

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

VINCENT TRIPICCHIO, on behalf  
of himself and all others similarly  
situated,

Plaintiffs,

Case No. 1:21-cv-14512

-against-

THE UPS STORE, INC., JB & A  
Enterprises, Inc.,

Defendants.

**DEFENDANTS THE UPS STORE, INC.'S AND JB & A ENTERPRISES,  
INC.'S NOTICE OF REMOVAL  
PURSUANT TO 28 U.S.C §§ 1332, 1441, 1446, AND 1453**

PLEASE TAKE NOTICE that Defendants The UPS Store, Inc. (“TUPSS, Inc.”) and JB & A Enterprises, Inc. (“JB & A” and together with TUPSS, Inc., “Defendants”) hereby remove to this Court the State Court Action described below pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. Defendants deny the allegations and damages claimed in the Complaint filed in the State Court Action, and submit this notice without waiving any defenses, exceptions, or obligations that may exist in their favor in either state or federal court.

**Procedural History and Timeliness of Removal**

1. November 16, 2020, Plaintiff Vincent Tripicchio commenced an action in the Superior Court of New Jersey, Law Division – Burlington County,

Case No. BUR-L-002219-20 (the “State Court Action”).

2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendants in the action are attached to this notice collectively as Exhibit A to the Declaration of David J. Fioccola in Support of Defendants’ Notice of Removal (“Fioccola Dec.”).

3. In the Complaint, Plaintiff alleges that on October 13, 2020, he had a single document notarized at a The UPS Store® franchise business in Mount Laurel, New Jersey that was owned and operated by defendant JB & A Enterprises, Inc. Plaintiff claims that he was charged a “\$2.50 ‘Notary’ fee and a \$12.50 ‘Notary Convenience’ fee.” (Compl. ¶ 30.) All of Plaintiff’s causes of action are premised on the notion that these transactions violated N.J. Stat. Ann. § 22A:4-14 (“Section 22A:4-14”), which provides in relevant part that “For a service specified in this section, foreign commissioners of deeds, notaries public, judges and other officers authorized by law to perform such service, shall receive a fee as follows: . . . For taking all acknowledgments, \$2.50.” Plaintiffs allege that “Defendants have pursued a uniform policy of charging an illegal \$15 fee to notarize all documents . . . with Defendants labeling this \$15 fee on the receipt as a “\$2.50 ‘Notary’ charge and a \$12.50 ‘Notary Convenience’ fee.” (Compl. ¶ 21.)

4. Based on these allegations, Plaintiff sued JB & A, as well as TUPSS, Inc., the franchisor of The UPS Store® centers. Plaintiff purports to assert claims

against defendants for a declaratory judgment that a business cannot charge a separate “convenience fee” to have a document notarized, and claims for violations of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, New Jersey Truth in Consumer Contract, Warranty, and Notice Act, N.J. Stat. Ann. § 56:12-14, unjust enrichment, and breach of contract.

5. In addition, Plaintiff is seeking certification of a three different plaintiff classes. The first consists of “all persons who were charged a fee of more than \$2.50 by Defendants for notarizing any document not related to the sale or financing of real estate at a UPS Store in New Jersey between November 16, 2014 and the present.” The second is a subclass of “all persons who were charged a \$12.50 ‘Notary Convenience’ fee by Defendants for notarizing a power of attorney document, will, or affidavit at a UPS Store in New Jersey between November 16, 2014 and the present.” The third is a subclass of “all persons who were charged a \$12.50 ‘Notary Convenience’ fee for having a power of attorney document, will, or affidavit notarized at UPS Store #1155 in Mount Laurel, New Jersey between November 16, 2014 and the present.” (Compl. ¶¶ 34-36.)<sup>1</sup>

6. The Complaint does not specify the amount Plaintiff alleges to be in controversy. Rather, Plaintiff vaguely requests unspecified relief for “damages

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<sup>1</sup> On July 22, 2021, the Appellate Division issued an opinion and order in a related putative class action holding that Section 22A:4-14 “confers no private cause of action on plaintiff.” (See Fioccola Decl. ¶ 2, Ex. B.)

suffered,” as well as treble damages under N.J. Stat. Ann. § 56:8:19, “punitive damages,” “pre-judgment and post-judgment interest,” statutory penalties of \$100 “per person” under N.J. Stat. Ann. § 56:12-14, and “attorneys’ fees and costs.” (See Compl. “Prayer for Relief”.) Plaintiff also seeks injunctive and declaratory relief, including a “court-administered program to provide refunds to all class members....” (*Id.*)

7. Defendants’ deadline to answer or otherwise respond to the Complaint is September 30, 2021.

8. Removal is timely. Under 28 U.S.C. § 1446(b)(1), “in the event the initial pleading demonstrates the basis for removal, the notice of removal must be filed ‘within 30 days after the receipt by ‘the defendant.’” *Portillo v. Nat’l Freight, Inc.*, 169 F. Supp. 3d 585, 593 (D.N.J. 2016) (quoting 28 U.S.C. § 1446(b)(1)). “If, however, the initial pleading does not demonstrate a basis for removal, the petition must ‘be filed within 30 days after receipt by the defendant’ of a litigation document (either an ‘amended pleading, motion, order or other paper’) demonstrating sufficient jurisdictional facts” under 28 U.S.C. § 1446(b)(3). *Id.*

9. Here, the deadlines under §§ 1446(b)(1) and (b)(3) were never triggered because the FAC does not allege that the amount in controversy exceeds the \$5 million requirement under the Class Action Fairness Act of 2005 (“CAFA”) and defendants have not received any other litigation document demonstrating that

plaintiffs are seeking more than \$5 million. *See id.* at 594 (“even a cursory inspection of Plaintiffs' Class Action Complaint reveals that it fails to describe a basis for federal jurisdiction . . . [it] provides no clue as the numeric composition of the proposed class, nor to the aggregate damages sought by the unquantified class . . . because neither Plaintiffs' Complaint nor their subsequent dismissal submissions provided Defendants with facts demonstrating federal jurisdiction under CAFA, the Court concludes that the 30-day removal clocks of 28 U.S.C. § 1446(b)(1) and (3), *supra*, have not been triggered either by the Complaint or any other litigation document received by Defendants.”)

10. There is no prohibition against defendants removing a case without waiting to receive some other “litigation document” that would trigger the deadlines under § 1446(b)(3). “[T]he weight of persuasive authority has rejected the view that the 30-day removal windows of 28 U.S.C. §§ 1446(b)(1) and (b)(3) provide the exclusive periods for removal, embracing instead the notion that defendants may remove once they determine, based upon a review of their own records, that the action meets the requirements of CAFA.” *Id.* at 595 (collecting cases)

11. Here, Defendants are timely filing this notice after an investigation of their records revealed that the \$5 million amount in controversy requirement for diversity jurisdiction under CAFA has been met.

### **Basis for Removal Jurisdiction**

12. Generally. The action is removable under CAFA, 28 U.S.C. §§ 1332(d) and 1453(b).

13. Covered Class Action. This action meets the CAFA definition of a class action, which is “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. §§ 1332(d)(1)(B), 1453(a), (b). Plaintiffs purport to bring a class action on behalf of “all persons who were charged a fee of more than \$2.50 by Defendants for notarizing any document not related to the sale or financing of real estate at a UPS Store in New Jersey between November 16, 2014 and the present.” (Compl. ¶ 34.) Plaintiffs allege that the Class “includes at least 100 persons.” (*Id.* ¶ 37.)

14. Diversity. The minimal diversity standard of the CAFA is met as long as any defendant is a citizen of a state different from any member of the putative class of plaintiffs. 28 U.S.C. § 1332(d)(2)(A). Plaintiff alleges that he is a New Jersey citizen resident and that the putative class consists of “all persons who were charged a fee of more than \$2.50 by Defendants for notarizing any document not related to the sale or financing of real estate at a UPS Store in New Jersey...,” which would include citizens not only from New Jersey but from other states—for

example neighboring Pennsylvania and New York—who had a document notarized at a The UPS Store® franchise in New Jersey. (Compl. ¶ 34.) As of the date the State Court Action was filed, and as of the date of this removal, Defendant TUPSS, Inc. is a Delaware corporation with its principal place of business in San Diego, California. (Declaration of Judith Milner, dated July 28, 2021 (“Milner Decl.”) ¶ 6; *see* Complaint ¶ 10.)

15. Amount in Controversy – Alleged Damages. This Court has original jurisdiction over a class action “in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs....” 28 U.S.C. § 1332(d)(2). The claims of the individual class members are aggregated to determine whether the matter in controversy requirement is met. *Id.* § 1332(d)(6). Here, TUPSS, Inc.’s internal records demonstrate that for the putative six year class period there were 1,068,852 transactions for notary services at The UPS Store® centers in New Jersey. (Milner Decl. ¶ 5.) Conservatively assuming that there was only one item notarized in each transaction and that, accepting Plaintiff’s allegations as true that there was a \$12.50 overcharge per transaction, Plaintiff is seeking at least \$13,360,650 in compensatory damages. *See, e.g., Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007) (calculating amount in controversy by multiplying named plaintiff’s alleged damages by number of individuals in the putative class). Further, because Plaintiff asks for treble damages under the New Jersey Consumer

Fraud Act, monetary damages that he is seeking are at least \$40,081,950. *See id.* (where plaintiff class requests punitive damages provided for under a statute a court “must consider [them] when calculating the amount in controversy.” (citation omitted)) Similarly, Plaintiff is seeking statutory penalties of \$100 per person under N.J. Stat. Ann. § 56:12-14. Assuming that each transaction is associated with a single person, those statutory penalties amount to more than \$100 million. Plaintiff also seeks an injunction requiring all The UPS Store® franchisees in New Jersey never to charge more than \$2.50 for any notarial services. The present value of a lost stream of payments of \$2,226,775 (based on an average of 178,142 transactions per year at \$2.50 rather than \$15.00) for 20 years is nearly \$44.5 million. *See, e.g., McNair v. Synapse Grp., Inc.*, Civil Action No. 06-5072 (JLL), 2009 U.S. Dist. LEXIS 103108, at \*6-7 (D.N.J. Nov. 5, 2009) (“In the Third Circuit, for actions seeking an injunction, ‘it is settled that the amount in controversy is measured by the value of the right sought to be protected by the equitable relief.’”) (quoting *In re Corestates Trust Fee Litig.*, 39 F.3d 61, 65 (3d Cir. 1994)). Finally, Plaintiff also seeks an award of attorney’s fees. (Compl. “Prayer for Relief”.) This amount should be included in determining the amount in controversy, and could be as much as 30% of a judgment, or at least \$4 million based on the alleged compensatory damages alone. *See, Frederico*, 507 F.3d at 199 (when assessing the amount in controversy, courts “must also consider



attorney's fees [which] could be as much as thirty percent of the judgment” in a class action). Accordingly, the amount in controversy is well over the required \$5 million threshold.

### **Notice to State Court**

16. A copy of this Notice of Removal was filed with the Clerk of the Superior Court of New Jersey, Law Division – Mercer County. (*See* Fioccola Decl. ¶ 3 attaching the state court removal notice without exhibits as Exhibit C.)

Accordingly, Defendants respectfully submit that this action is removed properly pursuant to CAFA.

Dated: New York, New York  
August 3, 2021

MORRISON & FOERSTER LLP

By: /s/ David J. Fioccola

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Adam J. Hunt *pro hac vice forthcoming*  
250 West 55<sup>th</sup> Street  
New York, New York 10019  
Tel: (212) 468-8000  
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*Attorneys for Defendants The UPS Store, Inc.*

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One Battery Park Plaza, 28<sup>th</sup> Fl.  
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Tel: (212) 402-2298  
Email: [mbjohnson@grsm.com](mailto:mbjohnson@grsm.com)

*Attorneys for Defendant JB & A Enterprises, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused a true and complete copy of the within NOTICE OF REMOVAL to the following counsel of record for Plaintiff Vincent Tripicchio via UPS and electronic mail:

**DENITTIS OSEFCHEN PRINCE, P.C.**

Stephen P. DeNittis, Esq.

Joseph A. Osefchen, Esq.

Shane T. Prince, Esq.

525 Route 73 North, Suite 410

Marlton, New Jersey 08053

sdenittis@denittislaw.com

This 3<sup>rd</sup> day of August, 2021.

/s/ David J. Fioccola

David J. Fioccola

# **EXHIBIT A**



## Notice of Service of Process

Transmittal Number: 22327674  
Date Processed: 11/20/2020

**Primary Contact:** SOP UPS - United Parcel  
SOP - PowerBrief - Wilmington  
251 Little Falls Dr  
Wilmington, DE 19808-1674

**Electronic copy provided to:** Salem Desir  
Bishop Martin  
Arlette Willis  
CSC Test

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<b>Entity:</b>	The UPS Store, Inc. Entity ID Number 2551127
<b>Entity Served:</b>	The UPS Store, Inc.
<b>Title of Action:</b>	Vincent Tripicchio vs. The UPS Store, Inc.
<b>Matter Name/ID:</b>	Vincent Tripicchio vs. The UPS Store, Inc. (10677528)
<b>Document(s) Type:</b>	Summons/Complaint
<b>Nature of Action:</b>	Class Action
<b>Court/Agency:</b>	Burlington County Superior Court, NJ
<b>Case/Reference No:</b>	BUR-L-002219-20
<b>Jurisdiction Served:</b>	New Jersey
<b>Date Served on CSC:</b>	11/19/2020
<b>Answer or Appearance Due:</b>	35 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Stephen P. DeNittis 856-797-9951

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

Ex. A - 001

**DeNITTIS OSEFCHEN PRINCE, P.C.**  
**Stephen P. DeNittis, Esq. (031381997)**  
**Joseph A. Osefchen, Esq. (024751992)**  
**Shane T. Prince, Esq. (022412002)**  
**525 Route 73 North, Suite 410**  
**Marlton, New Jersey 08053**  
**(856) 797-9951**

**Attorneys for Plaintiff**

VINCENT TRIPICCHIO, on behalf of himself  
 and all others similarly situated,

Plaintiff

vs.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION  
 BURLINGTON COUNTY

DOCKET NO. BUR-2219-20

**SUMMONS**

From The State of New Jersey  
 To The Defendant(s) Named Above: The UPS Store, Inc.

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received the summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of services with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for fee legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: November 17, 2020

/s/ MICHELLE M. SMITH

Clerk of the Superior Court

Name of defendant(s) to be served: The UPS Store, Inc.  
c/o Corporation Service Company  
Princeton South Corporate Center, Suite 160  
100 Charles Ewing Blvd  
Ewing, NJ 08628

**ATLANTIC COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division, Direct Filing  
1201 Bacharach Blvd., First Fl.  
Atlantic City, NJ 08401

LAWYER REFERRAL  
(609) 345-3444  
LEGAL SERVICES  
(609) 348-4200

**BERGEN COUNTY:**

Deputy Clerk of the Superior Court  
Case Processing Section, Room 119  
Justice Center, 10 Main St.  
Hackensack, NJ 07601-0769

LAWYER REFERRAL  
(201) 488-0044  
LEGAL SERVICES  
(201) 487-2166

**BURLINGTON COUNTY:**

Deputy Clerk of the Superior Court  
Central Processing Office  
Attn: Judicial Intake  
First Fl., Courts Facility  
49 Rancocas Road  
Mt. Holly, NJ 08060

LAWYER REFERRAL  
(609) 261-4862  
LEGAL SERVICES  
(609) 261-1088

**CAMDEN COUNTY:**

Deputy Clerk of the Superior Court  
Civil Processing Office  
1<sup>st</sup> Fl., Hall of Records  
101 S. 5<sup>th</sup> Street  
Camden, NJ 08103

LAWYER REFERRAL  
(856) 964-4520  
LEGAL SERVICES  
(856) 964-2010

**CAPE MAY COUNTY:**

Deputy Clerk of the Superior Court  
9 N. Main Street  
Box DN-209  
Cape May Court House, NJ 08210

LAWYER REFERRAL  
(609) 463-0313  
LEGAL SERVICES  
(609) 465-3001

**CUMBERLAND COUNTY:**

Deputy Clerk of the Superior Court  
Civil Case Management Office  
Broad & Fayette Sts., P.O. Box 615  
Bridgeton, NJ 08302

LAWYER REFERRAL  
(856) 692-6207  
LEGAL SERVICES  
(856) 451-0003

**ESSEX COUNTY:**

Deputy Clerk of the Superior Court  
50 West Market Street  
Room 131  
Newark, NJ 07102

LAWYER REFERRAL  
(973) 622-6207  
LEGAL SERVICES  
(973) 624-4500



**GLOUCESTER COUNTY:**

Deputy Clerk of the Superior Court  
Civil Case Management Office  
Attn: Intake  
First Fl., Court House  
1 North Broad Street, P.O. Box 129  
Woodbury, NJ 08096

LAWYER REFERRAL  
(856) 848-4589  
LEGAL SERVICES  
(856) 848-5360

**HUDSON COUNTY:**

Deputy Clerk of the Superior Court  
Superior Court, Civil Records Dept.  
Brennan Court House – 1<sup>st</sup> Floor  
583 Newark Avenue  
Jersey City, NJ 07306

LAWYER REFERRAL  
(201) 798-2727  
LEGAL SERVICES  
(201) 792-6363

**HUNTERDON COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
65 Park Avenue  
Flemington, NJ 08862

LAWYER REFERRAL  
(908) 735-2611  
LEGAL SERVICES  
(908) 782-7979

**MERCER COUNTY:**

Deputy Clerk of the Superior Court  
Local Filing Office, Courthouse  
175 South Broad St., P.O. Box 8068  
Trenton, NJ 08650

LAWYER REFERRAL  
(609) 585-6200  
LEGAL SERVICES  
(609) 695-6249

**MIDDLESEX COUNTY:**

Deputy Clerk of the Superior Court  
Administration Building  
Third Floor  
1 Kennedy Sq., P.O. Box 2633  
New Brunswick, NJ 08903-2633

LAWYER REFERRAL  
(732) 828-0053  
LEGAL SERVICES  
(732) 249-7600

**MONMOUTH COUNTY:**

Deputy Clerk of the Superior Court  
Court House, 71 Monument Park  
P.O. Box 1269  
Freehold, NJ 07728-1262

LAWYER REFERRAL  
(732) 431-5544  
LEGAL SERVICES  
(732) 866-0020

**MORRIS COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
30 Schuyler Pl., P.O. Box 910  
Morristown, NJ 07960-0910

LAWYER REFERRAL  
(973) 267-5882  
LEGAL SERVICES  
(973) 285-6911

**OCEAN COUNTY:**

Deputy Clerk of the Superior Court  
Court House, Room 119  
118 Washington Street  
Toms River, NJ 08754

LAWYER REFERRAL  
(732) 240-3666  
LEGAL SERVICES  
(732) 341-2727

**PASSAIC COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
Court House  
77 Hamilton Street  
Paterson, NJ 07505

LAWYER REFERRAL  
(973) 278-9223  
LEGAL SERVICES  
(973) 345-7171

**SALEM COUNTY:**

Deputy Clerk of the Superior Court  
92 Market St., P.O. Box 18  
Salem, NJ 08079

LAWYER REFERRAL  
(856) 935-5628  
LEGAL SERVICES  
(856) 451-0003

**SOMERSET COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division Office  
New Court House, 3<sup>rd</sup> Fl.  
P.O Box 3000  
Somerville, NJ 08876

LAWYER REFERRAL  
(908) 685-2323  
LEGAL SERVICES  
(908) 231-0840

**SUSSEX COUNTY:**

Deputy Clerk of the Superior Court  
Sussex County Judicial Center  
43-47 High Street  
Newton, NJ 07860

LAWYER REFERRAL  
(973) 267-5882  
LEGAL SERVICES  
(973) 383-7400

**UNION COUNTY:**

Deputy Clerk of the Superior Court  
1<sup>st</sup> Fl., Court House  
2 Broad Street  
Elizabeth, NJ 07207-6073

LAWYER REFERRAL  
(908) 353-4715  
LEGAL SERVICES  
(908) 354-4340

**WARREN COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division Office  
Court House, 413 Second Street  
Belvidere, NJ 07823-1500

LAWYER REFERRAL  
(973) 267-5882  
LEGAL SERVICES  
(973) 475-2010

BURLINGTON COUNTY  
SUPERIOR COURT  
49 RANOCAS ROAD  
MT HOLLY NJ 08060

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 288-9500  
COURT HOURS 8:30 AM - 4:30 PM

DATE: NOVEMBER 16, 2020  
RE: TRIPICCHIO VINCENT VS THE UPS STORE  
DOCKET: BUR L -002219 20

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON AIMEE R. BELGARD

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002  
AT: (609) 288-9500.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH R.4:5A-2.

ATTENTION:

ATT: STEPHEN P. DE NITTIS  
DE NITTIS OSEFCHEN AND PRINCE  
5 GREENTREE CENTRE  
525 ROUTE 73 NORTH STE 410  
MARLTON NJ 08053

JUCCAU0

## Civil Case Information Statement

**Case Details: BURLINGTON | Civil Part Docket# L-002219-20**

**Case Caption:** TRIPICCHIO VINCENT VS THE UPS  
STORE, INC.

**Case Initiation Date:** 11/16/2020

**Attorney Name:** STEPHEN P DE NITTIS

**Firm Name:** DE NITTIS OSEFCHEN AND PRINCE PC

**Address:** 5 GREENTREE CENTRE 525 ROUTE 73 NORTH  
STE 410

MARLTON NJ 08053

**Phone:** 8567979951

**Name of Party:** PLAINTIFF : Tripicchio, Vincent

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** TORT-OTHER

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 12 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same  
transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: Vincent Tripicchio?** NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual  
management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** YES **Title 59?** NO **Consumer Fraud?** YES

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

11/16/2020  
Dated

/s/ STEPHEN P DE NITTIS  
Signed

Ex. A - 008



**DeNITTIS OSEFCHEN PRINCE, P.C.**  
**Stephen P. DeNittis, Esq. (031381997)**  
**Joseph A. Osefchen, Esq. (024751992)**  
**Shane T. Prince, Esq. (022412002)**  
**525 Route 73 North, Suite 410**  
**Marlton, New Jersey 08053**  
**(856) 797-9951**

**Attorneys for Plaintiff**

VINCENT TRIPICCHIO, on behalf of himself and all others similarly situated,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BURLINGTON COUNTY
Plaintiff	
vs.	DOCKET NO. BUR-
THE UPS STORE, INC. and JB & A ENTERPRISES, INC.,	<b>CLASS ACTION COMPLAINT AND JURY DEMAND</b>
Defendants.	

**INTRODUCTION**

1. This is a class action brought on behalf of a class composed of customers who, between November 16, 2014 and the present, were charged notary fees which exceeded New Jersey legal limits for notarizing documents by Defendants at UPS Store locations in New Jersey.

2. As outlined in greater detail herein, N.J.S.A. § 22A:4-14 sets the maximum allowable fees a New Jersey notary public can charge for notarizing a document that does not relate to the sale or financing of real estate at \$2.50 and does not permit any additional fees for notarizing such documents, whether those fees are labeled as “**Notary Convenience**” fees or otherwise.

3. As outlined in greater detail herein, Defendants employ a uniform policy of charging \$15 for notarizing such documents; an amount which is twice the maximum permitted

statutory fee. Defendants describe this \$15 fee on the receipt as a \$2.50 “**Notary**” fee and an additional \$12.50 “**Notary Convenience**” fee.

4. Such a \$12.50 “**Notary Convenience**” fee violates the plain language of N.J.S.A. § 22A:4-14 and is unlawful in New Jersey.

5. The class complaint seeks to obtain an injunction to end the illegal policy of overcharges and to obtain refunds of the illegal overcharges, with the complaint bringing statutory claims under the New Jersey Consumer Fraud Act, the New Jersey Truth in Consumer Contract, Warranty and Notice Act and common law claims under a theory of unjust enrichment/ disgorgement, as well as a claim for an injunction barring the unlawful practice alleged herein, on behalf of Plaintiff and the class as a whole.

#### **JURISDICTION AND VENUE**

6. Jurisdiction over this matter in New Jersey Superior Court is proper in that all claims in this matter arise exclusively under New Jersey state law.

7. This matter is properly venued in Burlington County in that Plaintiff is a New Jersey citizen who resides in Moorestown, Burlington County, Defendant JB & A Enterprises, Inc. is a New Jersey corporation with its principal place of business in Mount Laurel, New Jersey and the transaction involving Plaintiff described herein took place in Burlington County, New Jersey.

8. There is no federal subject matter jurisdiction over this matter in that all claims pleaded herein arise exclusively under New Jersey law and no federal claim or federal issue is raised. Moreover, the total amount in controversy is far less than \$5 million because the out of pocket losses in this matter are \$12.50 per person and the proposed class is less than 5,000

persons. Thus, even with treble damages and a \$100 per person statutory penalty, the amount in controversy is less than \$1 million.

### THE PARTIES

9. Plaintiff Vincent Tripicchio is a citizen of New Jersey and resident of Moorestown, Burlington County, who, like every other proposed class member during the class period, was charged a uniform notary fee of \$15 by Defendants – described by Defendants as a \$.250 “Notary” fee and a \$12.50 “Notary Convenience” fee on the receipt – for notarizing a document at a UPS Store in New Jersey that did not relate to the sale or financing of real estate.

10. Defendant The UPS Store, Inc. is a Delaware corporation headquartered at 6060 Cornerstone Court West, San Diego, California 92121. Defendant The UPS Store, Inc. is registered to do business in New Jersey, does in fact do business in New Jersey, and may be served with process by service upon its registered agent in New Jersey.

11. Defendant JB & A Enterprises, Inc. is a New Jersey corporation with its principal place of business located at 3111 Rt. 38, Suite 11, in Mount Laurel, New Jersey 08054 and is the nominal owner and an operator of UPS Store #1155, located at 3111 Rt. 38, Suite 11 in Mount Laurel, New Jersey 08054.

12. Defendant The UPS Store, Inc. has a franchise relationship with Defendant JB & A Enterprises, Inc. in that Defendant The UPS Store, Inc. is a franchisor and Defendant JB & A Enterprises, Inc. is a franchisee.

13. No claims in this case are based solely on the status of Defendant The UPS Store, Inc. as the franchisor of Defendant JB & A Enterprises, Inc. and/or The UPS Store #1155.

14. Rather, all claims pleaded herein against Defendant The UPS Store, Inc. are based solely on the actions of Defendant The UPS Store, Inc. in that the unlawful uniform policy



alleged herein is not limited to UPS Store #1115 and is in fact followed by all UPS stores in New Jersey at the direction of Defendant The UPS Store, Inc. That policy was personally created, ratified and implemented by Defendant The UPS Store, Inc. and Defendant The UPS Store, Inc. requires its New Jersey franchisees to uniformly follow said unlawful uniform policy. Moreover, Defendant The UPS Store, Inc. requires its New Jersey franchisees to pay Defendant The UPS Store, Inc. a share of the proceeds of said unlawful uniform policy and thus The UPS Store Inc is a holder of such illegal funds and is a necessary defendant for any claims of reimbursement, refund and/or disgorgement.

#### **FACTS WHICH GIVE RISE TO THE CLASS CLAIMS**

15. As a matter of uniform policy, each UPS Store in New Jersey offers notary services to customers.

16. The notary services performed by Defendants at UPS Stores in New Jersey are almost exclusively for purposes unrelated to the sale or financing of real estate, such as notarizing power of attorney documents, wills and affidavits.

17. Indeed, notarization of documents relating to the sale or transfer of real estate are routinely performed by a title agent or attorney at the closing. Notarization of documents relating to the financing of real estate are routinely performed by a bank or mortgage company employee when the notarized document relates to a mortgage. Such notarizations are not done at UPS Stores.

18. New Jersey law places a legal limit on the fees that can be charged for notarizing documents in New Jersey.

19. Specifically, N.J.S.A. § 22A:4-14 provides that for notarizing any document which does not relate to the transfer or financing of real estate, a notary may charge a fee of no

more than \$2.50. See N.J.S.A. § 22A:4-14, providing that a notary “**shall receive a fee as follows:**

**For administering an oath or taking an affidavit, \$2.50.**

**For taking proof of a deed, \$2.50.**

**For taking all acknowledgments, \$2.50.”**

20. N.J.S.A. § 22A:4-14 does not authorize, and in fact plainly bars, any other type of fee charged for notarizing such documents, including any purported “**Notary Convenience**” fee.

21. Throughout the class period, Defendants have pursued a uniform policy of charging an illegal \$15 fee to notarize all documents unrelated to the sale or transfer of real estate at UPS Stores in New Jersey, with Defendants labeling this \$15 fee on the receipt as a \$2.50 “**Notary**” charge and a \$12.50 “**Notary Convenience**” fee.

22. This uniform policy is illegal in New Jersey.

23. N.J.S.A. § 22A:4-14 plainly bars any additional or ancillary charges for notarizing documents and does not permit any additional fees for notarizing documents beyond the statutory fee of \$2.50, no matter how that fee is labeled. Thus, Defendants’ act in labeling the \$12.50 overcharge a “**Notary Convenience**” is unlawful.

24. Moreover, the \$12.50 “**Notary Convenience**” fee is plainly not even for any actual expense or service. This \$12.50 additional notary fee is being charged inside the UPS Store where the notary works and thus the customer comes to the notary and not the other way around. Thus the UPS notary has no mileage or travel expenses. Nor are any additional services being performed at UPS beyond simply notarizing the documents at issue.

25. The unlawful uniform policy alleged herein is not limited to UPS Store #1115 and is in fact followed by all UPS stores in New Jersey at the direction of Defendant The UPS Store,

Inc.

26. Indeed, that unlawful policy was personally created, ratified and implemented by Defendant The UPS Store, Inc., which requires its New Jersey franchisees to uniformly follow said unlawful uniform policy and requires its franchisees to pay Defendant The UPS Store, Inc. a share of the proceeds of said unlawful uniform policy.

27. What happened to Plaintiff illustrates Defendants' unlawful policy.

28. On October 13, 2020, Plaintiff sought to have a durable power of attorney document notarized at Defendants' at UPS Store #1155 in Mt Laurel, New Jersey. See Attachment A, power of attorney document notarized for Plaintiff at UPS Store.

29. That document did not relate to the sale or financing of real state. Id.

30. Defendants charged Plaintiff \$15 for notarizing that document. See Attachment B, UPS Store receipt dated October 13, 2020, listing a \$2.50 **"Notary"** fee and a \$12.50 **"Notary Convenience"** fee.

31. Defendants did not incur any expenses in this transaction for mileage in that Plaintiff traveled to the UPS Store to purchase these notary services, which were performed on the UPS Store premises.

32. Nor did Defendants perform any additional services for Plaintiff beyond notarizing the single power of attorney document which is attached hereto as Attachment A.

33. What happened to Plaintiff was not an accident or an oversight. It was part of a uniform policy in which Defendants unlawfully charge a \$15 fee for notarizing documents for which N.J.S.A. § 22A:4-14 mandates that the maximum notary fee is no more than \$2.50.

#### **CLASS ACTION ALLEGATIONS**

34. Plaintiff brings this action as a class action pursuant to Rule 4:32, on behalf of

himself and all members of the following proposed class:

**All persons who were charged a fee of more than \$2.50 by Defendants for notarizing any document not related to the sale or financing of real estate at a UPS Store in New Jersey between November 16, 2014 and the present.**

35. Plaintiff also seeks to have a sub-class certified under Rule 4:32 which is defined

as:

**All persons who were charged a \$12.50 "Notary Convenience" fee by Defendants for notarizing a power of attorney document, will or affidavit at a UPS Store in New Jersey between November 16, 2014 and the present.**

36. Plaintiff also seeks to have a sub-class certified under Rule 4:32 which is defined

as:

**All persons who were charged a \$12.50 "Notary Convenience" fee for having a power of attorney document, will or affidavit notarized at UPS Store #1155, in Mount Laurel, New Jersey, between November 16, 2014 and the present.**

37. The class and sub-classes are each so numerous that joinder of all members is impracticable and each includes at least 100 persons.

38. The exact number and identities of the persons who fit within each proposed class are contained in Defendants' records and can be easily ascertained from those records.

39. Common questions of law and fact exist as to each class member.

40. All claims in this action arise exclusively from a uniform policy as outlined herein.

41. No violations alleged in this complaint are a result of any individualized oral communications or individualized interaction of any kind between class members and Defendants or anyone else.

42. In the case at bar, there are clearly a number of issues of law and fact which are

identical as to the entire class and sub-class, including:

- a. Whether Defendants are lawfully allowed to charge a \$15 notary fee to notarize the documents at issue;
- b. Whether N.J.S.A. § 22A:4-14 bars Defendants from charging more than \$2.50 to notarize the documents at issue;
- c. Whether N.J.S.A. § 22A:4-14 bars Defendants from charging a \$12.50 “**Notary Convenience**” fee;
- d. Whether Defendants’ policy of charging notary fees in excess of what is allowed by N.J.S.A. § 22A:4-14 constitutes an unlawful and unconscionable commercial practice in violation of N.J.S.A. § 56:8-2 of the Consumer Fraud Act;
- e. Whether Defendants’ act in offering and presenting signs and form notices relating to these illegal fees to Plaintiff and the class violated N.J.S.A. § 56:12-16 of the Truth in Consumer Contract, Warranty and Notice Act; and
- f. Whether plaintiff and the class are entitled to an injunction barring the challenged practice and requiring Defendants to limit notary fees to the amounts permitted by N.J.S.A. § 22A:4-14.

43. Plaintiff is a member of the class and sub-classes he seeks to represent.

44. The claims of Plaintiff are not only typical of all class members, they are identical.

45. All claims of Plaintiff and the class arise from the same course of conduct, uniform policies and procedures as outlined herein.

46. All claims of Plaintiff and the class are based on the exact same legal theories.

47. Plaintiff seeks the same relief for himself as for every other class member.

48. Plaintiff has no interest antagonistic to or in conflict with the class.

49. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

50. Defendants have acted and/or refused to act on grounds generally applicable to

the class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

51. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would confront Defendants with incompatible standards of conduct.

52. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since, inter alia, the damages suffered by each class member are \$12.50 per document and are therefore too low to make individual lawsuits economically feasible.

53. Common questions will predominate, and there will be no unusual manageability issues.

### **COUNT I**

#### **Uniform Declaratory Judgment Act, N.J.S.A. 2A:16-51, et seq.**

54. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

55. Plaintiff and the class need, and are entitled to, a declaration that Defendants' policy as described herein is unlawful and that Defendants are barred by law from charging more than \$2.50 to notarize documents unrelated to the sale or financing of real estate.

56. Plaintiff and the class members have a significant interest in this matter in that each has been, or will be subjected to, the unlawful policies alleged herein.

57. Based on the foregoing, a justifiable controversy is presented in this case, rendering declaratory judgment appropriate.

58. In addition, because the unlawful uniform policies of Defendants are ongoing, Plaintiff and the class also need, and are entitled to, an order for equitable and injunctive relief,

barring the continuation of those policies.

## **COUNT II**

### **Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq.**

59. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

60. Defendants' uniform policies as described herein constitute sharp and unconscionable commercial practices in the sale of services in violation of N.J.S.A. § 56:8-2 by charging fees in an amount which is higher than the maximum fee allowed by New Jersey law.

61. As a proximate result of the unlawful conduct by Defendants, Plaintiff and the class members have suffered an ascertainable loss of money and property.

62. Plaintiff seeks, inter alia, refunds of the illegal overcharges for himself and the class and to obtain a class-wide injunction on behalf of the class under the Consumer Fraud Act barring the continuing illegal policy at issue, as discussed, certified and approved in Laufer v. U. S. Life Ins. Co. in City of N.Y., 385 N.J. Super. 172 (App. Div. 2006).

## **COUNT III**

### **Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. § 56:12-14, et seq.**

63. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

64. Plaintiff and the class members are "consumers" within the meaning of N.J.S.A. §§ 56:12-15 and 16.

65. Defendants are "sellers" of services within the meaning of N.J.S.A. §§ 56:12-15 and 16.

66. By the acts alleged herein, Defendants violated N.J.S.A. § 56:12-16 because, in

the course of their business, Defendants caused consumer notices and signs to be offered and presented to Plaintiff and the class members which contained provisions that violated their clearly established legal rights under state law, within the meaning of N.J.S.A. § 56:12-15 and 16.

67. Specifically, Defendants caused to be offered and presented to Plaintiff and the class written notices and signs which violate the clearly established rights of Plaintiff and the class under N.J.S.A. § 22A:4-14 to be charged no more than \$2.50 to notarize documents of the type at issue.

68. Moreover, Defendants caused to be offered and presented to Plaintiff and the class written notices and signs which violate the clearly established rights of Plaintiff and the class under N.J.S.A. § 56:8-2 of the New Jersey Consumer Fraud Act; a New Jersey statute which provides a right to be free of deceptive and unconscionable practices in the sale of services.

69. Plaintiff and the class members seek an order for injunctive relief under TCCWNA pursuant to N.J.S.A. § 56:12-17, as described in detail herein, against Defendants.

70. Due to the Defendants' conduct described herein, Plaintiff and the class members have suffered actual damages.

71. Pursuant to N.J.S.A. § 56:12-17, Plaintiff also seek a statutory penalty of \$100 for each class member, as well as actual damages and attorney's fees and costs.

#### **COUNT IV**

##### **Unjust Enrichment/Disgorgement**

72. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.



73. Plaintiff brings, as an alternative theory of recovery, a claim for refunds on behalf of himself and the class under a theory of unjust enrichment and/or disgorgement.

74. By the acts alleged herein, Defendants received a benefit from Plaintiff and the class in the form of monies paid by Plaintiff and the class to Defendants which were higher than the fees permitted by New Jersey law.

75. It is specifically alleged that Defendant The UPS Store Inc. received and possess part of the illegal overcharge collected from Plaintiff and the class and thus this defendant is a holder of illegal funds who is a necessary defendant for any claim of restitution, refund or disgorgement.

76. The retention of that benefit by Defendants would be unjust.

77. By the facts alleged herein, equity demands that Defendants disgorge themselves of this benefit.

#### **COUNT V**

##### **Breach of Contract for Violation of the Implied Duty of Good Faith and Fair Dealing**

78. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

79. There exists a contract between class members and at least one defendant relating to the sale of services.

80. By operation of New Jersey law, there existed an implied duty of good faith and fair dealing in each such contract.

81. By the acts alleged herein, Defendants have violated that duty of good faith and fair dealing by charging fees in excess of the maximum allowed by New Jersey law.

82. As a result of this breach by Defendants, Plaintiff and each class member have

suffered damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff ask this Court to:

- a. Certify the case as a class action pursuant to Rule 4:32;
- b. Enter an order for injunctive and declaratory relief, enjoining Defendants' unlawful policies as alleged herein, directing Defendants to send a court-approved form of notice to all class members advising them of these violations, and establishing a court-administered program to provide refunds to all class members, with the Defendants being ordered to pay the costs associated with such a program;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. Award Plaintiff and the class members treble damages under the Consumer Fraud Act;
- e. Award Plaintiff and the class members a \$100 per person statutory penalty under Truth in Consumer Contract, Warranty and Notice Act;
- f. Award Plaintiff reasonable attorneys' fees and costs; and
- g. Grant such other and further legal and equitable relief as the Court deems just and equitable.

**JURY TRIAL DEMAND**

PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury as to all parties.

Dated: November 16, 2020

DeNITTIS OSEFCHEN PRINCE, P.C.

BY: 

STEPHEN P. DENITTIS, ESQ. (031981997)  
JOSEPH A. OSEFCHEN, ESQ. (024751992)  
SHANE T. PRINCE, ESQ. (022412002)

*Attorneys for Plaintiff*

**CERTIFICATION PURSUANT TO RULE 4:5-1**

To the best of Plaintiff's knowledge, the matter in controversy is not related to any pending action in New Jersey. No arbitration proceeding is pending or contemplated. There are no other parties known to Plaintiffs at this time who should be joined in this action.

**CERTIFICATION PURSUANT TO N.J.S.A. 56:8-1, et seq.**

The undersigned hereby certify that a copy of this complaint has been forwarded to the Attorney General of the State of New Jersey.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Stephen P. DeNittis is designated as trial counsel.

Dated: November 16, 2020

DeNITTIS OSEFCHEN PRINCE, P.C.



BY: \_\_\_\_\_

STEPHEN P. DENITTIS, ESQ. (031981997)  
JOSEPH A. OSEFCHEN, ESQ. (024751992)  
SHANE T. PRINCE, ESQ. (022412002)

*Attorneys for Plaintiff*

# Exhibit A

## Durable Power of Attorney

**NOTICE:** THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS DURABLE POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

### Definition of Agent

As used in this document, the term "Agent" shall include all agent(s), attorney(s)-in-fact, attorneys-in-fact / agents, and mandatary or mandataries who are appointed herein.

**TO ALL PERSONS,** be it known, that I, Vincent Tripicchio, the undersigned Principal, who resides at 630 Garwood Road, City of Moorestown, County of Burlington, State of New Jersey, do hereby appoint Brenda Tripicchio as my Agent, and \_\_\_\_\_ as my Agent, who ☐ must act jointly ☒ may act separately on my behalf.

At the time of the execution of this Durable Power of Attorney, Brenda Tripicchio resides at 630 Garwood Road, City of Moorestown, County of Burlington, State of New Jersey.

At the time of the execution of this Durable Power of Attorney, \_\_\_\_\_ resides at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

If one of my Agents is unable to serve for any reason, ☐ I authorize the remaining named Agent to act as my sole Agent OR ☐ I designate \_\_\_\_\_, residing at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, to serve in that person's place.

If both of my Agents are unable to serve for any reason, I designate \_\_\_\_\_, residing at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, as my Successor Agent.

**Grant of General Authority**

My Agent shall care for, manage, control, and handle all of my business, financial, property, and personal affairs in my name, place, and stead in as full and complete a manner in which I myself could do, if I were personally present, with respect to the following matters, to the extent that I am permitted by law to act through such a representative and subject to any limitations on or additions to the specified powers inserted after the following:

(NOTICE: The Principal must write his or her initials in the corresponding blank space for each of the subdivisions (A) through (M) below for which the Principal WANTS to give the Agent authority. If the corresponding blank space for any particular subdivision is NOT initialled, NO AUTHORITY WILL BE GRANTED for those matters specified in the subdivision. ALTERNATIVELY, the letter corresponding to each power the Principal wishes to grant has been referenced in subdivision "(N)", and the Principal may initial in the blank space to the left of subdivision "(N)" in order to grant each of the powers so indicated.)

(W) (A) **Real property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, tear down, alter, rebuild, improve, manage, insure, move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds, and in any way or manner deal with all or any part of any interest in real property whatsoever, including specifically, but without limitation, real property lying and being situated in the State of New Jersey, under such terms and conditions, and under such covenants, as my Agent shall deem proper and may for all deferred payments accept purchase money notes payable to me and secured by mortgages or deeds to secure debt, and may from time to time collect and cancel any of said notes, mortgages, security interests, or deeds to secure debt.

(W) (B) **Tangible personal property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are recognized under the Uniform Commercial Code as adopted at that time under the laws of the State of New Jersey or any applicable state, or otherwise hypothecate (pledge), and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper.

(W) (C) **Stock and bond transactions.** To purchase, sell, exchange, surrender, assign, redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds, or other securities in any business, association, corporation, partnership, or other legal entity, whether private or public, now or hereafter belonging to me.

(W) (D) **Commodity and option transactions.** To buy, sell, exchange, assign, convey, settle, and exercise commodities futures contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions; establish or continue option accounts for the Principal with any securities or futures broker; and, in general, exercise all powers with respect to commodities and options which the Principal could if present and under no disability.

(X) (E) **Banking and other financial institution transactions.** To make, receive, sign, endorse, execute, acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts, and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loans, credit unions, or other institutions or associations. To pay all sums of money, at any time or times, that may hereafter be owing by me upon any account, bill of exchange, check, draft, purchase, contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered by me or for me in my name, by my Agent. To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments from time to time in whole or in part. To have free access at any time or times to any safe deposit box or vault to which I might have access.

(X) (F) **Business operating transactions.** To conduct, engage in, and otherwise transact the affairs of any and all lawful business ventures of whatever nature or kind that I may now or hereafter be involved in. To organize or continue and conduct any business which term includes, without limitation, any farming, manufacturing, service, mining, retailing, or other type of business operation in any form, whether as a proprietorship, joint venture, partnership, corporation, trust, or other legal entity; operate, buy, sell, expand, contract, terminate, or liquidate any business; direct, control, supervise, manage, or participate in the operation of any business and engage, compensate, and discharge business managers, employees, agents, attorneys, accountants, and consultants; and, in general, exercise all powers with respect to business interests and operations which the Principal could if present and under no disability.

(X) (G) **Insurance and annuity transactions.** To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate or change the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts, unless the Agent is my spouse or only child.

(X) (H) **Estate, trust, and other beneficiary transactions.** To accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim, and recover any legacy, bequest, devise, gift, or other property interest or payment due or payable to or for the Principal; assert any interest in and exercise any power over any trust, estate, or property subject to fiduciary control; establish a revocable trust solely for the benefit of the Principal that terminates at the death of the Principal and is then distributable to the legal representative of the estate of the Principal; and, in general, exercise all powers with respect to estates and trusts which the Principal could exercise if present and under no disability; provided, however, that the Agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the Principal or require the trustee of any trust for the benefit of the Principal to pay income or Principal to the Agent unless specific authority to that end is given.

(X) (I) **Claims and litigation.** To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper.



☒ (J) **Personal and family maintenance.** To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others, and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper.

☒ (K) **Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or military service.** To prepare, sign, and file any claim or application for Social Security, unemployment, or military service benefits; sue for, settle, or abandon any claims to any benefit or assistance under any federal, state, local, or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service, or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service, and governmental benefits, including but not limited to Medicare and Medicaid, which the Principal could exercise if present and under no disability.

☒ (L) **Retirement plan transactions.** To contribute to, withdraw from, and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings, and other retirement plan, individual retirement account, deferred compensation plan, and any other type of employee benefit plan); select and change payment options for the Principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the Principal could if present and under no disability.

☒ (M) **Tax matters.** To prepare, to make elections, to execute, and to file all tax, Social Security, unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which I am or may be liable.

☐ (N) **ALL OF THE MATTERS LISTED ABOVE.** YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

#### **Grant of Specific Authority (Optional)**

My Agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your Agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your Agent.)

☐ Create, amend, revoke or terminate an inter vivos trust.

☐ Make a gift.

☐ Create or change rights of survivorship.

☐ Create or change a beneficiary designation.

☐ Authorize another person to exercise the authority granted under this Durable Power of Attorney.



☐ Waive the Principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.

☐ Exercise fiduciary powers that the Principal has authority to delegate.

☐ Disclaim or refuse an interest in property, including a power of appointment.

**Limitation on Agent's Authority**

An Agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the Agent or a person to whom the Agent owes an obligation of support unless I have included that authority in the Special Instructions.

**Special Instructions (Optional)**

Additional powers, if any, that are not inconsistent with the other provisions of this Durable Power of Attorney:

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The powers granted hereinabove shall not include the following powers or shall be modified or limited in the following particulars:

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Additional powers, if any, granted to the Agent with respect to any power listed above and not eliminated/struck out by the Principal:

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**Special Instructions for Gifts**

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

☐ I grant my Agent the power to apply my property to make gifts to individuals, charities, or to the Agent, up to the amount of \$500 per year, per individual or entity, without signature of the Principal, as the Agent determines to be in the Principal's best interest.

Authorization for an Agent to make gifts or transfers of \$500 or more requires the Principal to execute a Major Gifts Rider at the same time as the Durable Power of Attorney document.

☐ I grant my Agent the power to make major gifts and transfers of my property set forth under the Major Gifts Rider.

**Nomination of Guardian or Conservator (Optional)**

In the event that a court decides that it is necessary to appoint a Guardian of my person or Conservator of my estate, I hereby nominate \_\_\_\_\_, who resides at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, to be considered by the court for appointment to serve as my Guardian or Conservator, or in any similar representative capacity.

**Effective Date [Choose one and only one option.]**

(☒) This Durable Power of Attorney shall be effective immediately.

(☐) This Durable Power of Attorney shall take effect in the event that I become mentally and/or physically incapacitated, as determined and certified in writing by my treating physician, to such an extent that I am unable to independently make important decisions in regard to the management of my own property and finances.

**Durable Provision**

This Durable Power of Attorney shall not be affected by any lapse of time, and shall not be affected by the subsequent incapacity of the Principal except as provided by statute in the State of New Jersey, and all acts done by the Agent under the power granted herein during any period of the Principal's disability or incapacity shall have the same effect and inure to the benefit of and bind the Principal and Principal's successors in interest as if the Principal were competent and not disabled.

My Agent hereby accepts this appointment subject to its terms and agrees to act and perform in the said fiduciary capacity and observe the standards of care applicable to trustees as described by relevant New Jersey statute consistent with my best interests as his, her, or their best discretion deem advisable, and I affirm and ratify all acts so undertaken.

If the Agent is a corporate Agent, the Agent shall not use my assets for its benefit, nor the benefit of its officers or directors.


If this Durable Power of Attorney is revoked or terminated, such revocation or termination for any reason in accordance with law shall be ineffective as to any Agent unless and until actual notice or knowledge of such revocation or termination shall have been received by the Agent.

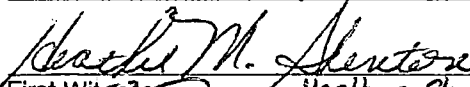
My subsequent death shall not revoke or terminate the agency granted herein as to my Agent who, without actual knowledge of my death, acts in good faith under this Durable Power of Attorney. Any action so taken, unless otherwise invalid or unenforceable, shall bind my successors in interest.


**Notice to Third Parties**

To induce any third-party to act hereunder, I hereby agree that any third-party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination shall have been received by such third-party, and I for myself and for my heirs, executors, legal representatives, and assigns, hereby agree to indemnify and hold harmless any such third-party from and against any and all claims which may arise against such third-party by reason of such third-party having relied on the provisions of this instrument.

THIS DURABLE POWER OF ATTORNEY MAY BE REVOKED OR AMENDED IN WRITING BY ME AT ANY TIME.

  
\_\_\_\_\_  
Vincent Tripicchio, Principal 10-13-20 (date)

  
\_\_\_\_\_  
First Witness Heather Shenton 10/13/20 (date)

  
\_\_\_\_\_  
Second Witness Christopher Sabb 10/13/20 (date)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF New Jersey )  
COUNTY OF Camden )

On October 13, 2020, before me, Lorrienne Zamora, a Notary Public, personally appeared Vincent Tripicchio, as Principal, and Heather Shenton, as Witness, and Christopher Sabb, as Witness, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New Jersey that the foregoing paragraph is true and correct.

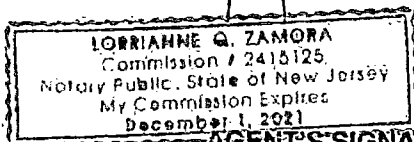
WITNESS my hand and official seal.

Signature of Notary

Affiant Known ☒ Produced ID

Type of ID New Jersey Driver's License

(Seal)



#### AGENT'S SIGNATURE AND ACKNOWLEDGMENT

##### First Agent Acknowledgment

I, \_\_\_\_\_, am the person identified as the Agent for the Principal named in this document and acknowledge my legal duties.

Date

Signature

##### Second Agent Acknowledgment (if applicable)

I, \_\_\_\_\_, am the person identified as the Agent for the Principal named in this document and acknowledge my legal duties.

Date

Signature

# Exhibit B

The UPS Store - #1155  
3111 Route 38  
Suite 11  
Mt. Laurel, NJ 08054  
(856) 234-7447

10/13/20 11:36 AM

We are the one stop for all your  
shipping, postal and business needs.

We offer all the services you need  
to keep your business going.



001 000003 (011) TO \$ 2.50

Notary

002 500282 (011) \*\*\*\*S\*\*\*\* TO \$ 12.50

Notary Convenience

SubTotal \$ 15.00

Total \$ 15.00

AMERICAN EXPRESS \$ 15.00

ACCOUNT NUMBER \* \*\*\*\*\*3013

Appr Code: 823623 (I) Sale

ENTRY METHOD: ChipRead

MODE: Issuer

AID: A000000025010801

TVR: 0800008000

TSI: F800

AC: D430AA7F14021EE8

ARC: 00

Receipt ID 83337782641592888372 002 Items

CSH: Lorrienne Tran: 6932 Reg: 001

Thank you for visiting our store.  
Please come back again soon.

Whatever your business and personal  
needs, we are here to serve you.

We're here to help.  
Join our FREE email program to receive  
great offers and resources.

[www.theupsstore.com/signup](http://www.theupsstore.com/signup)

**DeNITTIS OSEFCHEN PRINCE, P.C.**  
**Stephen P. DeNittis, Esq. (031381997)**  
**Joseph A. Osefchen, Esq. (024751992)**  
**Shane T. Prince, Esq. (022412002)**  
**525 Route 73 North, Suite 410**  
**Marlton, New Jersey 08053**  
**(856) 797-9951**

**Attorneys for Plaintiff**

VINCENT TRIPICCHIO, on behalf of himself  
and all others similarly situated,

Plaintiff

vs.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO. BUR-2219-20

**AFFIDAVIT OF SERVICE**

**Person to be Served:** **JB & A Enterprises, Inc.**  
**c/o Susan E. Kraft**  
**324 Longstone Drive**  
**Cherry Hill, NJ 08003**

**By Serving:**

**Cost of Service pursuant to R.4:4-3(c)**  
**\$ \_\_\_\_\_**

**Attorney:**

**Papers Served:**

*Summons, Lawyer referral info, complaint, track assignment & plaintiff's discovery requests*

**Service Data:** ☒ Served Successfully ( ) Not Served

**Date/Time:** 11-18-20 1:45 PM

**Attempts:** **Date/Time**  
**Date/Time**  
**Date/Time**

( ) Delivered a Copy to him/her personally

( ) Left a copy with a competent household member over  
14 years of age residing therein (indicate name and  
relationship at right)

☒ Left a copy with a person authorized to accept  
service, e.g. Managing Agent, registered agent,  
etc. (indicate name and official title at right)

**Name of Person Served and relationship/title**

Susan Kraft

**Ex. A - 034**

**Description of Person Accepting Service**

SEX: \_\_\_ AGE: \_\_\_ Height \_\_\_ Weight \_\_\_ SKIN \_\_\_ HAIR \_\_\_ OTHER: \_\_\_

**Unserved:**

- ( ) Defendant is unknown at the address furnished by the attorney  
( ) All reasonable inquiries suggest defendant moved to an undetermined address  
( ) no such street in municipality  
( ) Defendant is evading service  
( ) No response on: Date/Time \_\_\_\_\_  
Date/Time \_\_\_\_\_  
Date/Time \_\_\_\_\_

Other:

**Served Data:**

Subscribed and Sworn to me this

18 Day of NOV, 2020

Notary Signature



DAWN M. FARLEY  
NOTARY PUBLIC STATE OF NJ  
MY COMMISSION EXPIRES  
JANUARY 3, 2023

I, Dawn Mitchell,  
Was at the time of service a competent adult  
not having a direct interest in the litigation  
I declare under penalty of perjury that the  
foregoing is true and correct.

Signature of Process Server

Date

11/18/20

**DeNITTIS OSEFCHEN PRINCE, P.C.**  
**Stephen P. DeNittis, Esq. (031381997)**  
**Joseph A. Osefchen, Esq. (024751992)**  
**Shane T. Prince, Esq. (022412002)**  
**525 Route 73 North, Suite 410**  
**Marlton, New Jersey 08053**  
**(856) 797-9951**

**Attorneys for Plaintiff**

VINCENT TRIPICCHIO, on behalf of himself  
and all others similarly situated,

Plaintiff

vs.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO. BUR-2219-20

**AFFIDAVIT OF SERVICE**

**Person to be Served:**     **The UPS Store, Inc.**  
                                      **c/o Corporation Service Company**  
                                      **Princeton South Corporate Center, Suite 160**  
                                      **100 Charles Ewing Blvd.**  
                                      **Ewing, NJ 08628**

**By Serving:**

**Cost of Service pursuant to R.4:4-3(c)**  
**\$** \_\_\_\_\_

**Attorney:**

**Papers Served:**

*Summons, Lawyer referral info, complaint, track assignment & plaintiff's discovery requests*

**Service Data:**     ☒ **Served Successfully**     ( ) **Not Served**

**Date/Time:** 11-19-20 1:50 PM

**Attempts:**     **Date/Time**  
                          **Date/Time**  
                          **Date/Time**

( ) **Delivered a Copy to him/her personally**

( ) **Left a copy with a competent household member over**  
      **14 years of age residing therein (indicate name and**  
      **relationship at right**

☒ **Left a copy with a person authorized to accept**  
      **service, e.g. Managing Agent, registered agent,**  
      **etc. (indicate name and official title at right)**

**Name of Person Served and relationship/title**

JOHANNE MYERS  
SPECIALIST

**Ex. A - 036**





**SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW**

The following clerk notice is being sent from eCourts:

Plaintiff Name: VINCENT TRIPICCHIO  
Defendant Name: JB & A ENTERPRISES I NC, THE UPS STORE INC  
Case Caption: TRIPICCHIO VINCENT VS THE UPS STORE  
Case Number: BUR L 002219-20  
Docket Text: **CLERK NOTICE:** re: NOTICE OF APPEARANCE (NOT THE FIRST PAPER) LCV2021245600 -Your account was charged 1st paper fee of \$175. Thank you!  
Transaction ID: LCV2021247497

**Notice has been electronically mailed to:**

Plaintiff Attorney	STEPHEN P DE NITTIS	SDENITTIS@DENITTISLAW.COM DAWN@DENITTISLAW.COM SPRINCE@DENITTISLAW.COM
Defendant Attorney	MATTHEW B JOHNSON	MBJOHNSON@GRSM.COM VLINCK@GRSM.COM

**Notice was not electronically mailed to:**

Defendant	THE UPS STORE INC	NJ 00000
-----------	-------------------	----------

Login to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey Civil Division in county of venue.

This communication is for notification purposes only.

This email was sent from a notification-only address that cannot accept incoming mail. Please do not reply to this message.

**SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW**

The following deficiency notice is being sent from eCourts:

Plaintiff Name: VINCENT TRIPICCHIO  
Defendant Name: JB & A ENTERPRISES I NC, THE UPS STORE INC  
Case Caption: TRIPICCHIO VINCENT VS THE UPS STORE  
Case Number: BUR L 002219-20  
Docket Text: **DEFICIENCY NOTICE:** re: STIPULATION TO EXTEND TIME FOR ANSWER LCV2021246332 -Stip ext time to ans MUST be accompanied by the Answer, a completed Case Information Statement and the approp filing fee. Pursuant to R. 4:6-1 (c), a Stip to ext time to ans shall be filed with the responsive pleading within said 60 day period.  
Transaction ID: LCV2021247507

**Notice has been electronically mailed to:**

Plaintiff Attorney	STEPHEN P DE NITTIS	SDENITTIS@DENITTISLAW.COM DAWN@DENITTISLAW.COM SPRINCE@DENITTISLAW.COM
Defendant Attorney	MATTHEW B JOHNSON	MBJOHNSON@GRSM.COM VLINCK@GRSM.COM

**Notice was not electronically mailed to:**

Defendant	THE UPS STORE INC	NJ 00000
-----------	-------------------	----------

Login to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey Civil Division in county of venue.

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**GORDON REES SCULLY MANSUKHANI, LLP**

Andrew M. Schwartz (ID 037271996)

Matthew B. Johnson (ID 259382018)

One Battery Park Plaza, 28th Fl.

New York, New York 10004

Phone: (212) 453-0767

Email: amschwartz@grsm.com

mbjohnson@grsm.com

*Attorneys for Defendant JB & A Enterprises, Inc.*

VINCENT TRIPICCHIO, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO.: BUR-L-002219-20

**NOTICE OF APPEARANCE OF  
MATTHEW B. JOHNSON**

Kindly enter the appearance of Matthew B. Johnson, Esquire on behalf of Defendant JB  
& A Enterprises, Inc.

**Gordon & Rees LLP**

By: /s/ Matthew B. Johnson  
Matthew B. Johnson

Dated: February 2, 2021

Ex. A - 040

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2021, I electronically filed the foregoing with the Clerk of the Court using the NJ ecourts' system, which shall send notification of such filing to all known counsel of record.

Dated: February 2, 2021

/s/ Matthew B. Johnson

**GORDON REES SCULLY MANSUKHANI, LLP**

Andrew M. Schwartz (ID 037271996)

Matthew B. Johnson (ID 259382018)

One Battery Park Plaza, 28th Fl.

New York, New York 10004

Phone: (212) 453-0767

Email: amschwartz@grsm.com

mbjohnson@grsm.com

*Attorneys for Defendant JB & A Enterprises, Inc.*

VINCENT TRIPICCHIO, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO.: BUR-L-002219-20

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**STIPULATION TO EXTEND TIME FOR DEFENDANT  
JB & A ENTERPRISES, INC. TO FILE RESPONSIVE PLEADING**

---

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned  
counsel for Plaintiff Vincent Tripicchio and Defendant JB & A Enterprises, Inc. in the above  
entitled-action that the time for Defendants to answer, move, or otherwise respond to Plaintiffs'  
Complaint shall be extended to February 20, 2021.

**DeNittis Osefchen Prince, P.C.**  
*Attorneys for Plaintiff*

By: /s/ Stephen DeNittis

Stephen DeNittis  
525 Route 73 North, Suite 410  
Marlton, New Jersey 08053

**Gordon & Rees LLP**  
*Attorneys for Defendant JB & A Enterprises,  
Inc.*

By: 

Matthew B. Johnson  
One Battery Park Plaza, 28th Fl.  
New York, New York 10004

Dated: February 2, 2021

Dated: February 1, 2021

**Ex. A - 042**

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2021, I electronically filed the foregoing with the Clerk of the Court using the NJ ecourts' system, which shall send notification of such filing to all known counsel of record.

Dated: February 2, 2021

/s/ Matthew B. Johnson

**SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW**

The following notice is being sent from eCourts:

Plaintiff Name: VINCENT TRIPICCHIO  
Defendant Name: JB & A ENTERPRISES I NC, THE UPS STORE INC  
Case Caption: TRIPICCHIO VINCENT VS THE UPS STORE  
Case Number: BUR L 002219-20  
Docket Text: The motion filed on 02/12/2021 will be decided on 03/05/2021. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION EXTENDING TIME FOR FILING OF DOCUMENT LCV2021343965  
Transaction ID: LCV2021362586

**Notice has been electronically mailed to:**

Plaintiff Attorney	STEPHEN P DE NITTIS	SDENITTIS@DENITTISLAW.COM DAWN@DENITTISLAW.COM SPRINCE@DENITTISLAW.COM
Defendant Attorney	MATTHEW B JOHNSON	MBJOHNSON@GRSM.COM VLINCK@GRSM.COM

**Notice was not electronically mailed to:**

Defendant	THE UPS STORE INC	NJ 00000
-----------	-------------------	----------

Login to eCourts to view the case jacket. You will need a valid user ID(Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey Civil Division in county of venue.

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**SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW**

The following clerk notice is being sent from eCourts:

Plaintiff Name: VINCENT TRIPICCHIO  
Defendant Name: JB & A ENTERPRISES I NC, THE UPS STORE INC  
Case Caption: TRIPICCHIO VINCENT VS THE UPS STORE  
Case Number: BUR L 002219-20  
Docket Text: **CLERK NOTICE:** re: NOTICE OF APPEARANCE (NOT THE FIRST PAPER) LCV2021402375 -Appearance is the 1st paper for defendant, UPS Store Inc. Your account has been charged required \$175 filing fee. Thank you!  
Transaction ID: LCV2021411192

**Notice has been electronically mailed to:**

Plaintiff Attorney	STEPHEN P DE NITTIS	SDENITTIS@DENITTISLAW.COM DAWN@DENITTISLAW.COM SPRINCE@DENITTISLAW.COM
Defendant Attorney	MATTHEW B JOHNSON	MBJOHNSON@GRSM.COM VLINCK@GRSM.COM
Filer Attorney	FIOCCOLA, DAVID, JOHN	DFIOCCOLA@MOFO.COM DOCKETNY@MOFO.COM JROY@MOFO.COM

**Notice was not electronically mailed to:**

Defendant	THE UPS STORE INC	NJ 00000
-----------	-------------------	----------

Login to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey Civil Division in county of venue.

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Andrew M. Schwartz (ID 037271996)

Matthew B. Johnson (ID 259382018)

One Battery Park Plaza, 28th Fl.

New York, New York 10004

Phone: (212) 453-0767

Email: amschwartz@grsm.com

mbjohnson@grsm.com

*Attorneys for Defendant JB & A Enterprises, Inc.*

VINCENT TRIPICCHIO, on behalf of  
himself and all others similarly  
situated,

Plaintiff,

v.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO.: BUR-L-002219-20

~~PROPOSED~~ ORDER

This matter having been brought before the Court on Motion by Defendants The UPS Store, Inc. and JB & A Enterprises, Inc. (together “Defendants”), by their respective attorneys, for an Order granting an extension of time to file an Answer or otherwise respond to the Complaint, setting down a date for an initial Case Management Conference and staying the time for Defendants to respond to Plaintiff’s discovery demands;

IT IS on this 5th day of March, 2021,

**ORDERED** that Defendants’ Motion be and hereby is granted; and

**IT IS FURTHER ORDERED** that Defendants shall file an Answer or otherwise respond to the Complaint on or before April 20, 2021; and

**IT IS FURTHER ORDERED** that an Initial Case Management Conference in this matter is scheduled for May 3rd, 2021 at 2:00 PM and

**IT IS FURTHER ORDERED** that the time for Defendants to respond to Plaintiff's discovery demands be and hereby is stayed pending a discovery schedule to be established at the Initial Case Management Conference; and

**IT IS FURTHER ORDERED** that a copy of this Order shall be served on all parties within 7 days of the date ~~hereof~~ of receipt unless otherwise served via eCourts.

/s/Aimee R. Belgard  
AIMEE R. BELGARD, P.J. Cv., **J.S.C.**

[ ] Opposed  
[ X ] Unopposed

BURLINGTON SUPERIOR COURT  
49 RANCOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM  
CV0555

MARCH 12, 2021

TO: DAVID J FIOCCOLA  
MORRISON & FOERSTER LLP  
250 W 55TH STREET  
NEW YORK NY 10019

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

A CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR THIS CASE ON MAY 03,  
2021 AT 02:00PM BEFORE JUDGE AIMEE R BELGARD.

PLEASE REPORT TO: COURT ROOM REMOT  
CONTACT THE COURT FOR DETAILS ON WHETHER THE  
PROCEEDING WILL BE HELD BY VIDEO OR PHONE OR PAPER.

BURLINGTON SUPERIOR COURT  
49 RANOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM  
CV0555

MARCH 12, 2021

TO: MATTHEW B JOHNSON  
GORDON REES SCULLY MANSUKHANI  
ONE BATTERY PARK PLZ 28TH FL  
NEW YORK NY 10004

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

A CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR THIS CASE ON MAY 03,  
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BURLINGTON SUPERIOR COURT  
49 RANCOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM

MARCH 12, 2021

CV0555

TO: STEPHEN P DE NITTIS  
DE NITTIS OSEFCHEN AND PRINCE  
5 GREENTREE CENTRE  
525 ROUTE 73 NORTH STE 410  
MARLTON NJ 08053

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

A CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR THIS CASE ON MAY 03,  
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BURLINGTON SUPERIOR COURT  
49 RANOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM  
CV0555

MARCH 12, 2021

TO: DAVID J FIOCCOLA  
MORRISON & FOERSTER LLP  
250 W 55TH STREET  
NEW YORK NY 10019

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

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PLEASE REPORT TO: COURT ROOM REMOT  
CONTACT THE COURT FOR DETAILS ON WHETHER THE  
PROCEEDING WILL BE HELD BY VIDEO OR PHONE OR PAPER.

BURLINGTON SUPERIOR COURT  
49 RANCOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM  
CV0555

MARCH 12, 2021

TO: MATTHEW B JOHNSON  
GORDON REES SCULLY MANSUKHANI  
ONE BATTERY PARK PLZ 28TH FL  
NEW YORK NY 10004

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

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2021 AT 02:00PM BEFORE JUDGE AIMEE R BELGARD.

PLEASE REPORT TO: COURT ROOM REMOT  
CONTACT THE COURT FOR DETAILS ON WHETHER THE  
PROCEEDING WILL BE HELD BY VIDEO OR PHONE OR PAPER.



BURLINGTON SUPERIOR COURT  
49 RANCOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM

MARCH 12, 2021

CV0555

TO: STEPHEN P DE NITTIS  
DE NITTIS OSEFCHEN AND PRINCE  
5 GREENTREE CENTRE  
525 ROUTE 73 NORTH STE 410  
MARLTON NJ 08053

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

A CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR THIS CASE ON MAY 03,  
2021 AT 02:00PM BEFORE JUDGE AIMEE R BELGARD.

PLEASE REPORT TO: COURT ROOM REMOT  
CONTACT THE COURT FOR DETAILS ON WHETHER THE  
PROCEEDING WILL BE HELD BY VIDEO OR PHONE OR PAPER.

**GORDON REES SCULLY MANSUKHANI, LLP**

Andrew M. Schwartz (ID 037271996)

Matthew B. Johnson (ID 259382018)

One Battery Park Plaza, 28th Fl.

New York, New York 10004

Phone: (212) 453-0767

Email: amschwartz@grsm.com

mbjohnson@grsm.com

*Attorneys for Defendant JB & A Enterprises, Inc.*

VINCENT TRIPICCHIO, on behalf of  
himself and all others similarly  
situated,

Plaintiff,

v.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO.: BUR-L-002219-20

~~PROPOSED~~ ORDER

This matter having been brought before the Court on Motion by Defendants The UPS Store, Inc. and JB & A Enterprises, Inc. (together “Defendants”), by their respective attorneys, for an Order granting an extension of time to file an Answer or otherwise respond to the Complaint, setting down a date for an initial Case Management Conference and staying the time for Defendants to respond to Plaintiff’s discovery demands;

IT IS on this 5th day of March, 2021,

**ORDERED** that Defendants’ Motion be and hereby is granted; and

**IT IS FURTHER ORDERED** that Defendants shall file an Answer or otherwise respond to the Complaint on or before April 20, 2021; and

**IT IS FURTHER ORDERED** that an Initial Case Management Conference in this matter is scheduled for May 3rd, 2021 at 2:00 PM and

**IT IS FURTHER ORDERED** that the time for Defendants to respond to Plaintiff's discovery demands be and hereby is stayed pending a discovery schedule to be established at the Initial Case Management Conference; and

**IT IS FURTHER ORDERED** that a copy of this Order shall be served on all parties within 7 days of the date ~~hereof~~ of receipt unless otherwise served via eCourts.

/s/Aimee R. Belgard  
AIMEE R. BELGARD, P.J. Cv., **J.S.C.**

[ ] Opposed  
[ X ] Unopposed

**SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW**

The following clerk notice is being sent from eCourts:

Plaintiff Name: VINCENT TRIPICCHIO  
Defendant Name: JB & A ENTERPRISES I NC, THE UPS STORE INC  
Case Caption: TRIPICCHIO VINCENT VS THE UPS STORE  
Case Number: BUR L 002219-20  
Docket Text: **CLERK NOTICE:** re: CONSENT ORDER LCV2021985453 -The CMC scheduled for Monday is still on so Judge Belgard can check in with the parties. Thank you.  
Transaction ID: LCV20211095970

**Notice has been electronically mailed to:**

Plaintiff Attorney	STEPHEN P DE NITTIS	SDENITTIS@DENITTISLAW.COM DAWN@DENITTISLAW.COM SPRINCE@DENITTISLAW.COM
Defendant Attorney	MATTHEW B JOHNSON	MBJOHNSON@GRSM.COM VLINCK@GRSM.COM
Defendant Attorney	DAVID JOHN FIOCCOLA	DFIOCCOLA@MOFO.COM DOCKETNY@MOFO.COM JROY@MOFO.COM

**Notice was not electronically mailed to:**

Login to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey Civil Division in county of venue.

This communication is for notification purposes only.

This email was sent from a notification-only address that cannot accept incoming mail. Please do not reply to this message.

**SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW**

The following notice is being sent from eCourts:

Plaintiff Name: VINCENT TRIPICCHIO  
Defendant Name: JB & A ENTERPRISES I NC, THE UPS STORE INC  
Case Caption: TRIPICCHIO VINCENT VS THE UPS STORE  
Case Number: BUR L 002219-20  
Docket Text: The motion filed on 04/30/2021 will be decided on 05/28/2021. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR ADMISSION PRO HAC VICE LCV20211104771  
Transaction ID: LCV20211112528

**Notice has been electronically mailed to:**

Plaintiff Attorney	STEPHEN P DE NITTIS	SDENITTIS@DENITTISLAW.COM DAWN@DENITTISLAW.COM SPRINCE@DENITTISLAW.COM
Defendant Attorney	MATTHEW B JOHNSON	MBJOHNSON@GRSM.COM VLINCK@GRSM.COM
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BURLINGTON SUPERIOR COURT  
49 RANCOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM  
CV0555

MAY 03, 2021

TO: DAVID J FIOCCOLA  
MORRISON & FOERSTER LLP  
250 W 55TH STREET  
NEW YORK NY 10019

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

A CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR THIS CASE ON JULY 07,  
2021 AT 02:00PM BEFORE JUDGE SANDER D FRIEDMAN.

PLEASE REPORT TO: COURT ROOM REMOT  
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MAY 03, 2021

TO: MATTHEW B JOHNSON  
GORDON REES SCULLY MANSUKHANI  
ONE BATTERY PARK PLZ 28TH FL  
NEW YORK NY 10004

DOCKET: BUR - L -002219-20  
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MAY 03, 2021

TO: ANDREW M SCHWARTZ  
GORDON REES SCULLY MANSUKHANI  
1717 ARCH ST  
STE 610  
PHILADELPHIA PA 19103

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MAY 03, 2021

CV0555

TO: STEPHEN P DE NITTIS  
DE NITTIS OSEFCHEN AND PRINCE  
5 GREENTREE CENTRE  
525 ROUTE 73 NORTH STE 410  
MARLTON NJ 08053

DOCKET: BUR - L -002219-20  
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**GORDON REES SCULLY MANSUKHANI, LLP**

Andrew M. Schwartz (ID 037271996)

Three Logan Square

1717 Arch Street, Suite 610

Philadelphia, PA 19103

Phone: (215) 717-4023

Email: [amschwartz@grsm.com](mailto:amschwartz@grsm.com)

*Attorneys for Defendant JB & A Enterprises, Inc.*

**VINCENT TRIPICCHIO**, on behalf of  
himself and all others similarly  
situated,

Plaintiff,

v.

**THE UPS STORE, INC.** and **JB & A  
ENTERPRISES, INC.**,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO.: BUR-L-002219-20

**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that Andrew M. Schwartz, from the law firm of  
Gordon Rees Scully Mansukhani, LLP, hereby appears as counsel of record for  
defendant JB&A Enterprises, Inc.

Dated: Philadelphia, Pennsylvania  
April 3, 2021

GORDON REES SCULLY  
MANSUKHANI, LLP

By: Andrew M. Schwartz  
Andrew M. Schwartz  
Three Logan Square  
1717 Arch Street, Suite 610  
Philadelphia, PA 19103  
☎ 215-717-4023  
📠 215-693-6650  
✉ [amschwartz@grsm.com](mailto:amschwartz@grsm.com)  
Counsel for Defendant, JB&A  
Enterprises, Inc

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2021, I electronically filed the forgoing Notice of Appearance using the New Jersey eCourts system, which will send electronic notification of this filing to all counsel of record.

Dated: Philadelphia, Pennsylvania  
April 3, 2021

GORDON REES SCULLY  
MANSUKHANI, LLP

By: Andrew M. Schwartz  
Andrew M. Schwartz  
Three Logan Square  
1717 Arch Street, Suite 610  
Philadelphia, PA 19103  
☎ 215-717-4023  
📠 215-693-6650  
✉ amschwartz@grsm.com  
Counsel for Defendant, JB&A  
Enterprises, Inc

BURLINGTON SUPERIOR COURT  
49 RANCOCAS ROAD  
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MOUNT HOLLY NJ 08060

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MAY 03, 2021

TO: DAVID J FIOCCOLA  
MORRISON & FOERSTER LLP  
250 W 55TH STREET  
NEW YORK NY 10019

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TRIPICCHIO VINCENT VS THE UPS STORE

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GORDON REES SCULLY MANSUKHANI  
ONE BATTERY PARK PLZ 28TH FL  
NEW YORK NY 10004

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MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
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CV0555

MAY 03, 2021

TO: ANDREW M SCHWARTK  
GORDON REES SCULLY MANSUZHANI  
1F1F ARCH ST  
STE 610  
PHILADELPHIA PA 19103

DOCZET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE

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MAY 03, 2021

TO: STEPHEN P DE NITTIS  
DE NITTIS OSEFCHEN AND PRINCE  
5 GREENTREE CENTRE  
525 ROUTE 73 NORTH STE 410  
MARLTON NJ 08053

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**LCV20211104771**

VINCENT TRIPICCHIO, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

THE UPS STORE, INC. and JB & A  
ENTERPRISES, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY

DOCKET NO. BUR-L-002219-20

CIVIL ACTION

**ORDER ADMITTING MARK R.  
McDONALD, ESQ. *PRO HAC VICE***

**THIS MATTER HAVING COME** before the Court on Motion of David J. Fioccola, Esq., counsel for defendant The UPS Store, Inc., the Court having reviewed the papers filed in support of this Motion, and for good cause shown,

**IT IS** on this 3rd day of June, 2021,

**ORDERED AS FOLLOWS,**

**THAT** Mark R. McDonald, Esq. is hereby admitted *pro hac vice* in the above-captioned matter pursuant to Rule 1:21-2; and

**THAT** Mark R. McDonald, Esq. shall abide by the Rules Governing the Courts of the State of New Jersey, including all disciplinary rules; and

**THAT** Mark R. McDonald, Esq. shall consent to the appointment of the Clerk of the Supreme Court of the State of New Jersey as the agent upon whom service of process may be made for all actions against Mr. McDonald or his firm that may arise out of Mr. McDonald's participation in this matter; and

**THAT** Mark R. McDonald, Esq. shall notify the Court immediately of any matter affecting his standing at the bar of any other court; and



**THAT** Mark R. McDonald, Esq. shall have all pleadings, briefs and other papers filed with the Court signed by an attorney of record who is authorized to practice law in the State of New Jersey, who shall be held responsible for them, for the conduct of this matter, and for the conduct of Mr. McDonald; and

**THAT** Mark R. McDonald, Esq. shall not be designated as trial counsel;

**THAT** Mark R. McDonald, Esq. shall within ten (10) days of the date of this Order, comply with Rules 1:20-1(b), 1:28B-1(e) and 1:28-2 by paying the appropriate fees to the New Jersey Lawyer's Assistance Program and the New Jersey Lawyers' Fund for Client Protection; and

**THAT** Mark R. McDonald, Esq. shall pay the appropriate fees to the New Jersey Lawyer's Assistance Program and the New Jersey Lawyers' Fund for Client Protection on or before February 1 of every year, or such other date as the Court may determine, and confirm his compliance; and

**THAT** automatic termination of the admission of Mark R. McDonald, Esq. *pro hac vice* shall occur for failure to make the required annual fees to the New Jersey Lawyer's Assistance Program and the New Jersey Lawyers' Fund for Client Protection.

**THAT** no adjournment or delay in discovery, motion practice, trial or any other proceeding will be requested by reason of Mark R. McDonald's inability to appear; and

**THAT** noncompliance with any of these requirements shall constitute grounds for termination of the admission of Mark R. McDonald, Esq. *pro hac vice*; and

**THAT** a copy of this Order shall be served on all parties within seven (7) days of the date of this Order.

/s/Aimee R. Belgard  
HON. AIMEE R. BELGARD, P.J. Cv.

BURLINGTON SUPERIOR COURT  
49 RANCOCAS ROAD  
PO BOX 6555  
MOUNT HOLLY NJ 08060

TELEPHONE: (609) 288-9500  
8:30 AM - 4:30 PM  
CV0555

JUNE 23, 2021

TO: DAVID J FIOCCOLA  
MORRISON & FOERSTER LLP  
250 W 55TH STREET  
NEW YORK NY 10019

DOCKET: BUR - L -002219-20  
TRIPICCHIO VINCENT VS THE UPS STORE \*ARB

A CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR THIS CASE ON JULY 19,  
2021 AT 01:30PM BEFORE JUDGE SANDER D FRIEDMAN.

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JUNE 23, 2021

TO: MATTHEW B JOHNSON  
GORDON REES SCULLY MANSUKHANI  
ONE BATTERY PARK PLZ 28TH FL  
NEW YORK NY 10004

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-----X		
VINCENT TRIPICCHIO, on behalf of himself and	:	SUPERIOR COURT OF
others similarly situated,	:	NEW JERSEY
	:	
Plaintiff,	:	LAW DIVISION – BURLINGTON
	:	COUNTY
-against-	:	
THE UPS STORE, INC. and JB & A	:	DOCKET NO.: BUR-2219-20
ENTERPRISES, INC.,	:	
	:	<b>[PROPOSED] CASE</b>
Defendants.	:	<b>MANAGEMENT ORDER</b>
	:	
-----X		

Defendants The UPS Store, Inc. (“TUPSS, Inc.”) and JB & A Enterprises, Inc. (“JB & A”), and Plaintiff Vincent Tripicchio appeared before a Case Management Conference before this Honorable Court on July 19, 2021 and subsequent to hearing from the parties this Honorable Court enters the following Case Management Order;

**IT IS** on this \_\_ day of July, 2021,

**ORDERED AS FOLLOWS,**

1. **THAT** Defendants’ response to the Complaint shall be filed on or before September 30, 2021; and
2. **THAT** this matter for discovery purposes shall be changed from a TRACK II case to a TRACK III case.

Dated: July \_\_, 2021

\_\_\_\_\_  
Hon. Sander D. Friedman, .J.S.C.

-----X		
VINCENT TRIPICCHIO, on behalf of himself and	:	SUPERIOR COURT OF
others similarly situated,	:	NEW JERSEY
	:	
Plaintiff,	:	LAW DIVISION – BURLINGTON
	:	COUNTY
-against-	:	
THE UPS STORE, INC. and JB & A	:	DOCKET NO.: BUR-2219-20
ENTERPRISES, INC.,	:	
	:	<del>PROPOSED</del> CASE
Defendants.	:	MANAGEMENT ORDER
	:	
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IT IS on this <sup>23rd</sup> \_\_\_ day of July, 2021,

**ORDERED AS FOLLOWS,**

1. **THAT** Defendants’ response to the Complaint shall be filed on or before September 30, 2021; and

2. **THAT** this matter for discovery purposes shall <sup>remain</sup> ~~be changed from~~ TRACK II

~~XXXXXXXXXXXXXXXXXXXX~~ at this time and discovery issues should be brought to the Courts ~~case to a TRACK III case.~~ attention as they arise.

Dated: July \_\_, 2021

Sander Friedman  
Hon. Sander D. Friedman, .J.S.C.

# **EXHIBIT B**

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1612-20**

BARBARA MCLAREN,  
on behalf of herself and  
others similarly situated,

Plaintiff-Respondent,

v.

THE UPS STORE, INC.,  
TURQUOISE TERRAPIN, LLC,  
formerly d/b/a UPS STORE #4122,  
RK & SP SERVICES, LLC,  
formerly d/b/a UPS STORE #4122,  
HAMILTON PACK N SHIP, LLC,  
in their own right and as  
representatives of a class of  
similarly situation UPS STORE  
franchisees,

Defendants-Appellants.

---

Argued May 10, 2021 – Decided July 22, 2021

Before Judges Messano, Hoffman, and Suter.

On appeal from an interlocutory order of the Superior  
Court of New Jersey, Law Division, Mercer County,  
Docket No. L-0919-20.

Joseph R. Palmore (Morrison & Foerster, LLP) of the District of Columbia bar, admitted pro hac vice, argued the cause for appellants (Morrison & Foerster, LLP, attorneys; David J. Fioccola, Adam J. Hunt, and Mark R. McDonald (Morrison & Foerster, LLP) of the California bar, admitted pro hac vice, on the briefs).

Jared M. Placitella argued the cause for respondent (Cohen, Placitella & Roth, PC, attorneys; Jared M. Placitella, Caroline Ramsey Taylor (Whitfield Bryson, LLP) of the Tennessee bar, admitted pro hac vice, and Daniel K. Bryson and Jeremy R. Williams (Whitfield Bryson, LLP) of the North Carolina bar, admitted pro hac vice, of counsel and on the briefs).

#### PER CURIAM

In this putative class action, we granted defendant, RK & SP Services LLC, leave to appeal from the Law Division's order denying defendant's motion to dismiss the complaint brought by plaintiff Barbara McLaren individually and as representative of a class. Our February 18, 2021 order limited our review to plaintiff's individual claims premised upon defendant's "alleged violation of N.J.S.A. 22A:4-14."<sup>1</sup> That statute provides:

For a service specified in this section, foreign commissioners of deeds, notaries public, judges and

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<sup>1</sup> Plaintiff alleged that defendant, a franchisee of defendant The UPS Store, Inc. (TUPPS), was the owner of "UPS Store #4122," and the other individually named defendants were defendant's predecessor and successor in interest. Given the limitation of our order, we use the singular "defendant" throughout this opinion.

other officers authorized by law to perform such service, shall receive a fee as follows:

For administering an oath or taking an affidavit, \$2.50.

For taking proof of a deed, \$2.50.

For taking all acknowledgments, \$2.50.

For administering oaths, taking affidavits, taking proofs of a deed, and taking acknowledgments of the grantors in the transfer of real estate, regardless of the number of such services performed in a single transaction to transfer real estate, \$15.00.

For administering oaths, taking affidavits and taking acknowledgments of the mortgagors in the financing of real estate, regardless of the number of such services performed in a single transaction to finance real estate, \$25.00.

[N.J.S.A. 22A:4-14 (the Statute) (emphasis added).]

Because this appeal comes to us from the denial of defendant's motion to dismiss the complaint for failure to state a claim, "[w]e . . . treat [plaintiff's] version of the facts as uncontradicted and accord it all legitimate inferences. We pass no judgment on the truth of the facts alleged; we accept them as fact only for the purpose of reviewing the motion to dismiss." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005) (citing R. 4:6-2(e)). The critical concern is whether, upon review of the complaint, exhibits attached thereto and matters of public record, there exists "the fundament of a cause of action"; "the ability of

the plaintiff to prove its allegations is not at issue." Id. at 183 (citing Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)).

We review a decision denying a motion to dismiss for failure to state a claim de novo applying the same standard as the Law Division judge. MasTec Renewables Constr. Co. v. SunLight Gen. Mercer Solar, LLC, 462 N.J. Super. 297, 309 (App. Div. 2020) (citing Castello v. Wohler, 446 N.J. Super. 1, 14 (App. Div. 2016)). Moreover, when analyzing pure questions of law raised in a dismissal motion, such as the application of a statute of limitations, we undertake a de novo review. Smith v. Datla, 451 N.J. Super. 82, 88 (App. Div. 2017) (citing Royster v. N.J. State Police, 227 N.J. 482, 493 (2017); Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013)).

## I.

On August 26, 2019, plaintiff visited UPS Store #4122 in Hamilton Square, owned at the time by defendant. She sought a notary to take her affidavit on an L-8 Form for the Division of Taxation and to acknowledge her signature on a bank form. Defendant charged plaintiff five dollars per document, for a total of ten dollars. Plaintiff filed this complaint, alleging the following causes of action against defendant: violation of the Statute; violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -226; unjust enrichment; and civil



conspiracy. She sought bilateral certification of a class of all customers in New Jersey charged fees in excess of those permitted by the Statute by a defendant class of TUPPS franchisees who charged excessive fees to notarize documents.

Defendant moved to dismiss the complaint before filing an answer, contending it failed to state a cause of action; defendant also sought to strike plaintiff's class allegations. The judge heard legal argument on the motion.

In a written decision, after reciting the relevant case law and the parties' contentions and arguments, the judge concluded "[t]he actual interpretation of the [S]tatute and how parties have perceived [it] cannot be established without further evidence. There are clearly triable issues of fact here, and . . . the matter must be allowed to proceed." The judge denied defendant's motion.<sup>2</sup>

## II.

Defendant repeats the same arguments made in the Law Division. It contends the plain meaning of the Statute is clear — by using the phrase "shall receive," the Legislature signified a "minimum fee" for a notary's service in administering an oath or taking an affidavit, not "a maximum limit" as to what

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<sup>2</sup> The judge granted the motion as to count five of plaintiff's complaint which separately sought equitable and injunctive relief. The judge concluded this was not a claim but "rather a remedy, a prayer for relief." He "converted" the fifth count to "a request for relief" and dismissed count five. Plaintiff did not seek leave to appeal that portion of the order.

a business may charge for such services. Defendant contends the Statute's plain meaning is confirmed by "statutory context and canons of construction," and "subsequent legislative history and secondary sources" do not "alter [the Statute's] plain meaning." Lastly, defendant contends the Statute does not "infer" any private right of action for alleged violations.

Plaintiff agrees the Statute is not ambiguous — simply put, it "sets the price that can be charged for notary services." Plaintiff contends this construction is supported by canons of statutory interpretation, legislative history, and secondary sources. Plaintiff also argues the Statute implicitly creates a cause of action for its violation, and any violation is also actionable under the CFA.

"The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature[,]" Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012), and "the best indicator of that intent is the statutory language" which should be given its "ordinary meaning and significance." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (first citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003); and then citing Lane v. Holderman, 23 N.J. 304, 313 (1957)). "We construe the words of a statute 'in context with related provisions so as to give sense to the legislation as a whole.'" Spade v. Select Comfort Corp., 232 N.J.

504, 515 (2018) (quoting N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 570 (2017)).

Courts may not "rewrite a plainly written statute or . . . presume that the Legislature meant something other than what it conveyed in its clearly expressed language." Murray, 210 N.J. at 592 (citing DiProspero, 183 N.J. at 492). "If the plain language leads to a clear and unambiguous result, then our interpretive process is over." Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 386 (2016) (quoting Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007)). "We rely on extrinsic evidence of legislative intent 'only when the statute is ambiguous, the plain language leads to a result inconsistent with any legitimate public policy objective, or it is at odds with a general statutory scheme.'" Spade, 232 N.J. at 515 (quoting Shelton v. Restaurant.com, Inc., 214 N.J. 419, 429 (2013)).

Defendant contends the Statute "creates an entitlement for notaries to be compensated, not a restriction on what they or their employers may charge." Plaintiff counters that the plain language of the Statute — a notary "shall receive a fee" — evidences the Legislature's intent to limit the fee for performance of the outlined services. With both sides arguing diametrically opposed views of the Statute's plain meaning, we might assume some ambiguity regarding the

Legislature's choice of words. See, e.g., MasTec Renewables, 462 N.J. Super. at 320 (noting ambiguity in a statute if its wording "leads to more than one plausible interpretation" (quoting State v. Twiggs, 233 N.J. 513, 532 (2018))). However, we are inclined to agree with plaintiff.

Shall means "[h]as a duty to; more broadly, is required to." Black's Law Dictionary 1653 (11th ed. 2019). "When according statutes their plain meaning, 'the word "may" ordinarily is permissive and the word "shall" generally is mandatory.'" In re State Bd. of Educ.'s Denial of Petition, 422 N.J. Super. 521, 532 (App. Div. 2011) (quoting Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 325 (2000)). "In . . . rare situations, the word 'shall' conveys only a suggestion that something be done, rather than a mandate to do it." Ibid. But, only "[i]f no public benefit ensues and no private right is insured by according the word 'shall' an imperative meaning, . . . is [it] to be construed as directory rather than mandatory." State v. Jorn, 340 N.J. Super. 192, 196 (App. Div. 2001) (quoting Franklin Ests. v. Twp. of Edison, 142 N.J. Super. 179, 184 (App. Div. 1976), aff'd, 73 N.J. 462 (1977)).

Pursuant to the Notaries Public Act (the NPA), N.J.S.A. 52:7-10 to -21, notaries are appointed by the State Treasurer for a five-year term "but may be

removed from office at the pleasure of the State Treasurer." N.J.S.A. 52:7-11(a). A notary must "subscribe an oath" and "indorse a certificate of commission and qualification." N.J.S.A. 52:7-14(a) and (b). Notaries may be denied appointment or re-appointment if convicted of certain crimes. N.J.S.A. 52:7-20; N.J.S.A. 52:7-21.

The Legislature generally has provided notaries public with the authority to administer oaths and take affidavits since 1864. State v. Eisenstein, 16 N.J. Super. 8, 12 (App. Div. 1951) (citing L. 1864, p. 15; Rev. 1877, p. 740). N.J.S.A. 41:2-1 lists those "officers" empowered to administer oaths and take affidavits; notaries public are included, along with justices of the Supreme Court, judges, mayors, surrogates, sheriffs and clerks of court. Notaries public and attorneys are in a short list of otherwise public officials "authorized to take acknowledgments or proofs." N.J.S.A. 46:14-6.1(a).<sup>3</sup>

Our point is simple. As Chief Justice Weintraub said, "The notary holds a public office . . . [and] exercises a power he [or she] receives from government rather than from someone who happens to be his private employer." Com. Union Ins. Co. v. Burt Thomas-Aitken Constr. Co. (Com. Union I), 49 N.J. 389, 392–

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<sup>3</sup> See Tunia v. St. Francis Hosp., 363 N.J. Super. 301, 306 (App. Div. 2003) (explaining "acknowledgments" as "statements completed by the notaries public . . . necessary to record an instrument, N.J.S.A. 46:14-2.1," and not a "jurat").

93 (1967) (citations omitted). See also Immerman v. Ostertag, 83 N.J. Super. 364, 369 (Law Div. 1964) ("A notary is a public officer and, as such, he owes a duty to the public to discharge his functions with diligence.").

Plaintiff sought the services of a public officer to whom the government has granted significant powers limited to few others in the state, and over whom the government exercises significant authority. A member of the public would hardly expect that other public officials empowered by the Statute to perform certain functions could charge whatever they wished for administering oaths, taking acknowledgements, et cetera. Yet, during oral argument before us, defendant acknowledged that its interpretation of the Statute's plain language would permit a notary to charge \$100 or more for these services, an absurd result that cannot be countenanced based on a literal reading of the statutory language. Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012). In our view, the Statute provides a decidedly public benefit by limiting the amount of money the public may be charged by a public officer, and that benefit is only secured by "according the word 'shall'" — a notary public shall receive a fee — its "imperative meaning." Jorn, 340 N.J. Super. at 196 (quoting Franklin Ests., 142 N.J. Super. at 184).

Defendant posits other arguments that do not rely on the Statute's plain language. While noting the paucity of caselaw, defendant cites Gittleman v. City of Newark, 132 N.J.L. 328 (E. & A. 1945), Castellano v. City of Newark, 21 N.J. Misc. 63 (Cir. Ct. 1943), and Samson v. City of Newark, 125 N.J.L. 221 (Sup. Ct. 1940), as supporting its position that the Statute merely states minimum compensation to which notaries are entitled, not a limitation on fees they may charge. None of the cases cited by defendant are apposite.

In Gittleman, the plaintiff, an attorney working for the City of Newark, sued seeking payment for taking acknowledgements on tax sale certificates three years earlier. 132 N.J.L. at 329. The court simply held that the plaintiff "waive[d] . . . any claim for the taking of acknowledgments." Id. at 330 (citations omitted). Similarly, in Castellano, the plaintiff attorney employed by the City of Newark sued "for alleged statutory compensation claimed to be due . . . for taking acknowledgments to tax sales certificates." 21 N.J. Misc. at 63. The court recognized the Statute "provide[d] . . . compensation . . . for taking acknowledgements," but rejected the plaintiff's suit, noting his position and annual salary "contemplated . . . the performance . . . of such services," and further, that at the time the plaintiff actually performed the services, the Statute

made "no provision for compensation . . . for taking acknowledgments by an attorney-at-law." Id. at 65–66.

The court in Samson reached a different result, concluding that the plaintiff-attorneys, who were not employed by the City of Newark, took acknowledgments on tax sale certificates but never received "[t]he fee fixed by law." 125 N.J.L. at 222. Instead, those fees became part of the tax lien and when sold those fees were paid into the city treasury. Ibid. The court concluded the plaintiffs were entitled to judgment because the city was "enriched at the expense of officers performing a statutory service for which a fee has been earned and paid to the city." Id. at 223.

In our view, these cases stand for nothing more than the unremarkable proposition that the Statute provides compensation for a notary and other public officials who perform certain services. They do not advance defendant's claim that the Statute does not cap the fee charged to the public.

In fact, the dicta in these cases, and one more which neither party cites, support plaintiff's position, not defendant's. In Commercial Union Insurance Company v. Burt Thomas-Aitken Construction Company (Com. Union II), the Court considered the plaintiff-surety's claim that the "notary should be held to guarantee the truth of his acknowledgement." 54 N.J. 76, 81 (1969).



Recognizing the notary was "not an insurer, and is not liable except for negligence[,] " the Court affirmed the jury's no cause verdict. Ibid. Importantly for our purposes, the Court said: "The authorized fee for an acknowledgment . . . is nominal and would hardly support an investigation appropriate for the assumption of absolute liability." Ibid. (emphasis added) (citing N.J.S.A. 22A:4-14).<sup>4</sup> See also Castellano, 21 N.J. Misc. at 65 (the Statute "merely fixes the amount" for certain services); Samson, 125 N.J.L. at 223 (noting the plaintiffs were "entitled by law to fixed fees") (emphases added). In short, these cases support plaintiff's principal argument that the fee charged for services listed in the Statute has been fixed by the Legislature.

Defendant contends the Statute should not be read as setting a mandatory maximum fee for the services listed because the phrase — "shall receive a fee as follows" — is markedly different from other statutory provisions that evince the Legislature's clear intention to fix a permitted fee. We accept as a general proposition that the Legislature knows how to express its intent, and the presence of explicit language of other statutory provisions may imply a legislative intent different from the expressed language in the Statute at issue. See, e.g., Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark, 244

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<sup>4</sup> At the time, the statutory fee for an acknowledgment was one dollar. Ibid.

N.J. 75, 111–12 (2020) (concluding that "power of inquiry" provided by one statute is not the power to subpoena explicitly provided in other statutes).

The statutes defendant cites are not part of Chapter 4 of Title 22A which generally deals only with fees charged by various public officers for their services. We confine our review to those provisions, many of which were enacted as part of a comprehensive legislative scheme.<sup>5</sup> See DiProspero, 183 N.J. at 492 (reading statutory words "in context with related provisions so as to give sense to the legislation as a whole"). The language in many sections varies little from that used in the Statute. See N.J.S.A. 22A:4-6 ("county clerk shall receive" certain amount for "attending . . . daily sessions" of Superior Court); N.J.S.A. 22A:4-8 (enumerating fees that sheriffs "shall receive" for various services); N.J.S.A. 22A:4-10 (listing fees that "[s]heriffs, undersheriffs, deputy sheriffs, constables, court attendants and other officers authorized by law to perform" certain services "shall receive"); N.J.S.A. 22A:4-11 (computing mileage payments that "[s]heriffs, constables and other authorized officers shall receive"); N.J.S.A. 22A:4-12 (setting fees that clerk of the Superior Court, county clerks and registrars "shall receive" for various services); N.J.S.A.

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<sup>5</sup> Although its historical antecedents extend back to the nineteenth century, the Statute was part of a comprehensive revision enacted by the Legislature in 1953. See L. 1953, c. 22.

22A:4-16 (services performed by judicial officers "shall be paid to, demanded and received by the clerk of the court"). According to N.J.S.A. 22A:4-17(a), "[a]ll fees . . . and other perquisites of whatever kind" that certain county officials "are entitled to charge and receive for any official acts or services they may render shall be for the sole use of the county." (emphasis added).

As already noted, the Statute includes notaries amongst other public officers and is part of a larger scheme devised by the Legislature. It is incomprehensible that the Legislature intended public officers, including notaries public, could simply charge "and receive a fee" for certain services exceeding those fees set forth within the statutory framework.

Defendant's interpretation of the Statute's language is also not supported by its more recent legislative history. See Varsolona v. Breen Cap. Servs. Corp., 180 N.J. 605, 623 (2004) ("[S]ubsequent legislation may be used by a court as an extrinsic aid when seeking to discern earlier legislative intent."). The Legislature enacted amendments to the Statute in 2002 that increased the fees for certain services, including taking an affidavit or acknowledgment. L. 2002, c. 34 § 48, eff. July 1, 2002. In addition, the 2002 amendment added the following new provisions to the Statute:

For administering oaths, taking affidavits, taking proofs of a deed, and taking acknowledgments of the

grantors in the transfer of real estate, regardless of the number of such services performed in a single transaction to transfer real estate, \$15.00.

For administering oaths, taking affidavits and taking acknowledgments of the mortgagors in the financing of real estate, regardless of the number of such services performed in a single transaction to finance real estate, \$25.00.

[N.J.S.A. 22A:4-14 (emphasis added).]

Defendant contends that these additional provisions evince a legislative intent to cap notary fees only in certain circumstances — real estate and mortgage transactions — not present here. We reach a different conclusion. The Legislature understood that federal law required closing statements provide accurate figures for certain ministerial duties, like notary services, that were necessary to consummate the sale or mortgage financing:

Under federal law (Real Estate Settlement Procedures Act), notary charges must be shown on the closing statement of a real estate transaction. However, the precise amount of the charges is typically not known until shortly before the settlement. To amend the closing statement so close to the settlement can cause delay in the process of completing the transaction. This bill takes the guesswork out of calculating the notary public charges so that closing statements can be prepared in advance of the settlement and the transaction can be completed without additional delay.

[Sponsor's Statement to A. 1848 (Feb. 21, 2002).]<sup>6</sup>

These new provisions limited the fees notaries public "shall receive" when providing certain services in real estate and mortgage transactions, regardless of the number documents involved. The new provisions did not change the fees notaries "shall receive" in other circumstances, and they do not indicate a different legislative intent as to the maximum fees notaries could charge for their services.

We conclude that the fees for notarial services set by the Statute are the maximum fees that may be charged. Such interpretation is consistent with the plain language of the Statute, the context of the entire legislative scheme of which it is part, the limited caselaw applying the Statute, and its recent legislative history.

### III.

Defendant contends that the Statute confers no private right of action upon plaintiff to bring a suit alleging she was charged notary fees in excess of the statutory amounts. Defendant also asserts, in passing, that since it is a business

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<sup>6</sup> It appears that the provisions of A.B. 1848 were incorporated in the final text of A. 2506 and enacted as L. 2002, c. 34.

entity, not a corporeal person serving as a notary, even if plaintiff was correct in her construction of the Statute, she had no cause of action against defendant.

As to this latter point, the motion judge aptly noted that issues of defendant's vicarious responsibility for the actions of the notary who provided the services to plaintiff, as well as TUPPS' potential liability for the conduct of its franchisees, were incapable of resolution without further development of the record.<sup>7</sup> We decide only whether the facts alleged in plaintiff's complaint "suggested" a cause of action against defendant. Printing Mart-Morristown, 116 N.J. at 746. The complaint certainly meets this test.

As to the right to bring a cause of action specifically under the Statute, "New Jersey courts have been reluctant to infer a statutory private right of action where the Legislature has not expressly provided for such action." R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co., 168 N.J. 255, 271 (2001). The Court has adopted a three-part test for determining whether a statute implies a private right of action:

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<sup>7</sup> We also hasten to add that we do not decide whether a franchisee may charge a notary fee consistent with the Statute and a separate "convenience" fee. The appendix to defendant's motion for leave to appeal included a similar complaint filed by another plaintiff in another vicinage, to which was attached the store receipt demonstrating an alleged violation of the Statute. That receipt, however, had the charge broken down into two components: a notary fee of \$2.50; and a convenience fee of \$12.50.

To determine if a statute confers an implied private right of action, courts consider whether: (1) plaintiff is a member of the class for whose special benefit the statute was enacted; (2) there is any evidence that the Legislature intended to create a private right of action under the statute; and (3) it is consistent with the underlying purposes of the legislative scheme to infer the existence of such a remedy.

[Id. at 272.]

"Although courts give varying weight to each one of those factors, 'the primary goal has almost invariably been a search for the underlying legislative intent.'" Id. at 272–73 (quoting Jalowiecki v. Leuc, 182 N.J. Super. 22, 30 (App. Div. 1981)).

Here, the first Gaydos prong weighs in favor of an implied cause of action because the fees set by the Statute were intended to benefit the public by limiting the amount of money that public officers could charge for performing certain functions. It is anomalous, indeed, if our courts were to recognize the potential right of a notary to sue for his or her statutory fees, as in Gittleman, Castellano, and Samson without recognizing the public's reciprocal right to only pay those fees permitted by the Statute.

As to the second Gaydos prong, there is no evidence that the Legislature intended to create a private right of action under the Statute as it expressly did

in other provisions of Chapter 4 of Title 22A. N.J.S.A. 22A:4-8, for example, provides that an "aggrieved" party may file suit against a sheriff whose charges exceed the statutory amount. As part of the 1953 legislation which included the Statute, the Legislature enacted N.J.S.A. 22A:4-13, a provision that expressly permitted a party to sue a notary who overcharged for services involving certain commercial instruments. L. 1953, c. 22, § 11; repealed by L. 2002, c. 34, § 49.<sup>8</sup> N.J.S.A. 22A:4-15 expressly permits the State Treasurer to file a "civil action" to recover fees charged by the Clerks of the Supreme Court and Superior Court and bring suit in lieu of prerogative writs against those public officers. See also N.J.S.A. 22A:4-17 (permitting county commissioners to file similar suits against county surrogates, clerks, registrars, and sheriffs for failing to remit fees received for their official acts).

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<sup>8</sup> The Sponsor's Statement for the repealer explained its purpose, which had nothing to do with the private right of action set forth in the statute:

[T]he bill repeals N.J.S.A. 22A:4-13, which establishes the fees a notary public may collect for the service of making a demand for payment or registering a protest against a demand for payment. The act of making a demand for payment under oath was made obsolete with the passage of the Uniform Commercial Code . . . in 1961.

[Sponsor's Statement to A. 1848.]



It is significant that the Legislature expressly provided for private and public rights of action for violations involving statutory fees public officers may charge for their services, or for other failures in carrying out their ministerial duties, yet did not provide for similar rights under the Statute. "In determining whether the Legislature intended to authorize an implied private cause of action, 'a court should be mindful of the "elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.'"" Castro v. NYT Television, 370 N.J. Super. 282, 293 (App. Div. 2004) (quoting Glynn v. Park Tower Apartments, Inc., 213 N.J. Super. 357, 362 (App. Div. 1986)).

As to the third Gaydos prong, "[o]ur Supreme Court has indicated that a court should be especially hesitant in implying a right to a private cause of action against an entity that is subject to pervasive regulation by a State agency." Id. at 293. As noted, pursuant to the NPA, notaries public are commissioned public officers who are subject to statutory obligations and may be removed at the at the pleasure of the State Treasurer. N.J.S.A. 52:7-11. The New Jersey Division of Revenue's Business Support Services Bureau administers the notary public

program and has published a manual for guidance a required by the NPA.<sup>9</sup> See N.J.S.A. 52:7-17 (requiring the State Treasurer to include certain provisions in the manual and update the manual as appropriate).

Presumably, the conduct of any notary public who charges fees exceeding those permitted by the Statute could be brought to the attention of the State Treasurer for appropriate action. See Warren Cnty. Bar Ass'n v. Bd. of Chosen Freeholders, 386 N.J. Super. 194, 203 (App. Div. 2006) (declining to find private right of action under N.J.S.A. 2B:6-1 because "recognition of a private right of action is not required to ensure proper enforcement of the statute" (citing R. J. Gaydos, 168 N.J. at 274–75)).

We conclude that the Statute confers no private cause of action on plaintiff. We therefore reverse the order under review and order the trial court to dismiss the first count of her complaint.

Our order limited the grant of interlocutory appeal to "causes of action asserted by plaintiff in her individual capacity against defendant . . . premised upon that defendant's violations of [the Statute]." Defendant correctly notes in its brief the limited scope of our order, and we regret any imprecision in the

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<sup>9</sup> Parenthetically, the manual states the fees in the Statute "are fees that Notaries may charge."

order that may have implied our intention to address whether the complaint was cognizable under the CFA. Additionally, plaintiff properly notes that her complaint alleged other common law causes of action which also were not within the scope of our order.

More importantly, since entry of our order, it has become clear that the paucity of the existing record impedes any consideration of whether charging a fee that violates the Statute is alone sufficient to sustain the CFA count in the complaint. For example, we already noted the complex statutory scheme governing notaries public under the NPA and the power of the State Treasurer to remove a notary from his office at the Treasurer's pleasure.<sup>10</sup>

Plaintiff's assumption that a violation of the Statute is per se a violation of the CFA fails to recognize the difference between services provided by a public officer — an individual notary public — and a purveyor of consumer goods and services. We are unfamiliar with any case that holds the CFA applies to a public official who obtains his or her powers directly from the State and is subject to significant State control and discipline, and plaintiff has failed to bring one to our attention.

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<sup>10</sup> Several pieces of legislation are currently pending in the Legislature that would significantly amend the current NPA.

At the same time, defendant and the other franchisees are providing a service to the public. On the record that exists, we reach no conclusion as to whether the complaint states a cause of action under the CFA or the common law, nor was it our intention to address those issues by our grant of interlocutory review.

We reverse the order under review only with respect to count one of plaintiff's complaint. Although we conclude the Statute sets the maximum fee a notary public may charge for services listed in the Statute, the Statute provides no express or implied cause of action to recover for an excessive fee. The matter is remanded to the Law Division for entry of an order dismissing count one of plaintiff's complaint and for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION

# **EXHIBIT C**

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VINCENT TRIPICCHIO, on behalf of himself and	:	SUPERIOR COURT OF
others similarly situated,	:	NEW JERSEY
	:	
Plaintiff,	:	LAW DIVISION – BURLINGTON
	:	COUNTY
-against-	:	
THE UPS STORE, INC. and JB & A	:	DOCKET NO.: BUR-2219-20
ENTERPRISES, INC.,	:	
	:	
Defendants.	:	
-----	X	

**NOTICE TO STATE COURT OF REMOVAL TO FEDERAL COURT**

Please take notice that Defendants The UPS Store, Inc. and JB & A Enterprises, Inc., have, on August 2, 2021, filed a Notice of Removal with the Clerk of the United States District for the District of New Jersey, to remove the above-referenced cause, Case No. BUR-2219-20, from the Superior Court of New Jersey, Law Division – Burlington County to the United States District Court for the District of New Jersey. A copy of Defendants’ Notice of Removal is attached hereto and marked as “Exhibit A.”

Dated: New York, New York  
August 2, 2021

MORRISON & FOERSTER LLP

By: /s/ David J. Fioccola

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 2, 2021, a true and correct copy of the foregoing document was served via email and through the Court's electronic document filing system, upon the following:

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims UPS Notary Fees Exceed New Jersey Maximum](#)

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