

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLEY MCINNIS,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

PARTY CITY CORPORATION,

Defendant.

:
:
:
:
: Case No. _____
:
: IL State Court Case No. 2020L001103
:
:
:
:
:
:
:

NOTICE OF REMOVAL OF PARTY CITY CORPORATION

Defendant Party City Corporation (“Defendant” or “Party City”), by and through its counsel, Blank Rome LLP, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1453, and 1711, and the Local Rules of the United States District Court for the Northern District of Illinois (the “Local Rules”), hereby removes this action from the Circuit Court of DuPage County, Illinois, Law Division (“State Court”), to the United States District Court for the Northern District of Illinois, Eastern Division. In support thereof, Defendant states as follows:

BACKGROUND

1. Defendant exercises its rights under the provisions of 28 U.S.C. §§ 1331, 1332, 1441, and 1446 to remove this case from the State Court where this case is pending under the name and style of *Willey McInnis v. Party City Corporation*, Case No. 2020L001103.

2. 28 U.S.C. § 1441(a) provides any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant to the U.S. district court for the district and division embracing the place where such action is pending.

3. This is a civil action instituted in the State Court that has not been tried.

4. On September 28, 2020, Plaintiff Willey McInnis (“Plaintiff” or “McInnis”) filed his original *Class Action Complaint* (the “Complaint”) in the State Court. A true and correct copy of the available file¹, including the Complaint, **Exhibit A**, and operative Affidavit of Service, **Exhibit B**, is attached hereto.

5. As set forth below, the State Court Docket reflects that Defendant allegedly received a copy of the Summons and Complaint on December 18, 2020; this Notice is thus timely under 28 U.S.C. §§ 1446(b) and 1453. *See* Ex. B.²

6. As more fully set forth below, this case is properly removed to this Court under 28 U.S.C. § 1441 because this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), in that Plaintiff’s action constitutes a class action—as defined in 28 U.S.C. § 1332(d)(1)(B)—pursuant to the Class Action Fairness Act, codified at 28 U.S.C. §§ 1332(d) and 1453 (“CAFA”).

SUBJECT MATTER JURISDICTION

THIS CLASS ACTION IS REMOVABLE UNDER THE CLASS ACTION FAIRNESS ACT, 28 U.S.C. §§ 1332(d), 1453

7. CAFA, 28 U.S.C. § 1332(d), was enacted “to facilitate adjudication of certain class actions in federal court.” *See Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554

¹ Due to unexpected court closures and staffing issues at the State Court associated with the COVID-19 pandemic, Defendant’s timely request for the entire file was not processed with enough time to include all such material with this removal notice. Despite this, Defendant obtained the core, non-ministerial State Court filings—including the Complaint, several Alias Subpoenas, a Motion for Class Certification, and Affidavit of Service—and has provided all such documents here. Should additional material be received from the State Court, Defendant will supplement this removal notice accordingly.

² Notably, Defendant is only making this representation with respect to CAFA removal and does not concede that service was properly executed under the Illinois Rules of Civil Procedure or the Federal Rules of Civil Procedure. In fact, there appear to be several irregularities associated with service of the *Complaint*. For one, the *Affidavit of Service* was addressed to “Peoplelink, LLC”—which appears to be a staffing agency—that is wholly unaffiliated with Defendant. Second, the person served was an intake specialist for CT Corporation System, which serves as a registered agent to its clients. But CT Corporation System is not currently Defendant’s registered agent in Illinois and has not served in this capacity since May/June 2018. In an abundance of caution, however, and due to the strict nature of removal, Defendant has filed this Notice as if Plaintiff had properly effectuated service on December 18, 2020.

(2014). Accordingly, CAFA expands jurisdiction for diversity class actions by creating federal subject matter jurisdiction if: (1) a class has 100 or more class members; (2) at least one class member is diverse from at least one defendant (*i.e.*, “minimal diversity”); and (3) there is more than \$5 million, exclusive of interest and costs, in controversy in the aggregate. *See* 28 U.S.C. § 1332(d); *see also Roppo v. Travelers Commer. Ins. Co.*, 869 F.3d 568, 578 (7th Cir. 2017).

8. As set forth below, this Court has subject matter jurisdiction pursuant to CAFA Section 1332(d)(2), because: (1) this case is a class action as defined in 28 U.S.C. § 1332(d)(1)(B); (2) at least one member of the putative class is a citizen of a state different from any defendant; and (3) there is more than \$5 million, exclusive of interest and costs, in controversy in the aggregate. Because all three requirements have been met, removal is appropriate in this case.

I. The Minimal Diversity of Citizenship Requirement is Satisfied.

9. At the time Plaintiff commenced this action against Defendant in State Court, and now at the time of removal, there was and is minimal diversity of citizenship as contemplated by Section 1332(d)(2)(A) of the CAFA.

10. CAFA provides that the minimal diversity requirement is met if any member of a class of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2)(A). This requirement is met here, as Defendant is a citizen of a different state than the named Plaintiff.

11. The Complaint identifies the named Plaintiff as a citizen of Illinois. Ex. A ¶ 7.

12. The Complaint also identifies Defendant as being incorporated in Delaware. *Id.* ¶ 8.

13. For purposes of diversity citizenship under 28 U.S.C. §§ 1332(a) and (d), Defendant is a citizen of a state other than the state of Illinois.

14. As a citizen of Delaware, Defendant is a citizen of a state other than the state of citizenship of at least one named Plaintiff identified in the Complaint; accordingly, diversity of citizenship is established under 28 U.S.C. § 1332(d)(2)(A).

II. The Amount in Controversy Requirement Under CAFA is Satisfied Because the Aggregate Amount in Controversy Exceeds \$5,000,000.

15. Under CAFA, the claims of the individual plaintiffs in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(6), (d)(11).

16. The “party seeking removal does not need to establish what damages the plaintiff will recover, but only how much is *in controversy* between the parties. A removing defendant need not confess liability in order to show that the controversy exceeds the threshold.” *Roppo*, 849 F.3d at 579 (citing *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008)) (emphasis added). “When a defendant seeks federal-court adjudication, the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Id.*

17. Here, Plaintiff’s claims meet the jurisdictional threshold set forth in Section 1332(d)(6) in that, if awarded, the aggregate amount of the damages and other relief sought by the putative class would exceed \$5,000,000, exclusive of interest and costs.

18. Where, as here, a complaint fails to plead a specific amount of damages or disclaim an amount of damages in excess of \$5,000,000, the party seeking removal need only make a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *Dart Cherokee*, 135 S. Ct. at 554.

19. A party seeking to remove under CAFA must establish the amount in controversy by showing “a reasonable probability that the stakes exceed the minimum.” *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005). “Once the proponent of jurisdiction has set

out the amount in controversy, only a ‘legal certainty’ that the judgment will be less forecloses federal jurisdiction.” *Id.* at 448-49 (citing *Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938)).

20. CAFA’s legislative history makes clear that doubts regarding the maintenance of class actions in state or federal court should be resolved in favor of federal jurisdiction. *See, e.g.*, S. Rep. No. 109-14, at *43, as reprinted in 2005 WL 627977 (“[o]verall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions”); *see also Dart Cherokee*, 135 S. Ct. at 550 (“no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court”).

21. The Complaint seeks relief for purported violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”). *See* Ex. A ¶¶ 4-6.

22. Plaintiff specifically alleges Defendant violated BIPA via the use of its biometric timekeeping system, which collected his (and putative class members’) fingerprints without first: (a) obtaining the putative class members’ consent to use their biometrics; (b) providing written notice to the putative class members of Defendant’s use of biometrics; and (c) making a written biometrics policy establishing a retention schedule and guidelines for permanent deletion of biometric data available to the putative class members, and actually adhering to that retention schedule with respect to the deletion of the putative class members’ biometric data. *Id.* ¶¶ 41-43.

23. Plaintiff seeks “liquidated damages for each of Defendant’s violations of the BIPA pursuant to 740 ILCS 14/20.” *Id.* ¶ 52. The Complaint also seeks injunctive relief “necessary to protect the interests of the Plaintiff and the Class by requiring Defendant’s [*sic*] to comply with the BIPA’s requirements for the collection, storage, and use of biometric identifiers and biometric information.” *Id.* Moreover, the Complaint seeks attorney’s fees and expenses. *Id.*

24. As a threshold matter, a removing defendant may aggregate all a plaintiff's claims to determine the total amount in controversy. *See* 28 U.S.C. § 1332(d)(6) (under CAFA, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds \$5,000,000, exclusive of interest and costs).

25. The Complaint does not disclaim an amount in controversy in excess of \$5,000,000.

26. BIPA provides for liquidated damages of \$1,000 for each negligent violation. 740 ILCS 14/20(1). BIPA also provides for liquidated damages of \$5,000 for each intentional or reckless violation. 740 ILCS 14/20(2).

27. Here, Plaintiff alleges Defendant "disregarded" its obligations under BIPA and further "disregarded its employees' statutorily protected privacy rights." *See* Ex. A ¶¶ 5, 25, 26. That allegation, in conjunction with Plaintiff's prayer for relief under 740 ILCS 14/20(2), demonstrates Plaintiff is seeking the greater of actual damages or \$5,000 for each alleged BIPA violation.

28. The amount of damages sought plausibly could include the combined total of the statutory damages for each member of the putative class. 28 U.S.C. § 1332(d)(6) (under CAFA, "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds . . . \$5,000,000, exclusive of interest and costs"). Therefore, the total of these statutory damages amounts during the relevant period makes up the plausible damages at issue in this case.

29. Plaintiff also seeks to represent a class of "[a]ll residents of the State of Illinois who had their fingerprints collected, captured, received, otherwise obtained, or disclosed by Defendant while residing in Illinois." Ex. A. ¶ 35. The initial investigation conducted by the undersigned indicates at least 1,000 individuals located in Illinois may have used a biometric timeclock that

involved placing their thumb or finger on a device while at an Illinois Party City facility.³ See Declaration of Edward Plesa in Support of Notice of Removal, attached as **Exhibit C**, ¶ 5. Accordingly, for purposes of CAFA aggregation⁴, there are at least 1,000 members of the putative class alleged by Plaintiff. Therefore, the aggregate amount of liquidated damages for all individuals in the putative class, each at \$5,000 or more, exceeds \$5 million.

30. Further, Plaintiff claims “Party City has collected, captured, received, or otherwise obtained the biometric identifiers or biometric information from at least hundreds of employees who fall into the definition of the Class.” Ex. A ¶ 36.

31. Assuming “hundreds” of class members is only 200 “employees,” and using the lower amount of \$1,000 per violation, it would only take 26 violations for each class member to reach the \$5,000,000 threshold.⁵ Considering Plaintiff’s allegations that employees were required to scan their fingerprints “each time [they] began and ended a workday,” the amount in controversy is easily satisfied. *Id.* ¶ 29.

32. In addition, Plaintiff seeks an award of “reasonable attorneys’ fees and costs and expenses pursuant to 740 ILCS 14/20(3).” *Id.* ¶ 52.

33. Accordingly, by joining their claims in one action, Plaintiff and his purported class have placed in controversy at least \$5,000,000 in damages.

34. The \$5,000,000 amount in controversy threshold is thus satisfied for purposes of satisfying 28 U.S.C. § 1332(d)(6).

³ Defendant is only making this representation with respect to CAFA removal and does not concede that Plaintiff was ever employed by Party City; that Plaintiff was ever assigned to work for a Party City account on a temporary basis by a third-party staffing company; or that Plaintiff ever used a time clock operated and/or controlled by Party City to track its employees’ time and attendance.

⁴ Defendant is only making this representation with respect to CAFA removal and does not concede the potential size of the putative class for purposes of numerosity under Rule 23 of the Federal Rules of Civil Procedure.

⁵ 200 x \$1,000 x 26 = \$5,200,000.

III. The Court Should Not Decline to Exercise Jurisdiction Over This Action.

35. Pursuant to 28 U.S.C. § 1332(d)(3), a district court may decline to exercise jurisdiction over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed.

36. Plaintiff cannot satisfy Section 1332(d)(3), as Plaintiff submits that all putative class members are Illinois citizens. Ex. A ¶ 35. It is therefore impossible for less than two-thirds of the members of the putative class to be Illinois citizens. Further, Defendant is a citizen of Delaware. *Id.* ¶ 8. This action was originally filed in the State of Illinois. *See generally* Ex. A. Thus, this Court should not decline to exercise jurisdiction on the basis of Section 1332(d)(3).

37. Pursuant to 28 U.S.C. § 1332(d)(4), a district court shall decline to exercise jurisdiction over a class action where two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed, or where:

- a. greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;
- b. at least one defendant is a defendant:
 - i. from whom significant relief is sought by members of the plaintiff class;
 - ii. whose alleged conduct forms a basis for the claims asserted by the proposed plaintiff class; and
 - iii. who is a citizen of the State in which the action was originally filed; and
- c. principal injuries resulting from the alleged conduct of each defendant were incurred in the State in which the action was originally filed; and

- d. during the three-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons.

38. The factors outlined in Section 1332(d)(4) are not present here. By its terms, 28 U.S.C. § 1332(d)(4) cannot be met where no defendant is a citizen of the state where the action was originally filed. Thus, this Court should not decline to exercise jurisdiction over this action.

**PLAINTIFF HAS ALLEGED CONCRETE, MATERIAL HARMS
SUFFICIENT TO ESTABLISH ARTICLE III STANDING**

39. Defendant bears the burden of establishing that this Court has jurisdiction. *Tri-State Water Treatment, Inc. v. Bauer*, 845 F.3d 350, 352-53 (7th Cir. 2017) (explaining that “the party seeking removal . . . bears the burden of establishing federal jurisdiction”). Article III standing is a component of the jurisdictional analysis. *Collier v. SP Plus Corp.*, 889 F.3d 894, 896 (7th Cir. 2018) (“As the party invoking federal jurisdiction, [defendant] had to establish that all elements of jurisdiction—including Article III standing—existed at the time of removal.”).

40. For a defendant to establish plaintiff has Article III standing, a defendant must demonstrate plaintiff alleges an injury-in-fact that was caused by defendant and that is redressable by this Court. *Groshek v. Time Warner Cable, Inc.*, 865 F.3d 884, 886 (7th Cir. 2017) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (“The ‘irreducible constitutional minimum of standing’ consists of three elements: injury-in-fact, causation, and redressability.”).

41. For an injury to qualify as an injury-in-fact, it must be “concrete and particularized” and “actual and imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540, 1548 (2016). For an injury to be concrete, it “must be “*de facto*”; that is, it must actually exist.” *Id.* at 1548 (quoting BLACK’S LAW DICTIONARY 479 (9th ed. 2009)). A “bare procedural violation, divorced from any concrete harm” does not qualify as an injury-in-fact. *Id.* at 1549. However, a procedural statutory violation may constitute an injury-in-fact on its own if the

legislature has elevated a *de facto* injury that was “previously inadequate in law” “to the status of [a] legally cognizable injur[y].” *Lujan*, 504 U.S. at 578. Nonetheless, a statutory violation only causes an injury that is concrete for Article III standing purposes if it presents an “‘appreciable risk of harm’ to the underlying concrete interest that [the legislature] sought to protect by enacting the statute.” *Groscheck*, 865 F.3d at 887 (quoting *Meyers v. Nicolet Rest. of De Pere, LLC*, 843 F.3d 724 (7th Cir. 2016)).

42. Here, Plaintiff has alleged the type of “concrete” injury-in-fact that courts within the Seventh Circuit have held sufficiently conferred Article III standing in BIPA cases.⁶

43. The Seventh Circuit recently addressed the question of Article III standing in the context of a BIPA action in *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617 (7th Cir. 2020). There, the Seventh Circuit held the failure to provide notice and/or obtain consent prior to the collection of biometric information or biometric identifiers both inflict a personal privacy injury sufficient to establish the Article III injury-in-fact prong of the standing analysis for Section 15(b) claims. *Id.* at 626.

44. Even more recently, the Seventh Circuit again addressed Article III standing in the context of BIPA in *Fox v. Dakkota Integrated Systems*, 980 F.3d 1146 (7th Cir. 2020). In *Fox*, the Seventh Circuit held the failure to comply with Section 15(a)’s requirements—regarding the retention and destruction of a plaintiff’s biometric identifiers or biometric information in violation of BIPA Section 15(a)—constitutes a cognizable injury-in-fact sufficient to confer standing for Section 15(a) claims. In so holding, the *Fox* court reasoned that the improper retention of biometric

⁶ As before, this discussion of injury is limited to whether Plaintiff has alleged an injury-in-fact sufficient to confer Article III jurisdiction on this Court. Defendant hereby contests that Plaintiff has suffered an actual injury—or that he is an “aggrieved party” under BIPA—and hereby reserves the right to raise such an argument at a later date.

identifiers or biometric information inflicts a personal privacy injury in the same sense that improper collection does. *Id.* at 1155.

45. Here, as in *Bryant*, Plaintiff alleges a concrete injury-in-fact under Section 15(b). Indeed, Plaintiff claims Defendant violated Section 15(b) by failing to obtain written releases as required by Section 15(b)(3), and by failing to inform Plaintiff and the Class in writing of the information required to be disclosed under Section 15(b)(1) and (2). Ex. A ¶¶ 47-49.

46. Similarly, as in *Fox*, Plaintiff also alleges a concrete injury-in-fact under BIPA Section 15(a). Plaintiff claims Defendant failed to comply with the Section 15(a)'s mandate that "companies in possession of biometric data establish and maintain a satisfactory biometric data retention (and—importantly—deletion) policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (*i.e.*, when the employment relationship ends); and (ii) ***actually adhere to that retention schedule and actually delete the biometric information.*** See 740 ILCS 14/15/(a)." *Id.* ¶¶ 42-43 (emphasis added).

47. Thus, based on the allegations in the Complaint, Plaintiff has adequately alleged the existence of a "concrete" injury-in-fact sufficient to confer Article III standing in this Court as it relates to both of Plaintiff's claims asserted under BIPA Sections 15(a) and 15(b) against Defendant in this case.

PROCEDURAL COMPLIANCE

48. In accordance with the requirements of 28 U.S.C. § 1446(b), a Notice of Removal should be filed within thirty (30) days after service of the Summons and Complaint on a defendant.

49. Here, the State Court Docket reflects that a copy of the Summons and Complaint was served on December 18, 2020. *See* Ex. B.

50. Pursuant to 28 U.S.C. § 1441 *et seq.*, the right exists to remove this case from the State Court to the U.S. District Court for the Northern District of Illinois, which embraces the place where the action is currently pending.

51. The U.S. District Court for the Northern District of Illinois embraces the county in which the State Court action is now pending (*i.e.*, DuPage County); thus, this Court is a proper venue for this action pursuant to 28 U.S.C. § 93(a)(1).

52. No previous application has been made for the relief requested herein.

53. Pursuant to the provisions of 28 U.S.C. § 1446(a), attached hereto are copies of all process, pleadings, and orders served upon Defendant; the *Class Action Complaint*, bearing case number 2020L01103, filed in the Circuit Court of DuPage County, Illinois (*see Exhibit A*, attached); and the Affidavit of Service (*see Exhibit B*, attached).

54. Written notice of the filing of this Notice of Removal will be served upon counsel for Plaintiff as required by law.

55. A true and correct copy of this Notice of Removal will be filed with the clerk of the State Court, as required by law, and served upon counsel for Plaintiff.

WHEREFORE, Defendant Party City Corporation hereby removes this case from the State Court, where it is now pending, to this Court.

DATED: January 19, 2021

Respectfully submitted,

BLANK ROME LLP

s/ Andrew Schrag _____
Andrew Schrag, Esq., Ill. Bar No. 6306943
444 W. Lake Street, Suite 1650
Chicago, IL 60606
Tel.: (312) 776-2521

Fax: (312) 264-2461
Email: ASchrag@BlankRome.com

Jeffrey N. Rosenthal, Esq.
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Tel.: (215) 569-5553
Fax: (215) 832-5533
Email: Rosenthal-J@BlankRome.com

David J. Oberly, Esq.
(pro hac vice forthcoming)
1700 PNC Center
201 E. Fifth Street
Cincinnati, Ohio 45202
Tel.: (513) 362-8711
Fax: (513) 362-8702
Email: DOberly@BlankRome.com

*Attorneys for Defendant,
Party City Corporation*

CERTIFICATE OF SERVICE

I, Andrew Schrag, Esquire, hereby certify that, on January 19, 2021, I electronically filed the foregoing Notice of Removal of Defendant Party City Corporation with the Court via the ECF System and is available for viewing and downloading from the ECF system, and a true and correct copy was served to all counsel of record registered with the ECF system.

BLANK ROME LLP

s/ Andrew Schrag

Andrew Schrag, Esq.

*Attorney for Defendant,
Party City Corporation*

EXHIBIT A

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS, LAW DIVISION**

WILLEY MCINNIS individually and on behalf
of all others similarly situated,

Plaintiff,

v.

PARTY CITY CORPORATION,

Defendant.

2020L001103

Case No.: Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 10596387
2020L001103
FILEDATE: 9/28/2020 2:00 PM
Date Submitted: 9/28/2020 2:00 PM
Date Accepted: 9/28/2020 2:55 PM
LG

CLASS ACTION COMPLAINT

Plaintiff Willey McInnis (“Willey” or “Plaintiff”) brings this Class Action Complaint against Defendant Party City Corporation (“Party City” or “Defendant”) to put a stop to its unlawful collection, use, and storage of Plaintiff’s and the putative Class members’ sensitive biometric data. Plaintiff, for Plaintiff’s Class Action Complaint, alleges as follows upon personal knowledge as to Plaintiff’s own acts and experiences and, as to all other matters, upon information and belief.

NATURE OF THE ACTION

1. Party City is a party supply store with a location in Naperville, Illinois.
2. When employees first begin their jobs at Party City, they are required to scan their fingerprint in its biometric time tracking system as a means of authentication, instead of using only key fobs or other identification cards.
3. While there are tremendous benefits to using biometric time clocks in the workplace, there are also serious risks. Unlike key fobs or identification cards—which can be changed or replaced if stolen or compromised—fingerprints are unique, permanent biometric

identifiers associated with the employee. This exposes employees to serious and irreversible privacy risks. For example, if a fingerprint database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

4. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), specifically to regulate companies that collect and store Illinois citizens’ biometrics, such as fingerprints.

5. Despite this law, Party City disregarded its employees’ statutorily protected privacy rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Party City has violated (and continues to violate) the BIPA because it did not:

- Properly inform Plaintiff and the Class members in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, and used, as required by the BIPA;
- Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff’s and the Class’s fingerprints, as required by the BIPA; nor
- Receive a written release from Plaintiff or the members of the Class to collect, capture, or otherwise obtain fingerprints, as required by the BIPA.

6. Accordingly, this Complaint seeks an order: (i) declaring that Defendant’s conduct violates the BIPA; (ii) requiring Defendant to cease the unlawful activities discussed herein; and (iii) awarding liquidated damages to Plaintiff and the proposed Class.

PARTIES

7. Plaintiff is a natural person and citizen of the State of Illinois.
8. Defendant Party City is a Delaware Foreign BCA corporation.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois and have committed tortious acts in Illinois.

10. Venue is proper in DuPage County because Defendant operates throughout this County and “resides” in DuPage County within the meaning of 735 ILCS § 5/2-102(a).

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

11. In the early 2000’s, major national corporations started using Chicago and other locations in Illinois to test “new [consumer] applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias.” 740 ILCS 14/5(b). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing, yet unregulated technology. *See* 740 ILCS 14/5.

12. In late 2007, a biometrics company called Pay By Touch—which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions—filed for bankruptcy. That bankruptcy was alarming to the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint records—which, are unique biometric identifiers, can be linked to people’s sensitive financial and personal data—could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who had used that company’s fingerprint scanners were completely unaware that the scanners were not actually transmitting fingerprint data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that unique biometric identifiers could now be sold to unknown third parties.

13. Recognizing the “very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information,” Illinois enacted the BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

14. The BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things, “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifiers or biometric information, unless it *first*:

(1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and

(3) receives a written release executed by the subject of the biometric identifier or biometric information.

740 ILCS 14/15(b).

15. BIPA specifically applies to employees who work in the State of Illinois. BIPA defines a “written release” specifically “in the context of employment [as] a release executed by an employee as a condition of employment.” 740 ILCS 14/10.

16. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry, and—most importantly here—fingerprints. *See* 740 ILCS 14/10. Biometric information is separately defined to include any information based on an individual’s biometric identifier that is used to identify an individual. *See id.*

17. The BIPA also establishes standards for how employers must handle Illinois employees’ biometric identifiers and biometric information. *See* 740 ILCS 14/15(c)–(d). For instance, the BIPA requires companies to develop and comply with a written policy—made available to the public—establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting such identifiers or information has been satisfied or within three years of the individual’s last

interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

18. Ultimately, the BIPA is simply an informed consent statute. Its narrowly tailored provisions place no absolute bar on the collection, sending, transmitting or communicating of biometric data. For example, the BIPA does not limit what kinds of biometric data may be collected, sent, transmitted, or stored. Nor does the BIPA limit to whom biometric data may be collected, sent, transmitted, or stored. The BIPA simply mandates that entities wishing to engage in that conduct must make proper disclosures and implement certain reasonable safeguards.

II. Party City Violates the Biometric Information Privacy Act.

19. By the time the BIPA passed through the Illinois Legislature in mid-2008, many companies who had experimented with using biometric data as an authentication method stopped doing so, at least for a time. That is because Pay By Touch's bankruptcy, described in Section I above, was widely publicized and brought attention to consumers' discomfort with the use of their biometric data.

20. Unfortunately, Party City failed to take note of the passage of the BIPA despite that it has been in effect for over a decade and Party City is presumed to know the law. Party City continued to collect, store, and use its employees' biometric data in negligent, and potentially willful or reckless, violation of BIPA.

21. Specifically, when employees worked at Party City, they are required to have their fingerprints scanned in order to enroll them in its fingerprint database.

22. Party City uses an employee time tracking system that requires employees to use their fingerprints as a means of authentication. Unlike a traditional timeclock, employees have to use their fingerprint to "punch" in to or out of work.

23. Party City failed to inform its employees of the complete purposes for which it

collects their sensitive biometric data or to whom the data is disclosed, if at all.

24. Party City similarly failed to provide its employees with a written, publicly available policy identifying its retention schedule, and guidelines for permanently destroying its employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by the BIPA. An employee who leaves the company does so without any knowledge of when their biometric identifiers will be removed from Party City databases—or if they ever will be.

25. The Pay By Touch bankruptcy that catalyzed the passage of the BIPA highlights why conduct such as Party City's—whose employees are aware that they are providing biometric identifiers but are not aware of to whom or the full extent of the reasons they are doing so—is so dangerous. That bankruptcy spurred Illinois citizens and legislators to realize a critical point: it is crucial for people to understand when providing biometric data who exactly is collecting it, who it will be transmitted to, for what purposes, and for how long. But Party City disregards these obligations, and instead unlawfully collects, stores, and uses its employees' biometric identifiers and information without proper consent.

26. Ultimately, Party City disregards its employees' statutorily protected privacy rights by violating the BIPA.

FACTS SPECIFIC TO PLAINTIFF

27. Plaintiff worked for Party City in Illinois through at least 2016.

28. As an employee, Party City required Plaintiff to scan Plaintiff's fingerprint so that it could use it as an authentication method to track time. Party City subsequently stored Plaintiff's fingerprint data in its databases.

29. Each time Plaintiff began and ended a workday, Party City required a scan of

Plaintiff's fingerprints.

30. Party City never informed Plaintiff of the specific limited purposes or length of time for which it collected, stored, or used fingerprints.

31. Similarly, Party City never informed Plaintiff of any biometric data retention policy it developed, nor whether it will ever permanently delete fingerprints.

32. Plaintiff never signed a written release allowing Party City to collect or store fingerprints.

33. Plaintiff has continuously and repeatedly been exposed to the risks and harmful conditions created by Party City violations of the BIPA alleged herein.

34. Plaintiff now seeks liquidated damages under BIPA as compensation for the injuries Party City has caused.

CLASS ALLEGATIONS

35. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801 on behalf of Plaintiff and a Class of similarly situated individuals, defined as follows:

All residents of the State of Illinois who had their fingerprints collected, captured, received, otherwise obtained, or disclosed by Defendant while residing in Illinois.

The following people are excluded from the Class: (1) any Judge presiding over this action and members of their families; (2) Party City, Party City's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

36. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this

time, but it is clear that individual joinder is impracticable. Party City has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least hundreds of employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

37. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class' biometric identifiers or biometric information;
- b) whether Defendant properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;
- c) whether Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff and the Class' biometric identifiers or biometric information;
- d) whether Defendant has sold, leased, traded, or otherwise profited from Plaintiff and the Class's biometric identifiers or biometric information;
- e) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of their last interaction, whichever occurs first;
- f) whether Defendant complies with any such written policy (if one exists); and
- g) whether Defendant used Plaintiff and the Class' fingerprints to identify them.

38. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff have no interests antagonistic to those of the Class, and

Defendant has no defenses unique to Plaintiff. Plaintiff and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor their counsel have any interest adverse to those of the other members of the Class.

39. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Party City's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Party City's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

CAUSE OF ACTION
Violation of 740 ILCS 14/1, *et seq.*
(On Behalf of Plaintiff and the Class)

40. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

41. The BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, the BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a

customer’s biometric identifiers or biometric information, unless [the entity] first: (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; *and* (3) receives a written release executed by the subject of the biometric identifier or biometric information. . . .” 740 ILCS 14/15(b) (emphasis added).

42. The BIPA also mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention (and—importantly—deletion) policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (*i.e.*, when the employment relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

43. Unfortunately, Party City fails to comply with these BIPA mandates.

44. Party City qualifies as a “private entity” under the BIPA. *See* 740 ILCS 14/10.

45. Plaintiff and the Class are individuals who had their “biometric identifiers” collected by Party City (in the form of their fingerprints), as explained in detail in Section II. *See* 740 ILCS 14/10.

46. Plaintiff and the Class’ biometric identifiers or information based on those biometric identifiers were used to identify them, constituting “biometric information” as defined by the BIPA. *See* 740 ILCS 14/10.

47. Party City violated 740 ILCS 14/15(b)(3) by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

48. Party City violated 740 ILCS 14/15(b)(1) by failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored.

49. Party City violated 740 ILCS 14/15(b)(2) by failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored, and used.

50. Party City violated 740 ILCS 14/15(a) by failing to publicly provide a retention schedule or guideline for permanently destroying its employees' biometric identifiers and biometric information.

51. By collecting, storing, and using Plaintiff's and the Class' biometric identifiers and biometric information as described herein, Party City violated Plaintiff's and the Class' rights to privacy in their biometric identifiers or biometric information as set forth in the BIPA, 740 ILCS 14/1, *et seq.*

52. On behalf of themselves and the Class, Plaintiff seek: (1) injunctive and equitable relief as is necessary to protect the interests of the Plaintiff and the Class by requiring Defendant's to comply with the BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (2) liquidated damages for each of Defendant's violations of the BIPA pursuant to 740 ILCS 14/20; and (3) reasonable attorneys' fees and costs and expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully requests that the Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as representative of the Class, and appointing their counsel as Class Counsel;
- B. Declaring that Defendant's actions, as set out above, violate the BIPA;
- C. Awarding statutory damages for each of Defendant's violations of the BIPA, pursuant to 740 ILCS 14/20;
- D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with the BIPA;
- F. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;
- G. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- H. Awarding such other and further relief as equity and justice may require.

Dated: September 28, 2020

Respectfully submitted,

Willey McInnis, individually and on behalf of all others similarly situated,

By: /s/ Mara Baltabols
One of Plaintiff's Attorneys

David Fish
dfish@fishlawfirm.com
Mara Baltabols
mara@fishlawfirm.com
THE FISH LAW FIRM, P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563
Tel: 630.355.7590
Fax: 630.778.0400
DuPage Cnty #: 218726
docketing@fishlawfirm.com

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

2020L001103

PLAINTIFF

CASE NUMBER

VS

DEFENDANT

SUMMONS
CIRCUIT COURT

File Stamp Here

ORIGINAL ALIAS

To each Defendant:

You are Summoned and Required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance in the office of the Clerk of the Circuit Court, 505 N. County Farm Road, Wheaton, Illinois, within 30 days after service of this summons not counting the day of service.

If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

To the Officer

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service and not less than three (3) days before the date of appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than thirty (30) days after its date.

DATE OF SERVICE

TO BE INSERTED BY OFFICER ON COPY LEFT WITH DEFENDANT OR OTHER PERSON

WITNESS:

Name: The Fish Law Firm, P.C. Pro Se

DuPage Attorney Number: 218726

Attorney for: Plaintiff

Address: 200 E. 5th Ave., Suite 123

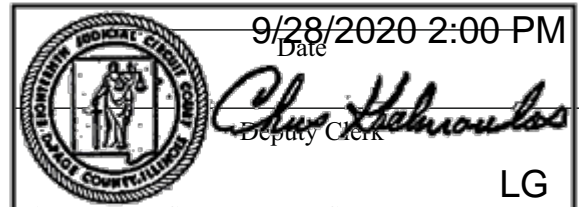
City/State/Zip: Naperville, IL 60563

Telephone Number: 630-355-7590

Email: admin@fishlawfirm.com



CHRIS KACHIROUBAS, Clerk of the Eighteenth Judicial Circuit Court, and the seal thereof, Wheaton, Illinois



E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp> or talk to your circuit clerk's office.

NOTE:

The filing of an appearance or answer with the Circuit Court Clerk requires a statutory filing fee, payable at the time of filing.

If you need legal advice concerning your legal responsibility as a result of this summons being serviced upon you and you don't have a lawyer, you can call the DuPage Bar Association, Lawyer Referral Service at 630-653-9109.

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

SHERIFF'S FEES

Service and return \$ _____
 Miles _____ \$ _____
Total \$ _____

Sheriff of _____ County

SHERIFF'S RETURN

I certify that I served this summons on defendant as follows:

- (a) **(Individual - personal):**
By leaving a copy and a copy of the complaint with each individual as follows:
- (b) **(Individual - abode):**
By leaving a copy and a copy of the complaint at the usual place of abode of each individual with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and the complaint in a sealed envelope with postage fully prepaid, addressed to each individual at the usual place of abode, as follows:
- (c) **(Corporation):**
By leaving a copy and a copy of the complaint with the registered agent, officer, or agent of each corporation as follows:
- (d) **(Other service):**
- (e) **(Unable to Serve):**
By _____, Deputy Badge Number: _____

Name of Defendant _____	Name of Defendant _____
Name of Person summons given to _____	Name of Person summons given to _____
Sex _____ Race _____ Approximate age _____	Sex _____ Race _____ Approx. age _____
Place of service _____	Place of service _____
City, State _____	City, State _____
Date of service _____ Time _____	Date of service _____ Time _____
Date of Mailing _____	Date of Mailing _____
Special Process Server of _____	Sheriff of _____ County
	County Illinois License # _____
	By _____

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PLAINTIFF
VS
DEFENDANT

CASE NUMBER

SUMMONS
CIRCUIT COURT

File Stamp Here

ORIGINAL ALIAS

To each Defendant:

You are Summoned and Required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance in the office of the Clerk of the Circuit Court, 505 N. County Farm Road, Wheaton, Illinois, within 30 days after service of this summons not counting the day of service.

If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

To the Officer

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service and not less than three (3) days before the date of appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than thirty (30) days after its date.

DATE OF SERVICE
TO BE INSERTED BY OFFICER ON COPY LEFT WITH DEFENDANT OR OTHER PERSON

WITNESS:

Name: The Fish Law Firm, P.C. Pro Se
DuPage Attorney Number: 218726
Attorney for: Plaintiff
Address: 200 E. 5th Ave., Suite 123
City/State/Zip: Naperville, IL 60563
Telephone Number: 630-355-7590
Email: admin@fishlawfirm.com



CHRIS KACHIROUBAS, Clerk of the Eighteenth Judicial Circuit Court, and the seal thereof, Wheaton, Illinois

10/28/2020 8:58 AM
Date
Chris Kachirobas
Deputy Clerk CM

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit http://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp or talk to your circuit clerk's office.

NOTE:

The filing of an appearance or answer with the Circuit Court Clerk requires a statutory filing fee, payable at the time of filing.

If you need legal advice concerning your legal responsibility as a result of this summons being serviced upon you and you don't have a lawyer, you can call the DuPage Bar Association, Lawyer Referral Service at 630-653-9109.

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

SHERIFF'S FEES

Service and return \$ _____
 Miles _____ \$ _____
Total \$ _____

Sheriff of _____ County

SHERIFF'S RETURN

I certify that I served this summons on defendant as follows:

- (a) **(Individual - personal):**
By leaving a copy and a copy of the complaint with each individual as follows:
- (b) **(Individual - abode):**
By leaving a copy and a copy of the complaint at the usual place of abode of each individual with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and the complaint in a sealed envelope with postage fully prepaid, addressed to each individual at the usual place of abode, as follows:
- (c) **(Corporation):**
By leaving a copy and a copy of the complaint with the registered agent, officer, or agent of each corporation as follows:
- (d) **(Other service):**
- (e) **(Unable to Serve):**
By _____, Deputy Badge Number: _____

Name of Defendant _____
 Name of Person
 summons given to _____
 Sex _____ Race _____ Approximate age _____
 Place of service _____
 City, State _____
 Date of service _____ Time _____
 Date of Mailing _____
 Special Process Server of _____

Name of Defendant _____
 Name of Person
 summons given to _____
 Sex _____ Race _____ Approx. age _____
 Place of service _____
 City, State _____
 Date of service _____ Time _____
 Date of Mailing _____
 Sheriff of _____ County
 County Illinois License # _____
 By _____

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PLAINTIFF
VS
DEFENDANT

CASE NUMBER

SUMMONS
CIRCUIT COURT

File Stamp Here

ORIGINAL ALIAS

To each Defendant:

You are Summoned and Required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance in the office of the Clerk of the Circuit Court, 505 N. County Farm Road, Wheaton, Illinois, within 30 days after service of this summons not counting the day of service.

If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

To the Officer

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service and not less than three (3) days before the date of appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than thirty (30) days after its date.

DATE OF SERVICE
TO BE INSERTED BY OFFICER ON COPY LEFT WITH DEFENDANT OR OTHER PERSON

WITNESS:

Name: The Fish Law Firm, P.C. Pro Se
DuPage Attorney Number: 218726
Attorney for: Plaintiff
Address: 200 E. 5th Ave., Suite 123
City/State/Zip: Naperville, IL 60563
Telephone Number: 630-355-7590
Email: admin@fishlawfirm.com



CHRIS KACHIROUBAS, Clerk of the Eighteenth Judicial Circuit Court, and the seal thereof, Wheaton, Illinois 12/15/2020 11:52 AM



Date Candice Adams Deputy Clerk KB

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit http://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp or talk to your circuit clerk's office.

NOTE:

The filing of an appearance or answer with the Circuit Court Clerk requires a statutory filing fee, payable at the time of filing.

If you need legal advice concerning your legal responsibility as a result of this summons being serviced upon you and you don't have a lawyer, you can call the DuPage Bar Association, Lawyer Referral Service at 630-653-9109.

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT © WHEATON, ILLINOIS 60187-0707

SHERIFF'S FEES

Service and return \$ _____
 Miles _____ \$ _____
Total \$ _____

Sheriff of _____ County

SHERIFF'S RETURN

I certify that I served this summons on defendant as follows:

- (a) **(Individual - personal):**
By leaving a copy and a copy of the complaint with each individual as follows:
- (b) **(Individual - abode):**
By leaving a copy and a copy of the complaint at the usual place of abode of each individual with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and the complaint in a sealed envelope with postage fully prepaid, addressed to each individual at the usual place of abode, as follows:
- (c) **(Corporation):**
By leaving a copy and a copy of the complaint with the registered agent, officer, or agent of each corporation as follows:
- (d) **(Other service):**
- (e) **(Unable to Serve):**
By _____, Deputy Badge Number: _____

Name of Defendant _____
 Name of Person
 summons given to _____
 Sex _____ Race _____ Approximate age _____
 Place of service _____
 City, State _____
 Date of service _____ Time _____
 Date of Mailing _____
 Special Process Server of _____

Name of Defendant _____
 Name of Person
 summons given to _____
 Sex _____ Race _____ Approx. age _____
 Place of service _____
 City, State _____
 Date of service _____ Time _____
 Date of Mailing _____
 Sheriff of _____ County
 County Illinois License # _____
 By _____

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS, LAW DIVISION**

WILLEY MCINNIS individually and on behalf
of all others similarly situated,

Plaintiff,

v.

PARTY CITY CORPORATION,

Defendant.

Case No.: 2020L001103

Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 10604110
2020L001103
FILEDATE: 9/29/2020 9:19 AM
Date Submitted: 9/29/2020 9:19 AM
Date Accepted: 9/29/2020 10:35 AM
LG

**PLAINTIFF’S MOTION FOR CLASS CERTIFICATION AND REQUEST FOR
DISCOVERY ON CERTIFICATION ISSUES**

Plaintiff Willey McInnis (“Willey” or “Plaintiff”) alleges that Defendant Party City Corporation (“Party City” or “Defendant”) systematically violated the Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.* This case is well-suited for class certification under 735 ILCS 5/2-801. Specifically, Plaintiff seeks to certify a class consisting of hundreds of former and current similarly-situated employees who worked for Defendant that had their fingerprints unlawfully collected, captured, received, otherwise obtained, or disclosed by Defendant during the applicable statutory period in violation of BIPA. The question of liability is a legal question that can be answered in one fell swoop. As Plaintiff’s claims, and the claims of similarly-situated individuals, all arise from Defendant’s uniform policies and practices, they satisfy the requirement of 735 ILCS 5/2-801 and should be certified.

I. RELEVANT BACKGROUND

Major national corporations started using locations in Illinois in the early 2000s to test “new [consumer] applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias.” 740 ILCS 14/5(c). Given its relative infancy, an overwhelming portion of the public became wary of this then-growing, yet unregulated, technology. *See* 740 ILCS 14/5.

The Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* was enacted in 2008, arising from concerns that these experimental uses of finger-scan technologies created a “very serious need of protections for the citizens of Illinois when it comes to biometric information.” Illinois House Transcript, 2008 Reg. Sess. No. 276. Under the Act, it is unlawful for a private entity to, among other things, “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifiers or biometric information unless it first:

- (1) Informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored;
- (2) Informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
- (3) Receives a written release executed by the subject of the biometric identifier or biometric information.” 740 ILCS 14/15(b).

Although there may be benefits with using biometrics in the workplace, there are also serious risks. Unlike ID badges— which can be changed or replaced if stolen or compromised — fingerprints are a unique, permanent biometric identifier associated with each individual. These biometrics are biologically unique to the individual; once compromised, the individual has *no* means by which to prevent identity theft, unauthorized tracking, or other unlawful or improper use of this information. This exposes individuals to serious and irreversible privacy risks. For example,

if a biometric database is hacked, breached, or otherwise exposed – as in the recent Equifax, Home Depot, Google+ and Facebook/Cambridge Analytica data breaches– individuals have no means to prevent the misappropriation and theft of their proprietary biometric makeup. Recognizing the need to protect its citizens from harms like these, Illinois enacted BIPA specifically to regulate the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information.

A. Factual Allegations

Plaintiff filed this class action against Defendant to redress Defendant’s unlawful collection, use, storage, and disclosure of Illinois employees’ biometric information under BIPA. In this Class Action Complaint, Plaintiff provided detailed allegations that Illinois employees who use Defendant’s technology as a condition of employment were, and continue to be, universally required to scan their fingerprints for enrollment in an employee database(s) as a requirement of their employment, but are not: (1) informed in writing of the purpose(s) and length of time for which fingerprint data is being collected, stored, used, and disseminated by Defendant; (2) provided a publicly available retention schedule or guidelines for permanent destruction of the biometric data by Defendant; and (3) provided (nor did it execute) a written release for Defendant, as required by BIPA. *See* Compl. ¶¶ 20-24, 27-33, 41-52.

Plaintiff was required to use Defendant’s biometric device during his work for Defendant. *Id.* ¶¶ 2,21. As a condition of employment, Plaintiff was required to scan his fingerprints each time he clocked in or out of work. *Id.* Plaintiff was required to scan his fingerprints each time they accessed Defendant’s biometric device. *Id.* However, Defendant failed and continue to fail to inform Illinois employees, including Plaintiff, of the extent of the purposes for which it collects individuals’ sensitive biometric data or to whom the data is disclosed. *Id.* ¶¶5, 23-24. Defendant

similarly failed to provide Illinois employees, including Plaintiff, with a written, publicly available policy identifying its retention schedule and guidelines for permanently destroying individuals' fingerprint data when the initial purpose for collecting or obtaining their fingerprint is no longer relevant, as required by BIPA. *Id.* ¶¶23-24, 42-43. Illinois employees, including Plaintiff, have no knowledge when they leave the company of when – if ever – their biometric identifiers will be removed from Defendant's database(s). *Id.*

Illinois workers are not told what might happen to their biometric data if and when Defendant merges with another company or, worse, if and when Defendant's entire businesses fold. Since Defendant neither publishes a BIPA-mandated data retention policy nor disclose the purposes for its collection of biometric data, Illinois employees, including Plaintiff, have no idea whether Defendant sells, discloses, re-discloses, or otherwise disseminates their biometric data. Nor are Illinois employees told to whom Defendant currently discloses their biometric data or what might happen to their biometric data in the event of a merger or a bankruptcy. Finally, Defendant never secured a written release executed by any of Illinois' employees, including Plaintiff, permitting it to collect, store, use, and disseminate employees' biometric data, as required by BIPA. *Id.* ¶¶ 5, 32, 41-43.

Accordingly, Defendant's practices violated BIPA. As a result of Defendant's violations, Plaintiff and similarly-situated individuals were subject to Defendant's common and uniform policies and practices and were victims of its scheme to unlawfully collect, store, use, and disseminate Illinois employees' biometric data in direct violation of BIPA. Plaintiff now seeks class certification for the following similarly-situated individuals, defined as:

All residents of the State of Illinois who had their fingerprints collected, captured, received, otherwise obtained, or disclosed by Defendant while residing in Illinois.

Given Defendant's standard practices defined above and the straightforward and common legal questions presented in this case, Plaintiff now moves for class certification. Notably, this motion is being filed shortly after the Complaint was filed and before Defendant has responded. For the reasons discussed herein, Plaintiff's request should be granted.

II. STANDARD FOR CLASS CERTIFICATION

"The basic purpose of a class action is the efficiency and economy of litigation." *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App. (1st) 131465, ¶ 9 (Ill. App. Ct. May 8, 2015) (citing *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981)). "In determining whether to certify a proposed class, the trial court accepts the allegations of the complaint as true and should err in favor of maintaining class certification." *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 9 (citing *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (2007)). Under Section 2801 of the Code of Civil Procedure, a class may be certified if the following four requirements are met:

- (1) the class is so numerous that a joinder of all members is impracticable;
- (2) there are questions of fact or law common to the class that predominate over any questions affecting only individual members;
- (3) the representative parties will fairly and adequately protect the interest of the class; and
- (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

See Smith v. Illinois Cent. R.R. Co., 223 Ill. 2d 441, 447 (2006) (citing 735 ILCS 5/2-801).

Notably, "[a] trial court has broad discretion in determining whether a proposed class meets the requirements for class certification." *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 9 (citing *Ramirez*, 378 Ill. App. 3d at 53). Here, the allegations and facts in this case amply demonstrate that the four certification factors are met.

III. ARGUMENT

Plaintiff's claims here are especially suited for class certification because Defendant treated all Illinois employees identically for the purposes of applying BIPA. All of the putative class members in this case were uniformly subjected to the same illegal and unlawful collection, storage, use, and dissemination of their biometric data that was required as a condition of employment throughout the class period. Plaintiff meets each of the statutory requirements for maintenance of this suit as a class action. Thus, the class action device is ideally suited and is far superior to burdening the Court with many individual lawsuits to address the same issues, undertake the same discovery, and rely on the same testimony.

A. The Class Is So Numerous That Joinder of All Members Is Impracticable.

Numerosity is not dependent on a plaintiff setting forth a precise number of class members or a listing of their names. *See Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 771 (2d Dist. 2008) (“Of course, plaintiffs need not demonstrate a precise figure for the class size, because a good-faith, non-speculative estimate will suffice; rather, plaintiffs need demonstrate only that the class is sufficiently numerous to make joinder of all of the members impracticable.”) (internal citations omitted); *Hayna v. Arby's, Inc.*, 99 Ill. App. 3d 700, 710-11 (1st Dist. 1981) (“It is not necessary that the class representative name the specific individuals who are possibly members of the class.”). Courts in Illinois generally find numerosity when the class is comprised of at least 40 members. *See Wood River Area Dev. Corp. v. Germania Fed. Sav. Loan Ass'n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990).

In the present case, there can be no serious dispute that Plaintiff meets the numerosity requirement as Defendant employs hundreds of Illinois workers who were subjected to the same policy. The class of potential plaintiffs is sufficiently large to make joinder impracticable. As a

result of Defendant's violations of BIPA, Plaintiff and all similarly situated individuals were subjected to Defendant's common and uniform policies and practices and were victims of Defendant's scheme to unlawfully collect, store, use, and disseminate their extremely personal and private biometric data in direct violation of BIPA. The precise number in the class cannot be determined until discovery records are obtained from Defendant. Nevertheless, class membership can be easily determined by reviewing Defendant's records and those of its customers. *See e.g., Chultem v. Ticor Title Ins. Co.*, 401 Ill. App. 3d 226, 233 (1st Dist. 2010) (reversing Circuit Court's denial of class certification and holding that class was certifiable over Defendant's objection that "the proposed class was not ascertainable, because the process of reviewing Defendant's transaction files to determine class membership would be burdensome"). Once Defendant's records are obtained, the Court will know the precise number of persons affected.

Further, recognizing the need to protect its citizens from harms such as identity theft, Illinois enacted BIPA specifically to regulate the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information. A class action would help ensure that Plaintiff and all other similarly-situated individuals have a means of redress against Defendant for its widespread violations of BIPA.

B. Common Questions Of Law And Fact Exist That Predominate Over Any Questions Solely Affecting Individual Members Of The Class.

Courts analyze commonality and predominance under Section 2-801 by identifying the substantive issues that will control the outcome of the case. *See Bemis v. Safeco Ins. Co. of Am.*, 407 Ill. App. 3d 1164, 1167 (5th Dist. 2011); *Cruz*, 383 Ill. App. 3d at 773. The question then becomes whether those issues will predominate and whether they are common to the class, meaning that "favorable adjudication of the claims of the named plaintiffs will establish a right of recovery in other class members." *Id.* at 773. As stated by the Court of Appeals, the question is

will “common . . . issues be the subject of the majority of the efforts of the litigants and the court[?]” *Bemis*, 407 Ill. App. 3d at 1168. The answer here is “yes.” Common questions of law or fact are typically found to exist when “the claims of the individual class members are based upon the common application of a statute or where the proposed class members are aggrieved by the same or similar conduct or a pattern of conduct.” *Bueker v. Madison Cty.*, 2016 IL App (5th) 150282, ¶ 27; *McCarthy v. LaSalle Nat’l Bank & Trust Co.*, 230 Ill. App. 3d 628, 634 (1st Dist. 1992).

At the heart of this litigation is Defendant’s culpable conduct under BIPA. The issues are simple and straightforward legal questions that plainly lend themselves to class-wide resolution. Notwithstanding the clear and unequivocal requirements of the law, Defendant disregarded the statutorily-protected privacy rights of Plaintiff and other similarly-situated individuals and unlawfully collected, stored, used, and disseminated their biometric data in direct violation of BIPA. Specifically, Defendant have violated and continues to violate BIPA because it failed and continues to fail to: (1) inform Plaintiff or the putative class in writing of the specific purpose(s) and length of time for which their fingerprints were being collected, stored, used, and disseminated as required by BIPA; (2) provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff’s and the putative class’ fingerprints, as required by BIPA; and (3) receive a written release from Plaintiff or the putative class to collect, capture, use, otherwise obtain or disseminate their fingerprints, as required by BIPA. Defendant treated the entire proposed class in precisely the same manner, resulting in identical violations of BIPA. These common practices create common issues of law and fact. In fact, the legality of Defendant’s collection, storage, use, and dissemination of Illinois employees’ biometric data is the focus of this litigation.

Indeed, once this Court determines whether Defendant's practices of collecting, storing, and using individuals' biometric data without adhering to the specific requirements of BIPA constitutes violations thereof, liability for the claims of class members will be determined in one stroke. The material facts and issues of law are substantially the same for the members of the class, and therefore these common issues could be tried such that proof as to one claimant would be proof as to all members of the class. This alone establishes predominance. The only remaining questions will be whether Defendant's violations caused members of the class to suffer damages and the proper measure of damages and injunctive relief, which in and of themselves are questions common to the class. Accordingly, a favorable adjudication of the Plaintiff's claims in this case will establish a right of recovery to all other class members, and thus the commonality and predominance requirements weigh in favor of certification of the class.

C. The Named Plaintiff And Class Counsel Are Adequate Representatives Of The Class.

When evaluating adequacy, courts look to whether the named plaintiff has the same interests as those of the class and whether he or she will fairly represent them. *See CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 16. In this case, Plaintiff's interest arises from statute. The class representative is a member of the proposed class and will fairly and adequately protect the class' interests. Plaintiff, as a condition of employment, was required to have his fingerprints scanned by one of Defendant's biometric devices. Defendant subsequently stored Plaintiff's fingerprints in its database(s). Plaintiff has never been informed of the specific limited purposes (if any) or length of time for which Defendant collected, stored, used, or disseminated his biometric data. Compl. ¶¶5,30,48. Plaintiff has never been informed of any biometric data retention policy developed by Defendant, nor has he ever been informed whether Defendant will ever permanently delete his fingerprints. Finally, Plaintiff has never been provided, nor did he ever sign, a written release

allowing Defendant to collect, store, use, or disseminate his fingerprints. Thus, Plaintiff was a victim of the same uniform policies and practices as the individuals he seeks to represent and is not seeking any relief that is potentially antagonistic to other members of the class. What is more, Plaintiff has the interests of those class members in mind, as demonstrated by his willingness to sue on a class-wide basis and step forward as the class representatives, which subjects them to discovery.

Proposed Class Counsel, The Fish Law Firm PC will also fairly and adequately represent the class. Proposed Class Counsel are highly qualified and experienced attorneys. The Fish Law Firm, P.C. has extensive experience in class action litigation and its attorneys have been appointed class counsel on numerous occasions; they also are involved in more than a dozen cases involving biometric privacy violations. (See Exhibit A.) Thus, proposed Class Counsel, too, are adequate and have the ability and resources to manage this lawsuit.

D. A Class Action Is The Appropriate Method For Fair And Efficient Adjudication Of This Controversy.

Finally, a class action is the most appropriate method for the fair and efficient adjudication of this controversy, rather than bringing individual suits which could result in inconsistent determinations and unjust results. “It is proper to allow a class action where a Defendant is alleged to have acted wrongfully in the same basic manner toward an entire class.” *P.J.’s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1003 (2d Dist. 2004). “The purported class representative must establish that a successful adjudication of its individual claims will establish a right of recovery or resolve a central issue on behalf of the class members.” *Id.*

Here, Plaintiff’s claim stems from Defendant’s common and uniform policies and practices, resulting in common violations of BIPA for all members of the class. Thus, class certification will obviate the need for unduly duplicative litigation that might result in inconsistent

judgments concerning Defendant's practices. *Wenthold v. AT&T Technologies, Inc.*, 142 Ill. App. 3d 612 (1st Dist. 1986). Without a class, the Court would have to hear dozens, if not hundreds, of additional individual cases raising identical questions of liability. Moreover, class members are better served by pooling resources rather than attempting to litigate individually. *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶¶ 28-30 (certifying TCPA class where statutory damages were alleged and rejecting arguments that individual lawsuits would be superior). In the interests of justice and judicial efficiency, it is desirable to concentrate the litigation of all class members' claims in a single forum. For all of these reasons, the class action is the most appropriate mechanism to adjudicate the claims in this case.

E. The Court Should Allow Supplemental And Deferred Briefing Following Discovery.

Defendant's practices and policies are uniform. Plaintiff believes that the present Motion should be supplemented based upon very limited initial discovery. Plaintiff is moving as early as possible for class certification in part to avoid the "buyoff problem," which occurs when a Defendant seeks to settle with a class representative on individual terms in an effort to moot the class claims asserted by the class representative. Plaintiff is also moving for class certification now because the class should be certified, and because no meaningful discovery is necessary to establish that fact. The instant motion is far more than a placeholder or barebones memorandum. Rather, Plaintiff's full arguments are set forth based on the facts known at this extremely early stage of litigation. Should the Court wish for more detailed factual information, the briefing schedule should be extended.

IV. Conclusion

For the reasons stated above, Plaintiff respectfully request that the Court enter an Order: (1) certifying Plaintiff's claims as a class action; (2) appointing Plaintiff as Class Representative;

(3) appointing The Fish Law Firm, P.C. as Class Counsel; and (4) authorizing court-facilitated notice of this class action to the class. In the alternative, this Court should allow discovery, allow Plaintiff to supplement this briefing, and defer response and reply briefs.

Date: September 29, 2020

Respectfully Submitted,

By: /s/ Mara Baltabols
One of Plaintiff's Attorneys

David Fish
dfish@fishlawfirm.com
Mara Baltabols
mara@fishlawfirm.com
THE FISH LAW FIRM, P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563
Tel: 630.355.7590
Fax: 630.778.0400
DuPage Cnty #: 218726
docketing@fishlawfirm.com

Exhibit A

DECLARATION OF DAVID J FISH

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true:

1. I am an attorney admitted to practice before the Supreme Court of the State of Illinois. I am entering this declaration in support of Plaintiffs' Motion for and Memorandum in Support of Class Certification. This declaration is based upon my personal knowledge except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

2. I am the founder of The Fish Law Firm, P.C.

3. I graduated #2 in my law school class from Northern Illinois University College of Law in 1999. Prior to starting my own firm, I was employed by other law firms engaged in litigation in and around Chicago, Illinois including, Jenner & Block in Chicago as a summer associate, Klein, Thorpe & Jenkins in Chicago as an associate and The Collins Law Firm, P.C. as an associate.

4. I have extensive experience representing employees and employers in labor and employment disputes. I have handled disputes with the Illinois Department of Labor, the United States Department of Labor, the Illinois Department of Human Rights, the National Labor Relations Board, the Equal Employment Opportunity Commission, and in the state and federal courts in Illinois. I have litigated dozens of cases in the United States District Court for the Northern District of Illinois.

5. I am the former chair of the DuPage County Bar Association's Labor and Employment Committee and served on the Illinois State Bar Association's Labor and Employment Committee Section Council. I also am a member of the National Employment Lawyers Association.

6. I have, on several occasions, lectured at educational seminars for lawyers and other professionals. I moderated a continuing legal education panel of federal magistrates and judges on the Federal Rules of Civil Procedure through the Illinois State Bar Association. I have presented on electronic discovery rules and testified before the United States Judicial Conference in Dallas, Texas regarding electronic discovery issues. I have provided several CLE presentations on issues relating to labor and employment law.

7. I have authored, or co-authored, many articles, including: "Enforcing Non-Compete Clauses in Illinois after Reliable Fire", Illinois Bar Journal (April 2012); "Top 10 wage violations in Illinois", ISBA Labor and Employment Newsletter (August, 2017); "Physician Non-Complete Agreements in Illinois: Diagnosis—Critical Condition; Prognosis- Uncertain" DuPage County Bar Journal (October 2002); "Are your clients' arbitration clauses enforceable?" Illinois State Bar Association, ADR Newsletter (October 2012); "The Legal Rock and the Economic Hard Place: Remedies of Associate Attorneys Wrongfully Terminated for Refusing to Violate Ethical Rules", Univ. of W. Los Angeles Law Rev. (1999); "[Zero-Tolerance Discipline in Illinois Public Schools](#)" Illinois Bar Journal (May 2001); "[Ten Questions to Ask Before Taking a Legal-Malpractice Case](#)" Illinois Bar Journal (July 2002); "[The Use Of The Illinois Rules of Professional Conduct to Establish The Standard of Care In Attorney Malpractice Litigation: An Illogical Practice](#)", Southern Illinois Univ. Law Journal (1998); "An Analysis of

Firefighter Drug Testing under the Fourth Amendment”, International Jour. Of Drug Testing (2000); “[Local Government Web sites and the First Amendment](#)”, Government Law, (November 2001, Vol. 38).

8. Some examples of class, collective, and/or employment litigation in which I have served as a lawyer include:

a. *Larson v. Lennox Industries*, 2013 WL 105902 (N.D. Ill, 12 c 2879)(conditional certification granted in FLSA action alleging that store managers were misclassified as exempt from receiving overtime pay).

b. *Nelson v. UBS Global Management*, No. 03-C-6446, 04 C 7660 (N. D. Ill.)(ERISA class action on behalf of thousands of BP Amoco employees who had Enron debt purchased as part of their money market fund; recovery of approximately \$7 million).

c. *Sotelo v. DirectRevenue*, No. 05-2562 (N.D. Ill. filed Apr. 29, 2005)(class action alleging that company placed “spyware” on consumers’ computers; resulted in a settlement that mandated significant disclosures to computer users before unwanted software could be placed on their computers, see also Julie Anderson, *Sotelo v. Directrevenue, LLC: Paving the Way for Spyware-Free Internet*, 22 Santa Clara High Tech. L.J. 841 (2005).

d. *Franzen v. IDS Futures Corporation*, 06 CV 3012 (N. D. Ill. 2006)(recovery of millions of dollars for more than 1,000 limited partners in an investment fund that lost value as a result of the Refco bankruptcy).

e. *Pope v. Harvard Bancshares*, 06 CV 988, 240 F.R.D 383 (N. D. Ill. 2006)(class action recovery of \$1.3 million for former shareholders of community bank who had stock repurchased in a reorganization).

f. *Pietrzycki v. Heights Tower Serv., Inc.*, 197 F. Supp. 3d 1007 (N.D. Ill. 2016)(finding Fish appropriate to represent Class in wage and hour claims relating to overtime).

g. *Schrock v. Wenner Media LLC*, et al, 10-cv-7230 (defended marketing company in putative nationwide class action alleging violations of TCPA for unsolicited text message marketing; our client dismissed from case voluntarily without payment).

h. *G.M. Sign Inc. v. Pastic-Mach Corporation*, 12-cv-3149 and 10-cv-7854 (defended putative nationwide class action alleging violations of TCPA for unsolicited junk faxes, both cases dismissed without payment by client).

i. *Ismael Salam v Nationwide Alarm LLC*, 14-cv-1720 (defended putative nationwide class action alleging violations of TCPA for unsolicited calls to cellular telephone; our client dismissed with prejudice voluntarily without payment).

j. *Cope v. Millhurst Ale House of Yorkville, Inc.* 14-cv-9498 (collective action for FLSA claims settled on collective basis).

k. *Girolamo v. Community Physical Therapy & Associates, Ltd*, 15-cv-2361 (alleging claims under FLSA, IMWL, IWPCA).

l. *Jones et al v. Sistar Beauty Corporation*, 15-cv-3359 (collective action alleging FLSA and class action alleging Illinois Minimum Wage Law “IMWL” claims; final judgment entered).

m. *Magallan v. Pancho’s Family Restaurant, LLC*, 15-cv-5578 (defending FLSA and IMWL claims).

n. *Mello et al v. Krieger Kiddie Corporation*, 15-cv-5660 (collective and putative class action alleging claims under FLSA, IMWL, IWPCA).

o. *Lampley v. Aryaani dba Subway*, 15-cv-9332 (collective action alleging claims under FLSA, IMWL, IWPCA).

p. *Kalechstein v. Mehrdad Abbassian, M.D., P.C.*, 15-cv-5929 (defending IWPCA claims).

q. *Barker et al v. Septran, Inc*, 15-cv-9270 (IMWL and putative collective claims under the FLSA and IWPCA).

r. *Simpkins v. DuPage Housing Authority*, 15-cv-9103 (includes claims under FLSA and IMWL).

s. *Day v. Stockton Construction Group, LLC*, 15-cv-5884 (collective claims brought under FLSA, IMWL, and IWPCA).

t. *Wehrle v. Midwest Sleep Associates, LLC*, 15-cv-4397 (collective action complaint alleging claims under FLSA and IMWL).

u. *Sharples et al v. Krieger Kiddie Corporation*, 2013 CH 25358 (Cir. Court Cook County) (Illinois Wage Payment and Collection Act IWPCA class action claims; final approval of class wide settlement).

v. *Wendell H. Stone Co. v. Metal Partners Rebar*, 16-cv-8285 (defending TCPA class action).

w. *Barker v. Septran*, 15-cv-9270 (Rule 23 IWPCA claim for vacation forfeiture and separate FLSA claims for overtime).

x. *Andrews v. Rockford Process Control, Inc.*, 3:17-cv-50171 (class and collective claims brought under the FLSA and the IMWL).

y. *Kusinski v. MacNeil Automotive Products Limited*, 17-cv-03618 (class and collective claims under the FLSA and the IMWL; final approval of class settlement entered);

z. *Grace v. Brickstone*, 17-cv-7849 (class and collective claims under the FLSA, IMWL, and IWPCA; final approval of class settlement).

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct.

Executed this 8th day of February, 2019 at Naperville, Illinois.

/s/ David J. Fish_____

David J. Fish

APPEARANCE - CIVIL

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

2020L001103

CASE NUMBER

Wiley McInnis

vs

Party City Corporation

Candice Adams
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 11859980
2020L001103
FILEDATE: 1/15/2021 5:14 PM
Date Submitted: 1/15/2021 5:14 PM
Date Accepted: 1/19/2021 7:15 AM
KC

File Stamp Here

APPEARANCE

I hereby enter the appearance of

Defendant, Party City Corporation

(Insert the name of the party for whom you are entering the appearance)

and my own as:

Additional Counsel

Respondent in Discovery

Appellate Counsel

Special & Limited Appearance

Court Appointed Counsel

Substitute Counsel

Guardian Ad Litem

Trial Counsel

Regular Counsel

in the above titled cause.

Name: Andrew Schrag Pro Se

DuPage Attorney Number: 353975


Attorney for: Defendant, Party City Corporation

Address: 444 W. Lake Street, Suite 1650

City/State/Zip: Chicago, IL 60606

Telephone Number: 312-776-2521

Email: aschrag@blankrome.com



Signature of Attorney filing Appearance

Andrew Schrag

Printed Name

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Party City Collected Ill. Workers' Fingerprints Without Consent, Lawsuit Alleges](#)
