

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SHEPLER'S, INC.,

Plaintiff,

v.

File No. 1:10-cv-968

Janet T. Neff, U.S. District Judge

JAMES F. WYNN, ARNOLD TRANSIT
COMPANY, UNION TERMINAL PIERS, INC.,
and THE CITY of MACKINAC ISLAND,

Defendants.

**DEFENDANT CITY OF MACKINAC
ISLAND'S ANSWER TO COMPLAINT**

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DEFENDANT, CITY OF MACKINAC ISLAND'S ANSWER TO COMPLAINT

NOW COMES Defendant, City of Mackinac Island, by and through its attorney, Plunkett Cooney, and for its response to the Plaintiff Complaint, states as follows:

1. Plaintiff, SHEPLER'S, INC., is a Michigan corporation that is headquartered in Mackinaw City, Michigan ("Shepler's").

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

2. Defendant, JAMES F. WYNN, is a Michigan resident living in Petoskey, Michigan ("Wynn").

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

3. Defendant, ARNOLD TRANSIT COMPANY, is a Michigan corporation headquartered in Mackinac Island, Michigan ("Arnold").

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

4. Defendant, UNION TERMINAL PIERS, INC., is a Michigan corporation headquartered in Mackinac Island, Michigan ("Union").

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

5. Defendant, THE CITY of MACKINAC ISLAND, is the municipality governing Mackinac Island, Michigan ("Mackinac Island").

RESPONSE: Admitted.

Jurisdiction and Venue

6. Shepler's is suing Wynn, Arnold, Union, and Mackinac Island for violations of federal law, among other claims, and therefore, original jurisdiction is vested in the United States District Court.

RESPONSE: Any allegation that Mackinac Island violated any federal law or any other laws is denied for the reason it is untrue. By way of further answer, jurisdiction is not contested.

7. Venue is appropriate in the Western District of Michigan because Wynn is a resident of Petoskey, Michigan, which is in the Southern Division of the Western District of Michigan.

RESPONSE: Venue being appropriate in the Western District is not contested. The remainder of the allegations in this paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

8. Local Civil Rule 3.2 of the Western District of Michigan provides criteria for selecting which division in the Western District of Michigan to file a case, and to which division a case shall be assigned. Pursuant to Local Civil Rule 3.2, the appropriate division for the case is the Southern Division, as the impacted property is located in more than one division, the Plaintiff does not reside in either the Southern Division or the Northern Division, the Defendants are, part, in the Southern Division and the Northern Division, the claim arose in both the Southern Division and the Northern Division, with material significant violations of the law occurring in the Southern Division, and finally, the Plaintiff has chosen the Southern Division as permitted by Section (i) of Local Civil Rule 3.2.

RESPONSE: Any allegation that this Defendant committed any violations of law in either division is denied as untrue. The remainder of the allegations in this paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs, other than it is admitted that this Defendant is located in the Northern Division.

9. The Court has supplemental jurisdiction over Shepler's state law claims.

RESPONSE: No contest.

General Factual Allegations The Creation of an Illegal Monopoly

10. Shepler's is suing Wynn, Arnold and Union for wrongfully seeking a monopoly for the purposes of eliminating competitive ferry boat service to Mackinac Island.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

11. Shepler's is suing Mackinac Island for violating its own ordinances and to enjoin Mackinac Island from completing its deal with Wynn, including as described below.

RESPONSE: Any allegation that Mackinac Island violated its own ordinances or that Plaintiff is entitled to the declaratory relief it seeks is denied as untrue.

12. Wynn has attempted to monopolize the ferry boat service to Mackinac Island through threats, intimidation, and inappropriate backroom deals.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

13. Wynn threatened Shepler's, and told Shepler's that it had to sell its business to Wynn, or that Wynn would utilize the money he would have paid Shepler's to eliminate Shepler's as a competitor.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

14. At the same time, Wynn was working with Mackinac Island city officials to engineer a deal where Wynn would borrow money at a high interest rate to acquire Arnold and Union, and sell Arnold and Union's docks and a portion of Arnold and Union's property to Mackinac Island.

RESPONSE: Denied as untrue.

15. The deal was that Mackinac Island would pay for the property and docks by issuance of public bonds, and then Arnold and Union would lease the property and docks back.

RESPONSE: Any allegation that there was any deal or agreement between Mackinac Island and Arnold and Union regarding the sale of property and docks is denied as untrue. By way of further answer, Mackinac Island states that after Wynn acquired Arnold and Union, Northern Ferry Company submitted a proposal to Mackinac Island dated October 4, 2010 and included in the proposal was a provision for the sale of docks and property to the City.

16. In exchange for selling the property and docks to Mackinac Island, Arnold and Union would receive a monopoly for ferry service to Mackinac Island.

RESPONSE: The allegation that there was any deal or agreement between the Mackinac Island and Arnold and Union such that Arnold and Union would receive a monopoly in exchange for selling the property and docks is denied as untrue. By way of further answer, Mackinac Island states that after Wynn acquired Arnold and Union, Northern Ferry Company submitted a proposal to Mackinac Island dated October 4, 2010 and included in the proposal was a request for an exclusive franchise.

17. Mackinac Island, in reaching the deal, exceeded its governmental authority, acted outside of its scope of authority, and Wynn, by suggesting, participating, and creating the deal, has violated antitrust laws and Michigan tort law.

RESPONSE: It is denied that any deal was reached and it is further denied that the City has exceeded its governmental authority.

18. At a City Council meeting on Thursday, September 26, 2010, Shepler's sought to have Mackinac Island honor its own ordinances and issue Shepler's a renewed non-exclusive franchise.

RESPONSE: It is admitted that at the City Council meeting on September 26, 2010, Shepler's sought to have Mackinac Island issue Shepler's a non-exclusive franchise. By way of further answer, any allegation that Mackinac Island has violated or intends to violate or otherwise not abide by its own ordinances is denied as untrue.

19. Mackinac Island, at the meeting and through its City Council, confirmed that Mackinac Island would openly violate its own ordinances.

RESPONSE: Denied as untrue.

20. Mackinac Island's conduct is arbitrary and capricious and is in direct violation of Michigan law.

RESPONSE: Denied as untrue.

21. Wynn openly laughed and snickered at the meeting when Shepler's presented arguments for having Mackinac Island follow its own ordinances.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

22. Mackinac Island has several ordinances that set forth the issuance of franchises for ferry service, relevant portions of which are set forth below:

Sec. 66-491.-- Required.

(a) No person shall operate a ferry boat service . . . or acquire ownership or control of a ferry boat company ... without such person having first obtained a franchise.

Sec. 66-492- Application; contents; fees.

(a) A]pplication (sic) for a franchise ... shall be made in writing to the council and include:

- (1) applicant's name, and . . .
- (2) applicant's principal place of business. . .
- (3) Description of each ferry boat . . .
- (4) A schedule of ferry boat services . . .

(b) [A]pplication shall be accompanied by an application fee established by ordinance.

Sec. 66-494.-- Issuance;

(a) Upon the approval of the filed schedule of services ... and receipt of the application fee, the council shall issue a franchise as is required by this division.

Sec. 66--495- Nonexclusive; term; form.

Any franchise issued pursuant to this article shall be a nonexclusive franchise for a term of years not to exceed 20 years

RESPONSE: Neither admitted nor denied as the Ordinances speak for themselves.

23. Shepler's and its wholly owned subsidiary have spent many millions of dollars on boats, marketing, employees, land and docks, in direct reliance on Mackinac Island honoring its obligations to grant non-exclusive ferry franchises and to act openly and honestly.

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs, except that it is denied that Mackinac Island has obligations to grant any particular ferry franchise and it is further denied that the Mackinac Island has not acted openly and honestly.

24. Shepler's is a third-generation family business that directly employs over 150 persons and has, for over 50 years, provided the absolute best ferry service to Mackinac Island.

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

25. Shepler's and many others are incurring irreparable damage as a result of the conduct by Wynn, Arnold, Union and Mackinac Island.

RESPONSE: Denied as untrue as to Defendant Mackinac Island.

26. Many businesses and associations have conferences on Mackinac Island, tourists and others frequently use Mackinac Island as a destination, and the disruption or termination of Shepler's business will have significant impacts on business owners and persons and companies both on and off the island.

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

27. Shepler's leases property and dock space from Mackinaw City, and if Wynn, Arnold, Union and Mackinac Island are successful in terminating Shepler's business, Mackinaw City will be injured as well.

RESPONSE: The allegations in this Paragraph are neither admitted nor denied for lack of knowledge and Plaintiff is left to its proofs.

28. Ferry service is provided to Mackinac Island almost entirely from Mackinaw City and St. Ignace. If Mackinaw City and St. Ignace each took the position that they could grant a monopoly for service from Mackinac Island, they could each pick a different carrier and no service would be legal. For example, if Mackinaw City chose Shepler's, St.

Ignace chose Starline, and Mackinac Island chose Arnold, no service could be provided. This demonstrates why non-exclusive franchises are legally required and Mackinac Island and Wynn's efforts are illegal, far reaching in the damage they are causing, immoral, and violate common sense. The same logic applies if each municipality sought to regulate the ticket prices and chose different prices.

RESPONSE: Any allegation that Mackinac Island has acted illegally or in any manner to cause damage to the Plaintiff is denied as untrue.

29. The Mackinac Island officials engaged in the conspiracy with Wynn, Arnold, and Union are individually liable for their tortuous (sic) acts, and Shepler's reserves the right to amend this Complaint to add such officials.

RESPONSE: Any allegation that Mackinac Island officials engaged in a conspiracy with Wynn, Arnold and Union is denied as untrue.

C O U N T I
Violation of Sherman Antitrust Act
(Wynn, Arnold and Union)

30. Shepler's sues Wynn, Arnold and Union for violation of the Sherman Antitrust Act; 15 U.S.C. 1 & 2, et seq. ("Sherman Act").

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

31. Shepler's re-asserts each of its allegations contained in paragraphs 1 through 29 of this Complaint, as though fully set forth in this paragraph.

RESPONSE: Defendant Mackinac Island restates its answers to paragraphs 1 through 29 as though fully restated herein.

32. Wynn, Arnold and Union have in fact attempted to monopolize trade or commerce that involves interstate commerce, including but not limited to, by agreements within a relevant market to restrain trade or commerce with anticompetitive effects, in violation of Section 1 of the Sherman Act.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

33. Wynn, Arnold and Union have violated Section 2 of the Sherman Act by, but not limited to, acquiring monopoly power in the relevant market by anticompetitive or exclusionary means.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at

this Defendant.

34. Wynn, Arnold and Union have caused damage to Shepler's and others.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

35. Wynn, Arnold and Union are causing irreparable damages and should be enjoined for violating the Sherman Act.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

36. Shepler's seeks the recovery of treble damages.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

37. Shepler's seeks equitable relief in terms of an injunction that stops Wynn and/or Arnold and/or Union from obtaining the sought after monopoly and prevents the sale of Arnold's docks and property to Mackinac Island.

RESPONSE: Any allegation that Shepler's is entitled to any relief against this City is denied as untrue. Further, Shepler's is not entitled to any relief that interferes with the City's constitutional right to acquire property, if the City chooses to do so.

38. Shepler's has satisfied all conditions precedent to maintaining this action.

RESPONSE: The allegations are denied for the reason that they are untrue.

WHEREFORE, Defendant, City of Mackinac Island requests entry of a judgment of no cause of action or that Plaintiff's Complaint be otherwise dismissed and its request for relief denied. The City of Mackinac Island further requests that it be awarded costs and attorney fees as allowed by law.

C O U N T I I
Violation of Michigan Antitrust Act
(Wynn, Arnold and Union)

39. Shepler's sues Wynn, Arnold and Union for violation of the Michigan Antitrust Reform Act; MCL 445.771, et seq.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

40. Shepler's re-asserts each of its allegations contained in paragraphs 1 through

29 of this Complaint, as though fully set forth in this paragraph.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

41. Wynn, Arnold and Union have in fact attempted to monopolize trade or commerce that involves commerce in the relevant market and in Michigan in violation of the Michigan Antitrust Reform Act.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

42. Wynn, Arnold and Union have caused damage to Shepler's and others.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

43. Wynn, Arnold and Union are causing irreparable damages and should be enjoined for violating the Michigan Antitrust Act.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

44. Shepler's seeks the recovery of treble damages.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

45. Shepler's seeks equitable relief in terms of an injunction that stops Wynn and/or Arnold and/or Union from obtaining the sought after monopoly and prevents the sale of Arnold and Union's docks and property to Mackinac Island.

RESPONSE: Any allegation that Shepler's is entitled to any relief against this City is denied as untrue. Further, Shepler's is not entitled to any relief that interferes with the City's constitutional right to acquire property, if the City chooses to do so.

46. Shepler's has satisfied all conditions precedent to maintaining this action.

RESPONSE: The allegations are denied for the reason that they are untrue.

WHEREFORE, Defendant, City of Mackinac Island requests entry of a judgment of no cause of action or that Plaintiff's Complaint be otherwise dismissed and its request for relief denied. The City of Mackinac Island further requests that it be awarded costs and attorney fees as allowed by law.

C O U N T I I I

Intentional Interference with Advantageous Business Relationship

(Wynn, Arnold and Union)

47. Shepler's sues Wynn, Arnold and Union for intentional interference with advantageous business relationship.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

48. Shepler's re-asserts each of its allegations contained in paragraphs 1 through 29 of this Complaint, as though fully set-forth in this paragraph.

RESPONSE: Defendant Mackinac Island restates its answers to paragraphs 1 through 29 as though fully restated herein.

49. Shepler's has a valid business relationship with, among others, Mackinac Island and its customers.

RESPONSE: Neither admitted nor denied as to what Plaintiff means by a valid business relationship. By way of further answer, it is admitted that Shepler's has a nonexclusive franchise with Mackinac Island for the period from April 1, 2010 to March 31, 2011.

50. Wynn, Arnold and Union have knowledge of Shepler's valid business relationship with, among others, Mackinac Island and its customers.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

51. Wynn, Arnold and Union engaged in actual knowing and wrongful intentional conduct to cause a termination of Shepler's relationship with Mackinac Island.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

52. Shepler's has incurred damages from Wynn, Arnold, and Union's wrongful conduct and is incurring irreparable harm.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

53. Shepler's seeks the recovery of exemplary damages from Wynn, Arnold and Union.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

54. Shepler's seeks a permanent and temporary injunction against Wynn, Arnold and Union to enjoin their wrongful interference.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

55. Shepler's has satisfied all conditions precedent to maintaining this action.

RESPONSE: Neither admitted nor denied for the reason the allegations are not directed at this Defendant.

WHEREFORE, Defendant, City of Mackinac Island requests entry of a judgment of no cause of action or that Plaintiff's Complaint be otherwise dismissed and its request for relief denied. The City of Mackinac Island further requests that it be awarded costs and attorney fees as allowed by law.

C O U N T I V
Violation of 42 USC § 1983
(Mackinac Island)

53. (sic) Shepler's sues Mackinac Island for violation of 42 U.S.C. 1983, et seq.

RESPONSE: Any allegation that Mackinac Island violated 42 USC 1983, et seq. is denied as untrue.

54. (sic) Shepler's re-asserts each of its allegations contained in paragraphs 1 through 29 of this Complaint, as though fully set-forth in this paragraph.

RESPONSE: Defendant Mackinac Island restates its answers to paragraphs 1 through 29 as though fully restated herein.

55. (sic) The conduct of Mackinac Island and the failure of Mackinac Island to exercise its duty in the circumstances described above constitutes a taking of Shepler's property right under Article 10, Section 2 of the Michigan Constitution; a violation of due process under Article 1, Section 17 of the Michigan Constitution; a violation of Amendment 5 of the U.S. Constitution, and further violates the guarantee of equal protection under both the Michigan Constitution Article 1, Section 2, and the United States Constitution.

RESPONSE: Denied as untrue.

56. Mackinac Island deprived Shepler's of federally protected rights, privileges and immunities provided by federal law and the United States Constitution, entitling Shepler's to damages for Mackinac Island's violation of 42 USC § 1983, et seq.

RESPONSE: Denied as untrue.

57. Mackinac Island's actions under color of law impeded and hindered the course of justice by deliberately denying Shepler's due process of law and further violated Shepler's equal protection rights.

RESPONSE: Denied as untrue.

58. Shepler's has suffered and will continue to suffer injury as a direct and proximate cause of Mackinac Island and Wynn and Arnold and Union's actions.

RESPONSE: Denied as untrue.

59. (sic) Mackinac Island acted with improper motive and intent to recklessly disregard Shepler's federally protected rights, entitling Shepler's to exemplary damages as well as all other damages incurred, including costs and attorneys' fees pursuant to 42 USC § 1988.

RESPONSE: Denied as untrue.

60. (sic) Shepler's has satisfied all conditions precedent to maintaining this action.

RESPONSE: Denied as untrue.

WHEREFORE, Defendant, City of Mackinac Island requests entry of a judgment of no cause of action or that Plaintiff's Complaint be otherwise dismissed and its request for relief denied. The City of Mackinac Island further requests that it be awarded costs and attorney fees as allowed by law.

C O U N T V
Declaratory Relief
(Wynn, Arnold, Union and Mackinac Island)

61. Shepler's sues Wynn, Arnold, Union and Mackinac Island for declaratory relief.

RESPONSE: Any allegation that Shepler's is entitled to any relief against the City of Mackinac Island is denied as untrue.

62. Shepler's re-asserts each of its allegations contained in paragraphs 1 through 29 of this Complaint, as though fully set forth in this paragraph.

RESPONSE: Defendant Mackinac Island restates its answers to paragraphs 1 through 29 as though fully restated herein.

63. Shepler's has an honest, ripe and bona-fide dispute and concern as to how to address and deal with Mackinac Island's breaches of its own ordinances and federal antitrust law, and is therefore in doubt as to how to conduct its business.

RESPONSE: Denied as untrue.

64. Shepler's needs and hereby requests this Court to declare that Mackinac Island has breached its ordinances and may not preclude or prevent Shepler's from providing ferry service to Mackinac Island.

RESPONSE: Any allegation that Mackinac Island has violated its ordinances is denied as untrue. It is further denied that Plaintiff is entitled to any relief whatsoever against Mackinac Island.

65. Shepler's needs and hereby requests this Court to declare that Mackinac Island's conduct is arbitrary and capricious and illegal and therefore void *ab initio*.

RESPONSE: The allegation that Mackinac Island has acted arbitrary, capriciously or illegally is denied as untrue. It is further denied that Shepler's is entitled to any relief against Mackinac Island.

66. Without a declaration from this Court, Shepler's risks, among other things, Mackinac Island physically obstructing Shepler's use of Shepler's commercial docks and property on Mackinac Island, which in turn impacts Shepler's hiring of employees, maintenance of boats, advertising spending, et cetera.

RESPONSE: It is denied that Mackinac Island has violated any of Shepler's rights and it is denied that Plaintiff is entitled to such relief.

67. Shepler's seeks a permanent and temporary injunction requiring Mackinac Island to issue non-exclusive franchise licenses pursuant to its ordinances — including without limitation, a franchise to Shepler's.

RESPONSE: The allegation that Plaintiff is entitled to such relief is denied for the reason it is untrue.

68. Shepler's seeks a declaration that Wynn, Arnold and Union have violated Mackinac Island's ordinances for ferry service by seeking to sell Arnold and Union's docks and property to Mackinac Island.

RESPONSE: The allegation that Shepler's is entitled to any relief is denied as untrue. Further, Shepler's is not entitled to any relief that interferes with the City's constitutional right to acquire property, if the City chooses to do so.

69. Shepler's seeks a permanent and temporary injunction prohibiting Wynn, Arnold and Union from selling Arnold and Union's docks and related property to Mackinac Island.

RESPONSE: The allegation that Shepler's is entitled to any relief is denied as untrue. Further, Shepler's is not entitled to any relief that interferes with the City's constitutional right to acquire property, if the City chooses to do so.

70. Shepler's has satisfied all conditions precedent to maintaining this action.

RESPONSE: Denied as untrue.

WHEREFORE, Defendant, City of Mackinac Island requests entry of a judgment of no cause of action or that Plaintiff's Complaint be otherwise dismissed and its request for relief denied, including costs and attorney fees as allowed by law.

AFFIRMATIVE DEFENSES

NOW COMES Defendant, City of Mackinac Island, by and through its attorney, Plunkett Cooney, and states the following Affirmative Defenses which it may rely upon in this matter:

1. The Plaintiff's federal takings claim is not ripe and must be dismissed.
2. The Plaintiff's claims of substantive due process and equal protection under the Federal Constitution are not ripe and must be dismissed.
3. The Plaintiff has failed to exhaust its state law remedies.
4. The City of Mackinac Island has discretion as to whether to grant a franchise, thereby barring the Plaintiff's federal claims.
5. The City's action in granting or denying the franchise request is legislative in nature and subject to the most deferential review by the courts.
6. The City's action seeking review of the Plaintiff's franchise is neither arbitrary nor capricious in the constitutional sense and must therefore be upheld.
7. The City's decision to review the Plaintiff's franchise request does not deprive the Plaintiff of economic viability of its property, nor does it render its property unusable.
8. The Plaintiff is not entitled to equitable relief as there has been no demonstration of irreparable harm nor the inadequacy of a remedy at law.
9. The City's decision to review the Plaintiff's franchise is a decision rationally related to a legitimate governmental interest.
10. The Plaintiff has no standing to make its claims.
11. The Plaintiff's taking claim fails to state a claim upon which relief can be granted since this Defendant has taken no action specifically directed at Plaintiff's franchise.
12. Plaintiff has failed to allege any factual or legal basis to support his conclusory

assertion that it has been subjected to a violation of substantive due process or equal protection and therefore these allegations fail to state a claim upon which relief can be granted.

13. Plaintiff's procedural, as well as substantive, due process claims must be dismissed for the reason the Plaintiff does not have a protected property interest entitling it to a new franchise.

14. The City's conduct at all times was consistent with its ordinances, as well as state and federal law.

15. Plaintiff has unclean hands and may have failed to mitigate its damages.

16. The City's conduct at all times was rationally related to a legitimate governmental purpose.

17. The City at all times acted in furtherance of the public health, safety and welfare of its residents.

18. Plaintiff's claims are premature, not ripe and subject to dismissal.

19. To the extent Plaintiff is or attempts to make an antitrust claim against the City of Mackinac Island, it is immune pursuant to the state action exemption.

Defendant, City of Mackinac Island, reserves the right to file further and additional Affirmative Defenses as they become known throughout discovery.

RELIANCE UPON JURY DEMAND

Defendant, City of Mackinac Island, hereby relies on the demand for jury trial previously filed by Plaintiff in this matter.

Respectfully submitted,

PLUNKETT COONEY

Dated: November 1, 2010

By: /s/ Gretchen L. Olsen
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by electronic filing or by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage fully prepaid thereon on the 1st day of November, 2010. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/s/ Gretchen L. Olsen
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