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10/23/2024 12:01 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
Case type: Other Civil

Sarah B. Van Bogart, as trustee for heirs and next of kin of Jordan Lance Markie,

Plaintiff,

vs.

Scheels All Sports, Inc. and William Ballantyne,

Defendants.

Case No. 27-CV-24-13319
Judge Karen Janisch

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

Defendants Scheels All Sports, Inc. ("Scheels") and William Ballantyne ("Ballantyne") (collectively, "Defendants") respectfully submit this Memorandum in support of Defendants' motion to dismiss the claims asserted in the Amended Complaint filed by Plaintiff Sarah B. Van Bogart, as trustee for heirs and next of kin of Jordan Lance Markie ("Plaintiff") for failure to state a claim upon which relief can be granted.

Plaintiff's Amended Complaint alleges that Defendants "negligently entrusted" a handgun to Jordan Lance Markie ("Mr. Markie"), a nineteen year-old man. The facts as alleged by Plaintiff contend that Mr. Markie entered the Scheels retail store in Eden Prairie, Minnesota, asked the Scheels sales associate to see an unloaded handgun for sale (which firearm was located in a locked case), and, in a startling turn of events, ran off with the unloaded firearm, loaded it with ammunition while on the run, and shot himself, ending his own life. While Defendants certainly recognize the tragic loss of Mr. Markie, Plaintiff's Amended Complaint and the claims therein are a legally unsustainable exercise in blame-shifting. Accepting each allegation in the Amended

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

Complaint as true, as Defendants must for purposes of this Motion, at no point during the brief interaction with Mr. Markie did Defendants commit any sort of wrongdoing. Unfortunately, as is clear from the allegations in the Amended Complaint, Mr. Markie engaged in a string of independent, unforeseeable decisions that resulted in Mr. Markie's theft of the firearm and his ultimate suicide in the Scheels store. As a matter of law, Defendants cannot and should not be held responsible for those unforeseeable, independent decisions.

Accordingly, and as discussed in more detail below, Plaintiff's Amended Complaint against Defendants must be dismissed in its entirety pursuant to Minnesota Rule of Civil Procedure 12.02(e).

STATEMENT OF FACTS

Even if accepted as true[1], the facts alleged in Plaintiff's Amended Complaint fail to state a claim upon which relief can be granted against Defendants.

As alleged by Plaintiff, the facts relevant to this motion are as follows: on August 22, 2022, Mr. Markie, then nineteen years old, rode his bicycle to the Eden Prairie Scheels store and proceeded to the firearms department on the second floor. (Amended Compl. at ¶ 25). Mr. Markie freely walked around the firearms department for several minutes, after which he asked Scheels employee Ballantyne to see a Taurus G2C 9mm handgun (the "Taurus Handgun"), which was contained inside a locked cabinet. (*Id.* at ¶¶ 29-30). The Taurus Handgun was unloaded but was not otherwise disabled. (*Id*.). Ballantyne did not ask Mr. Markie for identification to determine

[1] As required under Minnesota law, Defendants accept the facts alleged in Plaintiff's Amended Complaint as true ***solely*** for purposes of this Motion. *See, e.g., Johnson v. Peterson*, 734 N.W.2d 275, 277 (Minn. Ct. App. 2007) (requiring that the trial court consider only the facts alleged in the complaint when considering a motion to dismiss for failure to state a claim, accepting those facts as true and construing all reasonable inferences in favor of the non-moving party). Outside the context of this Motion, Defendants dispute Plaintiff's allegations and characterizations contained in the Amended Complaint and expressly deny that Defendants engaged in any negligent conduct.

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

whether Mr. Markie was twenty-one years of age before Ballantyne unlocked the cabinet and handed the unloaded firearm to Mr. Markie. (Amended Compl. at ¶ 31). "Less than half a minute" passed during this interaction between Mr. Markie and Ballantyne. (*Id*. at ¶ 32).

Mr. Markie then handled the Taurus Handgun in front of Ballantyne for approximately twenty-eight seconds before Mr. Markie ran off with the firearm to another part of the store, loaded it with a round of 9mm ammunition, pointed it at himself and pulled the trigger, thereby tragically ending his life. (*Id.* at ¶¶ 32-34). Plaintiff also alleges "upon information and belief" that the ammunition Mr. Markie used to take his life "was available" on the shelves of the Eden Prairie store and that Mr. Markie had previously stolen ammunition from the store "on at least two occasions prior to August 22, 2022". (*Id.* at ¶36). Plaintiff does not allege that the ammunition Mr. Markie used to load the Taurus Handgun was ammunition Mr. Markie stole from the Scheels store the day of the incident or at any time prior to the incident. (*See generally*, Amended Compl.)

Based on these allegations, Plaintiff's Amended Complaint asserts claims of negligent entrustment and wrongful death against Defendants. (*Id*. at pp. 12-14.) For the reasons outlined below, even if the allegations asserted by Plaintiff are true, Plaintiff's Amended Complaint does not state any sustainable cause of action against Defendants, and Plaintiff's claims against Defendants must be dismissed from the outset of this litigation.

LEGAL ARGUMENT

The claims asserted in Plaintiff's Amended Complaint suffer from fatal flaws, each of which, independently, are sufficient for this Court to dismiss Plaintiff's Amended Complaint in its entirety. From the outset, and presumably because of the application of the Protection of Lawful Commerce in Arms Act ("PLCAA"), 15 U.S.C. §7903(5)(A), a federal statute that would preempt a general negligence claims against Defendants, Plaintiff attempts to shoehorn her claim against Defendants into a claim for "negligent entrustment", a seldom-used cause of action in Minnesota

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

most often seen in the context of incidents involving a child's operation of automobiles or other recreational vehicles. Simply stated, because of the preemption that PLCAA establishes, Plaintiff's claims can only proceed if Defendants' conduct fits into the narrow circumstances attendant to a negligent entrustment cause of action. However, because Plaintiff's claims do not and cannot meet the required elements of a negligent entrustment cause of action under Minnesota law, Plaintiff's action must be dismissed in its entirety.

I. LEGAL STANDARD

Pursuant to Rule 12.02 of the Minnesota Rules of Civil Procedure, a defendant may raise the defense of failure to state a claim upon which relief may be granted by motion. *See* Minn. R. Civ. P. 12.02(e). Minnesota courts have long recognized that a motion to dismiss under Rule 12.02 is the proper method for challenging the legal sufficiency of a claim. *See, e.g., Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

In reviewing a motion to dismiss for failure to state a claim, only well-pleaded allegations of fact must be accepted as true; conclusory allegations of fact or law not supported by allegations of specific fact may not be taken as true. *See, e.g., Johnson v. Peterson,* 734 N.W.2d 275, 277 (Minn. Ct. App. 2007); *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008) (confirming the Court is "not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim."); *Dahl v. R.J. Reynolds Tobacco Co.*, 742 N.W.2d 186, 189 (Minn. Ct. App. 2007) (stating that on a motion to dismiss, the Court "consider[s] only the facts alleged in the complaint"). Where a moving party can demonstrate that it is not possible to grant relief on any evidence that might be produced consistent with the complaint, dismissal is warranted. *See Wiegand v. Walser Auto. Groups, Inc*., 683 N.W.2d 807, 811 (Minn. 2004).

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

Applying this standard with regard to claims involving negligent entrustment under Minnesota law leads to the unavoidable conclusion in this case that dismissal of Plaintiff's Amended Complaint is necessary. Even considering the Amended Complaint's factual allegations in a light most favorable to Plaintiff and accepting them as true, the pleading lacks legal sufficiency and must be dismissed.

II. COUNT I OF THE AMENDED COMPLAINT, PLAINTIFF'S NEGLIGENT ENTRUSTMENT CLAIM, FAILS BECAUSE PLAINTIFF CANNOT MEET THE REQUIRED LEGAL ELEMENTS.

The only substantive claim in Plaintiff's Amended Complaint is for "negligent entrustment." (Am. Compl. at ¶¶ 44-55). As mentioned above, Plaintiff relies on this specific cause of action because PLCAA expressly prohibits any state or federal civil action "brought by any person against a manufacturer or seller of a qualified product, or a trade association for damages ... resulting from the criminal or unlawful misuse of a qualified product by the person or a third party... ." 15 U.S.C. §7903(5)(A). A "qualified product" is defined in PLCAA to include firearms and ammunition. *See* 15 U.S.C. §7903(4). In other words, this statute confirms that a claimant may not bring a general negligence claim (or any other cause of action that does not fall within the exceptions to the PLCAA) against a firearms seller.

The preemptions of PLCAA expressly exclude claims based on negligence *per se*, negligent entrustment, or "knowing violations of state or federal statutes." 15 U.S.C. §7903(5)(A), (B). It is this narrow exception to preemption, which allows claims for negligent entrustment, that Plaintiff is relying on to advance claims against Defendants and the reason Plaintiff is forced to present her claims solely in the form of a negligent entrustment claim.

Minnesota has adopted Section 390 of the Restatement (Second) of Torts, defining, governing, and recognizing the cause of action of negligent entrustment. The Restatement outlines the required legal elements for a claim of negligent entrustment as follows:

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

> One who supplies directly or through a third person a chattel ***for the use*** of another whom the supplier ***knows or has reason to know*** to be likely because of his youth, inexperience, or otherwise, ***to use it in a manner involving unreasonable risk*** of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

Johnson v. Johnson, 611 N.W.2d 823, 826 (Minn. Ct. App. 2000) (internal citations omitted and emphasis supplied).

In application of this definition, Minnesota cases establish that foreseeability is an important factor in negligent entrustment analysis. *See id.* Specifically, "negligent entrustment has been defined as a separate wrongful act when the negligence of the [person to whom the chattel is entrusted] is ***reasonably foreseeable*** and the entrustor fails in the duty to take steps to prevent" use of the chattel. *Lim v. Interstate Sys. Steel Div., Inc*., 435 N.W.2d 830, 832 (Minn. Ct. App. 1989) (emphasis supplied).

In fact, negligent entrustment is a seldom-used[2] cause of action in Minnesota. The claim is most often used in Minnesota in the context of automobiles where, for example, a car owner permits an unlicensed, underage child to drive a car and the child then injures herself or another. *See, e.g., Axelson v. Williamson*, 324 N.W.2d 241, 244 (Minn. 1982). Other types of negligent entrustment cases involve owners that supply a chattel to someone with known, adverse propensities. *See, e.g., Lim*, 435 N.W.2d at 831-32 (involving negligent entrustment of a vehicle to a commercial driver with a previous citation for drug possession while driving). Indeed, there is only one prior case in Minnesota that examined a negligent entrustment cause of action in the context of use of a firearm, and that opinion issued by the Minnesota Supreme Court expressly found that negligent entrustment had not occurred. *See Clarine v. Addison*, 234 N.W. 295, 296

[2] Of the thirty-seven total Minnesota cases that contain the phrase "negligent entrustment", only twenty-five are reported, and a substantial portion of those relate solely to inapplicable insurance coverage issues.

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

(Minn. 1931) (declining to hold a father liable for negligent entrustment where the father furnished a 22-caliber rifle to his nineteen year-old son who then accidentally injured another person).

Accordingly, in order for Plaintiff's Amended Complaint to survive Defendants' motion to dismiss, Plaintiff's Amended Complaint must plausibly allege that: (1) Defendants supplied a chattel ***for the use*** of another; (2) whom Defendants ***knew or had reason to know*** to be likely because of his youth, inexperience, or otherwise, ***to use the chattel in a manner involving unreasonable risk*** of physical harm to himself or others; and (3) that physical harm resulted. Restatement (Second) of Torts § 390 (Am. L. Inst. 1977); *see also Johnson*, 611 N.W.2d at 826. Here, Plaintiff cannot meet these requirements of Minnesota law.

A. Defendants Did Not Supply the Taurus Handgun to Mr. Markie for Use.

The first requisite element of a valid negligent entrustment claim examines whether Defendants "supplied directly or through a third party a chattel ***for use*** of another . . . ." *Axelson,* 324 N.W.2d at 244 (emphasis added). In the automobile context, which, again, comprises the vast majority of case law in regard to this legal claim, "supplied for use" occurs when the owner of a vehicle authorizes another person to operate the vehicle, *i.e.* drive the vehicle. For example, in *Axelson*, the defendant and owner of a vehicle permitted a fifteen-year-old girl, who did not have a driver's license or learner's permit, to drive the car that he owned. While driving, the girl lost control of the car and crashed, suffering injuries that resulted in her death. *See id*. In those circumstances, the trial court found the defendant was negligent because he entrusted the operation of his car to a person whom he could have foreseen would operate the car in a negligent matter. *See id.*

As another example, in *Jones v. Fleischhacker,* the plaintiff brought suit against defendants, a father and son, to recover damages for injuries that plaintiff sustained while riding

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

in a car driven by the son. 325 N.W.2d 633, 640 (Minn. 1982). In that negligent entrustment case, the jury found the father was partially negligent for allowing his minor son, who only had a learner's permit, to have both possession of the keys to the vehicle and permission to drive the vehicle. *See id.* In reviewing whether the father's negligence should be set aside, the Minnesota Court of Appeals found that, based on the father's actual knowledge or a reasonable person's knowledge, a jury could have concluded that the father failed to use due care in granting permission for his son to drive the car. *See id.*

This case law demonstrates that the chattel entrusted must be entrusted for its intended actual use in order for the owner of the chattel to be liable for negligent entrustment. In both *Axelson* and *Jones,* the owner of the chattel (in those cases, vehicles) supplied the chattel to another so that the other could *use* the chattel and *drive* the vehicle from one place to another. Indeed, and importantly for purposes of this case, the Minnesota Court of Appeals has specifically distinguished ***use*** of chattel from ***sale*** of chattel and has held that claim of negligent entrustment does not apply within the context of a sale. *See Johnson*, 611 N.W.2d at 826-27 (holding that the doctrine of negligent entrustment did not apply in the area of sales and that, even if it did, defendants could not reasonably have foreseen the harm that would result by use of the chattel).

Here, in a distinction fatal to Plaintiff's claims, Defendants did not supply Mr. Markie with the Taurus Handgun for Mr. Markie to *use* the firearm. Indeed, Ballantyne handed the Taurus Handgun to Mr. Markie to inspect the unloaded firearm inside the Scheels retail store. (Am. Compl. at ¶¶ 30-32). This is not a situation where Defendants supplied the firearm to Mr. Markie for any purpose where the firearm would actually be discharged, *i.e.*, used. Indeed, Plaintiff does not and cannot make the allegation that Defendants entrusted Mr. Markie with the Taurus Handgun for him to fire the handgun. (*See generally,* Am. Compl.) To the contrary, Plaintiff's Amended

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

Complaint describes a situation in which Defendants temporarily handed Mr. Markie an unloaded gun for inspection inside the store, in a location that Plaintiff does not and cannot allege that firearms are fired or expected to be fired. (Am. Compl. at ¶¶ 30-33).

Because Plaintiff does not and cannot allege that Defendants supplied Mr. Markie the Taurus Handgun "for use," Plaintiff cannot meet the first element for a sustainable claim of negligent entrustment. Accordingly, Plaintiff's Amended Complaint is properly dismissed in its entirety.

B. Defendants Did Not and Could Not Have Had Reason to Know that Mr. Markie Would Likely Use the Taurus Handgun in a Manner Involving Unreasonable Risk of Physical Harm.

The second requisite element of a negligent entrustment claim requires that Defendants "knew or had reason to know [the entrustee] to be likely because of their youth, inexperience, or otherwise, to use [the chattel] in a manner involving unreasonable risk of physical harm to themselves or others whom the supplier should expect to share in or be endangered by its use." *Axelson,* 324 N.W.2d at 244. At its core, the second element is a foreseeability analysis. *See Johnson*, 611 N.W.2d at 826-27. As with the first requisite legal element, Plaintiff also cannot satisfy this independent second element, and Plaintiff's negligent entrustment claim must be dismissed.

Plaintiff alleges that "Defendants knew or reasonably should have known that Jordan, at 19 years old, was not of sufficient age to legally receive or purchase a handgun from a firearms dealer like Scheels. Jordan was an incompetent entrustee by virtue of his age." (Am. Compl. at ¶ 46). Additionally, "[s]uch negligent entrustment further occurred because Defendants took no steps to determine whether Jordan was of sufficient age to receive or purchase a handgun, despite the fact that Jordan looked substantially younger than his actual age and it is industry practice to

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

ask for identification before providing a potential customer with a firearm to ensure that said customer is legally old enough to buy the firearm." (Am. Compl. at ¶ 47).

Neither of these allegations, or any other allegation contained in Plaintiff's Amended Complaint, are sufficient to show that "because of [Mr. Markie's] youth, inexperience, or otherwise" Defendants "knew or had reason to know" after a total of fifty-eight seconds of interaction that Mr. Markie would use the Taurus Handgun in a manner involving unreasonable risk of physical harm.

First, Minnesota law specifically allows for lawful interaction with handguns by adults between the ages of eighteen to twenty-one in a number of circumstances. For example, any adult not otherwise excluded by statute (*i.e.*, a person over the age of eighteen) may purchase a handgun through a private sale in Minnesota or receive the handgun as a gift. *See* Minn. Stat. §624.713. Further, adults between the ages of eighteen and twenty-one in Minnesota may obtain a permit to carry a handgun for self-defense, and it has been ruled unconstitutional for these adults to be denied a permit to carry a handgun simply because they are in the age bracket between ages eighteen and twenty-one. *See Worth v. Jacobson*, 108 F.4th 677, 685 (8th Cir. 2024) (confirming that protections in the Second Amendment include adults age eighteen and older). Also, in Minnesota, people as young as age fourteen may legally handle or have in their possession a firearm as long as they are accompanied by a parent/guardian or have a firearms safety certificate. *See* Minn. Stat. §97B.021; Minn. Stat. §624.713, subd. 1(1). Finally, there is no statutory requirement in Minnesota that a gun seller check identification of a potential customer prior to handing over an unloaded firearm for purposes of inspection inside a retail store.

Accordingly, on its face, nothing about Mr. Markie's alleged age (at nineteen years old) is sufficient on its own to give Defendants reason to know that handing over the firearm for purposes

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

of inspection (not use) would involve unreasonable risk of physical harm. In fact, in the *only* Minnesota negligent entrustment case involving the use of a firearm, the Minnesota Supreme Court found that it was not clear that the entrustee, ***a 19-year old man,*** was necessarily inexperienced or careless with firearms by virtue of his age or that his father had reason to reasonably foresee the negligent use of the firearm. *See Clarine*, 234 N.W. at 296. Indeed, the standard and analysis stated by the court in *Clarine* are particularly instructive here:

> The record does not show whether [the nineteen-year-old entrusted with the firearm] was experienced or inexperienced, careful or careless, with firearms. There is nothing to indicate that the son, come almost to man's estate, was an unsafe donee of the target weapon in question. In an age when the legislative and executive branches of government permit the unrestricted possession, not only of small arms, but also of machine guns, the judiciary cannot hold a father for negligence simply because he has furnished his nineteen year old son, a normal young man, with some means of becoming familiar with firearms and proficient in their use. There is no authority for holding a parent liable in the absence of proof that, because of extreme youth, mental deficiency, recklessness, or other dangerous tendencies of which the parent was chargeable with knowledge, it was unsafe to intrust [sic] the child with possession of a firearm. In the absence of such evidence, it cannot be said that the parent might or should have reasonably anticipated that, as a consequence of the possession or use of the weapon by the child, another would be injured.

Id.

In this case, the knowledge and foreseeability elements are even more attenuated than in the circumstances presented in *Clarine*. Unlike the *Clarine* case, Defendants were not Mr. Markie's parent (and, as a result, did not have years of interactions with him), and Defendants never entrusted the Taurus Handgun to Mr. Markie for use. With these important distinctions, and considering the holding of *Clarine* and the requirements of Minnesota law, it is not possible for Plaintiff to present a legally-sustainable claim against Defendants for negligent entrustment.

Further, especially given the circumstances of the manner in which Defendants provided Mr. Markie with the Taurus Handgun (unloaded, for inspection, in the context of a retail store, and in the context of an interaction that lasted for a total of fifty-eight seconds), Defendants could not

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

have had any reasonable reason to know that Mr. Markie would use the unloaded gun in a manner involving unreasonable risk of physical harm. In the automobile context to which negligent entrustment analysis often refers, an analogous situation would be a car dealership employee allowing a potential customer to open the doors of a vehicle, check its interior, and evaluate trunk storage while inside the glass walls of the dealership showroom. In that analogy, as in this case, the chattel was neither entrusted for use, nor is it reasonably foreseeable for the retailer and/or the retailer's employee to know or have reason to know that the entrustee's mere examination of the chattel (the only activity for which the entrustee was loaned the chattel) would involve an unreasonable risk of physical harm.

Defendants simply never entrusted Mr. Markie with the Taurus Handgun for Mr. Markie to discharge the weapon. Plaintiff does not and cannot allege that this occurred, because it did not. Accordingly, even assuming all facts alleged in the Amended Complaint as true, Defendants did not and could not have had reason to know that Mr. Markie would foreseeably exceed the scope of mere inspection of the firearm and actually use the Taurus Handgun in a manner involving unreasonable risk of physical harm. Accordingly, Plaintiff cannot satisfy the second element of a negligent entrustment claim, and Count I of the Amended Complaint must be dismissed.

III. COUNT II OF PLAINTIFF'S AMENDED COMPLAINT, PLAINTIFF'S WRONGFUL DEATH CLAIM, IS PROPERLY DISMISSED.

Count II of Plaintiff's Amended Complaint, captioned "Wrongful Death," is asserted pursuant to Minnesota Statute §573.02. (Am. Compl. at ¶¶ 56-60). The legal viability of this claim is dependent on the determination that Defendants were negligent or committed some sort of wrongful act that caused Mr. Markie's death, *i.e.* the conduct complained of in Count I of Plaintiff's Amended Complaint. *See* Minn. Stat. 573.02, subd. 1. Stated differently, the cause of action captioned in Count II of Plaintiff's Amended Complaint is merely the mechanism by which

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

Plaintiff may bring an action on behalf of the decedent and does not stand alone as an independent claim. Accordingly, if the Court dismisses Count I of the Amended Complaint, as it must, the Court must properly dismiss the Amended Complaint in its entirety. *See, e.g., Beck v. Groe*, 245 Minn. 28, 34–35, 70 N.W.2d 886, 892 (1955) ("There can be no recovery under [the wrongful death act] except by proof of negligence on the part of a defendant. That is the very foundation of the right of recovery. . . If the decedent could not have recovered for an injury, had he lived, his representative cannot recover for his death."); *Foley v. W. Alloyed Steel Casting Co*., 219 Minn. 571, 572–73, 18 N.W.2d 541, 542 (1945) ("The acts or omissions constituting the wrong for which the action lies are the same as those for which the decedent might have maintained an action if the resulting injury had not been fatal." (*citing McLean v. Burbank*, 12 Minn. 530, 533 (1867))).

CONCLUSION

Despite the undeniable empathy for Mr. Markie's family borne from these tragic circumstances, Plaintiff has no viable claims in this case against Defendants. Under each facet of the required analysis, Plaintiff's Amended Complaint fails to state a valid claim under Minnesota law. Accordingly, Defendants respectfully request that all counts in Plaintiff's Amended Complaint be dismissed with prejudice pursuant to Minnesota Rule of Civil Procedure 12.02(e) for failure to state a claim upon which relief may be granted.

Filed in District Court
State of Minnesota
10/23/2024 12:01 PM

Dated: October 23, 2024

COZEN O'CONNOR

By: */s/Heather L. Marx*

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ACKNOWLEDGMENT

The undersigned acknowledges that, pursuant to Minnesota Statute §549.211, sanctions may be awarded to the party or parties against whom the allegations made in this pleading are asserted.

/s/Heather L. Marx
Heather L. Marx