING

TO: ALL PARTIES OF RECORD

PLEASE TAKE NOTICE that *Defendant Comerica Bank's Motion for Summary
Disposition Under MCR 2.116(C)(8) and (C)(10) in Lieu of Filing an Answer to in Lieu of Filing*

an Answer to Plaintiff's Complaint will be heard before the Hon. Wanda Stokes in her courtroom on Thursday, February 22, 2024 at 9:30 a.m. or as soon as counsel may be heard.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

/s/Scott R. Eldridge _____

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Dated: January 10, 2024

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**DEFENDANT COMERICA BANK'S MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(8) AND (C)(10) IN LIEU OF FILING AN ANSWER TO
PLAINTIFF'S COMPLAINT**

*****ORAL ARGUMENT REQUESTED*****

Defendant Comerica Bank ("Comerica"), through its counsel, Miller, Canfield, Paddock
and Stone, PLC, hereby moves for summary disposition under MCR 2.116(C)(8), or in the

alternative (C)(10), of Plaintiff Michigan Republican Party's Complaint for Declaratory and Injunctive Relief for the reasons stated in the accompanying brief.

WHEREFORE, Comerica respectfully requests that the Court grant summary disposition under MCR 2.116(C)(8), or in the alternative (C)(10), in favor of Comerica, dismiss it from the case, and award any other relief that the Court deems appropriate under the circumstances.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

/s/Scott R. Eldridge _____

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Dated: January 10, 2024

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

MICHIGAN REPUBLICAN PARTY,
By Kristina Karamo in her official
capacity as Chairwoman of the
Michigan Republican State Central Committee,

Case No. 23-0845-CZ
Hon. Wanda Stokes

Plaintiff,

v.

MICHIGAN REPUBLICAN PARTY TRUST, &
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Defendants.

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**BRIEF IN SUPPORT OF DEFENDANT COMERICA BANK'S MOTION FOR
SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AND (C)(10) IN LIEU OF FILING
AN ANSWER TO PLAINTIFF'S COMPLAINT**

¹ Comerica Bank is a Texas Banking Association.

I. INTRODUCTION

Comerica Bank (“Comerica”) is neither a necessary nor a proper party to this litigation, and it is clear on the pleadings (and attachments) that Comerica is entitled to immediate judgment as a matter of law. Plaintiff Michigan Republican Party’s (the “MRP”) longwinded and perplexing complaint boils down to a request for a declaration that the MRP, instead of Defendant Michigan Republican Party Trust (the “Trust”), owns Seymour Street, LLC, which holds title to real property located at 518 and 520 Seymour Avenue, Lansing, Michigan (collectively, the “Seymour Street Properties”). Comerica’s presence as a party in this lawsuit is unnecessary because the complaint is devoid of any factual allegation that Comerica has authority over or interest in the outcome of the real property dispute (it does not), maintains a position on which of the two entities owns the property (it does not), or that any other circumstance exists by which there is an actual case or controversy between the MRP and Comerica regarding the Seymour Street Properties. The relief that the MRP requests concerning the real property does not require the presence of Comerica as a defendant.

Independently, it is undisputed that Comerica loaned the MRP an amount of money which is documented by various loan documents attached to the complaint, most notably the September 22, 2022 Master Revolving Note (the “Note”). It is also undisputed that, as of the date of this Motion, the MRP failed to make monthly interest payments on the Note due in October, November, and December 2023, causing it to now be in default on the Note for more than 120 days.² The Complaint fails to sufficiently explain how the MRP’s distinct obligations on its Note with

² Indeed, as reflected in Exhibit A, Comerica has made demand upon the MRP for payment in full of the Note.

Comerica impact the ownership dispute over the Seymour Street Properties at the center of this case.

Nevertheless, the MRP has not adequately articulated a cause of action against Comerica about its obligation under the Note. Instead, the MRP asserts contradictory, befuddling, and factually unsupported allegations about the Note and other loan documents; for example, that one of the documents is either not valid, was revoked, was never revoked, simply does not exist, or that the signatory lacked authority to sign it. The allegations are so poorly and inconsistently pled that it is almost impossible to interpret what the MRP claims regarding its obligation under the Note.

To the extent the MRP alleges that the Note and other loan documents are invalid, the parties would need to be restored to the position they were in before the execution of the Note – which would require the MRP to return to Comerica the money that it loaned under the Note. Indeed, glaringly absent from the Complaint is any allegation that the MRP did not receive the money from Comerica identified in the Note. Of course, it is undisputed that the MRP received the loan. Moreover, to the extent that the MRP alleges that the Note does not contain authorized signatures, the MRP is ignoring its own Resolutions and Incumbency Certification of Unincorporated Association Authority to Procure Loans, also dated September 22, 2022, and attached as Exhibit B (the “Authority Resolution”). The Authority Resolution – which is part of the Note package the MRP returned to Comerica – provides that either the Chair or the Chief of Staff of the MRP had authority to sign the Note. Notably, the Chief of Staff, Paul J. Cordes, signed

the Note. The MRP nowhere alleges, and could not allege, that Mr. Cordes was not the Chief of Staff as of September 22, 2022.³

In short, the MRP does not sufficiently allege that Comerica is a proper or necessary party in this dispute between other entities over real property and trademark rights, nor has it adequately articulated a cause of action against Comerica about its obligation under the Note. For all these reasons, and those stated in more detail below, the Court should grant summary disposition in Comerica's favor under MCR 2.116(C)(8) and dismiss it from the action. Alternatively, in the event this Court considers evidence outside of the pleadings, summary disposition is appropriate under MCR 2.116(C)(10) as well, as there is no material fact dispute and discovery does not stand a fair chance of uncovering factual support for a triable claim.

II. FACTS AS ALLEGED IN PLAINTIFF'S COMPLAINT

A. Allegations Unrelated to Comerica

The bulk of Plaintiff's Complaint asserts claims solely against the Trust that have nothing to do with Comerica. Specifically, the MRP alleges that it owns the Seymour Street Properties instead of the Trust and that the Trust infringed the MRP's trademark rights when it filed a DBA under the name of "Michigan Republican Party." Noticeably lacking are sufficient factual allegations that Comerica has any involvement or interest in the outcome of these two disputes, and it does not.

³ On Saturday, January 6, 2024, the Michigan Republic Party Committee is reported to have voted Chair Kristina Karamo and General Counsel Daniel Hartman out of their respective positions within Michigan Republic Party leadership. Thus, it is unclear whether the continuation of this lawsuit is authorized by the Michigan Republican Party.

1. The MRP Alleges That It Owns the Seymour Street Properties

The crux of this case is about a dispute over which entity owns the Seymour Street Properties in Lansing, a building that was allegedly intended to be used as the MRP headquarters and which is titled the “MIGOP” building (Complaint ¶14(a)). The MRP claims that it owns the Seymour Street Properties (Complaint ¶¶4(j), (a)-(b)). However, it notes the existence of a document titled 2011 Affidavit of Interest in Real Property states that the sole member of Seymour Street, LLC, which holds title to the real property at 518 and 520 Seymour Avenue, is the Trust, not the MRP (*Id.* ¶18). Ultimately, the MRP seeks a declaration from the Court that “all rights of Seymour Street, LLC belong to the Michigan Republican Party ...” (*Id.*, ¶F of request for declaratory relief at p 31).

2. The MRP Alleges that Its Trademark Rights Have Been Infringed

The MRP further claims that it owns the exclusive rights to the trademark “Michigan Republicans.” (*Id.* ¶68). It alleges that in September 2013, an attorney filed a “doing business as” (DBA) in the name of the “Michigan Republican Party” on behalf of Seymour Street, LLC, that another attorney renewed the DBA on December 31, 2018, and that it is set to expire on December 31, 2023 (*Id.* ¶¶73-74). The MRP also contends that the creation of the DBA infringes its exclusive rights to use the trade name “Michigan Republican Party,” purportedly creating ambiguity as to whether the MRP or the Trust is entitled to use the name, which entity is responsible for payment on the Note, and which entity owns the Seymour Street Properties. (*Id.* ¶¶76-77, 80(a), 81). On this issue, the MRP asks the Court to “declare the rights of the trademark to use the name ‘Michigan Republican’ in any entity without an express license from the Plaintiff.” (*Id.* ¶H of request for declaratory relief at p 31). The Complaint is otherwise devoid of any allegations that Comerica has anything to say about which entity owns the intellectual property of the MRP.

B. Allegations Related to Comerica

Plaintiff asserts superfluous, conflicting, and factually inadequate allegations regarding its obligation on the Note and other loan documents with Comerica.

1. The MRP Defaults on its Note with Comerica

Comerica and the MRP entered into a financing arrangement documented by the Note, a Letter Agreement dated April 27, 2015 (the “Letter Agreement”), a Negative Pledge Letter Agreement dated September 28, 2006 (the “Negative Pledge”), and other documents, instruments, and agreements executed between the two entities (collectively, the “Loan Documents”) (Complaint ¶¶48, 67, 50, Exhibits 8, 10-11). As of November 17, 2023, the MRP failed to make monthly interest payments on the Note due in October and November 2023. The MRP’s failure to make timely interest payments constituted an Event of Default. Consequently, on November 22, 2023, Comerica sent a Default Letter dated November 22, 2023 (the “Default Letter”) to the MRP’s general counsel (Complaint ¶49, Exhibit 9). The MRP failed to respond to the Default Letter and then failed to make its December payment on the Note. The failure to make its December payment constituted an additional Event of Default. As a result, Comerica sent a Demand Letter dated December 12, 2023 (the “Demand Letter”), requesting immediate payment of all liabilities in full and invoking the default rate of interest. (Ex A, Demand Letter). The MRP has not responded to the Demand Letter and, as of the date of this Motion, has been in default for over 120 days.

The MRP, in a bit of sophistry, attaches the Note and asserts that nothing therein indicates that the MRP authorized the indebtedness. (Complaint ¶¶48(g), Ex 8). However, the MRP ignores its own Authority Resolution, attached as Exhibit B, which states on its first page that “any ... one

(1) of the following ... Chairman or Chief of Staff of the Association [“Michigan Republican Party, a Michigan unincorporated association”] (the ‘Authorized Signer(s)’ are/is authorized, for, on behalf of, and in the name of the Association to ... negotiate and procure loans ... from Comerica Bank ... execute and deliver ... any and all notes, evidences of indebtedness ... and other agreements” and so on. (Ex B, Authority Resolution); see MCR 2.113(C)(1) (“If a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading...”). Both Ronald Weiser, then the undisputed Chairman of the MRP, and Paul Cordes, then the undisputed MRP Chief of Staff, signed the Authority Resolution. (*Id.* at 2). Willfully ignoring this authorization and the fact that Mr. Cordes, in his capacity as the MRP Chief of Staff signed the Note, the MRP complaint summarily concludes that, based purely “on information and belief,” the Note is not a valid obligation of the MRP. (Complaint ¶48(m)).⁴

The MRP further claims, grounded only “on information and belief,” that the Note violates the Letter Agreement or, in the alternative, that the Letter Agreement was waived. (*Id.* ¶¶67(a)(ii), (b)(iii), (c)(i)-(ii)). The MRP also alleges that the Letter Agreement was “never validly executed

⁴ Importantly, Section 8.6 of the Note provides: “8.6 *Entire Agreement; Amendments.* This Note and **the other Loan Documents constitute the entire contract among the parties** relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. The terms and conditions of this Note may not be amended, waived or modified except in a writing signed by an officer of Bank expressly stating that the writing constitutes an amendment, waiver or modification of the terms of this Note.” (emphasis added) (Plaintiff’s Exhibit 8). On page 9, the Note defines “Loan Documents” as follows: “**Loan Documents**” means collectively, this Note **and all other documents, instruments and agreements evidencing, governing, securing, guaranteeing or otherwise relating to or executed pursuant to or in connection with this Note or the Indebtedness evidenced hereby (whether executed and delivered prior to, concurrently with or subsequent to this Note)**, as such documents, instruments or agreements may have been or may hereafter be amended from time to time.” (emphasis added) (*Id.* at p 9). The Authority Resolution – which is part of the Note package signed and dated on September 22, 2022 and returned to Comerica – is such a Loan Document and, thus, a pertinent part of the contract. Finally, Section 1(f) of the Authority Resolution empowers the execution of one or more notes. (Exhibit B, Section 1(f), p 1).

with authority” of the MRP. (*Id.* ¶67(f)). Ultimately, the MRP asserts, again only “on information and belief,” that the Letter Agreement has “been waived, merged, or revoked.” (*Id.* ¶67(g)).

Finally, the MRP alleges, “on information and belief” only, that the Negative Pledge is either not valid, was revoked, was never revoked, simply did not exist, or the signatory lacked authority to sign it (*Id.* ¶¶54-57, 66).⁵

The Complaint does not allege – nor could it – that the MRP did not take out the loan evidenced by the Loan Documents or that it did not accept or receive the loan. It, of course, did. Yet, in its prayer for relief, the MRP asks the Court to declare that the MRP “has no obligation under the Note (Exhibit 8), the Negative Pledge (Exhibit 10), or Letter Agreement (Exhibit 11) or in the alternative define each rights and responsibilities of the Plaintiff and Defendants as to each.” (Complaint ¶G of request for declaratory relief at p 31). Nowhere does the MRP state that it has returned Comerica to the status quo ante (easily done if the MRP simply were to pay the loan), or even that it will do so. The MRP additionally requests that the Court enjoin any further attempts to collect on the Note. (*Id.* ¶B of request for injunctive relief at p 33). The MRP does not, however, allege in any articulable manner, supported by plausible factual allegations, why or how it is not obligated to repay the loan.

2. The MRP’s Remaining Scattershot Allegations

The rest of the MRP’s allegations against Comerica are scattershot and appear to be unconnected to its requests for declaratory and injunctive relief. (Complaint ¶¶84-90). For example, the MRP asserts that, in February 2023, Comerica notified the MRP that it defaulted on

⁵ In total, the MRP’s Complaint comprises 32 allegations that are based solely “on information and belief.” (*Id.* ¶¶4(k), 5(c)-(d), 8, 13, 16(b)-(c), 21, 27-28, 36-37, 42(a), 43(d), 47(c)-(d), 48(j), 54-57, 64, 66, 67(a)(ii), (b)(i)-(ii), (c)(i)-(ii), (e), (g), 82, 91).

the Note in December 2022. (*Id.* ¶85). The MRP also alleges that Comerica took an “unreasonable amount of time” to provide it with access to the account records related to the Note and that it still has not provided the MRP with “many” allegedly required – albeit unidentified – documents. (*Id.* ¶86-87). The MRP further claims that Comerica “moved credit card debts that were incurred by the prior administration to the line of credit in 2023” and that it took money from MRP-owned bank accounts to pay the amount that was due on the Note (*Id.* ¶¶88-89). Finally, the MRP alleges that Comerica failed to provide it with documentation showing that the money it supposedly took was used to MRP’s benefit or that the MRP authorized any advances or draws against the Note (*Id.* ¶90).

As set forth below, none of the MRP’s allegations state a viable legal claim for declaratory relief against Comerica. Therefore, Comerica is entitled to summary disposition.

III. ARGUMENT

A. Standard of Review

A motion under MCR 2.116(C)(8) challenges the legal sufficiency of a complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). When considering a motion under this section, a court accepts all well-pleaded factual allegations as true. *Id.* (citing *Wade v Dept of Corr*, 439 Mich 158, 162; 483 NW2d 26 (1992)). “The motion must be granted if no factual development could justify the plaintiff’s claim for relief.” *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013) (citation omitted). When deciding a motion brought under this section of the court rule, the court considers only the pleadings. See MCR 2.116(G)(5). However, the Court may consider documents referenced in a complaint in considering a summary disposition motion brought under MCR 2.116(C)(8). See *Dalley v Dykema Gossett*, 287 Mich App 296, 301 n 1; 788 NW2d 679 (2010).

In the alternative, “[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual basis for a claim. A party defending against a motion brought under MCR 2.116(C)(10) may not rest upon its pleadings alone but must support allegations with factual documentation.” *Janice v Hondzinski*, 176 Mich App 49, 52; 439 NW2d 276 (1989). A motion under MCR 2.116(C)(10) can be granted before discovery if discovery does not stand “a fair chance of uncovering factual support for the opposing party’s position.” *Marilyn Froling Revocable Living Tr v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009).

B. Comerica Is Not a Proper Defendant to This Suit

“In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” Mich. Ct. R. 2.605(A)(1). Where no case of actual controversy exists, not only has Plaintiff failed to state a plausible claim for declaratory relief, but the circuit court lacks subject matter jurisdiction to enter a declaratory judgment. *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978); see also MCR 2.116(C)(4). To allege an actual controversy, “it is essential that a plaintiff, at a minimum, pleads facts entitling [it] to the judgment [it] seeks and proves each fact alleged, i.e., a plaintiff must allege and prove an actual justiciable controversy.” *Shavers*, 402 Mich at 589.

Comerica should be dismissed from this lawsuit because the MRP has not sufficiently alleged an actual justiciable controversy with it. The main disputes outlined in Plaintiff’s Complaint upon which it seeks declaratory relief—about which entity owns the Seymour Street Properties and whether the MRP’s trademark rights have been infringed—are controversies that exist exclusively between the MRP and the Trust; they have nothing to do with Comerica. The absence of factual allegations in the complaint to the contrary confirms this fact. Specifically, the

MRP fails to present any factual allegation that Comerica has ever attempted to assert a position about the control or ownership of the Seymour Street Properties. The Complaint is further silent as to whether Comerica has any interest in the outcome of the dispute or whether it has even announced a position on which of the two entities it believes owns the property. The MRP also fails to sufficiently explain how its distinct obligations on the Note, discussed below, are in any way associated with the ownership dispute over the Seymour Street Properties.

In the same vein, the MRP wholly fails to allege that Comerica had any involvement in or knowledge of the creation of the DBAs or any other conceivable connection to the alleged infringement of the MRP's trademark rights. Accordingly, the MRP has failed to properly articulate any circumstances by which the MRP and Comerica have an actual case or controversy regarding the Seymour Street Properties or the trademark dispute. *Shavers*, 402 Mich at 588-89; MCR 2.605(A)(1). Indeed, the MRP effectively concedes as much in its request for declaratory relief by identifying the Trust's alleged wrongdoing but omitting any specific mention of Comerica:

Under the facts stated herein, there is an actual controversy between the Plaintiffs and Defendants concerning the rights of the Michigan Republican Party acting under the authority of the Michigan Republican State Central Committee and the authority usurped and claimed by the Michigan Republican Party Trust by its trustees claiming right to own the subject property of the Michigan Republican Party including the subject property, Seymour Street, LLC and the registered names and trademarks.

(Complaint ¶93).

Comerica is caught in the crossfire of a dispute between other entities, and it is improperly named here. The Court could still grant the MRP's request, if warranted, for a declaration that "all rights of Seymour Street, LLC belong to the Michigan Republican Party," without the presence of Comerica as a defendant. (Complaint ¶F of request for declaratory relief at p 31). In short, the

MRP has failed to plead any facts, let alone plausible facts, to properly state claims against Comerica upon which relief may be granted as a matter of law. Therefore, Comerica should be dismissed from this lawsuit pursuant to MCR 2.116(C)(8). Alternatively, if the court were to consider materials outside of the pleadings (including records incorporated therein or presented by any other party), Comerica is also entitled to summary disposition under MCR 2.116(C)(10) because no amount of factual development will change the undisputed fact that Comerica is not involved in the disputes about ownership of the Seymour Street Properties or whether the MRP's trademark rights were infringed.

C. The MRP Fails to Adequately Plead a Cause of Action Regarding Its Obligation on the Note

Even if Comerica were a proper party in this dispute, the MRP fails to sufficiently state a cause of action against Comerica related to its obligation on the Note.

MCR 2.111(B)(1) requires a complaint to include a “statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]” As the Court of Appeals has explained, “[t]he primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position.” *Michigan Head & Spine Inst, PC v Michigan Assigned Claims Plan*, 331 Mich App 262, 275; 951 NW2d 731 (2019) quoting *Dalley v Dykema Gossett*, 287 Mich App 296, 304; 788 NW2d 679 (2010).

The MRP's allegations regarding its obligation under the Note are so factually deficient and contradictory that they do not reasonably inform Comerica or the Court of the nature of the MRP's claim or apprise it of the essential facts necessary to prepare a defense. MCR 2.111(B)(1). The MRP asserts so many alternate theories based solely on “information and belief” that it is

difficult, if not impossible, for Comerica to decipher what actual controversy the MRP alleges regarding the Note, such that trying to understand MRP's claim is like trying to nail Jell-O to a tree. The Complaint does not appear to contain allegations about the Note that would form a cause of action of any kind against Comerica.

But, as best as Comerica can translate from Plaintiff's severely flawed pleading, the MRP seemingly alleges that it is not obligated to pay on the Note because the Note and other loan documents are either unauthorized or nonexistent. Preliminarily, to the extent the MRP asserts that the Note is unauthorized, the Complaint is bereft of any allegation that the MRP did not receive the money from Comerica on the Note.

Further, to the extent the MRP claims that the Note is invalid or unenforceable for whatever reason, the proper equitable remedy that it should have sought is rescission of the Note, i.e., the equitable undoing of the Note to return the parties to the position in which they would have been if they had never formed the agreement. See *Johnson v QFD, Inc*, 292 Mich App 359, 374 n5; 807 NW2d 719 (2011) (citing *McMullen v Joldersma*, 174 Mich App 207, 218; 435 NW2d 428 (1988)). However, the MRP has not alleged any specific equitable grounds on which it could obtain rescission, including misrepresentation, duress, undue influence, mutual mistake, and so on. See *United States Fid & Guar Co v Black*, 412 Mich 99; 313 NW2d 77 (1981) (listing various bases justifying rescission). Comerica suspects that the MRP does not seek rescission of the Note because that would require the MRP to restore Comerica to the same position that it occupied before the Note was created, i.e., to return to Comerica the money that it loaned to the MRP. *Hisaw v Hayes*, 133 Mich App 639; 350 NW2d 302 (1984); *Cooper v Klopfenstein*, 29 Mich App 569; 185 NW2d 604 (1971).

The MRP's pleading infirmities continue with its failure to attach its own resolution, reflected by the Authority Resolution attached as Exhibit B. By ignoring its very own resolutions, the MRP incorrectly alleges that nothing in the Note signifies that the MRP authorized the indebtedness. (Complaint ¶¶48(g), Ex 8). However, the two-page Authority Resolution executed at the same time as the Note confirms the opposite. Indeed, these two pages explicitly authorize the Chairman or the Chief of Staff of the MRP to execute notes or other evidence of indebtedness on the MRP's behalf. (Ex B at 1). And, without doubt, the Authority Resolution contains both the signatures of Ronald Weiser, then Chairman of the MRP, and Paul Cordes, then Chief of Staff. (*Id.* at 2). The MRP's allegation that it did not authorize the debt on the Note therefore fails as a matter of law.

In addition, the MRP's conclusory assertion that – on information and belief only – the Note is not a valid obligation of the MRP, is insufficient to state a cause of action. *Kloian v Schwartz*, 272 Mich App 232, 241; 725 NW2d 671 (2006) (“A mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action.”) quoting *Lawsuit Fin, LLC v Curry*, 261 Mich App 579, 592; 683 NW2d 233 (2004); see *16630 Southfield Ltd. P'ship v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 506 (CA 6, 2013) (allegations based upon “information and belief” should be disregarded because they are not adequate to state a claim); see also *State ex. Rel. Gurganus v CVS Caremark Corp*, 496 Mich 45, 64 n 41; 852 NW103 2014 (citing favorably pleading standard in *Ashcroft v Iqbal*, 556 US 662 (2009)). In short, simply adding the boilerplate phrase “on information and belief” does not transform a conclusory pleading into one that is factually supported – particularly where, as here, the exhibits attached to the complaint and those attached hereto belie the contention. See MCR 2.113(C)(2) (“An attachment or reference to an attachment under subrule (C)(1)(a) or (b) is a part of the pleading for all

purposes.”); see also *Gravity Imaging, LLC v 814 Berkley, LLC*, 2022 WL 3568675 at *5 (Mich App, 2022) (trial court properly considered lease and license agreements filed by defendant in connection with (C)(8) motion that plaintiff failed to, but should have, attached to the complaint).

The MRP also asserts fact-deficient and conflicting allegations regarding the Letter Agreement. Specifically, it claims, again grounded merely “on information and belief,” that the Note violates the Letter Agreement in various unexplained ways or, in the alternative, that the Letter Agreement was waived. (*Id.* ¶¶67(a)(ii), (b)(iii), (c)(i)-(ii)). The MRP further claims, in a conclusory manner, that the Letter Agreement was “never validly executed with authority” of the MRP. (*Id.* ¶67(f)). Ultimately, the MRP sticks with its kitchen sink approach and asserts, “on information and belief,” that the Letter Agreement has also “been waived, merged, or revoked.” (*Id.* ¶67(g)).

In like fashion, the MRP hypothesizes, “on information and belief,” that the Negative Pledge is either not valid, was revoked, was never revoked, simply did not exist, or the signatory lacked authority to sign it. (*Id.* ¶¶54-57, 66). Parties have a right to raise inconsistent theories, but it is not unlimited. *People v Lemons*, 454 Mich 234, 245; 562 NW2d 447 (1997). When the contradictory assertions are so voluminous and amount to mere conclusory assertions based solely on information and belief, as here, they are not enough to state a claim. *Lyons v Brodsky*, 137 Mich App 304, 308; 357 NW2d 679 (1984) (finding that a complaint was “insufficient to meet even the liberal pleading standards under the court rules” because it was “too vague to inform defendants of the specific duty to be breached,” failed to allege what the plaintiff believed to be the problem, and pled alternative facts without specifying which comprises the plaintiff’s claim).⁶

⁶ To be clear, the Note contains the agreement of the MRP to repay the money owed to Comerica, not the Negative Pledge or the Letter Agreement.

Finally, the MRP asserts various directionless allegations against Comerica that are seemingly unconnected to the rest of its allegations about the Note and to its requests for declaratory and injunctive relief. (See Complaint ¶¶84-90). But even if the Court were to accept these allegations as true, they still fail to sufficiently assert that the MRP is not responsible for payment on the Note, that Comerica has some sort of legal duty to the MRP that it breached, or that Comerica engaged in any other sort of wrongdoing. On the whole, Plaintiff's Complaint is devoid of any factual allegation that could suffice to state a cause of action against Comerica – declaratory or otherwise – and no amount of factual development can save Plaintiff's deficient pleading. Accordingly, the Complaint should be dismissed in Comerica's favor for failure to state a claim on which relief can be granted under MCR 2.116(C)(8). Alternatively, if this Court considers evidence outside of the pleadings, summary disposition is appropriate under MCR 2.116(C)(10) as well, as there is no material fact dispute and discovery does not stand a fair chance of uncovering factual support for a triable claim.

IV. CONCLUSION

For the foregoing reasons, Comerica respectfully requests that the Court grant summary disposition under MCR 2.116(C)(8), or in the alternative (C)(10), in favor of Comerica, dismiss it from the case, and award any other relief that the Court deems appropriate under the circumstances.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

/s/Scott R. Eldridge _____

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jilek@millercafield.com

Dated: January 10, 2024

Exhibit A

Founded in 1852
by Sidney Davy Miller



MICHIGAN
ILLINOIS
NEW YORK
OHIO
WASHINGTON, D.C.
CANADA
CHINA
MEXICO
POLAND
QATAR

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December 12, 2023

Via Email (danjh1234@yahoo.com; Dan@migop.org) and U.S. First Class Mail

Daniel J. Hartman, Esq.
General Counsel
Michigan Republican Party
P.O. Box 307
Petoskey, MI 49770-0307

Re: **Renewed Notice of Default** of Loan from Comerica Bank ("Bank") to Michigan Republican Party ("Borrower"), and **Continued Reservation of Rights**

Dear Mr. Hartman:

Please refer to the Notice of Default and Reservation of Rights Letter dated November 22, 2023 ("the Default Letter") and the other Loan Documents. All capitalized terms not defined in this letter shall have the meanings ascribed in the Default Letter.

In addition to the Payment Default described in the Default Letter, Borrower failed to make the monthly payment on the Note that was due December 1, 2023 ("December Payment Default") and together with the Payment Default, the "Payment Defaults"). This December Payment Default also constitutes an additional Event of Default.

As of December 4, 2023, the Liabilities include principal in the amount of \$509,009.00, accrued interest in the amount of \$10,663.51, with interest continuing to accrue, and late fees in the amount of \$707.06.

The Note is a demand obligation, and Bank has the right at any time to make demand. Bank will invoke the default rate of interest, which is the highest rate of interest under the Note if the Borrower does not cure the payment defaults by bringing interest current by **December 15, 2023**. Moreover, Bank may also make demand.

Bank has the right to exercise its rights and remedies under the Loan Documents. These rights and remedies include making demand for payment and invoking the default rate of interest. At this time, Bank is reserving all of its rights and remedies under the Loan Documents, including its right to exercise one or more such rights and remedies at any time in the future without further notice.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Daniel J. Hartman, Esq.

-2-

December 12, 2023

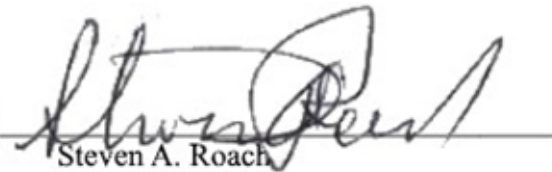
This letter does not constitute either an offer or an agreement to forbear. Bank does not waive any Default or Event of Default, including any Default or Event of Default not expressly set forth in this letter.

Please let me know if you need payment instructions to bring the past due interest current.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By:


Steven A. Roach

SAR

41446768.2/018095.00654

Exhibit B



RESOLUTIONS AND INCUMBENCY CERTIFICATION OF UNINCORPORATED ASSOCIATION AUTHORITY TO PROCURE LOANS

I certify that I am the duly elected and qualified Secretary of Michigan Republican Party, a Michigan unincorporated association (the "Association"), and the keeper of the records of the Association; that the following is a true and correct copy of resolutions duly adopted by the Board of Directors of the Association in accordance with its bylaws, statement of organization and applicable statutes.

Copy of Resolutions:

Be it Resolved, that:

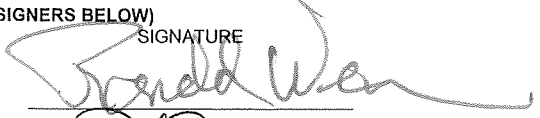
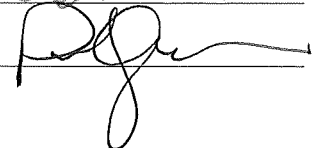
1. Any (insert number required to sign) one (1) of the following (insert titles only) Chairman or Chief of Staff of the Association (the "Authorized Signer(s)") are/is authorized, for, on behalf of, and in the name of the Association to:
 - (a) Negotiate and procure loans, letters of credit and other credit or financial accommodations from Comerica Bank (the "Bank"), up to an amount not exceeding \$ _____, in aggregate (if left blank, then unlimited);
 - (b) Discount with the Bank, commercial or other business paper belonging to the Association made or drawn by or upon third parties, without limit as to amount;
 - (c) Purchase, sell, exchange, assign, endorse for transfer and/or deliver certificates and/or instruments representing stocks, bonds, evidences of Indebtedness or other securities owned by the Association, whether or not registered in the name of the Association;
 - (d) Give security for any liabilities of the Association to the Bank by grant, security interest, assignment, lien, deed of trust or mortgage upon any real or personal property, tangible or intangible of the Association;
 - (e) Issue and/or execute one or more warrants for the purchase of the Association's capital stock to Bank;
 - (f) Execute and deliver in form and content as may be required by the Bank any and all notes, evidences of Indebtedness, applications for letters of credit, guaranties, subordination agreements, loan and security agreements, financing statements, assignments, liens, deeds of trust, mortgages, trust receipts and other agreements, instruments or documents to carry out the purposes of these Resolutions, any or all of which may relate to all or to substantially all of the Association's property and assets; and
 - (g) Appoint, delegate and authorize such other person(s) (the "Delegated Person(s)") as may be designated in writing from time to time by the above referenced Authorized Signer(s), or any one or more of them, to (i) request loans, advances and/or letters of credit under any line of credit, loan or other credit or financial accommodation made available by Bank to or in favor of the Association, and to execute and/or deliver unto Bank, in form and content as may be required by the Bank, such agreements, instruments and documents as may be necessary or required to carry out such purposes, (ii) make loan payments for and on behalf of the Association, and (iii) execute and certify borrowing base certificates, account agings, inventory reports and collateral reports (together with any other documents, reports and certificates required to be delivered in connection with any of the foregoing) for and on behalf of the Association.
2. Said Bank be and it is authorized and directed to pay the proceeds of any such loans or discounts as directed by the Authorized Signer(s) or Delegated Person(s) (if any), whether so payable to the order of any of said Authorized Signer(s) or Delegated Person(s) (if any) in their individual capacities or not, and whether such proceeds are deposited to the individual credit of any of said Authorized Signer(s) or Delegated Person(s) (if any) or not.
3. Any and all agreements, instruments and documents previously executed and acts and things previously done to carry out the purposes of these Resolutions are ratified, confirmed and approved as the act or acts of the Association.
4. These Resolutions shall continue in force, and the Bank may consider the holders of said offices and their signatures to be and continue to be as set forth in a certified copy of these Resolutions delivered to the Bank, until notice to the contrary in writing is duly served on the Bank (such notice to have no effect on any action previously taken by the Bank in reliance on these Resolutions).
5. Any person, corporation or other legal entity dealing with the Bank may rely upon a certificate signed by an officer of the Bank to effect that these Resolutions and any agreement, instrument or document executed pursuant to them are still in full force and effect and binding upon the Association.
6. The Bank may consider the holders of the offices of the Association and their signatures, respectively, to be and continue to be as set forth in the Certificate of the Secretary of the Association until notice to the contrary in writing is duly served on the Bank.

I further certify that the above Resolutions are in full force and effect as of the date of this Certificate; that these Resolutions and any borrowings or financial accommodations under these Resolutions have been properly noted in the corporate books and records, and have not been rescinded, annulled, revoked or modified; that neither the foregoing Resolutions nor any actions to be taken pursuant to them are or will be in contravention of any provision of the articles of incorporation, bylaws or statement of organization of the Association or of any agreement, indenture or other instrument to which the Association is a party or by which it is bound; and that none of the articles of incorporation, bylaws or statement of organization of the Association nor any agreement, indenture or other instrument to which the Association is a party or by which it is bound require the vote or consent of participants of the Association to authorize any act, matter or thing described in the foregoing Resolutions.

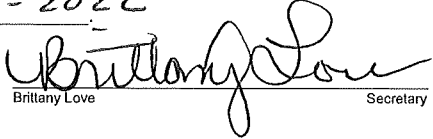
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I further certify that the following named persons have been duly elected to the offices set opposite their respective names, that they continue to hold these offices at the present time, and that the signatures which appear below are the genuine, original signatures of each respectively:

(PLEASE SUPPLY GENUINE SIGNATURES OF AUTHORIZED SIGNERS BELOW)

NAME (Type or Print)	TITLE	SIGNATURE
Ronald Weiser _____	Chairman _____	
Paul Cordes _____	Chief of Staff _____	

In Witness Whereof, I have affixed my name as Secretary on 9-22-2022


Brittany Love Secretary

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

MICHIGAN REPUBLICAN PARTY,
By Kristina Karamo in her official
capacity as Chairwoman of the
Michigan Republican State Central Committee,

Case No. 23-0845-CZ
Hon. Wanda Stokes

Plaintiff,

v.

MICHIGAN REPUBLICAN PARTY TRUST, &
COMERICA BANK, a Michigan Banking Corporation,

Defendants.

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Scott R. Eldridge (P66452)
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WARNER NORCROSS + JUDD, LLP
*Attorneys for Defendant Michigan Republican
Party Trust*
715 East Main Street, Suite 110
Midland, MI 48640
(989) 698.3700

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2024, my assistant, Christine M. Johnston, had hand delivered to the Clerk of the Court for filing the original of this motion and brief; and mailed by USPS first class mail (and I emailed to counsel of record) a copy of the foregoing document.

By: /s/Scott R. Eldridge (P66452)