1	IN THE SUPREME CO	OURT OF THE STATE OF NEVADA	
2 3 4 5 6 7 8 9	OSCAR HERNANDEZ,  Appellant,  vs.  THE HOME DEPOT, INC.; AND RIGID TOOL COMPANY and DOES I - V, and ROE CORPORATIONS I - V, inclusive,  Respondents.	) ) Electronically File ) Jun 12 2024 01:1 ) SUPREME COURT CHIE NO 77.94 Plizabeth A. Brow Clerk of Supreme ) ) ) ) ) )	d 2 PM 'n Court
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19 20 21		Attorney for Appellant OSCAR HERNANDEZ	
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

RIGID's Answering brief does not dispute that the nail gun in question was packaged and sold under the RIGID name and that the gun itself prominently bore the RIGID name. RIGID simply argues that it not be subject to liability under the theory of strict products liability despite holding itself out as the apparent manufacturer of the nail gun.

The apparent manufacturer doctrine properly mandates that any entity which "puts out" a product as its own will be held liable as though it were the manufacturer of the product. Restatement (Second) of Torts § 400. This Court should adopt this doctrine in order to properly spread the cost of harm caused by defective products to all entities who benefit from such products being on the market. *See*, *Kasel v. Remington Arms Co.*, 101 Cal. Rptr. 314, 322 (Cal. Ct. App. 1972) (recognizing the cost-benefit analysis of holding entities who benefit from the sale of defective products responsible for the resulting harms).

RIGID's answering brief also conceded that OSCAR had no way of knowing that any entity other than RIGID was responsible for putting the subject nail gun on the market. This Court should hold that "where a defendant puts out a product as its own, the purchaser has no means of ascertaining the identity of the true manufacturer. ... [I]t is thus fair to impose liability on the party whose actions effectively conceal the true manufacturer's identity." *Hebel v. Sherman Equipment*, 442 N.E. 2d 199, 201-03 (III. 1982). It would be unfair to purchasers to absolve the parties who hold themselves out as the manufacturer from liability for defective products. *See also, Connelly v. Uniroyal Inc.*, 389 N.E.2d 155, 163 (III. 1979).

RIGID's Answering Brief also failed to address why it should not be held liable as a supplier of the subject nail gun. *See*, *Ford Motor Co. v. Trejo*, 402 P.3d 649, 653 (Nev. 2017) (holding that strict product liability applies to the suppliers of goods) (citing *Shoshone Coca-*

Cola Bottling Co. v. Dolinski, 82 Nev. 439, 442, 420 P.2d 855, 857 (1966). Having invited and solicited the use of the product in question, RIGIS should be held liable for any harms caused by any defects.

This matter is very simple, when a party holds itself out as the manufacturer, gives every indication to the public that it is the manufacturer, is directly responsible for the product being in the stream of commerce, and benefits financially from the product being in the stream of commerce, that party cannot escape liability when the product is defective and harms someone. Nothing in RIGID's Answering Brief alters these realities.

## **CONCLUSION**

For the foregoing reasons this Court should hold that Nevada does impose strict products liability on an entity whose only involvement with a defective or unreasonably dangerous product is to license its trademark to be used to market the product and where the product and packaging prominently display its trademark.

DATED THIS 12th day of June, 2024

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/David Sampson

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that I have read the above and foregoing brief and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purposes. I further certify that this brief complies with all applicable Nevada Rules of appellate procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the records. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of appellate Procedure.

DATED this 12<sup>th</sup> day of June, 2024.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/David Sampson

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1	CERTIFICATE OF SERVICE
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3	I certify that the above RESPONSE was served on all parties to this action via the
4	Court's CM/ECF electronic filing program the 12 <sup>th</sup> day of June, 2024.
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8	<u>/s/ Amanda Nalder</u> An employee of THE LAW OFFICE OF DAVID
9	SAMPSON, LLC.
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