# STATE OF MICHIGAN

# COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 26-000135-MB

JOCELYN BENSON, in her official capacity as the duly elected Secretary of State,

Hon. Michael F. Gadola

Defendant.
_____ /

**ORDER DENYING PLAINTIFF'S 8/7/26 SECOND EMERGENCY MOTION FOR RECONSIDERATION**

On August 6, 2026, the Court of Appeals issued a published opinion in consolidated cases in *Barkley v Southfield*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket Nos. 369608, 370050, 370112, 370580, 370583, 372060, 372076). News of that release was more broadly communicated to the public this morning. After learning of this opinion, plaintiff filed a second motion for reconsideration of the August 4, 2026 order rejecting the amended complaint he filed in the current action. The factual and procedural background of *Barkley* is distinguishable from the current action and the Court DENIES plaintiff's motion.

At issue in *Barkley* was whether a plaintiff could file an amended complaint as of right under MCR 2.118(A)(1) before the plaintiff served the initial complaint on the defendant given the Court Rule's language that "[a] party may amend a pleading once as a matter of course *within* 14 days after being served with a responsive pleading by an adverse party. . . ." *Barkley*, slip op at 6-7, 9 (emphasis added). The key question before the Court of Appeals was the definition of

the phrase "within 14 days" and whether this language prohibited the filing of an amended complaint as of right before a responsive pleading is filed or served.

In the current case, plaintiff attempted to file an amended complaint as of right seven days *after* defendant moved for summary disposition pursuant to an expedited briefing schedule that was entered in response to plaintiff's request for expedited consideration of his emergency motion. He did not attempt to file an amended complaint before the initial complaint was served on defendant. The Court struck plaintiff's amended complaint because a motion for summary disposition is not a responsive pleading as defined in MCR 2.110(A), and not because of the timing of the amended complaint. Accordingly, *Barkley* is inapposite and not controlling.

Accordingly, the Court DENIES plaintiff's second emergency motion for reconsideration. This is not a final order and does not close the case.

Date: August 7, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims

