STATE OF MICHIGAN

IN THE COURT OF APPEALS

GUY BOYD,
Plaintiff-Appellee,

vs.

NOT AN LLC d/b/a JSD SUPPLY,
Defendant-Appellant,

And KYLE THUEME,
Defendant.

Court of Appeals No._____
Lower Court Case No. 2024-000304-NP
22nd Circuit Court Washtenaw County

CIVIL-CRIMINAL LITIGATION CLINIC By: David Santacroce (P61367) Attorney for Plaintiff 863 Legal Research Building 801 Monroe Street Ann Arbor, MI 48109-1215 (734) 763-4319	PENTIUK, COUVREUR & KOBILJAK, P.C. By: Kerry L. Morgan (P32645) And Randall A. Pentiuk (P32556) Attorneys for Defendant/Appellant Not an LLC d/b/ JSD Supply, Only 2915 Biddle Avenue, Suite 200 Wyandotte, MI 48192 (734) 281-7100 kmorgan@pck-law.com rpentiuk@pck-law.com
BLOCH & WHITE LLP Len H. Kamdang Counsel for Plaintiff – Pro Hac Vice 152 West 57th Street New York, NY 10019 (212) 702-8670 (Main) (646) 780-8052 (Direct) lkamdang@blochwhite.com	The Law Firm of William Amadeo William Amadeo (P76194) Attorney for Defendant Kyle Thueme 3913 Jackson Road Ann Arbor, MI 48103 (609) 816-9438

DEFENDANT/APPELLANT, JSD SUPPLY'S APPLICATION FOR LEAVE TO APPEAL

Respectfully submitted by:
PENTIUK, COUVREUR & KOBILJAK, P.C.
Kerry L. Morgan (P32645)
And: Randall A. Pentiuk (P32556)
Attorneys for Defendant/Appellant JSD Supply
2915 Biddle Ave., Suite 200
Wyandotte, MI 48192

TABLE OF CONTENTS

PAGE NOS.

INDEX OF AUTHORITIES

CASES: **Pages**

STATUTES:

COURT RULES:

JURISDICTIONAL STATEMENT

JSD is filing its Application for Leave to Appeal from the trial court's August 19, 2024, Order Denying JSD's Motion for Reconsideration of the trial court's prior Order denying its Motion to Dismiss pursuant to MCR 2.116(C)(8) for failure to state a claim upon which relief can be granted, which is an interlocutory order. (*See* MCR 7.205(B)(1) (appellant must file "an application for leave to appeal stating the date and nature of the judgment or order appealed from").

The Court of Appeals has jurisdiction over this Application for Leave to Appeal pursuant to MCR 7.205(A) which provides in pertinent part "the time limit for an application for leave to appeal is jurisdictional". MCR 7.205(A)(1)(b) further provides "Except as otherwise provided in this rule, an application for leave to appeal must be filed within 21 days after entry of an order deciding a motion for…reconsideration". In this case, the trial court entered its Order Denying JSD's Motion for Reconsideration on August 19, 2024. JSD filed this Application for Leave to Appeal within 21 days of that date. Accordingly, this Court has jurisdiction.

The following facts demonstrate why JSD will suffer substantial harm, and indeed the law of negligence itself, by awaiting final judgment before taking an appeal of right. First, the trial court simply ignored published, binding case law which has always controlled motions to dismiss at the preliminary stage. Second, the Court's Order unilaterally expanded negligence law ignoring as a practical matter, *Moning v Alfono*, 400 Mich 425 (1977). The Court held that Plaintiff had stated a claim against a seller for the sale of products to the general population including minors, absent any specific allegation that minors were especially targeted. This holding, in defiance of case law, is of such a momentous leap as to open the door wide to unlimited negligence claims being brought against every retailer. It cannot remain if negligence law is to remain recognizable in this state. Third, JSD's entire business model is now at risk due to the trial court's ruling. JSD

will be unnecessarily forced to expend significant time and money engaging in discovery and protracted litigation until it can finally file an appeal of right.

STATEMENT OF QUESTIONS INVOLVED

I. Whether the Trial Court Erred By Ignoring Published, Binding Authority Such as *Buczkowski?*

JSD answers: "Yes".
Boyd answers "No".
This Court should answer: "Yes".

II. Whether the Trial Court Erred by Imposing a Duty of Care Despite the Absence of Any Relationship Between JSD and Boyd?

JSD answers: "Yes".
Boyd answers "No".
This Court should answer: "Yes".

III. Whether the Trial Court Erred By Holding That JSD Owed a Duty of Care to Plaintiff (a Member of the General Public) While Simultaneously Finding That JSD Did Not Violate Any State or Federal Law?

JSD answers: "Yes".
Boyd answers "No".
This Court should answer: "Yes".

IV. Whether the Trial Court Erred By Relying Upon *Moning v Alfono* in Allowing Plaintiff to Proceed to Trial On His Negligent Entrustment Claim Where Plaintiff Did Not Allege JSD Marketed Its Products "Directly to Children" as Required Under That Special Duty of Care?

JSD answers: "Yes".
Boyd answers "No".
This Court should answer: "Yes".

V. Whether the Trial Court Erred By Improperly Applying a "Willful Blindness" Standard to Plaintiff's Negligent Entrustment Claim?

JSD answers: "Yes"
Boyd answers: "No"
This Court should answer: "Yes"

VI. Whether the Trial Court Erred By Holding That Plaintiff Sufficiently Alleged JSD Proximately Caused Thueme to Shoot Plaintiff In the Face Merely By Advertising Its Products to the General Public ?

JSD answers: “Yes”
Boyd answers: “No”
This Court should answer: “Yes”

STATEMENT OF FACTS

This case arises out of Defendant Kyle Thueme's ("Thueme") decision to deliberately aim a loaded handgun at Guy Boyd's ("Boyd") face and pull the trigger, which Thueme "hoped" was empty, while the two of them were admittedly drunk and high as a result of their illegal consumption of drugs. The following facts are derived from Boyd's Complaint for purposes of this Application for Leave to Appeal. Boyd alleged JSD is a Pennsylvania limited liability company which sells various products, including unregulated gun parts and gun kits. JSD does not sell firearms. (JSD's Appendix, Exhibit A, Complaint, ¶22 and 25). Boyd further alleged JSD is not a federal firearm licensee under 18 U.S.C. §§922(a), 923. *Id.* at ¶23.

A. *Thueme's Purchase of the Completion and Full Build Kits*

Boyd alleged Thueme purchased two kits from JSD, the first being a Polymer 80 PF940c Completion Kit (which included a Polymer80 frame and a jig) and the second being a "PF940c Full Build Kit – Minus Frame" (which included a slide, a barrel, a "Complete Lower Parts Kit" and a "Complete Slide Parts Kit", collectively "the Kits"). *Id.* at ¶s 63 & 67. Boyd alleged the "two companion Kits contained all the necessary components to quickly and easily build an operable pistol", the Kits can be "readily converted to expel a projectile by the action of an explosive and therefore constituted a firearm under federal law" and JSD offered the Kits for sale through its website. *Id.* at ¶41-44.

Next, Boyd alleged Thueme first purchased the Kits online from JSD on April 9, 2021 for $464.97 that were shipped to his parents' house in Ypsilanti, Michigan. *Id.* at ¶62-64. Boyd then alleged Thueme assembled a pistol from the Kits but Thueme's mother discovered it and took the pistol away from him. *Id.* at ¶65. A few weeks later, Thueme placed another order from JSD's website on April 27, 2021 and paid $474.97 to have the Kits delivered to his parents' house a

second time. *Id.* at ¶67. Boyd alleged JSD did not verify Thueme's age or perform a background check on Thueme. *Id.* at ¶68-72. Boyd also alleged Thueme purchased ammunition from an online seller named Outdoor Limited despite the fact that Thueme was a minor at the time because Outdoor Limited allegedly "did not require any meaningful age verification". *Id.* at ¶82-84.

B. ***Thueme Intentionally Points a Pistol At Boyd and Shoots Him In the Face While Both Are Drunk and High Due to Their Illegal Consumption of Alcohol and Marijuana***

Boyd and Thueme, who were best friends, were getting high and drunk in an RV parked in the driveway of Boyd's girlfriend's parents' home when Thueme pointed a pistol at Boyd's face and pulled the trigger, "hoping it was empty". *Id.* at ¶85-92. Both were minors at the time and therefore their consumption of alcohol and marijuana was illegal. *Id.* Boyd then alleged he suffered serious injuries as a result of Thueme shooting him in the face. *Id.* at ¶94-104. Boyd sued JSD Supply for selling gun parts to Thueme, parts that were incapable as sold of being made into a pistol except after substantial work and gunsmithing to the parts was completed, and purchase of a magazine and ammunition from third parties.

C. ***Procedural History***

JSD filed a Motion for Summary Disposition in lieu of an answer. (JSD's Appendix, Motion for Summary Disposition, Exhibit B). Boyd filed a response in which he argued, among other things, JSD owed a duty of care to Boyd based upon *Moning v Alfono*, 400 Mich 425 (1977). (JSD's Appendix, Boyd's Response, Exhibit C). JSD filed a Reply in which it argued, *inter alia*, that the special duty of care owed to bystanders set forth in *Moning* was inapplicable because Boyd did not allege JSD marketed its products "directly to children" as required under that case. (JSD's Appendix, JSD's Reply, Exhibit D). The trial court held a hearing on July 24, 2024, granted JSD's motion as to Boyd's negligence *per se* theory, but denied JSD's motion in all other respects as

evidenced by its written Order dated July 25, 2024. (JSD's Appendix, Order Regarding Summary Disposition, Exhibit E). JSD then filed a Motion for Reconsideration which was denied on August 19, 2024. (JSD's Appendix, Motion for Reconsideration, Exhibit F).

The key factual questions for this Application for Leave to Appeal are: a) whether Boyd alleged the existence of any relationship between himself and JSD that could give rise to a duty of care; b) whether Boyd alleged that JSD marketed its products "directly to children" such that the special, narrow duty exception set forth in *Moning* applies here; c) whether Boyd alleged that JSD had special notice of any peculiarities of Thueme for purposes of Boyd's negligent entrustment claim; and d) whether JSD proximately caused Thueme to illegally consume drugs and alcohol and recklessly shoot Boyd in the face merely by offering its products for sale to the general public.

ARGUMENT

Standard of Review

Each of the following sections of Appellant's legal argument are reviewed under the *de novo* standard because this appeal is based solely on questions of law. A trial court's grant of summary disposition is reviewed *de novo* on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a complaint by the pleadings alone. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). Under subrule (C)(8), the court accepts all well-pleaded factual allegations as true. *See Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

Summary of Argument

This Court should reverse the trial court's order denying JSD's Motion for Summary Disposition because: a) the trial court ignored published, binding authority which holds that JSD did not owe a duty of care to a member of the general public like Boyd; b) the trial court

erroneously imposed a duty of care despite the complete absence of any relationship between JSD and Boyd; c) the trial court erred by imposing a duty of care despite the lack of any statutory violation; d) the trial court erred by relying upon *Moning v Alfono* in allowing Boyd to proceed on a negligent entrustment claim where Boyd did not allege JSD marketed its products "directly to children" which is required in order to impose that special duty of care; e) the trial court erred by improperly applying a "willful blindness" standard to Plaintiff's negligent entrustment claim; and f) the trial court erred by holding that Boyd sufficiently alleged JSD proximately caused Thueme to shoot Boyd in the face merely by advertising its products for sale to the general public.

I. The Trial Court Erred By Ignoring Binding Precedent.

First, and most importantly, the trial court erred by ignoring binding precedent it was required to follow. One of the key arguments in JSD's Motion for Summary Disposition (and in its subsequent Motion for Reconsideration) was that JSD did not have a legal duty to protect Boyd, a member of the general public, from Thueme's criminal act. JSD cited *Buczkowski v McKay*, 441 Mich 96 (1992) in support of this proposition. (JSD's Appendix, Exhibit D at pg. 2).

The facts of *Buczkowski* are as follows. The plaintiff was injured by a shotgun slug intentionally fired by Defendant McKay that ricocheted off a parked vehicle. *Id.* at 97. McKay purchased that ammunition from K-Mart. *Id.* He testified that he had engaged in a day-long drinking spree and could not remember the gender of the salesperson and could not identify the box of shells he purchased. *Id.* He further testified that he remembered retrieving the shells from a self-serve shelf at K-Mart and purchasing them without speaking to anyone. He did not recall if he showed any signs of intoxication, but assumed he looked a mess after his day-long beer-drinking activities. *Id.* The ammunition was fired from McKay's shotgun several hours after the time of the purchase, and many miles away from the retailer's premises.

The retailer in *Buczkowski* filed motions for summary disposition, directed verdict, and judgment notwithstanding the verdict, all of which were denied. At trial, the court found the retailer's policy against selling ammunition to intoxicated customers was sufficient evidence to impose a legal duty on it. The Court of Appeals concluded that "a retailer of a product owes a duty of due care to a bystander affected by that product" and that "it is for the jury to determine whether the retailer created an unreasonable risk of harm". Additionally, with regard to the issue of proximate cause, the Court of Appeals found that "McKay's conduct was foreseeable and, therefore, that the issue was properly submitted to the jury". *Id.* at 99. In reversing the Court of Appeals, the Michigan Supreme Court stated:

> We granted leave in this case to determine **whether to impose a duty on a retailer to protect a bystander injured by the use of shotgun ammunition it sold to defendant McKay while McKay was intoxicated**, and **whether the sale of the ammunition was a proximate cause of the plaintiff's injury**. **Because the product sold was neither defective nor inherently dangerous, and because the Legislature has not defined a class of purchasers who we may deem legally incompetent to buy ammunition, we find that the retailer did not have a legal duty to protect plaintiff, a member of the general public, from the criminal act of the defendant.** Because we find no antecedent legal duty, we need not reach the issue of proximate cause. Accordingly, we reverse the decision of the Court of Appeals and remand the case to the trial court with directions that it enter judgment in favor of defendant K-Mart. *Id.* at 97. (emphasis added).

The *Buczkowski* court engaged a detailed and thorough analysis of negligence claims based upon the misuse of firearms. First, the court noted "[T]he mere fact that an event may be foreseeable does not impose a duty upon the defendant to take some kind of action accordingly." The court then stated:

> **Our ultimate decision turns on whether a sufficient relationship exists between a retailer and a third party to impose a duty under these circumstances**. The duty to protect others against harm from third persons is based on a relationship between the parties. Prosser & Keeton, § 56, pg 385. The relationship in this case is simply that of retailer and customer, where the customer later criminally injured an innocent bystander using a product purchased from the retailer that was neither defective nor inherently dangerous. **The plaintiff claims that it is reasonably**

> **foreseeable that an intoxicated person will use ammunition to injure another person. However, the plaintiff has not alleged that the defendant marketed ammunition to a known criminal**, and the customer here intentionally and criminally shot at the plaintiff's vehicle and injured the plaintiff. Thus, while it may be acknowledged that many criminal acts are committed by persons under the influence of intoxicants, the issue here is not whether it is foreseeable that an intoxicated customer may injure another with a nondefective product, but whether a retailer in the supermarket setting presented should be liable for a clerk's failure to foresee a customer's criminal purpose. **Recognizing such a duty would place on the retailer a duty to discover each customer's fitness to purchase any product that could conceivably harm unknown third parties**. To say that a duty should be imposed here because the harm was foreseeable is a fiction that obscures the policy inquiry. **The result here was no more foreseeable than the potential harm from any product sold to an apparently inebriated customer that might be used to injure third parties**. *Id.* at 105 (emphasis added).

The *Buczkowski* Court also rejected the plaintiff's argument that "ammunition is an inherently dangerous product and that the policy reasons for regulation of firearms are equally applicable to ammunition sales".

> Claims against retailers for a customer's criminal misuse of a firearm have been recognized **where the seller violated a state or federal firearm statute. In those cases, courts reason that where a legislature identifies certain classes of persons as incompetent to possess weapons, it is foreseeable that such persons will commit crimes if allowed access to weapons in violation of the statute**. Nevertheless, **beyond the class defined by statute, there is no duty owed by the retailer to discover other potential incompetent persons or foresee the criminal acts of others absent special circumstances.** *Id.* at 108, (emphasis added).

The facts here are nearly identical to those in *Buczkowski.* First, the issue in *Buczkowski* was "whether to impose a duty on a retailer [i.e. JSD] to protect a bystander [i.e. Boyd] injured by the use of [the Kits] it sold to defendant [Thueme] which he used to injure Boyd while he was intoxicated. *Id.* at 98.

As in *Buczkowski*, Boyd did not (and cannot) allege JSD marketed its products to "known criminals or minors". Rather, Boyd admitted JSD merely marketed its products to the general public, just like the retailer in *Buczkowski*. (JSD's Appendix, Exhibit A, ¶44 and Exhibit F, pgs. 3, 5 and 6). Thus, while Boyd alleges firearms can potentially wind up in the hands of minors, who

may then be prone to misusing such products, JSD did not have "a duty to discover each customer's fitness to purchase any product that could conceivably harm unknown third parties". *Id.* at 105. Furthermore, because the trial court concluded that JSD did not violate any state or federal statutes, "there is no duty owed by the retailer to discover other potential incompetent persons or foresee the criminal acts of others." *Id.* at 108.

It is unclear (and unknown) why the trial court blatantly ignored *Buczkowski* which is published, binding precedent. Nor can it be said that *Buczkowski* is an outlier. In fact, **the Court of Appeals sanctioned a plaintiff for asserting the same arguments Boyd makes here because the law on this issue is well settled**. *See Resteiner v Strum, Ruger & Co*, 223 Mich App 374; 566 NW2d 53 (1997).

The facts of *Resteiner* are as follows. Kevin Lovett and James Thomas were both intentionally shot and killed by Ronnie Johns in Flint during the summer of 1991. *Id.* at 378. In both shootings, Johns used a .44 caliber Redhawk revolver that was manufactured and sold by defendant Sturm, Ruger & Company, Inc. *Id*. The Redhawk handgun was purchased by defendant Brent Walker and was stolen from Walker's home in Saginaw County in May 1991 by an unknown person. *Id.*

The plaintiffs in *Resteiner* alleged that "Sturm, Ruger was liable in negligence for selling the handgun to the general public with knowledge that the gun could foreseeably come into the hands of criminals who would create a high risk of harm to the general public". *Id.* at 378. Just like here, "the circuit court initially denied Sturm, Ruger's motion for summary disposition pursuant to MCR 2.116(C)(8), finding that the [firearm] was inherently dangerous because of its high power and that Sturm, Ruger owed a duty to warn the public of the gun's inherent danger". *Id.* at 378. However, the Court of Appeals subsequently recognized that Ruger could not be liable

under a negligence theory merely for "selling the handgun to the general public with knowledge that the gun could foreseeably come into the hands of criminals who would create a high risk of harm to the general public". *Id.* at 378. Specifically, the Michigan Supreme Court held:

> **Plaintiffs first contend that Sturm, Ruger was negligent for marketing its Redhawk revolver to members of the general public**, such as Walker. **We conclude the case is controlled by *Buczkowski v McKay***, 441 Mich. 96, 106; 490 N.W.2d 330 (1992), and *King v R G Industries, Inc*, 182 Mich. App. 343; 451 N.W.2d 874 (1990). **Summary disposition was therefore proper**. *Id.* at 379 (emphasis added).

The allegations here are nearly identical to those in *Resteiner*, i.e. Boyd alleges JSD was negligent because it marketed its products to the general public. (JSD's Appendix, Exhibit A, ¶44). However, to be clear, Boyd's allegations here are **weaker** than those in *Resteiner* because the defendant in that case marketed and sold a completely assembled, fully functional firearm whereas here JSD marketed and sold unfinished parts.

Furthermore, to add insult to injury to the trial court's ruling, parties such as Boyd have actually been sanctioned for advancing this negligence theory because it is well established such a cause of action against a seller of firearms is not viable in Michigan.

> **The trial court was entirely correct in dismissing plaintiffs' respective complaints for failure to state any legally recognizable cause of action. Michigan courts have already repeatedly rejected plaintiffs' theories**. *Buczkowski v McKay*, 441 Mich. 96; 490 NW2d 330 (1992), reh den 441 Mich 1202; 491 NW2d 830 (1992); *King v R G Industries, Inc*, 182 Mich App 343; 451 NW2d 874 (1990); *Raines v Colt Industries, Inc*, 757 F Supp 819 (ED Mich, 1991). Additionally, **plaintiffs' theories have been rejected in every state** to consider them, as long ago as 1973 and as recently as August 2, 1995. *See, e.g., Bennet v Cincinnati Checker Cab Co*, 353 F Supp. 1206 (ED Ky, 1973); *Forni v Sturm, Ruger, et al, slip op* No. 132994-94 (S. Ct. NY County, NY, 8/2/95). Plaintiffs' complaints simply ignore this clear precedent. In light of this authority, as well as *Williams v Cunningham Drug Stores, Inc*, 429 Mich. 495; 418 NW2d 381 (1988), and *Scott v Harper Recreation, Inc*, 444 Mich 441; 506 NW2d 857 (1993), we conclude that **plaintiffs have not advanced a reasonable, good-faith argument for the extension, modification, or reversal of existing law**. MCR 2.114(D)(2). For these reasons, we hold that **plaintiffs' appeals are vexatious because they**

were taken without any reasonable basis for belief that there was a meritorious issue to be determined on appeal. *Id.* at 377 (emphasis added).

The trial court's refusal to follow published, binding precedential authority was a gross miscarriage of justice that requires reversal.

II. The Trial Court Erred By Imposing a Duty of Care In The Absence of Any Relationship Between Boyd and JSD.

Next, the trial court erred by finding that JSD owed a duty of care to Boyd **despite the lack of any relationship between JSD and Boyd.** To succeed on a negligence claim, a plaintiff must demonstrate that (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff was harmed, and (4) the defendant's breach of his duty was the cause of plaintiff's harm. *Loweke v Ann Arbor Ceiling & Partition Co*, 489 Mich 157, 162; 809 NW2d 553 (2011). A defendant cannot be liable unless he owed a duty to the plaintiff. *Hill*, 492 Mich at 661. "[W]hether a legal duty exists is a question of whether the relationship between the actor and the plaintiff gives rise to any legal obligation on the actor's part to act for the benefit of the subsequently injured person." *In re Certified Question*, 479 Mich 498, 505-506; 740 NW2d 206 (2007).

In determining whether a duty exists, a trial court should consider the parties' relationship, the foreseeability of the harm, the burden placed on the defendant, the nature and severity of the risk at issue, the moral blame of the conduct, and the connection between the conduct and the harm. *Valcaniant v Detroit Edison Co*, 470 Mich 82, 86; 679 NW2d 689 (2004); *Dyer v Trachtman*, 470 Mich 45, 49; 679 NW2d 311 (2004). These considerations inform the trial court as to "the ultimate inquiry in determining whether a legal duty should be imposed," which is "whether the social benefits of imposing a duty outweigh the social costs of imposing a duty." *In re Certified Question*, 479 Mich at 505.

The "most important factor" in the determination whether a duty exists "is the relationship of the parties." *Id*. **It is unnecessary to consider the other factors involved in the determination if no relationship exists between the parties**. *Id.* at 507; *see also Buczkowski v McKay*, 441 Mich 96, 101; 490 NW2d 330 (1992) ("[T]o require the actor to act, **some sort of relationship must exist between the actor and the other party** which the law or society views as sufficiently strong to require more than mere observation of the events which unfold on the part of the defendant.") (emphasis added). Similarly, a duty cannot be imposed where the harm is not foreseeable. *In re Certified Question*, 479 Mich at 509; *see also Valcaniant*, 470 Mich at 88.

In this case, it is undisputed there was no relationship between JSD and Boyd. Boyd did not, and could not, allege the existence of any relationship between himself and JSD. (JSD's Appendix, Exhibit A, generally wherein Boyd fails to allege the existence of any relationship between himself and JSD). Specifically, Boyd did not allege he ever visited JSD's website, saw any of JSD's advertisements, YouTube videos or other messaging or ever sought out any of JSD's products. *Id.* Indeed, it is almost certain Boyd did not even know JSD existed. *Id.* They were complete strangers in every sense of the word. *Id.* Thus, under well settled binding precedent, **JSD did not owe any duty to Boyd because "no relationship existed between those parties" and it was unnecessary for the trial court to consider any other factors.** *Id.* The trial court's analysis should have ended here because no further analysis was necessary or permitted. *Buczkowski, Id.*

Unfortunately, despite the lack of **any** relationship between Boyd and JSD, the trial court erroneously found that Boyd's common law negligence claim was "analogous to the [sic] *Moning v Alfono* 400 Mich 425 (1977)". ***Moning* is the exception, not the rule**, and **only** imposes a duty where a seller "directly markets its products to children". The trial court's July 24, 2024 Order

and August 19, 2024 Order Denying Reconsideration are based upon its conclusion that it considered "the factual allegations contained in Plaintiff's well-pleaded Complaint, accepting them as true, and construing them in the light most favorable to Plaintiff". In order for this case to be analogous to *Moning*, Boyd's Complaint must contain well pled factual allegations that JSD marketed its products to "directly to children". The trial court committed a clear error by finding that this case is "analogous" to *Moning* because **Boyd's Complaint does not contain a single, factual allegation that JSD marketed its products "directly to children**". (JSD's Appendix, Exhibit A, Complaint, *generally*).

In paragraphs 26 through 42, Boyd described the technical nature of the products at issue, without making any mention as to whom they are marketed towards. (JSD's Appendix, Exhibit A, Complaint, ¶s 26-42). At paragraph 43, Plaintiff candidly admitted JSD only marketed its products to the general public, not "directly to children" as required under *Moning*. *Id.* Specifically, at paragraph 44, Boyd alleged JSD's website was "**accessible to all internet users**, including teenagers" *Id.,* (emphasis added). Thus, instead of alleging JSD "directly marketed" its products to children, as *Moning* requires in order for there to be a special duty of care in the absence of any relationship, Boyd repeatedly alleged that JSD marketed its products to the general public. (JSD's Appendix, Exhibit A, *generally*). This, by definition, means JSD did **not** target its marketing towards children because the general public includes everyone, including senior citizens, middle-aged and younger people.

To be clear, by stating the obvious conclusion that JSD's website was potentially available to teenagers simply because it was "accessible to all internet users" is a direct, unequivocal admission that JSD marketed its products to the general public, **not** "directly to children". Even accepting all well pled allegations as true in favor of Boyd, as the trial court was required to do,

there was simply no way for the trial court to have concluded that JSD marketed its products "directly to children" based upon Boyd's factual allegations.

The trial court's job was simple: review the well pled factual allegations in Boyd's Complaint to determine if there was any relationship between Boyd and JSD that could give rise to a duty of care. If no relationship was alleged, there is no corresponding duty and the analysis ends. *Valcaniant v Detroit Edison Co, Id.; see also Buczkowski v McKay*, *Id*. The only narrowly construed "exception" in which JSD would owe a duty of care to a stranger like Boyd would be if JSD marketed its products "directly to children" which was not alleged. Boyd raised *Moning* for the first time in response to JSD's Motion for Summary Disposition but never alleged JSD marketed its products "directly to children", nor could he, because no such language appeared on JSD's archived website which was incorporated into Boyd's Complaint. (JSD's Appendix, Exhibit A, *generally*).

JSD cited numerous published and unpublished cases, all of which hold that *Moning* is the exception, not the rule, and only applies where products are marketed "directly to children". (JSD's Appendix, Exhibit D, pgs. 1, 2, 3, and 4 and Exhibit F, pgs. 1, 2, and 3). The trial court inexplicably ignored all of these binding, published cases and singlehandedly expanded tort liability in Michigan. Under the trial court's logic, any seller of any product in Michigan now owes a duty of care to everyone, regardless of whether there is a relationship between that seller and the general public and irrespective of whether the seller markets its products "directly to children". This was plain error requiring reversal.

III. The Trial Court Erred By Imposing a Duty of Care Despite The Lack of Any Statute Defining a Class of Persons Who Are Prohibited From Purchasing the Kits.

The trial court also erred by imposing a duty of care despite the lack of any statute defining a class of persons who are prohibited from purchasing the products at issue here. Specifically, JSD cited *Buczkowski* for the proposition that "because the Legislature has not defined a class of purchasers who we may deem legally incompetent to buy ammunition, we find that the retailer did not have a legal duty to protect plaintiff, a member of the general public, from the criminal act of the defendant". *Buczkowski* at 98. Thus, under Michigan law, JSD did not have a duty to protect a member of the general public (like Boyd) from Thueme's criminal acts because there was no statute restricting Thueme's right to purchase the Kits. The Michigan Legislature could have passed any number of laws imposing a minimum age, training requirements or other criteria for purchasing the products sold by JSD but it chose not enact any such legislation.

Stated another way, JSD did not owe any duty of care to a bystander like Boyd because the Michigan Legislature did not deem Thueme to be "legally incompetent" to purchase the Kits. To make matters even worse, the trial court expressly held "there has been no showing that Defendant, JSD, violated any federal or state law". (JSD's Appendix, Exhibit E, July 24, 2024 Order). Thus, the trial court's decision is internally inconsistent because it held JSD did not violate any state or federal laws but simultaneously ignored *Buczkowski* which holds JSD **only** owes a duty of care to Boyd **if** JSD violated a statute prohibiting it from selling the Kits to Thueme.

There is no way to reconcile these diametrically opposed conclusions. It was palpable error for the trial court to ignore *Buczkowski* which is published, binding case law. *See Tebo v Havlik*, 418 Mich 350, 379; 343 NW2d 181 (1984)(decisions of the Court of Appeals are binding precedent which must be followed by the trial courts). JSD would only owe a duty of care to a member of

the general public if JSD violated a statute making it illegal for JSD to sell the Kits to Thueme, which the trial court correctly recognized does not exist in Michigan.

IV. The Trial Court Erred By Allowing Boyd to Proceed On a Negligent Entrustment Theory Because JSD Did Not Market Its Products "Directly to Children", JSD Did Not Sell Thueme a "Firearm" and JSD Did Not Violate Any State or Federal Statutes.

Next, the trial court committed three errors in finding that Boyd stated a valid claim for negligent entrustment. First, the trial court erred by relying upon *Moning*. Specifically, the trial court stated "Plaintiff has sufficiently alleged a negligent entrustment claim against Defendant JSD. The *Moning* case is also analogous in this claim". (JSD's Appendix, Exhibit E, July 24, 2024, Order). This was a significant, palpable error because, as noted throughout, **there is not a single allegation in Boyd's Complaint that JSD marketed its products "directly to children**". Thus, the narrow rule set forth in *Moning* does not apply here. The trial court impermissibly disregarded decades of published, binding authority which holds **a seller does not owe a duty of care to the general public in the absence of any relationship**. *Valcaniant, Id.; see also Buczkowski, Id*. Because there was admittedly no relationship between JSD and Boyd to support a duty of care, nor did JSD market its products "directly to children", the trial court was bound to follow *Buczkowski* and progeny.

Second, the trial court erred by finding Boyd stated a negligent entrustment claim based upon a statutory violation. As with Boyd's negligence claim, he also asserted two theories in support of his negligent entrustment claim: a common law theory and a negligence *per se* theory. In Count III (Negligent Entrustment), Boyd alleged the following:

> 133. Defendant JSD sold the Kits to Defendant Thueme negligently and **in violation and circumvention of myriad Michigan and federal laws**.
>
> 134. **Each of the laws** that Defendant JSD violated and/or circumvented in selling the Kits to Defendant Thueme **were public safety statutes**, intended to

> protect Mr. Boyd and the public from injuries caused by guns at the hands of prohibited possessors, including minors.
>
> 135. Defendant JSD's violation **of the foregoing laws** creates a presumption that it negligently entrusted a pistol to a minor. (JSD's Appendix, Exhibit A, pgs. 22, emphasis added).

Although the trial court did not specify whether it found that Boyd stated a valid negligent entrustment claim under his common law or negligence *per se* theory, to the extent it found Boyd stated a claim under negligence *per se*, it erred. It is impossible for Boyd to have stated a negligent entrustment claim based upon violation of state and/or federal statutes because the trial court expressly held "there has been no sign that Defendant, JSD, violated any federal or state law". (JSD's Appendix, Exhibit E, July 24, 2024 Order).

Third, the trial court erred by finding that Boyd stated a negligent entrustment claim under the common law. Indeed, the only other basis which the trial court could have found that Boyd stated a valid negligent entrustment claim was under the common law. Specifically, at paragraph 137 (Count III – Negligent Entrustment) of his Complaint, Boyd alleged "State law recognizes a general duty to prevent minors from [sic] possession **firearms**". (JSD's Appendix, Exhibit A, pg. 22, emphasis added). The trial court erred by finding Boyd pled a valid negligent entrustment claim based upon this allegation because the trial court stated JSD did not sell Thueme a "firearm". This inescapable conclusion is necessarily true because the trial court held JSD did not violate any state or federal laws prohibiting the sale of **firearms** to minors. (JSD's Appendix, Exhibit E, July 24, 2024 Order). But Boyd's common law negligent entrustment claim was based **solely** upon his allegation that "state law recognizes a general duty to prevent minors from possessing **firearms**". (JSD's Appendix, Exhibit A, Complaint, ¶137, emphasis added).

IV. The Trial Court Erred By Improperly Applying a "Willful Blindness" Standard to Plaintiff's Negligent Entrustment Claim.

Next, the trial court erred by concluding "JSD had a duty to not entrust chattel [sic] **to a group of consumers including minors** that **it knew or should have known** was likely to use it in a manner involving an unreasonable risk of physical harm". (JSD's Appendix, Exhibit E, July 24, 2024 Order). This Court did not, and could not, conclude JSD entrusted its products **specifically to Thueme** based upon Boyd's Complaint, rather, it impermissibly concluded JSD entrusted its products to an unspecified "group of consumers" which "included minors". Again, this conclusively establishes the Court used the wrong legal standard because it held JSD marketed its products to the general public, **not** "directly to children" which is insufficient as a matter of law to state a duty of care in favor of a bystander. (Compare *Moning, Id.,* which imposed a duty of care in favor a bystander only where the seller marketed its products "directly to children" with *Valcaniant and Buczkowski, Id.* which held a seller does not owe a duty of care to the general public in the absence of any relationship between the seller and the plaintiff/bystander).

The trial court also erred by concluding that JSD "**knew or should have known**" Thueme was likely to use its products in an unsafe manner. At paragraph 138 of his Complaint, Boyd alleged JSD was "**willfully blind to the fact, and therefore knew or reasonably should have known**, that Defendant Thueme, a 17 year-old, was not of sufficient age to legally possess, receive, or purchase **a pistol**". (JSD's Appendix, Exhibit E, July 24, 2024 Order, emphasis added). The trial court could only have based its decision upon this allegation (and others like it) because it decided JSD's Motion for Summary Disposition under MCR 2.116(C)(8) with reference to the pleadings, alone. Yet there are numerous, fatal defects in this allegation.

First, the trial court correctly determined JSD did not sell Thueme a "pistol". (JSD's Appendix, Exhibit E, July 24, 2024 Order). Thus, to the extent the trial court's decision was based

upon JSD's purported knowledge that Thueme was too young to own a "pistol", it erred because the trial court agreed JSD never sold a "pistol" to Thueme. (JSD's Appendix, Exhibit E, July 24, 2024 Order, pg. 2).

Second, Boyd's allegation that JSD was "willfully blind" and "therefore knew or reasonably should have known" is insufficient as a matter of law to state a claim for negligent entrustment. **Willful blindness does not equal knowledge, in fact, every court that has considered the issue has held the exact opposite: a seller does not have any affirmative duty to inquire about a purchaser's status and a seller's failure to inquire cannot give rise to a negligent entrustment claim**. *See Buschlen v Ford Motor Co (On Remand)*, 121 Mich App 113, 117; 328 NW2d 592 (1982)("**the *Fredericks* court did not recognize an affirmative duty to inquire on the part of the entrustor** to ensure that the chattel being entrusted was being used in a safe manner. **Instead, the entrustor must first have special notice of the peculiarities of the entrustee** sufficient to put the entrustor on notice before the entrustor is under any further duty to ensure an entrusted chattel's safe use.

Yet this is literally the only "factual allegation" Boyd included in his Complaint, i.e. he **admits** JSD did not know of **any** of Thueme's peculiarities (his age, his propensity to illegally consume drugs and alcohol and his reckless use of firearms) but says "willful" blindness is enough to state a claim because JSD **should have inquired**. **This is not the law in Michigan, nor has it ever been**. *See Fredericks, Id.; Buschlen, Id.*[1]

[1] JSD also cited at least two unpublished decisions in its trial court pleadings, both of which held that there is no affirmative duty to inquire regarding an entrustee's status and the fact that a potential product may be used during an event does not constitute notice a product will necessarily be used in an unsafe and/or criminal manner. *See Burlingame v. Nationsrent, Inc*., unpublished decision of the Michigan Court of Appeals, Docket No. 291312, decided January 25, 2011 (Appendix, pg. 287) and *Flowers v. Williams*, unpublished decision of the Michigan Court of

The trial court ignored published, binding law it was bound to follow and instead "legislated from the bench" by holding Boyd stated a claim for negligent entrustment where he only alleged JSD "knew, or reasonably should have known" **based solely upon JSD's alleged "willful blindness**". Moreover, this allegation does not make sense: either JSD had actual knowledge or it did not, and positive, actual knowledge cannot be equated with "willful blindness" under *Buschlen*. Boyd's negligent entrustment claim is defective based upon the allegations of "willful blindness" contained within the four corners of his Complaint because "willful blindness" is not akin to actual knowledge nor did JSD have any duty to make further inquiry. *See Fredericks, Id.; Buschlen, Id.; Burlingame* and *Flowers.*

VI. The Trial Court Erred By Holding That Plaintiff Sufficiently Alleged JSD Proximately Caused Thueme to Shoot Plaintiff In the Face Merely By Advertising Its Products to the General Public.

Finally, the trial court erred by finding that Boyd sufficiently alleged JSD proximately caused Thueme to illegally consume drugs and alcohol and shoot Boyd in the face **merely by advertising its products for sale to the general public**. This was an unprecedented and unwarranted expansion of proximate cause under Michigan law.

Boyd's allegations regarding causation, even when accepted as true and viewed in a light most favorable to him under MCR 2.116(C)(8), were insufficient as matter of law. In fact, saying Boyd's allegations regarding causation were "insufficient" is a gross understatement: **Boyd did not include a single allegation of proximate cause in Count I of his Complaint.** Instead, he simply stated "**But for** Defendant JSD's sale of the Kits to Defendant Thueme, Defendant Thueme

---

Appeals, Docket No. 301175, decided January 17, 2012. (Appendix, pg. 298). JSD cited these decisions because they are relevant, specific fact patterns that are helpful in explaining the negligent entrustment doctrine. *See* MCR 7.215(C).

could have not shot Mr. Boyd". (JSD's Appendix, Exhibit A, Complaint, ¶116, emphasis added). "Proximate cause is an essential element of a negligence claim." *Ray v Swager*, 501 Mich 52, 63; 903 NW2d 366 (2017). Proximate cause should not be confused with cause in fact, or factual causation, which means that a plaintiff's injury would not have occurred "but for" the actions of a defendant. *Ray*, *Id.* 501 Mich at 63.

Here, Boyd completely and utterly failed to include **any** allegation of proximate causation in Count I of his negligence claim. Merely alleging "but for" causation is fatal because that only satisfies 50% of the requisite pleading standard. Boyd's complete and utter failure to plead proximate causation (which is a basic requirement of any negligence claim) required dismissal at the pleading stage under MCR 2.116(C)(8). *See Spiek v Dep't of Transp,* 456 Mich 331, 339; 572 NW2d 201 (1998) (summary disposition under MCR 2.116(C)(8) was appropriate when "[t]aking all plaintiffs' factual allegations as true, **the complaint fails to allege an essential element of their cause of action**")(emphasis added). The trial court erred in refusing to dismiss Count I of Boyd's Complaint at the pleading stage.

Next, while Boyd's Complaint did contain a few conclusory allegations of both "but for" and proximate cause in Count III (Negligent Entrustment) (Appendix, Exhibit A, ¶s141 and 142), these allegations are insufficient as a matter of law under *Lowy v Daniel Defense, LLC*, US District Court, ED VA, Docket No. 1:23-cv-1338, decided July 24, 2024. (JSD's Appendix, Exhibit F, pg. 298). (*Lowy* was decided on the same day the trial court issued its order denying JSD's Motion for Summary Disposition).

The facts of *Lowy* are as follows. That lawsuit arose out of a school shooting in which two of the plaintiffs were struck and injured by bullets. (JSD's Appendix, Exhibit F, pg. 299). The plaintiffs sued the manufacturer of the assault rifle used by the shooter and, like here, asserted

negligence and negligence *per se* claims. (JSD's Appendix, Exhibit F, pg. 299). And, just like here, the plaintiffs in Lowy alleged the defendant/manufacturer "deceptively and unfairly marketed their assault rifles…to appeal to the impulsive, risk-taking tendencies of civilian adolescent…males". (JSD's Appendix, Exhibit F, pg. 298). The *Lowy* plaintiffs further alleged the shooter there "foreseeably used defendants' products in [a] mass shooting" and the shooter was "influenced by defendants' marketing practices and relied on defendants' advertisements when purchasing his weapons". (JSD's Appendix, Exhibit F, pg. 298). The theories asserted in *Lowy* are nearly identical to those presented by Boyd here and were addressed in a motion under Fed. R. Civ. P. 12(b)(6) (a motion to dismiss based upon the complaint, alone, and accepting the factual allegations as true in light most favorable to the plaintiffs).

The *Lowy* court dismissed the plaintiffs' claims for numerous reasons, including because those plaintiffs, like Boyd here, failed to sufficiently plead proximate causation. Specifically, the *Lowy* court held the complaint in that case "does no more than speculate that Shooter, like other young men…observed defendants' advertisements. Without more support, these pleadings fail to raise plaintiffs' right to relief above the speculative level and can proceed no further". (JSD's Appendix, Exhibit F, pg. 299). Similarly, all Boyd alleges here is that JSD's website, at most, encouraged Thueme to purchase its products. (JSD's Appendix, Exhibit A, Complaint, pgs. 9, 10 and 11).

More importantly, the *Lowy* court also held that in order to successfully plead proximate causation at the pleading stage, those plaintiffs were not only required to allege the defendants' advertisements encouraged the shooter to purchase their assault rifle, but that defendants' advertisements encouraged or coerced the purchaser to illegally shoot innocent children. (JSD's Appendix, Exhibit F, pgs. 299-300). Boyd's allegations are similarly defective here because he

does not, and cannot, allege JSD encouraged Thueme to get drunk and high and recklessly shoot Boyd in the face. "Viewed most optimistically, plaintiffs allege that Shooter relied on defendants' advertisements when choosing to purchase defendants' products. **The Court cannot transform that allegation into an allegation that defendants' marketing had a 'determinative or coercive effect' on Shooters' decision to shoot at plaintiffs**". (JSD's Appendix, Exhibit F, pg. 299, emphasis added). Stated another way, the *Lowy* court held "**absent is any allegation that defendants' advertising coerced Shooter to attack the elementary school. Without that allegation, plaintiffs' alleged causal chain is incomplete**". (JSD's Appendix, Exhibit F, pg. 299-300, emphasis added).

Here, Boyd did not allege JSD coerced or encouraged Thueme to shoot Boyd which is required under MCR 2.116(C)(8), *Lowy* and Michigan law. Merely alleging JSD encouraged Thueme to purchase its products, without alleging JSD encouraged Thueme to recklessly shoot Boyd, is insufficient as a matter of law because Boyd **must** allege JSD was the proximate cause of Thueme shooting Boyd. (And because the trial court already held JSD did not violate any state or federal statutes by merely selling its products to Thueme, it was logically impossible for JSD's website, which at best encouraged customers to purchase its products, to be the proximate cause of Thueme's decision to shoot Boyd). What Boyd alleged here, in a light viewed most favorably to him, is that JSD advertised its products for sale to the general public (and therefore JSD's products could potentially land in the hands of minors). (JSD's Appendix, Exhibit A, Complaint, ¶44). Merely alleging "proximate cause" by arguing that a manufacturer potentially allowed prohibited persons access to its products has been rejected over and over again.

> The **city alleged that the defendant firearm companies' conduct in marketing and distribution of handguns allows them to fall into the hands of criminals and children…[but] plaintiffs' allegations were too remote to allege proximate cause because plaintiffs failed to allege the gun manufacturers 'intended to**

> **inflict injury upon the citizens of Philadelphia**…**the city at most alleged the firearm companies possessed an 'awareness of the means by which prohibited purchasers end up possessing handguns – an allegation insufficient to support proximate cause**. *See City of Philadelphia v Beretta USA Corp*, 277 F3d 415 at 419 (3rd Cir, 2002)(emphasis added).

This is precisely what Boyd alleged here with respect to "proximate causation", merely that JSD marketed its products in such a way that minors such as Thueme could potentially purchase them. (JSD's Appendix, Exhibit A, Complaint, ¶18 "ghost guns are particularly dangerous because they can be easily obtained by people who are not lawfully entitled to possess firearms, such as minors"; ¶44 "Kits were available for purchase through Defendant JSD's website, which was accessible to all internet users, including teenagers"; ¶138 "JSD…knew or reasonably should have known…that Defendant Thueme, a 17 year old, was not of sufficient age to legally possess, receive or purchase a pistol").

Boyd did not (and could not) allege JSD proximately caused Thueme to shoot Boyd in the face while under the influence of drugs and alcohol. Merely alleging that a minor could come into possession of a product is insufficient as a matter of law to plead proximate cause. The trial court did not make any effort to analyze or distinguish *Lowy* in any meaningful way other than to state the obviously conclusion that "Michigan is in the 6th Circuit". (JSD's Appendix, Exhibit G, 3rd paragraph). But Michigan follows the same standard for pleading proximate causation set forth in *Lowy,* i.e. a plaintiff cannot simply allege a retailer is the proximate cause of injury or death merely because it offered its products for sale to the general public. That is insufficient as a matter of law in Michigan, as it is in the 4th Circuit. *See Black v Shafer,* 499 Mich 950 (2016)(group of friends, including 16 year old minor, were drinking and smoking marijuana when defendant entrusted shotgun to his friend who in turn shot bystander, court held "defendant's conduct pertaining to the shotgun did not constitute a proximate cause of the plaintiff's injury, as [his friend]'s subsequent

actions in picking up the shotgun…cycling a shell in the chamber…and pulling the trigger constituted an intervening cause of the plaintiff's injury, which broke the chain of causation and relieved the defendant of any liability")[2].

Additionally, the *Lowy* court acknowledged that while "the question of proximate cause is usually a question of fact for a jury…when 'reasonable persons may not differ in their conclusions that such negligence was such a cause, a trial court properly decide[s] the question as a matter of law'". (JSD's Appendix, Exhibit F, pg. 301). The law is the same in Michigan. *Holton v A+ Ins Assocs*, 255 Mich App 318, 326; 661 NW2d 248 (2003)(causation is generally a matter for the trier of fact, but if there is no issue of material fact, then the issue is one of law for the court); *see also Martin v Ledingham*, 282 Mich App 158, 161; 774 NW2d 328 (2009), rev'd on other grounds 488 Mich 987; 791 N.W.2d 122 (2010)("here, reasonable persons may not differ because plaintiffs' pleadings provide no basis for finding proximate cause. So, plaintiffs' negligence and negligence *per se* claims fail too"). There were no disputed issues of fact because JSD's motion for summary disposition was brought under MCR 2.116(C)(8). Boyd simply alleged JSD proximately caused Thueme to shoot Boyd while the two were drunk and high merely because JSD's website was

[2] *See also Jane Garside & Lee E. Makielski v Szukhent,* unpublished decision of the Michigan Court of Appeals, Docket No. 231836, decided July 23, 2002 ("nor does the fact that [defendant] could have foreseen that [plaintiff] might misuse the paintball gun, by itself, give rise to a duty" and [defendant's] actions "merely provided the condition affording opportunity" for [defendant's] negligence to produce the injury, and cannot be considered a proximate cause") (Appendix, Exhibit J, 3rd and 4th paragraphs); *Estate of Blake L Bibbins v Swetland*, unpublished decision of the Michigan Court of Appeals, Docket No. 351271, decided October 15, 2020 ("although defendants initially handed the gun to the decedent" [who was impaired by alcohol and in a highly emotional state]...decedent's subsequent and much more materially significant actions" of failing to ensure bullets were removed from gun, pointing the firearm at his head and pulling the trigger were "the cause of the accident"). (Appendix, Exhibit K, pgs. 3 and 4). JSD cites these cases because they are relevant and on point. *See* MCR 7.215.

"accessible to all internet users". (JSD's Appendix, Exhibit A, Complaint, ¶44). This is not the law in Michigan.

CONCLUSION AND RELIEF REQUESTED

JSD respectfully requests that this Court grant its Application for Leave to Appeal, restore the law of negligence to its rightful place in Michigan jurisprudence, reverse the trial court's denial of JSD's Motion for Summary Disposition, and award JSD any other relief this Court deems appropriate.

Respectfully submitted,
PENTIUK, COUVREUR & KOBILJAK, P.C.

/s/ Kerry L. Morgan
By: Kerry L. Morgan (P32645)
And: Randall A. Pentiuk (P32556)
Attorneys for Defendant/Appellant Not an LLC d/b/ JSD Supply
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
(734) 281-7100
kmorgan@pck-law.com
rpentiuk@pck-law.com

Dated: September 6, 2024

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE AND TYPESTYLE REQUIREMENTS

This document contains 8,070 words, has been prepared in proportionally spaced typeface using Microsoft Word in Times New Roman 12-point font, and is in compliance with the word limitation of MCR 7.212(B).

PENTIUK, COUVREUR & KOBILJAK, P.C.

/s/ Kerry L. Morgan
By: Kerry L. Morgan (P32645)
And Randall A. Pentiuk (P32556)
Attorneys for Defendant/Appellant Not an LLC d/b/ JSD Supply,
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
(734) 281-7100
kmorgan@pck-law.com
rpentiuk@pck-law.com

Dated: September 6, 2024

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2024, I electronically filed the foregoing Defendant/Appellant JSD's Application for Leave to Appeal with the Clerk of the Court using the MiFILE system, which will send the same to the attorneys of record.

Respectfully submitted,
PENTIUK, COUVREUR & KOBILJAK, P.C.
/s/ Kerry L. Morgan
By: Kerry L. Morgan (P32645)
And Randall A. Pentiuk (P32556)
Attorneys for Defendant/Appellant Not an LLC d/b/ JSD Supply
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
(734) 281-7100
kmorgan@pck-law.com
rpentiuk@pck-law.com

Dated: September 6, 2024