STATE OF MICHIGAN
BERRIEN COUNTY TRIAL COURT – BUSINESS DOCKET
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BOSS OUTDOORS, LLC,
Plaintiff,

v.

LEE THOMAS KJOS, and
ZACH MEYER,
Defendants,

-and-

LEE THOMAS KJOS, ZACH MEYER, and **KJOS OUTDOORS, LLC,**
Third-Party Plaintiffs,

v.

BRANDON CERECKE, **DLM HOLDING GROUP, LLC**, and **ULTRA-SEAL INCORPORATED.**
Third-Party Defendants.

Case No. 2023-0017-CB

HON. DONNA B. HOWARD

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OPINION AND ORDER FOR JUDGMENT AFTER NON-JURY TRIAL
PART 1 – BOSS OUTDOORS COMPLAINT

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At a session of the Berrien County Trial Court, held
On the 11th day of July 2025, in the City of
St. Joseph, Berrien County, Michigan

PRESENT: HONORABLE DONNA B. HOWARD

I. INTRODUCTION

"*The ego is such a bullet that fires all your relations*." For obvious reasons, this quote from Dutch author and poet, Ehsan Sehgal, could not be more ironically apropos. Unfortunately for all the parties, the past several years, including at least two years spent in contested litigation, has revealed the true reality of how overinflated egos can lead to bad decisions.

As difficult as it may be to re-hash, it is necessary to first review the more recent procedural history given the extra time it has taken, post-trial, for this Court to issue its decision, before discussing its Findings of Fact and Conclusions of Law.[1]

II. PROCEDURAL OVERVIEW

As the parties are well aware, this matter comes before the Court for judgment following a six-day non-jury trial held on October 29-31, 2024, and November 1, 19-20, 2024, involving Plaintiff Boss Outdoors, LLC's ("Boss"), Defendants/Third-Party Plaintiffs Lee Kjos ("Kjos") and Zach Meyer ("Meyer"), Third-Party Plaintiff Kjos Outdoors, LLC's ("Kjos Outdoors"), and Third-Party Defendant Brandon Cerecke ("Cerecke"). The Boss complaint was filed on or about January 26, 2023, and contained four counts: breach of contract against Kjos (Count I), breach of contract against Meyer (Count II), promissory estoppel against both Defendants (Count III), and unjust enrichment against both Defendants (Count IV). Boss's complaint asserts that it is entitled to repurchase Kjos and Meyer's equity interests in Boss for a price determined by a set formula in the Boss Operating Agreement ("Operating Agreement"), after their termination from the company.

In a related matter, Kjos and Meyer, and Kjos Outdoors filed separate claims under Berrien Case No. 2023-0022-CB on or about January 31, 2023. This second action was consolidated with the present matter on May 15, 2023, after the Court's decision on some initial dispositive motions

[1] The Court will be issuing a separate opinion and order regarding Kjos's and Meyer's Second-Amended Third-Party Complaint claims proceeding to trial, *provided however,* it will be based, in large part, on the same Procedural Overview and Findings of Facts as contained herein.

[Order, 5/15/23].[2] By leave granted, Third-Party Plaintiffs amended their complaint, with Kjos and Meyer asserting statutory member oppression and defamation against Cerecke (Counts 1 & 3, respectively), various types of fraud by Third-Party Plaintiffs against Cerecke (Count 2), common law and statutory conversion by Kjos Outdoors against Third-Party Defendant Ultra-Seal Incorporated ("Ultra-Seal") (Counts 4 & 5, respectively), and unjust enrichment by Third-Party Plaintiffs against Cerecke, Ultra-Seal, and Third-Party Defendant DLM Holding Group, LLC ("DLM") [2nd Am 3rd-P Compl, 8/14/23].[3]

As the prior record reflects, on September 4, 2024, the Court granted in part, and denied in part, Boss's motion for summary disposition pursuant to MCR 2.116(C)(10), determining that the Operating Agreement was executed between Boss and Kjos, with an effective date of January 1, 2020, and that Meyer joined the Operating Agreement, was an employee, and was later terminated as an employee [Boss MSD Order, 9/4/24, pp 4–5]. Notwithstanding those rulings, as also reflected in the September 4th Order, the Court found that questions of fact surrounding Boss's breach of contract claims remained for trial regarding (1) whether Kjos had a "consulting engagement" with Boss that subjects him to the termination and repurchase provisions of the Operating Agreement; (2) whether the Operating Agreement was invalidated on the grounds of fraudulent inducement; (3) whether the Operating Agreement, or at least the repurchase provision contained therein, was voidable due to unconscionability; and finally, (4) whether the repurchase amounts were properly calculated. [Boss MSD Order, 9/4/24, pp 10–13, 16–17]. The September 4th Order granted Boss's summary disposition, "in all other pertinent respects," regarding enforceability of the Operating Agreement, rejecting Defendants' other affirmative defenses. [Boss MSD Order, 9/4/24, pp 15, 17]. The September 4th Order did not, however, adjudicate the equitable claims asserted in Boss's Complaint—Counts III and IV. [Boss MSD Order, 9/4/24, p 2].

Likewise, on September 16, 2024, the Court granted in part and denied in part Cerecke's motion for summary disposition pursuant to MCR 2.116(C)(10). More specifically, the Court granted dismissal of all of the claims or counts asserted against Cerecke *except* the claim of statutory member oppression as it related to the claim of fraud (Count 1), the various fraud claims (Count 2), and unjust enrichment (Count 6) [Cerecke MSD Order, 9/16/24].

[2] For clarity of the record and pleadings after consolidation, the Kjos, Meyer and Kjos Outdoors claims were re-identified in the present action as those of a third-party complaint.

[3] However, the claims against DLM and Ultra-Seal were summarily dismissed on or about September 23, 2024 [DLM/US Order, 9/23/24].

In light of the Court's rulings on the dispositive motions, the trial proceeded in whole or part, on Boss's claims for breach of contract against Kjos and Meyer, respectively (Boss Compl, Counts I & II); and as against Cerecke, the member oppression (2nd Am 3rd-P Compl, Count 1) by Kjos and Meyer, and the collective fraud claims (2nd Am 3rd-P Compl, Count 2) and the unjust enrichment claim (2nd Am 3rd-P Compl, Count 6) by Kjos, Meyer and Kjos Outdoors.

The parties filed their pre-trial proposed findings of fact and conclusions of law on or about October 1 or 2, 2024. During the trial, the Court heard testimony from Lee Kjos, Zach Meyer, Brandon Cerecke, Rodney Crawford (expert)[4], Scott DeFries, Steve Greve, and Megan Superczynski. This Court admitted approximately 164 documentary exhibits during the course of the trial,[5] although some exhibits were admitted for a limited purpose – *eg.* only admitted in the third-party claims against Cerecke.

At the close of proofs and for the reasons stated on the record, the Court granted Cerecke's oral motion for involuntary dismissal of the fraud claim (2nd Am 3rdP Compl – Count 2) by Kjos Outdoors, only [Trial Tr, Vol 6, 11/20/24, pp 1514-1520], which was subsequently entered by Order on February 4, 2025 [Order Inv Dism, 2/4/25]. Also, at the conclusion of the proofs on November 20, 2024, the parties placed on the record their request, with the Court's concurrence, for supplemental post-trial briefing in lieu of oral closing arguments [Trial Tr, Vol 6, 11/20/24, pp 1522-1526]. On or about December 9, 2024, through stipulated order, the Court more specifically set a post-trial briefing schedule [StipOrder, 12/9/24]. Consistent therewith, the parties filed their respective post-trial briefs on or about January 21, 2025. The six-volume trial transcript was also filed on that date. On or about February 4, 2025, the parties then timely filed respective post-trial reply briefs.

The Court has considered the pleadings, testimony of all the witnesses, trial and post-trial briefings, and the exhibits admitted into evidence. The Court has assessed the credibility of witnesses, including but not limited to such things as memory, demeanor, efforts in testifying or evading questions, personal interests or bias. *See eg*, M Civ JI 4.01; *Foley v Detroit & M Ry Co,* 193 Mich 233, 237; 159 NW 506 (1916). The Court has applied the standard of proof by a preponderance of the evidence to the parties' respective claims and/or applicable defenses raised

[4] Mr. Crawford provided testimony in the portion of trial for the third-party claims against Cerecke, only.

[5] By identification as admitted: Boss Exhibits 1– 18, 21, 25, 27–29, 31–33, 36–38, 40–42, 44–48, 50–53, 55–58, 60–62, 64–107, 112–129, 131–150, 164; and Kjos/Meyer Exhibits B1, B3–B4, B11–B33, B38, B45-2, B45-3–B45-5, B46-2, B47-2–B47-4, B49-2–B49-4, B55–B57. B73–B78, B95–B99, B116, B120–B121, B125–B-132, B138, B-141–B-143, B158, B161, B164, B168–B-169, B171, B177, B188–B-190, B193, B194, B200, B203–B204, B206, B208, B212 and B242.

in their pleadings and at trial, *except* where clear and convincing evidence is required as a matter of law. As such, the Court presents its written Findings of Fact and Conclusions of Law for Judgment on the Boss Complaint, pursuant to MCR 2.517.

III. FINDINGS OF FACT[6]

In early 2018, Cerecke began forming a company to sell shotgun shells, he developed, in the direct-to-consumer market [TT Vol 1, p 198; TT Vol 2, pp 396–397, 400–402; TT Vol 4, p 896; *see also* Boss MSD OpOrder, 9/4/24, p 3]. After being dissatisfied with a prior branding pitch obtained for the startup, around April 26, 2018, Cerecke and his business associate, Steve Greve, contacted Kjos to engage Kjos as a marketing and branding consultant. [TT Vol 1, pp 76–79, 201-203; TT Vol 3, p 572; TT Vol 4, pp 892-899; Exh 112]. Kjos was well-known in the hunting and outdoorsman industry as an artist and photographer, business owner, brand marketer, and conservationist, who also had experience creating and marketing similar brands. [TT Vol 1, p 145; TT Vol 2, pp 297-298; TT Vol 3, p 549; TT Vol 4, pp 882-884, 891; *see also,* Def/TPP Proposed Findings, 1/21/25, ¶ 8, p 1].

Specifically, on May 16, 2018, Greve asked Kjos to quote the cost for "the development of a name, logo, tagline, etc. for our Bismuth shotshell company." [TT Vol 1, p 78; Exh 64; Exh 113]. In response, Kjos sent a Kjos Outdoors Statement of Work with the "Boss Shotshells" name to Steve Greve on or about June 12, 2018 [TT Vol 1, pp 80-81; TT Vol 4, pp 899-901; Exh 114; Exh 115]. The Statement of Work provided a "Phase One" cost estimate of $75,000 for various tasks, such as name creation, brand identity, packaging, and other work. [TT Vol 1, pp 81, 85; Exh 115]. According to Kjos, the Statement of Work is a "standard document that Kjos provides when doing big brand work for companies as a consultant or 'hired gun,' and it involves a substantial amount of work." [Defs Post-Trial Brf, 1/21/25, p 17, citing TT Vol 4, pp 899-901; *see also,* TT Vol 4, p 891]. It is undisputed that Cerecke was only seeking Kjos as a consultant or "hired gun" at that time [TT Vol 3, p 572; Def/TPP Proposed Findings, 1/21/25, ¶ 7, p 1].

Shortly thereafter, Kjos made his initial pitch idea for the Boss name and logo ideas to Cerecke and Greve. [TT Vol 1, pp 82-83; Exh 62; Exh 117]. Cerecke approved of the name and filed Articles of Organization for Boss Outdoors LLC ("Boss") as its sole owner and managing

[6] As referenced above, the Court is issuing a separate opinion and order for Kjos's and Meyer's third-party claims that remained for trial. However, in an effort to largely consolidate these Findings of Fact for both cases, it should be noted that during the consolidated trial, there was some evidence that was deemed inadmissible for the Boss claims, that was allowed for the third-party claims against Cerecke, and/or *vice versa*. For purposes of the Court's analysis in this Opinion and Order, the Court relied only on that evidence deemed admissible for the Boss claims.

member on July 13, 2018. [Exh 1; TT Vol 2, pp 405-406]. As the initial sole owner and managing member of Boss Outdoors, Cerecke, individually or through one of his other existing companies, paid all initial expenses and individually invested all of the capital in Boss to get it up and running, which included over $5.0 million in personal guarantees. [TT Vol 1, p 184; TT Vol 2, pp 396–397, 400; TT Vol 4, pp 878–879].

In late July or early August 2018, Kjos asked or offered Cerecke to consider paying him for his consulting work in equity rather than cash since he knew money was often tight with startup businesses [TT Vol 2, pp 411–415; TT Vol 3, p 591-593]. According to Kjos, after further discussions, he and Cerecke landed on becoming partners with a 60-40 split because Cerecke had invested all the money, tax liability, and had the equipment [TT Vol 1, pp 67-72; TT Vol 2, pp 412–414; TT Vol 3, pp 589-590; TT Vol 4, p 927]. Cerecke would handle the manufacturing of the shotshells, and Kjos would handle the branding and marketing. [TT Vol 1, pp 107; TT Vol 4, pp 906, 927]. The Court finds that Cerecke verbally agreed to bring Kjos on as a 40% member of Boss once the company became profitable. Kjos denied that was part of their deal, and Kjos also believed their "deal" included the promise by Cerecke that "we'll get out when you want to get out." [TT Vol 1, pp 70-71, 107].

Instead, Kjos acknowledged at trial that there was no operating agreement signed then, no written consulting agreement, and Kjos didn't receive any tax documentation regarding the supposed membership from Boss or any other writings at that time or in 2019 either [TT Vol 1, pp 72-73]. However, consistent with the agreement between Kjos and Cerecke to have Kjos become a partner (40% share), in lieu of the invoiced payment, the Court also finds that Kjos' $75,000.00 previously invoiced work for the Phase One estimate remained unpaid through the balance of 2018, as well as all of 2019, and Kjos made no further attempts to collect on that original invoice after he and Cerecke agreed to become (60-40) partners.

Kjos testified that he met Meyer in about 2014 at a SHOT[7] show and occasionally did work for companies Meyer was working for or with at the time [TT Vol 4, pp 887-891; *see also* TT Vol 1, pp 85-86]. In or about August 2018, Kjos contacted Meyer to help with the Boss marketing campaign and connected Cerecke with Meyer to help accept delivery of Boss ammunition for a large event called Game Fair [TT Vol 3, pp 604-608, 650; TT Vol 6, pp 1408-1409; Def/TPP Proposed Findings, 1/21/25, ¶ 16, p 2]. In or around that same time, unbeknownst to Cerecke, Kjos orally promised (and a handshake) to give Meyer 5% of his (40%) membership in exchange for

[7] SHOT = Shooting, Hunting and Outdoor Trade

Meyer's help [TT Vol 1, pp 92-93, 127-129]. Meyer testified that neither in 2018 nor 2019 did he obtain any documentation regarding Kjos's promise for some of his shares [TT Vol 1, pp 232-233]. Cerecke did not learn of Kjos's promise to transfer 5% to Meyer until 2019 [TT Vol 3, pp 608, 650]. Upon learning of the transfer, Cerecke informed Meyer of the deal he had in place with Kjos, which was that "the equity wasn't going to come until Boss showed a profit." [TT Vol 2, pp 419–420].

Again, there was no challenge or dispute surrounding the fact that Meyer and Kjos did not issue or receive any membership paperwork, an operating agreement, or any other written agreement in 2018 or 2019 related to any Boss membership rights existing at that time. [*see eg.* TT Vol 4, pp 1043]. Rather, the admitted evidence shows that in 2019 and into 2020, Kjos, through his company Kjos Outdoors, continued to issue invoices or requests to Boss and Boss continued to issue payments to Kjos Outdoors for Kjos's marketing and branding work and/or incurred expenses. For example, presented at trial were unrefuted evidence of payments from Boss to Kjos Outdoors: research & development, $3,250.00 on October 10, 2019; travel expense, $1,852.20 on November 20, 2019; and travel expense and advertising and promotion, $4,374.23 and $1,975.90, respectively, on April 9, 2020 [Exh 79-001].

On June 18, 2020, it was Meyer who actually pressed Cerecke and Kjos to "get these papers signed" and sort out next steps since Meyer's current job was "touch and go." [Exh 122; TT Vol 1, pp 129-130, 233; *see also* Def/TPP Proposed Findings, ¶44, p 7]. That same day, Cerecke responded and explained, with copy to Kjos:

> Zach,
>
> **You and Lee work your deal and let me know**. Keep in mind if we do it now then anyone who owns over 20% has to have a personal guarantee on any debt currently held by Boss per the banking agreement we have. It's pretty standard across all banks.
>
> ***
>
> The goal has been to pay the lines down as soon as the cash is there then renegotiate a better deal for next year using Boss' assets for collateral and eliminate the personal guarantees.
>
> **I'm ready when you guys are.**

[Exh 121 (emphasis added)].

Kjos testified that at some point, after Boss was up and running, Cerecke said something to the effect that "[W]e have already made millions. We just haven't taken it out yet." [TT Vol 1, pp 74-75]. Meyer also testified to hearing similar statements from Cerecke that "You've already

made millions, we just had not taken it out yet." [TT Vol pp 220-223]. However, Meyer admitted as to those statements he did not take action, but instead in his mind "[j]ust file[d] it away." [TT Vol 1, pp 223-225].

In the third quarter of 2020, Boss was projected to be profitable for that year. [TT Vol 2, p 416]. As a result, Cerecke, Meyer, and Kjos met at Cerecke's home, on or about August 26, 2020, to discuss Meyer more formally coming on board, and moving forward with Meyer and Kjos acquiring their promised membership interests in Boss [TT Vol 1, p 233; TT Vol 3, pp 673-675; *see also* Exh 93; Exh 122; Exh 133]. During this meeting, general terms of an operating agreement, as well as some terms relating to Meyer's employment as President of Boss *(i.e.*, salary and benefits) were jotted down [TT Vol 1, pp 97–100, 230–234; Exh 93].

Within days of that gathering, Meyer asked Cerecke for the draft of an "operating agreement" to be provided for his review [Exh 133]. Cerecke followed up those discussions by texting a draft of an operating agreement to Meyer and Kjos on August 28, 2020. [TT Vol 1, pp 157–158; TT Vol 6, p 1439; Exh 90; Exh 133]. After further review and suggested edits, Kjos received a revised draft no later than November 9, 2020, and Kjos's tax attorney proposed other changes after receiving the draft [TT Vol 1, pp 101, 112-14; Exh 58]. More specifically, Kjos and/or Meyer received a series of corporate documents, which included the Operating Agreement, a Membership Interest Purchase Agreement between Boss, Kjos and Meyer [Exhs 3, 14], a Joinder Agreement [Exh 12], and others [*eg.* Exh 6]. Consistent with Kjos's and Cerecke's prior discussions, the documents reflected Kjos obtaining 40% of the equity in Boss. More specific to the drafted documents, Kjos was to acquire 400 of Boss's 1,000 total outstanding units, based upon a $5,000 capital contribution for Kjos units [Exh 3; Exh 8-046].

Section 5.1 of the Operating Agreement, explicitly states:

> (a) The Members acknowledge and agree that the Members have each contributed to the capital of the Company the amounts shown on EXHIBIT A attached hereto. The Members further agree that each of the Members have an initial Capital Account balance equal to such amounts and that they shall each own that number of Units set forth opposite each Member's name on EXHIBT A attached hereto.
>
> (b) No Member shall have any obligation to contribute additional capital to the Company.

[Exh 8-020 (emphasis in original)]. There is no reliable evidence that Kjos ever complained or sought a change in 2020 or thereafter while he provided work for Boss, due to a supposed error in the stated capital contributions he otherwise acknowledged in the Operating Agreement.

In addition, and consistent with Defendants' prior discussions with each other, the documents reflected Kjos's agreement to transfer 5% of his 40% membership to Meyer. As indicated, the 5% Meyer was acquiring from Kjos explicitly provided a $1,000.00 purchase price (or capital contribution) – although Kjos testified he never actually received the $1,000.00 from Meyer [*see,* MIP Agr, 1/2/20, Exh 3]. Also, for purposes of becoming an employee (*i.e.* President) of Boss, Cerecke and Kjos each agreed, effective August 26, 2020, to transfer an additional 2.5% of their respective ownership to Meyer (with no capital contribution) so Meyer would hold a total 10% of the membership, with Cerecke retaining 57.5%, and Kjos retaining 32.5% of his membership in Boss [Exh 8-047; Exh 6; Joint Written Consent, Exh 13]. As part of this transfer in membership, the capital contributions were again listed effective August 26, 2020 as: Kjos -- $5,000.00 and Meyer -- $1,000.00. Additionally, as part of the same agreement, Meyer had the option to purchase another 5% of the membership interests (*i.e.* 2.5% from each Cerecke and Kjos) at a later date, so long as it was within the following three years (*i.e.* by August 26, 2023) [Option Agr, Exh 9].

There is no question that the Operating Agreement between Boss and Kjos as proposed had an effective date of January 1, 2020, and Meyer would join the Operating Agreement, by virtue of the Member Interest Purchase Agreement and the Joinder Agreement, both effective January 2, 2020, and the three executed the Joint Written Consent, Option Agreement, and Unit Assignments, all effective August 26, 2020 [Exh 3; Exh 8; Exh 9; Exh 10; Exhs 12 – 14; Exh 17; Exh 28(B)-001].

The Operating Agreement [Exh 8] expressly sets forth certain authority or limitation on Kjos and Meyer as members and on Cerecke as the Manager:

> **3.1 MEMBERS** The Members of the Company shall have the rights prescribed herein. Except as expressly provided in this Agreement, no Member will take part in or interfere in any way with the management of the business and affairs of the Company.
>
> ***
>
> **4.1 MANAGEMENT BY MANAGER** Except as expressly provided herein or as is otherwise required by the Act, the Manager shall have complete and exclusive control of the management of the Company's business and affairs and the Members shall have no right to participate in the management of the conduct of the Company's business and affairs nor any power or authority to act for or on behalf of the Company in any respect whatsoever. The Manager has the power, on behalf of the Company, to do all things necessary or convenient to carry out the purposes of the Company, including without limitation, the power to:
>
> ***
>
> (b) enter into agreements relating to the operation of the Business;

***

(g) engage employees, advisors and agents, define their respective duties, and establish their compensation or renumeration . . . .

[Op Agr, §§ 3.1 & 4.1, Exh 8-014 & 8-016; *see also,* §4.2, Exh 8-017, for additional limitations of Manager].

Central to the parties' dispute, the final, signed version of the Operating Agreement contains section 8.8, with explicit provisions for the repurchase of Kjos's and Meyer's shares as follows:

(a) If any Member's (other than Brandon Cerecke) employment or consulting engagement with the Company or a subsidiary of the Company is terminated by the Company or subsidiary or such Member for any reason, then the Company shall have the right, but not the obligation, to purchase, and to require such Member, any of his, her or its Affiliates (or any Person of which such Member is an Affiliate)(each a "***Terminated Party***") to sell to the Company, all or any portion of the Units then directly or indirectly owned by them. The Company may exercise such repurchase right at any time within 180 days of the date such employment or consulting arrangement is so terminated. Such repurchase right may be exercised by the Company by giving notice to each Terminated Party in respect of which the Company is exercising its rights (a"***Repurchase Notice***"); provided that the Company may at any time prior to the closing described in Section 8.8(b) determine not to exercise its repurchase right by delivering written notice to the applicable Terminated Parties.

(b) The purchase price per Unit payable for any Units purchased under Section 8.8(a) shall equal the lesser of (i) the per Unit fair market value (determined in accordance with Section 8.9 or (ii) the per share price paid by the Member for such Units. The closing of any purchase and sale under this Section 8.8 shall be held at the principal offices of the Company at 10:00 a.m., local time, on a date specified by the Company in the applicable Repurchase Notice, which shall be not later than 30 days from the date of such Repurchase Notice. At such closing, the applicable seller(s) shall deliver one or more certificates, unit powers or other effective transfer instruments to effect the transfer of the Units and Unit Equivalents to be purchased, duly endorsed for transfer. The Units delivered by the seller(s) shall be free and clear of any encumbrances, and the seller(s) shall so represent and warrant, and further represent and warrant that he, she or it is the record and beneficial owner of such Units and. [sic] The Company shall deliver a cash amount (by check or wire transfer) equal to the purchase price for the Units at the closing.

[Op Agr, §8.8, Exh 8]. Relatedly, section 8.9(a) of the Operating Agreement states :

(a) For purposes of Section 8.7 and Section 8.8 hereof, the price for the purchase of a Seller's Units shall be equal to the lesser of (i) the per share price paid by the Member for such Units or (ii) the per Unit fair market value thereof, as determined by agreement of such Seller and the Company (as determined by Manager); *provided however*, if the Company and the Seller are unable to agree upon such price within ninety (90) days after a Transfer Event, either the Company

> or such Seller, by written notice to the other, may require the determination of such fair market value by an independent appraiser selected by mutual agreement of the Company and such Seller. In the event that the Company and the Seller are unable to agree upon an appraiser, each shall separately select an appraiser and the two so selected shall select a third. The third appraiser so selected shall determine such fair market value, which determination shall be final and binding upon the Company and such Seller. The Seller and the Company shall share equally in the cost of such appraisal process.

[Op Agr, §8.9, Exh 8]. Finally, the Operating Agreement contains general provisions in pertinent part as follows:

> **13.1 AMENDMENT.** Except as otherwise provided herein, this Agreement may be amended by vote or written consent of (a) the Manager, and (b) a majority in Interest of the Members.
>
> ***
>
> **13.7 ENTIRE AGREEMENT**. This Agreement represents the entire agreement among the Members with respect to the subject matter hereof, and supersedes all other written or oral understandings among the Members with respect to such subject.
>
> **13.10 TAX AND OTHER ADVICE.** Each Member has had the opportunity to consult with such Member's own tax or other advisors with respect to the consequences to such Member of the purchase, receipt or ownership of the Units. . . . Such Member acknowledges that none of the Company, its Affiliates, successors, beneficiaries, heirs and assigns and its and their past and present managers, directors, officers, employees, and agents (including, without limitation, their attorneys) makes or has made any representations or warranties to such Member regarding the consequences to such Member of the purchase, receipt or ownership of the Units….

[Op Agr, §§ 13.1, 13.7, & 13.10, Exh 8 (emphasis in original)].

Prior to executing any of the documents, Kjos also received an email forwarded from Cerecke with Cerecke's attorney outlining certain of the documents, including a reference to a specific revision made to the Operating Agreement's repurchase provision and explicitly explaining that "if either Lee or Zach are terminated the Company can repurchase their units for the *lesser* of the amount paid to purchase the units or the FMV." [TT Vol 1, p 101; TT Vol 3, pp 690-91, 756; Exh 58(A)]. There is no question that after the initial draft provided in August 2020, both Defendants received (either electronically or in paper-form) the later versions of the Operating Agreement [*see eg.* TT Vol 6, pp 1489-1490]. Neither Kjos nor Meyer expressed any disagreement or objection to the repurchase provisions in this Operating Agreement before signing [TT Vol 1, pp 117, 185]. Nor did they have their attorney or other representatives request any changes to the repurchase provisions, despite Corbo making other suggested changes [TT Vol 1, p 164; TT Vol 2, p 257, 492–494; TT Vol 4, p 1057; Exh 18; Exh 166]. At trial, Meyer specifically

acknowledged that he did not request any changes to the Operating Agreement or any of the other Boss corporate documents [TT Vol 2, pp 296, 441-43].

On November 1, 2020, Kjos emailed Cerecke, with a copy to his tax attorney, Todd Corbo, acknowledging receipt of the corporate documents, stating in part:

> All apologies on jumping on these. I was unaware of **the ownership docs** you prepared. **Thank you for doing that.**
>
> **Can't tell you what that means to me and B.**
>
> Todd, Brandon will send them to you. Do your thing and call me if you want to meet.

[Exh 25 (emphasis added); *see also* TT Vol 1, pp 159-160]. On November 11, 2020, Kjos confirms to Meyer that his tax attorney has "the ownership agreement now." [Exh 140; TT Vol 1, pp 161-162]. A couple weeks later, there was an email exchange between or among Kjos's wife, Bonnie Kjos ("Bonnie"), Corbo, Tri-County Bookkeepers, and Cerecke providing in pertinent part:

[Bonnie to Cerecke] Brandon – Good morning. [T]hank you for sending the BOSS documents so quickly. **We are working on planning the best way to merge BOSS into our business structure**.

Our Tax guy Todd Corbo has gone through most of the documents. He only has a couple questions:

First, in the LLC registration 2018, [i]s BOSS a single member or multi member LLC? . . . If single member, can you change to multi member to include Lee and Zach in 2020? What does Michigan require for that?

***

[Cerecke to Bonnie] Hey B. **Right now it is a single-member LLC**, but I think it's going to be converted to an sub-S this year.

2018 and 2019 lost money and since your basis was 0, I took a loss as it wouldn't have provided any benefit for you guys. All of the legal docs should signed [sic] and then dated for January 2020 so you can take advantage of receiving a full year's worth of basis. . .

***

[Bonnie to Scott] . . . At your earliest convenience could you sen[d] Todd Corbo the balance sheets and income statements for BOSS? **We are strategizing bringing BOSS into our portfolio**.

[Exh 56 (emphasis added); TT Vol 1, pp 135-139]. Kjos also testified that as of November 2020, he did not think he had received any ownership distributions [TT Vol 1, p 140]. The Court finds,

most certainly, as of November 2020, Kjos recognized and in fact understood that the Kjos "portfolio" of businesses did not yet include his membership in Boss.

Nevertheless, with the corporate documents still not signed by all three, in early December 2020, Cerecke, as Manager, instead authorized a payroll draw of $150,000.00 each for him and Kjos [TT Vol 4, pp 980-981; TT Vol 1, pp 151-152; Exh 125]. Upon notice of the anticipated payment, Kjos, through his tax attorney, Corbo, and his wife, Bonnie, requested the Boss payroll draw not be paid to Kjos, individually, but instead go to Kjos Outdoors [Exh 125]. Likewise, Cerecke decided to have his payroll draw be sent to Cerecke's related manufacturing business, DLM [Exh 125; *see also* Exh 139 (Cerecke texting with the Kjoses, "Lee and I were deserving of a raise.")]. Through the same communications, Cerecke actually mentioned a payment amount of $200,000.00 instead, and asks Kjos and/or Bonnie to send over an invoice from Kjos Outdoors and Kjos's IRS W-9 tax form, as Boss was making the payment to Kjos as "consulting fees for Boss." [Exh 139; TT Vol 1, pp 149-150, 152]. Kjos issued the Kjos Outdoor invoice as requested and marked it for "branding and advertising." [TT Vol 1, pp 152-253]. At trial, Kjos acknowledged that Boss paid him "$200,000 for the services [he] performed in 2020" [TT Vol 1, pp 147-148; TT Vol 2, p 317–321; *see also* Exh 76 (IRS Form 1099-NEC for nonemployee compensation paid by Boss to Kjos Outdoors]. Further, if it was a member distribution, as Kjos surmises, it makes no sense that Kjos and Cerecke would get the same amount, where Cerecke held more units than Kjos, and Kjos (and Meyer) say nothing about the fact that Meyer got nothing paid in that authorized payroll draw, even though Meyer was arguably the third member holding 10% ownership in Boss at that time. Consequently, the Court finds Kjos's repeated claim that the $200,000.00 should be considered as a member distribution carries no credibility and is without merit.

At about the same time, Kjos and Meyer were communicating with Boss financial institution about the anticipated joinder of them as Boss members and the need for certain of their financial information [Exh 21]. And again, Cerecke continued to remind Kjos and Meyer, "Our Boss accountant just called. Gotta get the ownership docs signed before the end of the year. 2 weeks left." [Exh 139]. The Court finds that both Kjos and Meyer had at least several weeks, and as much as a couple months, to review or have their advisors or others review the final version of Operating Agreement [TT Vol 1, pp 101–103, 162–163, 185, 233–235; TT Vol 2, pp 243-244, 246; TT Vol 3, pp 760-761; TT Vol 5, pp 1128-1132; TT Vol 6, p 1489; Exh 58; Exh 140-019]. Neither Kjos nor Meyer ever asked to talk to Cerecke about its terms or otherwise claimed at that time that the terms were unfair or inaccurate [TT Vol 1, pp 101–103, 134, 234–235; TT Vol 2, pp

296, 441-43; TT Vol 3, pp 760–761; TT Vol 4, pp 1058–62; TT Vol 6, p 1489]. Therefore, the Court finds that Defendants' contentions that they were under duress or otherwise pressured into signing the corporate governance and membership documents are unfounded based upon the evidence presented at trial, including but not limited to the significant time both Defendants had to review, consider, seek advice etc. on the Operating Agreement and related corporate documents before signing [*see eg.* TT Vol 4, p 1056-1057].

After further time and some communications exchanged between the parties, and/or their advisors, the Operating Agreement and the other prepared corporate documents were finally signed by Kjos in December 2020 or early 2021 [*see eg.* Exh 3; Exh 6; Exhs 9–10; Exhs 13–14; Exhs 17–19; TT Vol 1, pp 165–166]. Meyer likewise signed off on his Joinder Agreement, Joint Written Consent, and related membership documents as well in late 2020, without seeking any modification, complaining about any of the terms to Cerecke, or having the documents reviewed by a lawyer before he signed them [TT Vol 1, pp 72-73, 89–90, 92, 128–129, 134-141, 232; TT Vol 2, pp 250-264, 270-274 322; Exh 3; Exh 12; Exh 13; Exh 14 Exh 21; Exh 56; Exh 57]. Also, Kjos testified at trial, when signing the Operating Agreement, he did not rely on either of the statements – "(i) Cerecke and Kjos were in Boss together and would be until Kjos told Cerecke that Kjos wanted to stop and sell the Company, and (ii) Kjos and Cerecke would take less in ownership distributions on the front end (and throughout their ownership of the Company) so they could continue building the business and brand and share in a very large return upon a sale of the Company or other liquidity event." [TT Vol 1, p 75; *see* Defs AffDef No. 2, p 32]. Likewise, as noted above, Meyer could not explain how he relied on the statements to get him to sign the corporate documents to join the Operating Agreement [TT Vol 1, pp 223–226]. Simply put, Kjos and Meyer did not rely on the alleged misrepresentations that took place prior to execution of the Operating Agreement and Joinder Agreement [TT Vol 1, pp 72–75, 224–225, 226].

Certainly, by the signing of the Joint Written Consent, Kjos and Meyer (and Cerecke for that matter) each confirm that they "had an adequate opportunity to ask questions regarding, and investigate the nature of, the relationships and/or interests" contained therein, including joining the Operating Agreement with the revised capital contributions [Exh 13, p 2]. Their claims that they felt pressured to sign the corporate documents are not supported by the evidence presented, and the Court therefore finds them to be without merit.

As referenced, included therewith was the Member Interest Purchase Agreement, executed by Kjos and Meyer for the initial 5% of shares Kjos gave to Meyer, provides in part:

> By execution of this Agreement Purchaser shall become party to that certain Operating Agreement of Boss Outdoors LLC, dated January 1, 2020 (the *"Operating Agreement"*), and be considered a "Member" for all purposes under the Operating Agreement, and have all of the rights and obligations of a "Member" under the Operating Agreement. By execution of this Agreement, Purchasers [sic] represents and warrants that Purchaser has received, reviewed and understood the provisions of the Operating Agreement and agrees to be bound thereby, and that delivery of this Agreement constitutes delivery of a counterpart signature page to the Operating Agreement by Purchaser. . . . This Agreement shall take effect and shall become an integral part of the Operating Agreement as though the Operating Agreement had been executed directly by Purchaser as of January 1, 2020 and may be attached as a counterpart signature page to the Operating Agreement.

[MIP Agr, ¶ 6(g), pp 6-7, Exh 3]. Similarly, the Option Agreement which was executed between Meyer, Kjos, and Cerecke (individually and on behalf of Boss)—giving Meyer the ability to acquire an additional 5% of Boss at a later date [TT Vol 2, pp 275-276; Exh 9, p A-6, ¶ 4]. The Option Agreement provided in part:

> By execution hereof, the undersigned represents and warrants that the undersigned has received, reviewed and understood the provisions of the Operating Agreement, agrees to be bound thereby and the delivery by the undersigned and acceptance by the Company of this Agreement constitutes delivery of counterpart signature pages thereto by the undersigned.

[Option Agr, ¶ 4, Exh 9].

Admittedly, Kjos was doing the same type of work for Boss that Kjos had performed for other clients' branding and marking projects [TT Vol 4, pp 891, 1038–1042]. And by his own testimony, Kjos acknowledged that he provided advice, expertise, and professional services in areas related to branding and marketing of the Boss company [TT Vol 1, pp 143–146]. In fact, several other witnesses, including Meyer, consistently testified about the services and expertise, *i.e*. work performed by Kjos for Boss [TT Vol 2, pp 297–301, 307–311, 517–518; TT Vol 3, pp 749, 772; TT Vol 4, p 982; *see also,* Exh 114; Exh 115]. Notably, Kjos never challenged he was paid income as a consultant during his time at Boss (individually or through his company Kjos Outdoors) [TT Vol 1, pp 149-154, 175–177; TT Vol 2, pp 317–321, 390–391, 504–511; Exh 75; Exh 76; Exh 125; Exh 139; Exh 140].

Then, in late-June or mid-July, 2021, Meyer testified that Kjos, Meyer, Kjos's son, Luke Kjos, and Cerecke were having a conversation about assets of Boss or about a future sale [TT Vol 1, p 227; TT Vol 6, pp 1471]. Meyer testified that the conversation became heated and emotional

after Kjos poked Cerecke[8] [TT Vol 6, p 1471]. According to Meyer, it was then that Cerecke told them that the members would all benefit from any sale of Boss or liquidity event and they were all deferring more significant immediate distributions for larger distributions down the road [TT Vol 1, pp 226-227]. More specifically, Meyer testified that Cerecke's statement was that the "members would all benefit from any sale of Boss or liquidity event and that they were all deferring more significant and immediate distributions for larger distributions down the road." [TT Vol 1, p 221]. Meyer also testified that Cerecke assured them that he was going to move the patent and/or artwork so it was under the Boss name, not Ultra-Seal [TT Vol 6, pp 1473-75].

At the same time, Meyer acknowledged that they agreed as owners "to take less today so we can fund the growth of the company and hopefully not have . . . a larger line of credit. Just whatever we could do to help grow this business." [TT Vol 1, p 227]. Meyer described his understanding as, "this is what we're going to do, this is how we're going to go about doing it. It helped everyone understand the general structure or kind of direction of the business and, . . . how we were going to go about doing that." [TT Vol 1, pp 227-28 (emphasis added)]. According to Kjos, at about that time, Cerecke again told Kjos "we'll get out when you're ready to get out." [TT Vol 1, p 70].

However, a preponderance of the evidence demonstrates that after entering into the Operating Agreement (for Kjos), Joinder Agreement (for Meyer), and other corporate documents solidifying them as members of Boss, and throughout 2021, neither Kjos nor Meyer tried to or expressed to Cerecke that they wanted to "get out" of Boss, or objected to any of the Operating Agreement's provisions and related Boss corporate documents then in place [TT Vol 1, pp 102–103; TT Vol 2, pp 273–274, 481-488; TT Vol 3, p 786]. In fact, even after those discussions in the summer of 2021, about "the general structure" and "direction" of the Boss business to which it appears they all agreed, both Kjos and Meyer further reaffirmed their respective assents to the Operating Agreement, and membership interests, by signing its amended schedules and related documents in December 2021 [TT Vol 1, pp 104, 167–173; TT Vol 2, pp 263–264, 282; TT Vol 6 1436–1438; Exhs 15-17]. That is, in December 2021, Meyer exercised his option under the Option Agreement [Exh 9] to add to his shares in Boss (*i.e.* 5% more for a total of 15%), and the parties executed updated schedules to the Operating Agreement that reflected their membership interests and respective capital contributions, without any other proposed changes to the Operating

[8] Kjos admitted to poking Cerecke in the chest after he felt Cerecke was ignoring him while he was at the shop [TT Vol 4, p 985].

Agreement or related corporate documents [TT Vol 2, pp 282-289; Exh 7; Exh 15-17; Exh 28; *see also* TT Vol 1, pp 167-173]. For those shares, Meyer paid Kjos and Cerecke each $50,000.00 [Exh 52].

It is undisputed from the presented evidence that as of January 2022, by the signing of the various corporate documents, Cerecke owned 550 units of the 1,000 Boss total units (55%), Kjos owned 300 units (30%), and Meyer owned 150 units (15%) [Exh 8; TT Vol 1, pp 167-173]. Moreover, it remains undisputed that neither Kjos nor Meyer raised any objection or challenge at that time that the capital contributions reflected in the updated schedules were incorrect or any other terms of the Membership Interest Purchase Agreement, Option Agreement or related corporate documents [*see eg,* TT Vol 1, pp 130-133].

And again, in the same fashion as the parties' actions prior to the corporate documents being signed, Kjos, through his company, Kjos Outdoors, continued in 2021 and 2022 to periodically invoice Boss, and/or Boss continued to issue payments to Kjos Outdoors, for not just expenses, but also professional fees Kjos was incurring for the marketing and promotional work he was performing for Boss, such as $16,548.17 for "Advertising and Promotion" paid on September 21, 2021 [Exh 79-001; Exh 41]. It is also noted that Kjos received an additional cash payment from Boss in the amount of $75,000.00, in 2021, whereby an IRS form 1099-NEC for non-employee compensation would also be issued [Exh 41]. According to Boss's accountants, in 2021 alone, Boss paid Kjos, through Kjos Outdoors, professional fees totaling $91,548.17 [Exh 41]. Interestingly, Kjos never corrects or refutes being called a contractor, even Kjos's tax attorney, Corbo, in requesting a breakdown of all the payments from Boss from 2019 to March 2022, as a "**contractor**, owner or otherwise." [Exh 42 (emphasis added)].

For Meyer, there were similar expense reimbursements made by Boss to him in 2020 to 2021, separate from his salary as an employee, including: undescribed reimbursement for $411.60 paid on December 17, 2020; telephone expenses of $1,080.00 and $600.00 paid on June 3, 2021 and October 27, 2021, respectively; some sort of expense described as "1464 – Split" for $333.27 paid on July, 23, 2021; a Game Fair reimbursement for $247.20 paid on August 26, 2021; and a significant payment for what was designated as professional or management fees in the amount of $61,538.46 paid on October 28, 2021 [Exh 82-001 & 82-002]. According to Meyer's testimony at trial, he believed the $61,538.46 payment was his member distribution for 2020, but just like Kjos, Meyer could not explain how that amount correlated to the pro-rata amounts of his membership percentage (which was 10% at the time), and that of Cerecke and Kjos, who in 2020 and 2021 held

the remaining 57.5% and 32.5% of Boss, respectively [TT Vol 2, pp 292-295]. DeFries testified that the $61,538.46 payment was categorized correctly as a professional fee, not a member distribution, covering work Meyer performed for Boss, but prior to becoming an employee as President of Boss [TT Vol 2, pp 315-316].

Notably, in early 2022, with the assistance of DeFries to develop a distribution formula, the parties agreed to a more formal distribution formula between the three Boss members in preparation for distributions to take place in the future, including setting certain minimum levels of Boss net income [TT Vol 4, pp 852-853, 876-877; Exh 38; Exh 74]. During trial, Kjos acknowledged, and it was undisputed that separate from the fees and expense payments going to Kjos Outdoors (2019 to 2022), Boss made a payment to Kjos directly as a member, in the amount of $310,078.00 on February 10, 2022, representing a member distribution for 2021 [Exh 79-002; TT Vol 1, p 183]. In much of 2022 (Q2), Boss's net income did not meet the formula minimum requirements for a member distribution. Also, other sizable tax liability distributions were made to Kjos, individually, for $75,000.00 on June 15, 2022, and in the amount of $39,000.00 on October 4, 2022 [Exh 79-002; TT Vol 1, p 183]. It is unrefuted that all total for 2022, $424,078.00 was paid to Kjos, individually, that he otherwise would not have received had it not been for his membership in Boss.

Likewise, the record evidence indicates that Meyer received a member distribution of $133,032.68 on February 10, 2022 for 2021 [Exh 82-001]. There is unchallenged evidence presented that Meyer continued to be reimbursed by Boss for his incurred expenses as an employee for things like travel and his telephone in 2022 [Exh 82-001], and it is undisputed that Meyer continued to receive his employee salary ($104,000.00) and benefits. The evidence suggests that for the last quarter of 2022, Boss paid Meyer a member distribution, which was designated as a "loan" such that, by agreement, the payment could be directed to Meyer's personal limited liability company, ZMM Holdings, LLC, rather than a direct payment to him [Exh 40; TT Vol 4, pp 849-850].

Nevertheless, in or about April 2022, there was a meeting with representatives of Moore Capital Group at the Boss offices to discuss the possible acquisition of Boss [TT Vol 4, pp 858-859, 1008-1009]. As a result of that meeting with Moore Capital, Kjos was initially excited about the possibility of selling Boss [TT Vol 4, pp 1008-1011]. At the same time, Kjos noted that Boss built a new shop in 2022 as well [TT Vol 4, p 1012]. In any event, around June 2022, as it related to a potential sale, DeFries was present at discussions between Kjos, Meyer and Cerecke [TT Vol

4, p 860]. According to Meyer, the discussions concerned ownership of assets and what happens with a potential sale [TT Vol 6, pp 1475]. However, it is undisputed that no sale of Boss or other of Cerecke's companies was ever consummated, and no formal offer to purchase from Moore Capital was ever taken to a vote of the membership.

Whether it was from that point or at another time in 2022 is unclear, but Kjos and Meyer became unhappy with how things were going and wanting a new arrangement with Cerecke. Kjos drafted a text message in late September 2022, he was going to send to Cerecke, suggesting that he was unhappy and wanted to discuss changes "in comparison to [their] original agreement" and the way things "are structured." [Exh 140-016 – 140-017]. However, upon Meyer's review, Meyer advised Kjos that the conversation would be better discussed in person [Exh 140-016]. By or before October 2022, Kjos and Meyer started looking for other partners, such as Pete Angle[9] and Tim Duncan, to take over Boss or at least try to buy out Cerecke's shares in Boss [Exh 140-012-140-018]. On November 18, 2022, Kjos and Meyer texted in part as follows:

> [Kjos] that's what I'd like man. Get that piece of [sh--] his money (it's all he wants) and we'll run this.
>
> Negotiate a new manufacturing agreement and roll.
>
> [Meyer] He said he will make Brandon feel great while he gives his money and [f---]ing him in the [a--] at the same time.
>
> ***
>
> [Kjos] I think we talk to Duncan. Find out where we stand. Get as much dirt on Brandon as possible so he's scared and weakens his position.
>
> Then we take over.
>
> Easy or make it hard. Your choice Brandon.
>
> [Kjos] Pete says the family I'm meeting at SHOT wants it bad.

[Exh 140 (edits for expletives added)]. Clearly such an exchange indicates Kjos's intent was no longer for them all to sell Boss and make lots of money (*i.e.* "we'll get out when you want to get out."). The Court finds this evidence indicates a different desire – that is, Kjos and Meyer wanting to take over Boss for themselves and get rid of Cerecke as the managing member of Boss. Either way, there was no evidence presented that Kjos or Meyer, by themselves or as part of a group, ever actually presented Cerecke or Boss with an offer to purchase Boss.

[9] Mr. Angle had apparently quit an existing job over disagreement with owners and wanted to get a group together to buy Boss [Exh 140-012 – 140-018].

Not surprisingly, the business dealings between Kjos, Meyer and Cerecke continued to deteriorate when Kjos and Meyer were unable to secure the takeover of Boss from Cerecke. By December 6, 2022, Cerecke had made the decision, and had DeFries contact Kjos to let him know that Kjos's engagement with Boss was terminated and paperwork would follow [TT Vol 3, p 776, 749; TT Vol 4, p 851. The record evidence also shows that after Kjos's termination, that type of marketing and branding work Kjos had been providing was replaced at Boss with other outside consultants upon his termination [TT Vol 2, pp 309–310; TT Vol 3, pp 549-552].

A letter signed by Cerecke was sent to Kjos via email that same day, referencing not only termination of Kjos's engagement, but that with any of Kjos's affiliated entities as well [Exh 123]. Nevertheless, there is no question that Kjos still retained his shares at that time. Consistent therewith, Kjos acknowledged at trial that he remained affiliated with Boss from his initial hiring for his branding and consulting work under the first Kjos Outdoors Statement [Exh 115] to the end of 2022 [TT Vol 4, p 902].

Interestingly, on December 15, 2022, *after* Kjos was relieved from his work for Boss and access denied, Meyer texted Kjos his Boss online coupon code, "Zach" to allow Kjos to still place free orders of Boss product [TT Vol 2, pp 295-296; Exh 150].

Despite what was happening, Boss still scheduled to make an advance payment to Meyer in the event a member distribution would be made for the later part of 2022. That advance to Meyer was designated as a "loan" on Boss's records so it could be directed to Meyer's personal limited liability company, ZMM Holdings, LLC, rather than a direct payment to him [TT Vol 4, pp 849-850; Exh 40].

Thereafter, Cerecke, as the managing member of Boss, also had Meyer terminated as an employee on January 24, 2023 [Exh B-161]. That same day, Boss, through Cerecke, had Repurchase Notice letters issued to Kjos and Meyer, respectively [Exh 4, Exh 5, TT Vol 3, pp 777-778; TT Vol 4, pp 1083-1084]. In both letters there is reference to sections 8.8 and 8.9 of the Operating Agreement. Each letter included a tendered check for the repurchase amounts calculated by Boss for the shares held by Kjos and Meyer respectively and a proposed Assignment for each's shares back to Boss effective January 25, 2023 [Exh 4-003-4-004; Exh 5-003-5-004].

There is no question that Boss attempted to exercise its rights of repurchase within the 180 days provided under section 8.8(a) of the Operating Agreement – *i.e.* within 49 days of Kjos being terminated from further work; same day as Meyer was terminated as an employee [Exh B-161; Exh 4; Exh 5; Exh 8-030]. In terms of the repurchase price, Boss did not present any evidence at

trial of the fair market value of Kjos's and Meyer's respective shares. Rather, Boss's calculation presumed that the repurchase price based upon the "per share price paid" by Kjos and Meyer respectively for their units was the "lesser" amount [Op Agr §§ 8.8(b) & 8.9(a), Exh 8].

For Kjos, the letter indicated a repurchase price of $3,750.00 [Exh 4]. According to Boss, based on the explicit valuation indicated in the signed Operating Agreement and related corporate documents that became effective January 1, 2020, and later amended upon Kjos transferring some of his membership to Meyer, Kjos's original capital contribution was $5,000,[10] but was accordingly less per share once Kjos transferred 2.5% of his membership to Meyer through Meyer's exercise of his Option Agreement [Exh 8]. According to Boss, with reference to sections 8.8 and 8.9 of the Operating Agreement to determine the repurchase price for Kjos' units [TT Vol 3, p 742; Exh 4]. According to Boss, Boss's books and records reflect that the per share price for Kjos's units at the time he acquired them is $12.50 per unit (*i.e.* $5000/400) [TT Vol 3, pp 742, 762–64; Exh 8-046]. Boss calculated Kjos's unit repurchase price by multiplying Kjos's calculated per share acquisition price or "per share price" of $12.50 by the number of units Kjos held at the time of his termination (300 units) to arrive at $3,750.00 as the repurchase price of Kjos's 300 units (for his 30% membership) [TT Vol 3, pp 742, 778; Exh 8-048]. Boss did not calculate the fair market value, but determined that $3,750.00 was the proper repurchase price as the "lesser of" the fair market value and the amount Kjos paid Cerecke (as the selling member) for his units under Sections 8.8 and 8.9 of the Operating Agreement [TT Vol 3, pp 744-745, 775].

Kjos received the repurchase check from Boss but refused to cash it [TT Vol 4 p 1084; Tr, Vol 6, pp 1180, 1183–1184]. Kjos admits that he rejected the repurchase of his units, through counsel, and refused to tender his units to Boss [Exh B-11; TT Vol 3, p 779, 784–785]. Kjos contended that Boss could not repurchase his membership interest "at any price." [Exh B-11].

For Meyer, while there were no actual capital contributions to Boss noted, there are the more obvious payments to Kjos and Cerecke acknowledged for Meyer's acquisition of his units from them. First, there is his recorded contribution of $1,000.00[11] to Kjos for the first 5% of his

[10] Again, Kjos denied paying $5,000 for his initial 40% share in Boss. However, it is undisputed that such an amount was the amount explicitly stated as part of the Operating Agreement as Kjos's capital contribution, and reaffirmed for the Joint Written Consent, Kjos signed without challenge or question, and after having an opportunity to have it reviewed by a "tax or other advisors." [Op Agr, § 13.10, Exh 8].

[11] *Recall*, Kjos also denied ever actually receiving $1,000.00 from Meyer for the transfer of the initial 5% of shares from Kjos to Meyer. Nevertheless, Kjos and Meyer were clearly aware from the corporate documents and valuation therein that Meyer was given credit for purposes of Meyer's price paid to Kjos, the selling member. Otherwise, the price per share paid by Meyer would be zero for the initial 5% he acquired from Kjos, and Meyer would get no

shares (50 units) he obtained from Kjos consistent with their 2018 promise. Next, there is an acknowledged $0.00 capital contribution recorded, and no price otherwise paid, for the next 5% (50 units) Meyer obtained when he was appointed as President of Boss. And lastly, Meyer undeniably paid $50,000.00 each to Kjos and Cerecke (together $100,000.00) for the final 5% (50 units) Meyer later purchased from them pursuant to the Option Agreement [Exh 9; TT Vol 6, pp 1438, 1504]. As indicated in Meyer's letter, Boss calculated the repurchase price based upon the total "price paid" of the $101,000.00 for his 15% (150 units) by an average price per unit [Exh 5; TT Vol 3, pp 746-747, 776, 782]. According to Boss, the $101,000.00 would be the "lesser of" the amount Meyer paid for his units and the per unit fair market value under sections 8.8 and 8.9 of the Operating Agreement [TT Vol 3, p 775–776, 782].

Boss tendered a check for the price paid (totaling $101,000.00) to Meyer [Exh 5]. Meyer confirmed he received the check but did not cash it or return his units to Boss [TT Vol 3. p 784; TT Vol 6, p 1505]. Like Kjos, Meyer admitted he rejected Boss' attempts to repurchase his units [Exh B11; TT Vol 3, p 785; TT Vol 6, p 1505]. Neither Kjos nor Meyer disputed the amount calculated by Boss as the purchase price per unit they paid or requested an appraisal of the value of their respective shares [TT Vol 3, p 785; TT Vol 6, p 1504; Exh B11]. Neither tendered their units to Boss in exchange for the repurchase checks that Boss issued [TT Vol 3, p 779, 784-85; TT Vol 6, p 1505; Exh B-11]. Both Kjos and Meyer acknowledge that the checks they received from Boss were for an amount at least as much as they paid for their units [TT Vol 4, pp 1084; TT Vol 6, pp 1504-05].

While no independent unit fair market value analysis was presented for the Boss portion of the trial, for purposes of Kjos's and Meyer's pending claims against Cerecke remaining for trial from the Second Amended Third-Party Complaint, Kjos and Meyer presented evidence of valuation and accounting expert, Rodney Crawford, that under two scenarios or calculations he performed, he determined the fair value of Boss in its entirety would be on the low-end $19,742,000.00 or on the high-end $27,816,000.00 as of December 31, 2022 [Exh B47-4; B49-4; TT Vol 5, pp 1205, 1311-1318]. Then, using the higher of the two valuations, Crawford testified that he calculated $12,517,200.00 as a fair value of Kjos's and Meyer's combined 45% membership in Boss ($8,344,800.00 for Kjos; $4,172,400.00 for Meyer) [TT Vol 5, pp 1208, *see also* Def/TPP Proposed Findings, ¶ 75, pp 11-12].

credit for paying toward those units, similar to the second 5% he acquired from Kjos and Cerecke when he became President of Boss.

Crawford acknowledged that in performing his valuations he did not interview either Cerecke as the Manager of Boss, or DeFries, its CEO, or conduct a management interview, but did interview Kjos and Meyer [TT Vol 6, pp 1363-1365, 1378]; he did not reach a conclusion of value, just alternative calculations of value for Boss [TT Vol 6, pp 1361-1362]; and he did not perform a market study of shotshells [TT Vol 6, pp 1376-1377]. Crawford did interview Kjos and Meyer, but it was in mid-2023, months after they had been terminated from Boss [TT Vol 6, pp 1378-1379].

Crawford explained that his valuation method for Boss used the income approach, a standard in the industry [TT Vol 5, pp 1236-1237]. He also described that there was a difference in determining fair value and fair market value. The fair value standard takes the valuation of the entire enterprise and essentially multiplies is by the proportional share of ownership for each member of the organization [TT Vol 5, p 1212]. According to Crawford, the fair market value standard applies an additional discount when evaluating a "nonmarketable minority interest." [TT Vol 5, p 1212; TT Vol 6, p 1401]. Notably, the Court finds that Kjos and Meyer did not present admissible evidence, through Crawford or otherwise, what that discount rate would be to determine fair market value in this instance for the nonmarketable minority interests held by Kjos and Meyer, or what the fair market value of their interests would be. Crawford's testimony was limited to his determinations of fair value, and/or valuation of equity interests, which as explained are not the same things as fair market value.

IV. CONCLUSIONS OF LAW

In light of the above factual findings, the Court now turns to the claims and defenses asserted by and between Boss and Kjos and Meyer. That is, after the Court's summary disposition decision [OpOrder, 9/4/24], the trial of the Boss's claims proceeded to resolve four remaining issues of fact on the breach of contract claims (Counts I and II) [*see* Boss MSD Order, 9/4/24, pp 10–13, 16–17]. Again, those four initial issues for the breach of contract claims to be adjudicated are: (1) did Kjos have a "consulting engagement" with Boss for which the Operating Agreement's repurchase provision applies; (2) did Kjos and Meyer sufficiently demonstrate that Kjos and/or Meyer were fraudulently induced by Boss into entering the Operating Agreement; (3) did Kjos and Meyer sufficiently demonstrate that the Operating Agreement, or the repurchase provision contained therein, is voidable as unconscionable; and (4) if the repurchase provision of the Operating Agreement is applicable to Kjos and Meyer, and not otherwise voidable, was the repurchase price for their respective shares calculated properly.

In addition, or alternatively, the Court must decide whether Boss is entitled to damages for promissory estoppel (Count III) or unjust enrichment (Count IV) of the Boss Complaint.

A. Breach of Contract Claims

Michigan law states that "[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). To be recoverable, the breach of contract must be shown to be material. *Omnicom of Michigan v Giannetti Inv Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997). The Court of Appeals in *Omnicom* explained in pertinent part:

> In determining whether a breach is material, the court should consider whether the nonbreaching party obtained the benefit it reasonably expected to receive. Other considerations include the extent to which the injured party may be adequately compensated for damages for lack of complete performance, the extent to which the breaching party has partly performed, the comparative hardship on the breaching party in terminating the contract, the wilfulness of the breaching party's conduct, and the greater or lesser uncertainty that the party failing to perform will perform the remainder of the contract.

Id. (citations omitted).

Further, contracts are to be interpreted according to their plain language. *Altobelli v Hartmann*, 499 Mich 284, 300; 884 NW2d 537 (2016) (the court began its analysis of an arbitration clause contained within an operating agreement by looking to the plain language of the clause and the intent of the parties). As the Supreme Court has explained:

> Our goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself. If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law.

Kendzierski v Macomb Clay, 503 Mich 296, 311; 931 NW2d 604 (2019)(citations and quotation marks omitted).

"To ascertain the intent of the parties, a contract should be construed in the light of the circumstances existing at the time it was made." *Kunzie v Nibbelink*, 199 Mich 308, 314; 165 NW 722 (1917); *see also, Klapp v United Ins. Group Agency*, 468 Mich 459, 473; 663 NW2d 447 (2003); *Sobczak v Kotwicki*, 347 Mich 242, 249; 79 NW2d 471 (1956). "A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written." *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). The

Michigan Supreme Court summarized the foundational principles well in *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 212–13; 737 NW2d 670 (2007), when it explained:

> The United States Supreme Court has listed the right to make and enforce contracts among those fundamental rights which are the essence of civil freedom. We respect the freedom of individuals freely to arrange their affairs via contract by upholding the fundamental tenet of our jurisprudence . . . that unambiguous contracts are not open to judicial construction and must be *enforced as written,* unless a contractual provision would violate law or public policy. As one court has stated:
>
> > Courts do not make contracts for parties. Parties have great freedom to choose to contract with each other, to choose not to do so, or to choose an intermediate course that binds them in some ways and leaves each free in other ways.
>
> Were courts free to refuse to enforce contracts as written on the basis of their own conceptions of the public good, the parties to contracts would be left to guess at the content of their bargains. Because the parties have freely set forth their rights and obligations toward each other in their contract, when resolving a contractual dispute, society is not motivated to do what is fair or just in some abstract sense, but rather seeks to divine and enforce the justifiable expectations of the parties as determined from the language of their contract. Rather than attempt to apply an abstract notion of justice to each particular case arising out of a contract, we recognize that refusal to enforce a contract is contrary to the real justice as between the parties. Consequently, when parties have freely established their mutual rights and obligations through the formation of unambiguous contracts, the law requires this Court to enforce the terms and conditions contained in such contracts, if the contract is not contrary to public policy. When contracts are formed, the parties to the contract are the lawmakers in such realm and deference must be shown to their judgments and to their language as with regard to any other lawmaker.

Id. (emphasis in original; internal quotation marks, brackets and citations omitted).

Further, words in a contract must be interpreted according to their common meanings, and the fact that a contract does not define a term does not render the term ambiguous. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Contracts are to be read as a whole. *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 447; 886 NW2d 445 (2015). And the contract must be read to give "effect to every word, phrase, and clause," while taking pains to "avoid an interpretation that would render any part of the contract surplusage or nugatory" *Klapp,* 468 Mich at 468.

With that said, a contract or a provision therein may not be enforceable by its plain terms as written where "a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies." *Rory,* 473 Mich at 461.

1. Whether Kjos Had a Consulting Engagement with Boss to Provide Services

Applying the above principles, the first question at trial for the Boss claim for breach of contract and enforcement of the Operating Agreement repurchase provision against Kjos is whether or not Kjos was bound thereto because he was terminated from a "consulting engagement" as that term is utilized therein [*see,* Op Agr, §8.8, Exh 8]. As argued by Kjos, "[s]ection 8.8 of the Operating Agreement cannot be triggered unless a member's 'employment or *consulting engagement* with the Company . . . is terminated.'" [Defs Post Trial Brf, 1/21/25, p 17 (emphasis in original)].

Where words of a contract are not specifically defined in the document, as is such the case for "consulting engagement," the Court is allowed to determine the plain and ordinary meaning of words or phrases by consulting dictionaries. *Total Quality, Inc v Fewless,* 332 Mich App 681, 695; 958 NW2d 294 (2020); *Auto Owners Ins Co v Seils,* 310 Mich App 132, 145; 871 NW2d 530 (2015). Additionally, even varying definitions within dictionaries does not render a term or phrase ambiguous. *See, Henderson,* 460 Mich at 354-355.

In The Law Dictionary, "consulting" is defined as "[p]roviding expert knowledge to another party for a fee. This is done when a company needs another opinion on an issue." Consulting, *The Law Dictionary (Online)* (https://thelawdictionary.org/consulting, last visited June 1, 2025). Similarly, Merriam-Webster's common dictionary defines "consulting" as "providing professional or expert advice." Consulting, *Merriam-Webster* (https://www.merriam-webster.com/dictionary/consulting, last visited June 1, 2025). Merriam-Webster also defines "consultant" as "1: one who consults another; 2: one who gives professional advice or services : EXPERT." Consultant, *Merriam-Webster* (https://www.merriam-webster.com/dictionary/consultant, last visited June 24, 2025).

The other part of the disputed term is "engagement." Again, whether looking to a legal dictionary or a common dictionary, "engagement" is similarly defined. It is defined as "[a] contract or agreement involving mutual promises." Engagement, *Black's Law Dictionary* (8th ed. 2007). It can also mean "**a :** an arrangement to meet or be present at a specified time and place – [example:] a dinner *engagement*; **b :** a job or period of employment especially as a performer[.]" Engagement, *Merriam-Webster (*https://www.merriam-webster.com/dictionary/engagement, last visited June 24, 2025). Defendants did not provide any alternative source or definition contrary to the above [*see,* Defs Post-Trial Brf, 1/21/25, pp 4-20]. With that, the Court finds the plain and ordinary

meaning of "consulting engagement" is an agreement or arrangement in which one provides expert or professional advice or service to another.

Based upon a preponderance of the admitted evidence, the Court finds that Kjos most certainly had a "consulting engagement" with Boss to provide his branding and marketing work and expertise from 2018 through December 6, 2022, when that engagement was terminated. As an initial matter, the Court noticed in one of the corporate documents, namely the Joint Written Consent, there was reference to Kjos solely as a member, and not also as a consultant or contractor to Boss [Exh 13, p 2]. However, that reference is found to be insignificant in light of the remainder of the presented evidence finding that Kjos did have a "consulting engagement" with Boss. And while Kjos testified repeatedly that he believed he was just an owner since 2018 and was only paid in owner distributions and was never paid as a consultant, respectfully, his memory and articulated understanding and inquiry into the business dealings in that regard lack credibility. Instead, the vast majority of the admissible evidence demonstrates that Kjos provided professional and expert advise and service in the area of branding and marketing for the launch and growth of Boss shotshells by agreement of the parties over the span of several years until his termination on December 6, 2022, and was paid handsomely for his consulting work separate from any distributions or payments related to his membership in Boss.

As outlined in the above Findings, it is beyond question that Kjos was initially engaged as a consultant or "hired gun" in 2018, and Kjos quoted $75,000.00 as an initial invoice for "Phase One," through his company Kjos Outdoors, for the branding and marketing services requested by Cerecke for his startup, direct-to-consumer sales model for the shotshells Cerecke had developed and wanted to manufacture. Kjos continued that same type of work for Boss throughout 2018, after Cerecke launched the Boss company, and through 2019, while still maintaining his Kjos Outdoors business and other business endeavors. Further, Kjos performed the same or similar type of services for Boss that he previously performed for clients where he admitted he was a consultant.

The fact that Kjos and Cerecke renegotiated Kjos's initial Phase One ($75,000) invoice to be satisfied with a 40% share in Boss at a later unspecified date does not change the branding and marketing work Kjos performed for Boss from 2018 through 2022. As described above, Kjos, Meyer and other testifying witnesses were consistent in describing Kjos's work for Boss as professional advice, service and expertise in the areas of branding and marketing. Plainly, the preponderance of the evidence demonstrates Kjos never challenged or refuted references to him as a contractor to Boss or being paid in fees for that work.

Further, the evidence supported a finding that Kjos was paid as a consultant, and he never challenged he was paid professional fees, and reimbursed expenses during his time at Boss, that were recognized as income for that work. Significantly, as discussed above, in December 2020, Boss paid Kjos, through Kjos Outdoors, $200,000.00 for "consulting fees." The tax filings for Kjos and/or through his Kjos Outdoors business and related communications similarly support such payments as compensation for Kjos's consulting work after working for two-plus years without getting paid. Plainly, there was not a sufficient showing that Kjos reported the $200,000.00 as a membership distribution in 2020.

Ultimately, the preponderance of the evidence shows that Kjos (individually or through his Kjos Outdoors business) was not just paid solely as a member after execution of the Operating Agreement. That is, some significant payments were for his professional fees from Kjos's work, some expense reimbursements for that work, and others only later (after the effective date of the Operating Agreement) were member distributions and tax liability reimbursements made to Kjos individually due to his membership status.

Moreover, after entering into the Operating Agreement, effective January 1, 2020, it becomes even more clear that Kjos continued to be engaged as a consultant because Kjos and Meyer **as members** (other than the Manager) were expressly precluded under section 3.1 from participating in any business or affairs of the company [Op Agr, § 3.1, Exh 8]. And only Cerecke, as the Manager, had the authority to hire employees, **advisors,** and **agents**, such as Kjos, to perform business activities for Boss [Op Agr, §4.1(g), Exh 8]. That is what Cerecke did by having Kjos provide consulting services, for which Boss paid not only fees but reimbursed expenses. Finally, the evidence also shows that Kjos's type of consulting work for Boss after his termination was filled by Boss with other outside consultants.

Therefore, the Court finds Kjos's assertion that he only ever did work for Boss as a member is without merit. Based upon a preponderance of the evidence, the Court finds that the Operating Agreement, namely section 8.8 applies to Kjos, as a member (other than Cerecke) whose "consulting engagement with the Company . . . is terminated" in the same fashion as it did to Meyer as an employee who was also terminated [OpAgr § 8.8(a), Exh 8-030]. In light of the above and in consideration of the evidence presented at trial, the Court finds that Kjos had a "consulting engagement" with Boss in doing his work from 2018 through the time after the execution of the Operating Agreement, and until that engagement was terminated on December 6, 2022.

2. Affirmative Defenses

Next, the Court addresses Defendants' asserted two affirmative defenses to the enforceability of the Operating Agreement that proceeded to trial in defense to Boss's claims of breach of contract.[12] More specifically, after the Court's dispositive rulings [Boss OpOrder, 9/4/24], what remained for trial was whether Defendants could void the Operating Agreement, or at least the repurchase provision under section 8.8 and 8.9 due to fraudulent inducement, and/or unconscionability [Defs Aff Def Nos 2 & 3, pp 32-37; Boss OpOrder, 9/4/24]. After considering the facts described above, the Court finds that Defendants have not met their burden as to either of these defenses.

a. Fraudulent Inducement

As noted, a defense raised by Defendants is that they were fraudulently induced to enter into the Operating Agreement, pleading that "(i) Cerecke and Kjos were in Boss together and would be until Kjos told Cerecke that Kjos wanted to stop and sell the Company, and (ii) Kjos and Cerecke would take less in ownership distributions on the front end (and throughout their ownership of the Company) so they could continue building the business and brand and share in a very large return upon a sale of the Company or other liquidity event." [Defs AffDef No. 2, p, 32]. As presented at trial, there were essentially three specific representations or promises that Defendants assert Boss made, through Cerecke – (a) to Kjos, there is the statement that "we'll get out when you want to get out;" (b) to both, the statements essentially that "[W]e have already made millions. We just haven't taken it out yet;" and (c) to Meyer "members would all benefit from any sale of Boss or liquidity event and that they were all deferring more significant and immediate distributions for larger distributions down the road." Thus, the next question for the Court's determination is whether Defendants met their burden of proving their affirmative defense that they were fraudulently induced into signing the Operating Agreement or in Meyer's case joining thereunder, and therefore, the Operating Agreement, or at least section 8.8 is unenforceable against them.

As a general rule under Michigan law, one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms. *Smith Living Tr v Erickson Ret Communities*, 326 Mich App 366, 385; 928 NW2d 227 (2018).

[12] Defendants mistakenly raised a lack of consideration argument in their post-trial brief, pp 8-9, and/or proposed findings of fact, section VI, p 8, but that defense was not an issue of fact for determination at trial. *See,* Boss MSD OpOrder, 9/4/25.

However, a party who was fraudulently induced to enter a contract renders the contract voidable at the option of the defrauded party. *Id*. As a defense to the enforceability of the Operating Agreement based upon fraud, Defendants have the burden of establishing fraud by clear and convincing evidence as to each element. *Id.* at 385-386*,* citing*, Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336, 247 NW2d 813 (1976). The clear and convincing evidence standard is the most demanding standard applied in civil cases. *In re Martin*, 450 Mich 204, 226–27; 538 NW2d 399 (1995). Thus, the clear and convincing standard, is a higher evidentiary burden than the preponderance of the evidence standard imposed on Boss's affirmative claims of breach of contract. "Clear and convincing evidence is defined as evidence that produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Kefgen v Davidson*, 241 Mich App 611, 625; 617 NW2d 351 (2000)(quotation marks, brackets and citations omitted).

The elements of fraud that must be proved are: (1) that Boss made a material representation; (2) that it was false; (3) that when Boss made the false statement, it knew that the statement was false, or made it recklessly, without any knowledge of its truth, and as a positive assertion; (4) that Boss made it with the intention that it should be acted upon by Defendants; (5) that Defendants acted in reliance upon the statement; and (6) that Defendants thereby suffered injury. *Hi-Way Motor,* 398 Mich at 336. Each of these elements must be proved with a reasonable degree of certainty, and all of them must be found to exist; the absence of any one of them is fatal to a recovery. *Id.*

Because in this case, the Operating Agreement contains a merger clause in section 13.7, the bar to invalidate it based on fraud is high. It is limited to fraud in the inducement. "[W]hen a contract contains a valid merger clause, the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself. . . [or] the entire contract." *UAW-GM Hum Res Ctr v KSL Recreation Corp*, 228 Mich App 486, 503; 579 NW2d 411 (1998). It is not sufficient to claim "fraud" based on some other, pre-existing agreement that was invalidated by a merger clause. *Id.* "[W]hile parole evidence is generally admissible to prove fraud, fraud that relates solely to an oral agreement that was nullified by a valid merger clause would have no effect on the validity of the contract." *Id*. "Parol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Id*. at 492 (internal quotation marks omitted). "A merger clause can

render reliance unjustified as to agreements, promises or understandings related to performances that are not included in the written agreement." *Barclae v Zarb*, 300 Mich App 455, 482; 834 NW2d 100 (2013)(quotation marks and citations omitted).

Further, "[a] promise is a manifestation of intention to act or refrain from acting in a specific way, so made as to justify a promisee in understanding that a commitment has been made." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008)(quotation marks and citation omitted). Also, the fact that a party uses "hyperbole and puffery in seeking an advantage or concession does not necessarily create a promise." *Charter Tp of Ypsilanti v Gen Motors Corp*, 201 Mich App 128, 135; 506 NW2d 556, app den, cause remanded sub nom *Charter Tp of Ypsilanti, Cty of Washtenaw v Gen Motors Corp*, 443 Mich 882; 509 NW2d 152 (1993).

Third, a promise or representations must be "clear and definite," while statements that are "indefinite, equivocal, or not specifically demonstrative of an intention respecting future conduct, cannot serve as the foundation for an actionable reliance." *Bodnar v St John Providence*, *Inc*, 327 Mich App 203, 227; 933 NW2d 363 (2019)(quotation marks and citation omitted). The Court of Appeals in *Ypsilanti, supra,* described several examples from other jurisdictions of statements or promises of future events which were not actionable – "We're partners," "We look forward to growing together," and statements urging union concessions in order to prevent a foundry from closing, and asking employees for higher productivity and assuring them that the plant would not close. *Ypsilanti,* 201 Mich App at 135, citing *Marine Transport Lines Inc v Int'l Organization of Masters Mates & Pilots*, 636 FSupp 384 (SDNY, 1986); *Abbington v Dayton Malleable, Inc*, 561 FSupp 1290 (SDOhio, 1983), aff'd 738 F2d 438 (CA 6, 1984); and *Local 1330, United Steel Workers v United States Steel Corp*, 631 F2d 1264 (CA 6, 1980).

Because of the uncertainties often surrounding promises of future events, the general rule has long been that "a claim of fraud cannot be based on a promise of future conduct." *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 379; 689 NW2d 145 (2004), citing *Hi-Way Motor*, 398 Mich at 336. However, as the Court of Appeals explained, an exception to this general rule exists:

> [I]f a promise is made in bad faith without the intention to perform it. Evidence of fraudulent intent, to come within the exception, must relate to conduct of the actor at the very time of making the representations, or almost immediately thereafter. Plaintiffs, therefore, must demonstrate that at the time defendants made promises to them, defendants did not intend to fulfill the promises.

Derderian, 263 Mich App at 378–79 (internal brackets, quotation marks and citations omitted).

In this case, Defendants' efforts to prove they were fraudulently induced to sign Operating and Joinder Agreements fall well short of presenting clear and convincing evidence in a number of respects. First, none of the purported statements by Cerecke on behalf of Boss are clear and definite, and they are certainly missing material terms upon which there could arguably be reasonable reliance by either Defendant. For example, Kjos fails to demonstrate fraud related to the purported 2018 promise by Cerecke that "we'll get out when you want to get out." As an initial matter, Kjos's memory and mischaracterization of his dealings while working for Boss lacks credibility that "getting out when he said to get out" was promised as part of an agreement, or that it meant that Boss would have to be sold. Clearly such a statement, even assuming *arguendo* it was made, was an unspecified promise for a vague, general future event that was missing material information – *i.e.* When in the future? How much would Boss be sold for? What did Kjos need to do to indicate to Cerecke that he was ready to get out? Did Meyer get a say on the sale of Boss even though when the purported promise was made by Cerecke, Meyer was not yet officially involved with Boss? Such a vague statement for a future event cannot be the basis of fraud in the inducement. The same analysis applies to the other two purported statements or promises Defendants assert against Boss. The Court finds them to be more akin to hyperbole in those specific moments.

Moreover, Kjos fails to demonstrate that the future event ever came to fruition, in that there is no credible evidence that Kjos wanted to get out of Boss, and/or that he expressed that to Boss, prior to or even after the Operating Agreement went into effect. Certainly, if that was such a material term that Kjos relied upon, then that would have been discussed in August 2020, and Kjos, with thirty-plus years in the industry and owner of several other businesses, would have ensured that it was part of the Operating Agreement before he signed it. Instead, there were no discussions, no demands for its inclusion, even after Kjos had the drafted documents reviewed by his attorney, Corbo, and his wife and project manager, Bonnie.

To Meyer, there was also nothing promised by Boss that Meyer relied on that was not likewise fulfilled based on their agreements. It was Kjos who separately promised Meyer 5% of his membership in Boss (albeit without prior notice to Cerecke), and that is what Meyer got effective January 2, 2020. More importantly, Cerecke, Kjos and Meyer wanted to have Meyer come join Boss as a full-time employee of Boss (after Meyer's Minnesota job became tenuous and he was unable to buy out the business there he had been working for), with a negotiated salary of $104,000, plus benefits, and additional membership in Boss. Negotiated promises fulfilled. Not to

mention, as part of that negotiated deal between Kjos, Meyer and Cerecke, Meyer received an option to buy even more membership in Boss in the future. Meyer jumped at the chance in early December 2021. And that was after there had been heated discussions over assets and ownership between the three members several months earlier. Another promise made that was fulfilled. Notably, Meyer's exercise of his Option Agreement was about a year after Defendants had entered into the Operating Agreement. There was without question a reasonable amount of time for both Defendants to check and recheck the language of the Operating Agreement, Joinder Agreements, Unit Assignments and other corporate documents before and after it was signed by Defendants originally, and then later reaffirming its language in December 2021 when Meyer exercised his option and bought a greater share in Boss, and Kjos gave up more of his shares in Boss, as did Cerecke.

There was evidence presented of one party, Moore Capital Group, that came for a visit of the facilities as a potential buyer in April 2022. But not unlike the deal Meyer couldn't close with his prior boss-owner before coming to Boss, Defendants were not able to close on an acceptable deal for all the members for the sale of Boss. And if anything, the evidence presented at trial demonstrates that by late 2022, Defendants wanted to get Cerecke bought out, and keep running Boss for themselves, not see Boss sold, and "get out when you say to get out" or "members would all benefit from any sale of Boss or liquidity event" as Defendants attempted to assert as misrepresentations.

The most glaring void is that there is no cited testimony from either Kjos or Meyer that they actually relied on the misrepresentations they previously alleged in their stated affirmative defenses. Defendants both failed to demonstrate on the evidence admitted at trial that either of them relied on these alleged misrepresentations and were induced thereby into signing the Operating Agreement. *See, Hi-Way Motor*, 398 Mich at 336 (requiring that the defendants show by clear and convincing evidence "that [they] acted in reliance upon" the false statement). Neither Kjos nor Meyer has provided sufficient evidence by words or actions to establish reasonable reliance. Therefore, the Court finds that Defendants have simply not satisfied their burden of proving a reasonable reliance on any purported false statement.

Finally, it is undeniably admitted by both Defendants through the plain language of the Operating Agreement, namely section 13.10, that Defendants had a reasonable opportunity to consult with their advisors before signing the Operating Agreement, and moreover, that in signing Defendants acknowledged that neither Boss, nor Cerecke, its manager, "made any representations

or warranties" to them regarding the consequences of any of the Operating Agreements provisions. Defendants offer no evidence of a present intent by Boss, through Cerecke, not to carry out a true promise of a future event, arising to fraud or that there were material misrepresentations by Boss upon which Defendants reasonably relied. *See, Derderian*, 263 Mich App at 379. Accordingly, the affirmative defense of fraudulent inducement fails on that basis as well.

b. Unconscionability of the Operating Agreement

Next, to prove unconscionability of a contract, Michigan law requires both substantiative and procedural unfairness for an agreement to be invalidated. *Liparoto Const, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 30–31; 772 NW2d 801 (2009). As the Court of Appeals explained in pertinent part:

> For a contract or a contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present. Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term. Substantive unconscionability exists where the challenged term is not substantively reasonable. However, a contract or contract provision is not substantively unconscionable simply because it is foolish for one party or very advantageous to the other. Instead, a term is substantively unreasonable where the inequity of the term is so extreme as to shock the conscience.

Id. (citations and internal quotation marks omitted). *See also*, *Clark v DaimlerChrysler Corp*, 268 Mich App 138; 143–144; 706 NW2d 471 (2005); *Gillam v Mich Mortg Inv Corp*, 224 Mich 405, 409; 194 NW 981 (1923) ("An unconscionable contract is said to be one such as no man "not under a delusion would make on the one hand, and as no honest and fair man would accept on the other."). *See also, Nexteer Auto Corp v Mando America Corp*, 314 Mich App 391, 396; 886 NW2d 906 (2016)("Courts have long held parties to agreements they make, regardless of the harshness of the results.").

Substantive unconscionability is determined from the "language of the [contract] clause" and whether the language itself is "inherently unreasonable" or shocks the conscience." *Lebenbom v UBS Fin Servs, Inc,* 326 Mich App 200, 218; 926 NW2d 865 (2018). There is "no authority permitting a court to find a contract unconscionable on the basis of events that occurred long after the contract's formation." *Rose v Rose*, 289 Mich App 45, 61; 795 NW2d 611 (2010) "The determination of whether a given clause or contract is in fact unconscionable is to be made at the time of its making rather than at some subsequent point in time (e.g., at the time for performance)." *Id*. at 61 n.3., quoting 8 Willison, CONTRACTS (4th ed), § 18:12, p 127.

Upon consideration, the Court finds the substantive terms of the Operating Agreement, including sections 8.8 and 8.9, are not "inherently unreasonable" and do not "shock the conscience." The terms of the parties' bargain in sections 8.8 and 8.9 of the Operating Agreement were simple and straightforward: Kjos and Meyer contributed only minimal amounts of capital to Boss, but were entitled to receive membership distributions, even potentially very large distributions, so long as they continue making active contributions as a consultant and employee of Boss, respectively. If these contributions ceased for any reason, their right to the continued benefits of ownership in Boss would also end (upon Boss's election to invoke section 8.8). From the admitted evidence, including Defendants' own testimony, there is no question that Defendants benefited greatly from their membership, as operated under the Operating Agreement. They received, in addition to their professional fees as a consultant or salary and benefits as an employee, significant amounts in membership distributions and other tax reimbursement payments associated with their membership, while avoiding the personal loan guarantees that Cerecke was forced to sign to obtain equipment needed for manufacturing and cover payroll, and taxes, to name a few, in order for the brand to get off the ground and grow. Plainly, this is not a bargain so unreasonable that "no honest and fair man would accept." *See, Gillam,* 224 Mich at 409. In fact, these two experienced businessmen, not only accepted the terms of the Operating Agreement after at least a month or more after initially reviewing it, they clearly accepted those terms a second time, about a year later, when Meyer exercised his option to buy his additional shares in Boss from Kjos and Cerecke.

In addition, when questioned at trial, neither Kjos nor Meyer could point to anything specifically unfair about the repurchase provision at the time of signing. Meyer did not testify about any unfairness at all, just that he felt rushed. And Kjos complained only that it was "not his deal." Defendants have identified no reported case finding operating agreement provisions such as this unconscionable in Michigan. Moreover, Michigan law expressly permits an operating agreement to include a mechanism to terminate members. *See* MCL 450.4509(2).

In truth, Defendants' primary argument for substantive unconscionability is that—given Boss's recent success—the repurchase prices Kjos and Meyer respectively agreed to when joining the Operating Agreement would constitute "less than 1%" of what Boss is worth today [Defs Post-Trial Brf, p 16]. However, Michigan law dictates that it is improper to gauge unconscionability by looking at the contract *ex post facto. See, Rose,* 289 Mich App at 61 n.3. As such, the Court concludes the repurchase price, as a percentage of Boss's present value, is simply an irrelevant

metric to judge substantive unconscionability at the time the Operating Agreement was entered and then later reaffirmed.

For similar reasons, the Court also finds that Defendants have failed to establish procedural unconscionability. First, in looking for the procedural unconscionability component, the Court is hesitant to find from these negotiated corporate documents, and particularly the Operating Agreement, presented in several drafts before finalizing, that either party was in a "weaker" position. Both Defendants had decades of experience in the outdoorsmen industry; worked for and/or contracted with a myriad of businesses before joining Boss; and, in fact, own companies of their own. Nevertheless, even assuming *arguendo*, that Defendants held the "weaker" position, there still has not been a sufficient showing by Defendants that either of them was under duress or forced into signing the Operating Agreement, Joinder Agreements, or related corporate documents. That is, they failed to show they had "no alternative" but to sign the Operating Agreement and/or Joinder Agreements. *See Liparoto,* 284 Mich App at 30–31. Even considering Defendants' testimony that Cerecke was eventually terse in obtaining their signatures in late December 2020, or early January 2021, the Court notes that Defendants had months to review the documents, and during that same time, to have advisors look at them as well. Thus, their complaints of being rushed are insufficient to establish procedural unconscionability when they first signed them. Additionally, any allegations relating to procedural unconscionability are rendered too incredible because both Kjos and Meyer knowingly and voluntarily re-signed documents in December 2021 (without objection) reaffirming that they were subject to the terms of the Operating Agreement. Moreover, Defendants failed to credibly establish that they had no reasonable alternative to signing the Operating Agreement. In reality they had several options or alternatives. For example, Defendants could have asked for changes; they could have found other employment or business opportunities; they could have filed a lawsuit; and/or they could have refused to later sign documents incorporating the Operating Agreement's terms they only later realized were disadvantageous to them. Under the circumstances, as presented at trial, Kjos's and Meyer's testimony that they did not feel like they had a choice (not just once but twice), is simply nonsensical and unsupported by the evidence.

Applying the applicable law, and in light of the presented evidence, the Court holds that Defendants have failed to establish the Operating Agreement, including sections 8.8 or 8.9 therein, was either substantially or procedurally unconscionable.

3. The Repurchase Price Calculation

With no substantiated defense voiding the Operating Agreement in whole or part, Defendants are left with their challenge of the propriety of the repurchase price under section 8.9 of the Operating Agreement. There is no question that Defendants each failed or refused to cash the checks they were issued by Boss to repurchase their respective units after their terminations or to sign over their rights back to Boss. Thus, the Court agrees with Boss, and the plain language of the Operating Agreement, that if the tendered repurchase checks and their respective execution of the redemption paperwork were wrongfully refused by Defendants, it would constitute a material breach. Thus, the next question for the Court's factual determination is whether the repurchase amounts ($3,750.00 and $101,000.00 respectively) were calculated by Boss properly under the Operating Agreement, such that Defendants' refusal was wrongful and a breach of the Operating Agreement. The Court finds that the preponderance of the evidence demonstrates that the repurchase amounts calculated by Boss were accurate under the Operating Agreement, sections 8.8 and 8.9, such that Defendants' refusal to sign their units back to Boss was a breach of the Operating Agreement entitling Boss to relief.

As stated, by January 2022 and through to January 2023, Cerecke had 550 shares (55%), Kjos had 300 shares (30%) and Meyer had 150 shares (15%). Cerecke testified at trial that the repurchase prices were calculated based on Kjos's and Meyer's acknowledged capital contributions for their shares and percentages of membership (in the Operating Agreement, related Joinder Agreement, and unit purchase agreements) where there was no actual payments made for the units. That is, Kjos had a documented $5,000.00 capital contribution for the shares he was transferred from Boss; Meyer had a documented $1,000.00 capital contribution when he obtained his first 5% (50 units) from Kjos; Meyer had $0.00 for the second set of 50 units he got from Cerecke and Kjos. Then in the case of Meyer's last purchase of units, the actual amount paid for the final 50 units was undeniably $100,000.00. There was sufficient evidence at trial how the repurchase price was calculated and confirmed that neither Kjos nor Meyer requested an appraisal of their units. In addition, Defendants presented no testimony directly rebutting the validity of Boss's calculations, nor did the Court find any evidence (or even an allegation) that Kjos or Meyer paid more in capital contributions or direct payments to the selling members to purchase shares than the calculated amounts for their interests. If anything, they actually paid less than Boss gave Defendants credit for having paid. Those amounts were never challenged, negotiated, or questioned by Defendants. They unquestionably acquiesced to the stated contributions they were

given credit for not just once, but at least twice, the latter being December 2021 when Meyer exercised his right to purchase more shares from Cerecke and Kjos. As such, the Court finds the calculation appears credible and consistent with the repurchase provisions of sections 8.8 and 8.9 of the Operating Agreement.

At most, Defendants argue that under section 8.9 of the Operating Agreement, because they paid zero for some or all of their shares, the "lesser of" language should not apply, and so their shares "must be repurchased at fair market value." As previously discussed, this argument goes against well-established Michigan law, as it would require the Court to read portions of the Operating Agreement out of existence, or judicially reconstruct the plain language of sections 8.8 and 8.9 of the Operating Agreement, neither of which the Court is permitted to do. *Recall, Klapp,* 468 Mich at 468 (holding that courts must "give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory").

Consequently, the Court concludes that the repurchase checks were calculated in compliance with the Operating Agreement's repurchase provision. Boss paid Kjos and Meyer the full amount that the company's records reflected for their unit acquisition payments, which is **more** than Defendants contend they actually paid. Boss proved by a preponderance of the admitted evidence that it properly calculated the repurchase amounts and Defendants both breached the Operating Agreement by failing to timely return their units to Boss after notice and the checks in the respective repurchase amounts were tendered to each of them. *See, Miller-Davis,* 495 Mich at 178.

4. Equitable Remedy for Defendants' Breach

By its Complaint, Boss sought that the equitable relief of specific performance be ordered for the repurchase of its membership from Defendants pursuant to sections 8.8 and 8.9 of the Operating Agreement, and associated costs and attorneys' fees. Boss claims specific performance is necessary as it otherwise has no other adequate remedy at law [Boss Compl, ¶¶ 51, 58, pp 9-10]. This Court agrees.

As long been established in Michigan law, "[s]pecific performance of a contract is an equitable remedy of very ancient origin, and has been declared to be the most useful one of the various equitable remedies." *Keys v Hopper*, 270 Mich 504, 507; 259 NW 319 (1935)(quotation marks and citation omitted). However, "equity will not take 'jurisdiction of cases where a suitor has a full, complete, and adequate remedy at law, unless it is shown that there is some feature of

the case peculiarly within the province of a court of equity.'" *Madugula v Taub*, 496 Mich 685, 706; 853 NW2d 75 (2014), quoting*, Detroit Trust Co v Old Nat'l Bank of Grand Rapids,* 155 Mich 61, 65; 118 N.W. 729 (1908). Based in equity, "[t]he specific performance of contracts must always rest in the sound discretion of the court, to be decreed or not, as shall seem just and equitable under the peculiar circumstances of each case." *Smith v Lawrence*, 15 Mich 499, 501 (1867).

In *Oreland Equip Co v Copco Steel & Engg Corp*, 310 Mich 6, 13; 16 NW2d 646 (1944), the Supreme Court held specific performance would be an appropriate remedy where plaintiff could show that the particular copper and brass that was contracted for, could not be acquired in the market at the time of making the contract. In the case at bar, Boss entered into a valid Operating Agreement with Defendant that exchanged membership or units in the company for, among other things, the right of repurchase of those units and membership help by the other members if for whatever reason those members were terminated from working with Boss. There is no one else besides Defendants who hold membership rights in Boss, besides Cerecke, the manager, and there is no adequate remedy at law, for Boss to obtain or replace those units wrongfully being withheld by Defendants after they were terminated, and Boss tried to repurchase them.

Consequently, the Court finds ordering Defendants to return their respective units for the repurchase price tendered by Boss on January 24, 2023, and otherwise cancelling Defendants' membership rights in Boss, as proposed by Boss to be a just and equitable remedy under the circumstances of this case.

B. Promissory Estoppel & Unjust Enrichment Claims

As referenced above, Boss had asserted claims of promissory estoppel (Count III) and unjust enrichment (Count IV), in the alternative to its claims for breach of contract by Kjos and Meyer respectively. First, although related to theories of breach, promissory estoppel is a distinct cause of action. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686; 599 NW2d 546 (1999), citing *Marrero v McDonnell Douglas Capital Corp*., 200 Mich App 438, 442; 505 NW2d 275 (1993). To seek the equitable remedy of promissory estoppel a party must demonstrate: "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided." *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999)(internal citations and quotation marks omitted).

Along those same lines, "in order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). That is, a contract will be implied under an unjust enrichment theory only if there is no express contract covering the same subject matter. *Barber,* 202 Mich App at 509. The elements of unjust enrichment are "(1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant." *Deschane v Klug*, 344 Mich App 744, 753; 2 NW3d 131 (2022).

Because the Court holds that the parties had an express agreement, the Operating Agreement, and Defendants breached that Agreement by not allowing the repurchase of their respective shares, causing damage, there is no factual or legal basis upon which Boss is entitled to recover under the alternative theories of promissory estoppel or unjust enrichment. As alternative claims, the Court enters a no cause of action in favor of Defendants and against Boss on the claims fo promissory estoppel and unjust enrichment.

V. CONCLUSION

In light of the foregoing reasons, and the Court being otherwise advised in the premises, the Court concludes for the Boss Complaint as follows:

IT IS HEREBY ORDERED that on Count I of the Complaint (breach of contract), based upon the findings of fact and conclusions of law by this Court, a judgment in favor of Plaintiff Boss Outdoors, LLC and against Defendant Lee Thomas Kjos be entered.

IT IS HEREBY FURTHER ORDERED that on Count II of the Complaint (breach of contract), based upon the findings of fact and conclusions of law by this Court, a judgment in favor of Plaintiff Boss Outdoors, LLC and against Defendant Zachary Meyer be entered.

IT IS HEREBY FURTHER ORDERED that upon Boss re-tendering of (i) a repurchase check to Defendant Kjos in the amount of $3,750.00, and (ii) a repurchase check to Defendant Zachary Meyer in the amount of $101,000.00, with written notice of such re-tenderings being filed and served within 7 days thereafter, Defendants' respective units and membership rights in Boss are held REDEEMED and all rights, claims, title and interest previously held by Defendants as members, by and through their possession and/or control of Boss company units, shares, or otherwise are QUIETED and deemed VOIDED.

IT IS HEREBY FURTHER ORDERED that Count III (promissory estoppel) and Count IV (unjust enrichment) of the Complaint, as alternative claims, are adjudicated as no cause of action and DISMISSED.

IT IS HEREBY FINALLY ORDERED that the Court reserves on entry of a final judgment, including any request for allowable taxable costs under MCR 2.625(A)(1), if any, until the adjudication of the remaining claims pending in this action, and/or further order of this Court.

IT IS SO ORDERED. *This is not a final order and does not close the case.*

July 11, 2025
Date

Donna B. Howard
DONNA B. HOWARD (P57635)
Trial Court Judge – Business Docket

Certificate of Service: The undersigned certifies that a copy of the foregoing Opinion and Order was served upon the attorneys and/or parties of record to the above cause by mailing the same to them at their respective addresses as disclosed by the file with postage fully prepaid or interoffice office delivery, if available, and/or email if agreed, on: 7/11/2025.

s/ Mica Hutchins
Deputy Clerk/Bailiff