



operate sandwich shops, both directly and through franchised operations, across the United States, including in Illinois. Defendants employ individuals at these shops to, among other tasks, take orders, make sandwiches, and deliver those sandwiches to the customer. Yet, Defendants have required these at-will, low-wage employees to sign non-competition agreements that limit their employment options for years after leaving employment at a sandwich shop. The agreements have purported to prevent employees from obtaining any employment, in any capacity, with any employer who derived at least ten percent of revenue from the sale of categories of products such as “deli-style” sandwiches, for two years, if the new employer was within two miles of any Jimmy John’s store anywhere in the United States. Defendants have no legitimate business interest to warrant the imposition of any non-competition agreements on shop employees and assistant managers. Defendants’ only apparent concern has been to chill any effort by employees to consider leaving for another employer. Because the Defendants and their franchisees lack any legitimate business interest to justify the agreements, the agreements are not supported by adequate consideration, and the agreements are not narrowly tailored, they are unreasonable and unenforceable under Illinois law.

## **PARTIES**

2. Jimmy John’s is a franchised sandwich restaurant chain that sells sandwiches, cookies, chips, and soda at stores located throughout the United States, including Illinois. These stores (herein referred to as “Jimmy John’s Sandwich Shops”) also deliver their products to customers following phone or online orders. There are more than 2,000 Jimmy John’s Sandwich Shops in 43 states throughout the United States. There are approximately 274 such shops in Illinois.

3. Jimmy John's Enterprises, LLC, is a Delaware limited liability corporation with its principal place of business located at 2212 Fox Drive, Champaign, Illinois 61820. Jimmy John's Enterprises owns and operates eight Jimmy John's Sandwich Shops in Illinois and owns all intellectual property associated with Jimmy John's Sandwich Shops.

4. Jimmy John's Franchise, LLC, is a Delaware limited liability corporation with its principal place of business located at 2212 Fox Drive, Champaign, Illinois 61820. Jimmy John's Franchise licenses Jimmy John's Sandwich Shops' intellectual property to franchisees in order to establish Jimmy John's Sandwich Shop franchise locations in Illinois and elsewhere. Jimmy John's Franchise acts as a liaison with the entities that operate the franchised locations.

5. The Attorney General believes this action to be in the public interest of the citizens of the State of Illinois and brings this lawsuit pursuant to Section 7(a) of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7(a) and her common law authority to pursue actions in *parens patriae* to preserve the economic well-being of Illinois residents and businesses impacted by Defendants' unlawful conduct. Here, Defendants' actions affect a substantial segment of the residents of Illinois, including individuals directly impacted by these non-competition agreements and the general public, who suffer the indirect impact of decreased employee mobility and restraint of trade. Illinois businesses also suffer from the use of unreasonable and unenforceable non-competition agreements, including by limiting the pool of available workers. The State has an interest in preventing such undue economic limitations. Absent action by the Attorney General, the majority of individual signatories to these agreements will be unaware that the non-competition agreements are illegal and unenforceable and will continue to experience economic harm as a result.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to the Court's general jurisdiction and pursuant to 815 ILCS § 505/1 *et seq.* and 735 ILCS § 5/2-209(a) as the cause of action arises from actions taken by Defendants in Illinois.

7. This Court has personal jurisdiction over the Defendants because they reside in Illinois and transact business in Illinois, including in Cook County, Illinois.

8. Venue is proper in Cook County pursuant to 735 ILCS § 5/2-101 and § 5/2-102(a), because Defendants are doing business in Cook County, Illinois, and some of the transactions from which this cause of action arose happened in Cook County, Illinois. 735 ILCS § 5/2-101(2).

## **STATEMENT OF FACTS ALLEGED**

### *Store Employee Roles at Jimmy John's Sandwich Shops*

9. Each Jimmy John's Sandwich Shop is staffed by employees who greet customers, take orders by phone or in person, slice bread and meat, make sandwiches, operate the cash register, and clean the restaurant and kitchen area, among other similar tasks. These employees may have titles that include "sandwich maker" or "inshopper."

10. Some employees deliver orders to customers. These employees are sometimes called "drivers" or "bike delivery drivers" depending on whether they deliver by car or other means. When not delivering orders to customers, these employees are expected to assist inside the store.

11. Jimmy John's Sandwich Shops also employ "assistant managers." On information and belief, assistant managers perform all of these same job duties as in-store employees but also have some responsibility for store inventory and oversight of the cash

register. Thus, assistant managers also greet customers, take orders, slice bread and meat, make sandwiches, operate the cash register, and clean the restaurant and kitchen area. On information and belief, assistant managers do not select the vendor of inventory, negotiate the pricing on inventory, or decide the type of inventory that will be stocked.

12. Hereafter, the employees described in paragraphs 9 through 11 are collectively referred to as “Store Employees,” however such employees are titled by Defendants.

13. Store Employees’ primary function concerns the receipt of orders, the preparation of food, and the delivery of food whether in-store or elsewhere. These functions are performed in public and in front of customers.

14. All Store Employees are employed at-will.

15. Store Employees have minimal access to confidential or trade secret information.

*Store Employees Required To Sign Non-Compete Agreements  
At Shops Operated By Jimmy John’s Enterprises*

16. Jimmy John’s Enterprises owns and operates eight Sandwich Shops in Illinois.

17. Jimmy John’s Enterprises supplies a “new hire packet” to each of the Illinois shops it owns and operates. The new hire packet contains employment documents to be used for all newly hired Store Employees.

18. From September 15, 2007 through April 1, 2015, the new hire packet included a non-competition agreement. The same non-competition agreement was required for all employees of Jimmy John’s Enterprises, irrespective of title or job function. Store Employees were required to sign the non-competition agreement as a condition of employment. In fact, the non-competition agreements expressly stated that employment was conditioned on execution of the agreement.

19. Store Employees did not receive a bonus, pay increase, or guaranteed period of employment in exchange for signing the non-competition agreements.

20. Store Employees did not receive any consideration for signing the non-competition agreements.

21. During the same timeframe, the non-competition agreements also contained a confidentiality agreement designed to protect purported confidential and proprietary information that the employee might acquire during their employment.

22. From September 15, 2007 through June 14, 2012, Jimmy John's Enterprises required all Store Employees, including at-will sandwich makers, inshoppers, delivery drivers, and assistant managers to sign a non-competition agreement as a condition of employment. In a document that purports to be covered by copyright, the company required Store Employees to agree that during their employment and for a period of two years thereafter they would play no role, including as a manager, owner, or employee, of any business that earns more than ten percent of its revenue from selling "submarine," "hero-type," "deli-style," "pita," and/or "wrapped" or "rolled sandwiches." The limitation applied to any business located within three miles of either the address at which the Store Employee worked or any other Jimmy John's Sandwich Shop anywhere in the country.

23. Subsequently, from June 15, 2012 to April 1, 2015, Jimmy John's Enterprises required Store Employees to sign a substantively identical non-competition agreement, which slightly modified the geographic limitation to two miles around any Jimmy John's Sandwich Shop. This document also purports to be covered by copyright.

24. In April 2015, Defendants purportedly changed their internal policy regarding non-competition agreements. Defendants represented to the Illinois Attorney General that

Jimmy John's Enterprises changed its policy regarding non-competition agreements on or about April 2, 2015. Defendants asserted that Jimmy John's Enterprises no longer required Store Employees to sign non-competition agreements after that date. Defendants represented that they no longer included a non-competition agreement in the new hire packets supplied to Sandwich Shops owned by Jimmy John's Enterprises after April 2, 2015.

25. Defendants subsequently advised the Attorney General that the April 2, 2015 change in policy was never implemented in Jimmy John's Enterprises' Sandwich Shops. Furthermore, Defendants informed the Attorney General that they had not created a process to remove the non-competition agreements from the new hire packets that had previously been distributed to Jimmy John's Enterprises' Sandwich Shops.

26. As such, many new Store Employees who were hired after April 2, 2015 continued to sign non-competition agreements, despite the purported change in policy.

27. Defendants represented to the Attorney General that, as of April 2, 2015, they do not intend to enforce the non-competition agreements signed by employees.

28. This change in policy and non-binding intent not to enforce the non-competition agreements has not been communicated to current or former Store Employees of Sandwich Shops owned by Jimmy John's Enterprises. Defendants have never attempted to modify or formally rescind the non-competition agreements.

29. Current and former Store Employees of Jimmy John's Enterprises continue to be bound by the post-employment restrictions of the non-competition agreement. According to the terms of the non-competition agreements, the agreement extends throughout employment and for two years thereafter. Thus, current Store Employees remain contractually bound to comply with the non-competition agreement they signed. Many former employees also remain bound by the

non-competition agreement because two years has not elapsed since their separation from Jimmy John's Enterprises.

30. Without a legally-binding declaratory judgment that Defendants cannot enforce the existing non-competition agreements signed by current or former Jimmy John's Enterprises' Store Employees, current and former Jimmy John's Enterprises' Store Employees are and remain contractually obligated to comply with the terms of the non-competition agreement when seeking new employment.

*Store Employees Required to Sign Non-Compete Agreements  
At Sandwich Shops Franchised By Jimmy John's Franchise*

31. In order to more quickly expand throughout the United States, Defendants embarked on a franchise model of having Sandwich Shops operated by franchisees.

32. Jimmy John's Franchise licenses the intellectual property for Jimmy John's Sandwich Shops from Jimmy John's Enterprises. In turn, Jimmy John's Franchise licenses the property to franchisees. In addition to an upfront franchise fee, franchisees also pay Defendants an ongoing royalty and a share of advertising costs.

33. Jimmy John's Franchise licenses the operation of nearly 2,300 franchise locations nationwide and approximately 268 franchise locations in Illinois.

34. Jimmy John's Franchise ensures that each franchised location operates at a level of standards set by Defendants. Each franchisee participates in a seven week training program established by Defendants and each franchise location must provide at least two on-site managers who will go through a training program to become "certified managers." On information and belief, once completed, franchisees receive regular updates to their training, including on-site reviews conducted by Defendants.



35. On information and belief, employees of franchisees, such as general managers and area managers, who enter Defendants' certified manager training program are required to sign a confidentiality and non-competition agreement.

36. Jimmy John's Franchise provides each franchised location with an Operations Manual. The Operations Manual provides expectations and recommendations regarding the operations of the stores to the franchisee. The Operations Manual includes recommended forms to use for new hires, including Store Employees.

37. From September 15, 2007 through December 24, 2014, the Operations Manual included a non-competition agreement for all Store Employees. The same non-competition agreement was included for all employees, irrespective of title or job function.

38. These non-competition agreements were expressly intended by Defendants to be used by franchisees when hiring new employees.

39. Jimmy John's Franchise did not distinguish between the types of employees who should be required to sign the non-competition agreement provided in the Operations Manual.

40. Franchise owners were required to sign a Franchise Agreement that contained a non-competition agreement identical to the one required of Store Employees.

41. Franchisees in Illinois used the non-competition agreement provided by Jimmy John's Franchise, or adopted a substantively similar non-competition agreement. On information and belief, a substantial number of franchisees used the non-competition agreements provided by Jimmy John's Franchise for all Store Employees, including sandwich makers, inshoppers, delivery drivers, and assistant managers. On information and belief, Store Employees at these franchised locations in Illinois were required to sign the non-competition agreements as a condition of employment.

42. From September 15, 2007 through June 15, 2013, Jimmy John's Franchise distributed to all Jimmy John's franchisees operating in Illinois a physical copy of the Operations Manual which included the non-competition agreement referenced in paragraph 22 above, a copy of which is incorporated by reference as Exhibit A.

43. From June 25, 2013 through December 24, 2014, Jimmy John's Franchise distributed an updated copy of the Operations Manual to all Jimmy John's franchisees operating in Illinois. This updated Operations Manual included the revised non-competition agreement described in paragraph 23 above with the addition of a watermark "Sample" across the document.

44. Defendants represented to the Attorney General that on December 24, 2014, Jimmy John's Franchise removed the non-competition agreement from an electronic version of the Operations Manual that it uses to produce the physical version of the Operations Manual that is distributed to franchisees.

45. However, Jimmy John's Franchise did not inform franchisees that the non-competition agreement had been removed from the Operations Manual and did not instruct franchisees that any prior versions of the non-competition agreement should be removed from the Operations Manual. At no point did JJF not notify franchisees that Jimmy John's Enterprises had discontinued the use of non-competition agreements for its Store Employees.

46. On information and belief, a substantial number of Jimmy John's franchisees continue to require new store employees to sign the non-competition agreement that Jimmy John's Franchise provided to franchisees in the Operations Manual.

47. Despite the purported change in corporate policy by Jimmy John's Franchise and Jimmy John's Enterprises to no longer require their own employees to sign the non-competition

agreements, some franchisees continue to require employees to sign the non-competition agreement that Jimmy John's Franchise provided to them, in part, because they continue to believe that such agreements are suggested and endorsed by Defendants' corporate office.

48. Without a legally binding declaratory judgment that the non-competition agreements that Jimmy John's Franchise provided to franchisees are illegal and void, franchisees will continue to use the non-competition agreements and some franchise Store Employees will continue to be subject to the terms of the non-competition agreements that Jimmy John's Franchise provided. Moreover, any current or former employee of a Jimmy John's franchise who signed such an agreement will remain subject to the post-employment restrictions until two years after their employment at a Jimmy John's franchise location has ended.

#### **COUNT I – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

49. The People restate paragraphs 1 through 48 as though fully set forth herein.

50. For years, Jimmy John's Enterprises required all Store Employees to execute a non-competition agreement as part of the hiring process, and Jimmy John's Franchise distributed those same agreements to franchisees for their use. Certain of the Jimmy John's franchises in Illinois continue to require franchise Store Employees to sign non-competition agreements. Although Jimmy John's Enterprises could contact current and former employees to agree, in writing, to void the non-competition agreement, it has never done so. Indeed, Jimmy John's Enterprises has never advised current or former store employees that the non-competition agreements are cancelled, voided, or otherwise unenforceable, and Jimmy John's Franchise has never advised franchisees that the samples it provided to them are cancelled, voided, or otherwise unenforceable.

51. This case presents a ripe actual controversy as to the rights and legal relations of Jimmy John's Enterprises, Jimmy John's Franchise and the Store Employees subject to the non-competition agreements.

52. These non-competition agreements are unreasonable, unconscionable, and unenforceable under Illinois law as to all Store Employees at Illinois stores operated by Jimmy John's Enterprises or by franchisees.

53. The non-competition agreements for Store Employees are substantively unconscionable and constitute an impermissible restraint on trade.

54. Jimmy John's Enterprises and Jimmy John's Franchise have no legitimate business interest that can justify the use of a non-competition agreement for Store Employees in Illinois.

55. Jimmy John's Store Employees do not have near-permanent customer relationships. Store employees do not hold or acquire trade secret or other confidential proprietary information and, even if they did, such information would be separately protected by the confidentiality agreement they signed.

56. Store Employees were not provided with adequate consideration for execution of the non-competition agreement. Store Employees were not offered monetary payment or guaranteed employment for a specified period of time in return for execution of the non-competition agreement.

57. The non-competition agreements are not narrowly tailored and, therefore, are unreasonable, unconscionable, and unenforceable as a matter of law.

- a. The non-competition agreements apply irrespective of the length of time the Store Employee was employed at a Jimmy John's Sandwich Shop.

Accordingly, even someone employed at an Illinois location for a single day would have been subject to the non-competition agreement.

- b. The temporal restriction of two years post-employment is not objectively reasonable.
- c. Jimmy John's Enterprises' and Jimmy John's Franchise's non-competition agreements apply to any precluded employer within two miles of any Jimmy John's Sandwich Shop operated by Jimmy John's Franchise, Jimmy John's Enterprises, or any affiliate or franchisee existing on the date the Store Employee or manager terminates employment. With over 2,000 Jimmy Johns Sandwich Shop locations in 43 states, the geographic scope is unreasonable, unconscionable, and unenforceable. The geographic terms impose an undue hardship on former and current Store Employees.
- d. The non-competition agreements preclude employment in any capacity in the industry occupied by Jimmy John's Sandwich Shops and even beyond that industry. The agreements do not restrict positions based on activities, but rather, they preclude employment merely because the prospective employer licenses or franchises businesses that derive more than ten percent of revenue from the sale of certain products. Because the particular product at issue is sandwiches, this restriction extends well beyond the bounds of the fast food industry and may apply to any business—a gas station, coffee shop, a sports arena—that happens to sell sandwiches and meets the revenue threshold.
- e. The non-competition agreements preclude employment based on the percentage of revenue the business derives from selling certain products,

which is potentially non-public data not accessible to current and former Store Employees.

- f. The scope of the non-competition agreement is vague and ambiguous as to the businesses to which it purports to apply. The non-competition agreement fails to identify the precluded employers by name, fails to define the scope of “revenue” that triggers application, and fails to define sufficiently the type of products that trigger the non-competition agreement (for example, “hero-type” and “deli-style”).
- g. The restrictions of the non-competition agreement are not designed to protect a legitimate business interest considering that the agreements contained a separate confidentiality clause.

58. Declaratory relief is appropriate to resolve whether Defendants’ non-competition agreements are valid under Illinois law as to Store Employees in the Illinois locations.

59. Injunctive relief consistent with the declaratory relief is appropriate because the Plaintiff has a lawful right to prevent the imposition of unenforceable non-competition agreements. Further, the harm to Illinois residents and businesses is ongoing and irreparable, particularly where Store Employees subjected to the non-competition agreements have not been informed of the agreements’ unenforceability, and there is no adequate remedy at law.

60. For the reasons stated herein, Defendants’ non-competition agreements are unreasonable, unconscionable, unenforceable, and an improper restraint on trade under Illinois law as to all Illinois Store Employees.

WHEREFORE, the Plaintiff respectfully requests that this Court enter an Order:

- a. Declaring that Jimmy John's Enterprises' and Jimmy John's Franchise's non-competition agreements are unenforceable and void and rescinded as a matter of law as to all current and former Store Employees of Jimmy John's Sandwich Shop in Illinois;
- b. Providing for injunctive relief consistent with the declaration, including an order precluding Defendants from requiring or using non-competition agreements for Store Employees of any Jimmy John's Sandwich Shop in Illinois; and
- c. Awarding such other and further relief as the Court deems just and proper.

**COUNT II – EQUITABLE RELIEF PURSUANT TO THE ILLINOIS CONSUMER FRAUD ACT**

61. The People restate paragraphs 1 through 60 as though fully set forth herein.

62. Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815

ILCS 505/2, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

63. Jimmy John's Enterprises has required Store Employees to sign non-competition agreements. Jimmy John's Franchise has distributed those non-competition agreements to franchisees for their use and required franchise owners to sign identical non-competition agreements. The distribution of those non-competition agreements to franchisees resulted in the

use of those agreements by a substantial number of franchisees. As set forth above, these non-competition agreements are unreasonable, unconscionable, unenforceable, and constitute an improper restraint on trade. Defendants and their franchisees have no legitimate business interest that justifies a non-competition clause for Store Employees and franchise Store Employees in Illinois.

64. Any individual carrying out any aspect of Jimmy John's business – from sandwich makers and delivery drivers to franchise owners – is required to sign an identical non-competition agreement regardless of their actual duties, their responsibilities, or their use of proprietary information. The use of standard non-competition agreements is pervasive at all levels of the Defendants' hierarchy to promote its business structure.

65. The non-competition agreements contain unfair and onerous terms, including, but not limited to: an improper and excessive geographic scope; multi-year temporal restrictions; application to employees with short periods of employment; and preclusion of significant numbers of prospective employers without regard to prospective employment activity.

66. Defendants and their franchisees intended that the Store Employees rely on the unfair and deceptive acts and practices, including that they would adhere to the terms of the non-competition agreement.

67. Jimmy John's Enterprises' and Jimmy John's Franchise's actions are ongoing and continue to cause harm. On information and belief, certain of Jimmy John's franchisees still require non-competition agreements for franchise Store Employees. Further, current and former franchise Store Employees who executed a non-competition agreement have never been informed that the clause is unenforceable or void. Jimmy John's Enterprises has never advised current or former Store Employees that the non-competition agreements are cancelled, voided, or



otherwise unenforceable. Jimmy John's Franchise has not required franchisees to cease use of non-competition agreements for franchise Store Employees.

68. Jimmy John's Enterprises and Jimmy John's Franchise conduct is immoral, unethical, oppressive, and unscrupulous.

69. Non-competition agreements can significantly disrupt the labor market, particularly with respect to the low-wage workforce. Such clauses have a chilling effect on the efforts of employees to seek continued employment in a field in which they have gained familiarity. Such clauses also have a chilling effect on the ability of Illinois businesses to freely hire workers, by potentially subjecting these businesses to litigation, and by limiting the pool of available workers.

70. The use of non-competition agreements for at-will, low-wage workers limits the ability of employees to find new employment, limits the ability of employees to move to a new state and find employment where Jimmy John's locations exist, hinders upward mobility of workers looking for higher wages or advancement with new employment using skills obtained in their current employment, and suppresses wages for employees who have limited negotiating power with both current and potential new employers when they are limited by a non-competition agreement. This suppression of wages and hindrance on mobility impacts trade or commerce throughout Illinois

71. Illinois has evinced a desire to avoid onerous and excessive non-competition agreements. Illinois has recognized that such clauses must be premised on a legitimate business interest and must be narrowly tailored in terms of time, activity, and place. Illinois law also recognizes that the unreasonable restraint of trade or commerce by contract is an offense against state law and public policy.

72. Defendants' non-compete agreements are neither supported by a legitimate business interest nor narrowly tailored. Where, as here, such agreements are unreasonable, the societal harms are magnified.

73. Accordingly, Defendants have engaged in unfair conduct in violation of the Consumer Fraud and Deceptive Business Practices Act by requiring Store Employees to sign unenforceable non-competition agreements without consideration, without a legitimate business reason, and without narrowly tailoring the agreements to protect any purported confidential or trade secret information.

74. To the extent that Defendants know that they will not enforce the terms of the non-competition agreements but have failed to inform the Store Employees or franchise Store Employees of such information, Jimmy John's Enterprises and Jimmy John's Franchise have omitted material information from Store Employees and franchise Store Employees. Information that their executed non-competition agreements would not be enforced by Defendants would be material to the individual Store Employees who are bound by them. By failing to inform Store Employees of this material fact, Defendants have also engaged in deceptive conduct in violation of the Consumer Fraud and Deceptive Business Practices Act.

75. As detailed above, Jimmy John's Enterprises and Jimmy John's Franchise have engaged in unfair and deceptive acts or practices that are unlawful under Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order:

- a. Finding that Jimmy John's Enterprises and Jimmy John's Franchise have violated Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815

ILCS 505/2, by engaging in unfair and deceptive acts and practices alleged herein;

- b. Declaring that Jimmy John's Enterprises' and Jimmy John's Franchise's non-competition agreements are unenforceable and void and rescinded as a matter of law as to all current and former Store Employees in Illinois;
- c. Providing for injunctive relief consistent with the declaration, including an order precluding Defendants from requiring or using non-competition agreements for Store Employees;
- d. Requiring full restitution for any harm to Illinois consumers and businesses;
- e. Ordering disgorgement against Defendants of any benefits from the unlawful acts and practices;
- f. Assessing the maximum applicable civil penalty against Defendants, including a penalty of \$50,000 per violation if the Court determines that Jimmy John's Enterprises or Jimmy John's Franchise have engaged in acts or practices declared unlawful by the Act with the intent to defraud;
- g. Requiring the defendant(s) to pay all costs for the prosecution and investigation of this action, as provided by section 10 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/10; and
- h. Awarding such other and further relief as the Court deems just and proper.

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Respectfully submitted,

LISA MADIGAN  
Attorney General of the State of Illinois

BY: 

Jane R. Flanagan  
John Wolfsmith  
Anna Crane  
Assistant Attorneys General  
100 West Randolph Street, 11th Floor  
Chicago, Illinois 60601  
Phone: (312) 814-3000  
Attorney No. 99000  
[jflanagan@atg.state.il.us](mailto:jflanagan@atg.state.il.us)  
[jwolfsmith@atg.state.il.us](mailto:jwolfsmith@atg.state.il.us)  
[acrane@atg.state.il.us](mailto:acrane@atg.state.il.us)