

**IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

11417280

DR. DAVID S. MURANSKY, individually,)
and on behalf of others similarly situated,)

Plaintiff,)

CASE No.: 2020CH07156

v.)

GODIVA CHOCOLATIER, INC.)
a New Jersey corporation,)

Defendant.)

CLASS ACTION COMPLAINT

Plaintiff, Dr. David S. Muransky, on behalf of himself and other similarly situated individuals, sues Defendant, Godiva Chocolatier, Inc., and alleges:

INTRODUCTION

1. This class action complaint is based on Defendant’s violations of the Fair and Accurate Credit Transactions Act (“FACTA”) amendment to the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.*, as amended (the “FCRA”), Specifically, this action is based upon Section 1681c(g) of the FCRA, which states that “no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.” Despite the clear language of the statute, Defendant willfully chose not to comply with the FCRA. As such, consumers who purchased products from Defendant using a credit or debit card suffered violations of Section 1681c(g), were burdened with a material risk of identity theft and other harms, and are entitled to an award of statutory damages.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209(a)(1), because Defendant does business in Illinois, and is alleged to have committed tortious acts here.

3. Venue is proper because Defendant maintains multiple stores and committed a number of the alleged FACTA violations at issue in Cook County.

PARTIES

4. Plaintiff, Dr. David S. Muransky, is a natural person who resides in Broward County, Florida.

5. Defendant, Godiva Chocolatier, Inc. (“Defendant” or “Godiva”), is a New Jersey corporation whose principal address is 333 West 34th Street, New York, New York 10001. Godiva operates multiple store in Illinois, and maintains a registered agent for service of process at 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604.

6. Defendant is both a global maker and worldwide retailer of premium chocolates and other confectionaries with more than 600 locations in the U.S., Canada, Europe, and Asia. Not long before this lawsuit was originally filed, Godiva’s annual revenue was expected to exceed \$765 million.¹

FACTUAL ALLEGATIONS

Background of FACTA

7. Identity theft is a serious issue affecting both consumers and businesses. As of 2018, a Harris Poll revealed that nearly 60 million Americans have been affected by identity

¹ Source: <http://www.confectionerynews.com/Manufacturers/UPDATED-Yildiz-Holding-sells-20-stake-in-Uelker-as-Godiva-thrives>.

theft. There were a record high 16.7 million victims of identity fraud in 2017 alone, and account takeovers (when a thief opens a credit card account or other financial account using a victim's name and other stolen information) tripled in 2017 from 2016, causing \$5.1 billion in losses.

8. In 2003, FACTA was enacted by Congress, and signed into law by President George W. Bush, to prevent identity theft and related harm. See Pub. L. No. 108-159 (December 4, 2003) (“An Act . . . to prevent identity theft . . . and for other purposes.”)

9. Upon signing FACTA into law, President Bush remarked that “[s]lips of paper that most people throw away should not hold the key to their savings and financial secrets.” 39 Weekly Comp. Pres. Doc. 1746, 1757 (Dec. 4, 2003). President Bush added that the government, through FACTA, also was “act[ing] to protect individual privacy.” Id.

10. One such FACTA provision was specifically designed to thwart identity thieves' ability to gain sensitive information regarding a consumer's credit or debit card account from a receipt provided to the consumer at the point of sale, which, through any number of ways, could be seen by or fall into the hands of someone other than the consumer.

11. FACTA accomplishes this goal by requiring merchants to mask or “truncate” most of the consumer's credit or debit card account number on the transaction receipt provided to the consumer at the point of sale. Codified at 15 U.S.C. §1681c(g), this provision states the following:

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(hereinafter, the “Receipt Provision”).

12. In particular, Congress passed FACTA to prevent a thief from getting “key” debit and credit account information from transaction receipts the thief could use to commit theft or fraud. [*See* S. Rep. No. 108-166 at p.3]. In other words, Congress found cardholders were exposed to a real risk of identity theft (including card fraud) when more than the last five digits of their card numbers were printed on their transaction receipts. Here, Defendant printed ten digits – the first six and last four – of customers’ sixteen-digit card numbers on their receipts.

13. The risk created by this disclosure is substantial. For example, at least one study demonstrated that in just six seconds, a person armed with nothing more than the first six and last four digits of a credit card number can deduce the missing digits and make a fraudulent purchase online using a “distributed guessing attack,” *i.e.*, systematically attempt multiple online purchases with different number combinations.

14. Defendant’s practice of printing the last four digits of the card number on the receipt along with the first six also enhances a thief’s ability to conduct these attacks because the last digit of the card number is a “check digit,” *i.e.*, a digit whose value is determined based on the other digits of the card number using a formula called the Luhn algorithm. This significantly limits the number of possible combinations a thief will need to attempt to discover the missing digits.

15. The first six digits of a card also reveal details merchants do not normally print on the receipt that a thief can use to deduce missing account information needed to commit fraud via “phishing” inquiries, *i.e.*, using the first six digits and information about the cardholder’s account learned from it, the thief can call or email the consumer posing as the store or bank and convince the consumer the call is legitimate, to extract more data. *See, e.g., Redman v. RadioShack Corp.*, 768 F.3d 622, 626 (7th Cir. 2014) (data FACTA prohibits merchants from

printing on the receipt can “bolster the credibility of a criminal” in “phishing scams”). Account information revealed by the first six digits includes, but is not limited to, the name of the card-issuing institution, the card level (black, platinum, business), and the card industry program (*e.g.* airline or gas card) or merchant program (such as American Airlines AAdvantage Miles, Hilton Honors Points, etc.). As one resource succinctly puts it: “**The BIN/IIN [*i.e.* the first six digits] provides merchants with a lot of other information besides just the issuing entity.**”²

16. Disclosing FACTA-prohibited information on the receipt also gives thieves multiple ways to access it. In addition to finding the receipt if discarded or lost, expert testimony to Congress established printing the information where it can be seen risks its capture by “unscrupulous employees” or “shoulder-surfers” (persons standing nearby) who see the receipt.

17. The only reason Plaintiff was exposed to these real risks is because Defendant printed the first six and last four digits of his card account number on his receipt. Absent Defendant’s memorialization of the first six digits of Plaintiff’s card on the receipt, a thief has no practical way to learn that information because banks issue cards using multiple first-six digit combinations, sometimes hundreds by a single bank, and thus without the receipt a thief cannot determine which first-six-digit combination is on Plaintiff’s card.

18. After enactment, FACTA provided three (3) years in which to comply with the Receipt Provision, mandating full compliance no later than December 4, 2006.

² See <https://chargebacks911.com/bank-identification-numbers/#:~:text=The%20BIN%2FIIN%20provides%20merchants,funds%20will%20be%20transferred%20from> at “How Bank Identification Numbers Help” (bold and brackets added).

19. The Receipt Provision was widely publicized among retailers and the FTC. For example, on March 6, 2003, in response to earlier state legislation enacting similar truncation requirements, then-CEO of Visa USA, Carl Pascarella, announced a new policy to combat identity theft and protect consumers by limiting cardholder information on receipts to the last four digits of their account numbers, explaining: “Identity thieves thrive on discarded receipts and documents containing consumers’ information such as payment account numbers Visa’s new policy will protect consumers by limiting the information these thieves can access.”

20. Within 24 hours, MasterCard and American Express announced they were imposing similar requirements.

21. Card issuing organizations proceeded to require compliance with FACTA by contract, in advance of FACTA’s mandatory compliance date. For example, the “Rules for Visa Merchants,” which are distributed to and binding upon all merchants that accept Visa cards, expressly requires that “only the last four digits of an account number should be printed on the customer’s copy of the receipt” and “the expiration date should not appear at all.”³ VISA required complete compliance by July 1, 2006, five months ahead of the statutory deadline.

22. Because a handful of large retailers did not comply with their contractual obligations to the card companies and the straightforward requirements of FACTA, Congress passed The Credit and Debit Card Receipt Clarification Act of 2007, to temporarily change the definition of willful noncompliance with respect to violations involving the failure to mask card

³ *Rules for Visa Merchants*, VISA (p.17) (Sept. 1, 2007), http://www.runtogold.com/images/rules_for_vis_merchants.pdf.

expiration dates on transaction receipts for a short period of time. Importantly, the Clarification Act did not amend FACTA to allow publication of more than the last 5 digits of the card number or the card expiration date. Instead, it simply provided amnesty for certain past violators who disclosed the card expiration date, and then only up to June 3, 2008.

23. Card processing companies continued to alert their merchant clients, including Defendant, of FACTA's requirements. According to a Visa Best Practice Alert in 2010:

Some countries already have laws mandating PAN truncation and the suppression of expiration dates on cardholder receipts. For example, the United States Fair and Accurate Credit Transactions Act (FACTA) of 2006 prohibits merchants from printing more than the last five digits of the PAN or the card expiration date on any cardholder receipt. (Please visit <http://www.ftc.gov/os/statutes/fcrajump.shtm> for more information on the FACTA.) To reinforce its commitment to protecting consumers, merchants, and the overall payment system, Visa is pursuing a global security objective that will enable merchants to eliminate the storage of full PAN and expiration date information from their payment systems when not needed for specific business reasons. To ensure consistency in PAN truncation methods, Visa has developed a list of best practices to be used until any new global rules go into effect.

24. Most of Defendant's business peers and competitors kept their credit card and debit card receipt printing process in compliance with FACTA by ensuring their card machines and devices complied with the truncation requirement. Defendant could very easily have done the same.

25. Not only was Defendant informed it could not print more than the last five numbers, it was contractually prohibited from doing so. Defendant accepts credit cards from all major issuers; these companies set forth requirements that merchants, including Defendant, must follow, including FACTA's redaction and truncation requirements.

26. As noted above, the processing companies have required that credit card or debit card expiration dates and more than the last five digits of card account numbers not be shown since 2003 and still require it. For example, American Express directed:

Pursuant to Applicable Law, truncate the Card Number and do not print the Card's Expiration Date on the copies of Charge Records delivered to Card Members. Truncated Card Number digits must be masked with replacement characters such as "x," "*", or "#," and not blank spaces or numbers.

27. Similarly, MasterCard required in a section titled Primary Account Number (PAN) truncation and Expiration Date Omission:

A Transaction receipt generated by an electronic POI Terminal, whether attended or unattended, must not include the Card expiration date. In addition, a Transaction receipt generated for a Cardholder by an electronic POI Terminal, whether attended or unattended, must reflect only the last four digits of the primary account number (PAN). All preceding digits of the PAN must be replaced with fill characters, such as "X," "*", or "#," that are neither blank spaces nor numeric characters.

28. So problematic is the crime of identity theft that the three main credit reporting agencies, Experian, Equifax, and Transunion, joined to set-up a free website (<http://www.annualcreditreport.com>) to comply with FACTA requirements and provide the citizens with a means of monitoring their credit reports for possible identity theft.

29. FACTA clearly prohibits printing more than the last 5 digits of the card number on the receipt to protect the cardholder from identity theft, including card fraud.

Plaintiff's Factual Allegations

30. On March 31, 2015, Plaintiff incurred a charge for \$19.26 dollars for goods purchased at Defendant's retail store located at the Aventura Mall in Aventura, Florida.

31. Plaintiff paid for said goods using his personal VISA® credit card. Upon making the payment, he was provided with an electronically-printed receipt bearing the GODIVA® logo, which also displayed the last four digits of his credit card *as well as the first six digits of his account number*.

32. Concerned about the amount of his card account number that was disclosed on the receipt, Plaintiff took care to make sure he did not lose the receipt. First he took it to his

office and put it in his desk. Subsequently, he made arrangements for his counsel to lock it in a safe.

33. This same violation at issue took place at numerous Godiva retail stores across the United States, including but not limited to the Galleria Mall (Fort Lauderdale, Florida) and the Gardens Mall (Palm Beach Gardens, Florida), for a period of time that included the busy Easter shopping season.

34. Upon information and belief, the violations at issue arose when Defendant installed TOSHIBA® SurePOS retail systems in its many retail stores across the United States.

35. Upon information and belief, prior to the rollout of the TOSHIBA® point-of-sale system, Defendant had a written policy in place requiring the truncation of credit card account numbers; this is evidenced by the fact that prior to the installation of the aforementioned retail system, Defendant was actually truncating credit card account numbers.

36. Upon information and belief, a manual was provided to Godiva for the operation of the TOSHIBA® point-of-sale system which explained that the retailer is able to determine which fields will appear on a printed receipt and further explained that the retailer is able to truncate credit card numbers and mask expiration dates.

37. Upon information and belief, it would take an individual less than thirty seconds to run a test receipt in order to determine whether the TOSHIBA® point-of-sale system was in compliance with federal law(s) or Defendant's own alleged written policy requiring the truncation of credit card numbers.

38. Moreover, Defendant's employees had actual knowledge of the statute's requirements. In fact, in a 2007 Form 10-K Statement filed with the United States Securities and Exchange Commission, Jim Goldman (then-CEO of Godiva) was informed in his capacity as a

director of another company, The Children's Place Retail Stores, Inc., that it was the subject of a virtually identical class action for violations of FACTA. The statement read in part:

On or about September 28, 2007, Meghan Ruggiero filed a complaint against the Company and its subsidiary, Hoop Retail Stores, LLC, in the United States District Court, Northern District of Ohio on behalf of herself and other similarly situated individuals. The lawsuit alleges violations of the Fair and Accurate Credit Transactions Act ("FACTA") and seeks class certification, an award of statutory and punitive damages, attorneys' fees and costs, and injunctive relief. The outcome of this litigation is uncertain; while we believe there are valid defenses to the claims and will defend ourselves vigorously, we cannot reasonably estimate the amount of loss or range of loss that might be incurred as a result of this matter.

...

James Goldman has served as a director of the Company since 2006 and is a member of the compensation committee. Mr. Goldman has served as President, Worldwide of Godiva Chocolatier, Inc., a wholly owned subsidiary of the Campbell Soup Company, Inc. since 2004. From 2001 to 2004, Mr. Goldman served as President, North America Food and Beverage of Campbell Soup Company.

39. The above-referenced class action lawsuit, *Ruggiero v. The Children's Place Retail Stores, Inc.*, No. 07-cv-09966 (N.D. Ohio), alleged precisely the same violations as in the present matter – *i.e.*, the printing of more than the last 5 digits on a credit card receipt.

40. Further, in 2011, Jim Goldman also sat on the Board of Directors of Domino's Pizza, Inc., when it too was sued in a similar class action for violation of FACTA. *See Lipkis v. Domino's Pizza, Inc., et al.*, No. 11CH39816 (Ill. Cook Co. Cir. Ct. Nov. 17, 2011).

41. Upon information and belief, Mr. Goldman was informed of the Domino's Pizza, Inc. lawsuit in his capacity as a director of Domino's Pizza, Inc., and consequently, he was again made aware of FACTA's requirements.

42. Mr. Goldman is not the only member of Godiva's Board of Directors who had actual, personal knowledge of FACTA's requirements; other board members also served as directors of other companies, all of which were alleged to have violated FACTA, including Rose

Marie Bravo (“Saks Fifth Avenue” and “Burberry Limited”), Peter B. Saunders (“The Body Shop”), and Jay Margolis (“Tommy Hilfiger”).

43. The law is well settled that the knowledge of a corporation’s directors may be imputed to the corporation. *Beck v. Deloitte & Touche*, 144 F.3d 732, 736 (11th Cir. 1998); *In re Hellenic Inc.*, 252 F.3d 391, 395 (5th Cir. 2001) (noting “courts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation”).

44. In addition to having a written policy and its employees and board members having personal knowledge of FACTA’s truncation requirements, Defendant also would have been alerted by its third-party payment processing company. Many payment processors, including Chase Paymentech in 2010, sent email alerts directly to all merchants regarding FACTA’s truncation requirement. Without the benefit of discovery, it is unknown which third-party payment processors were utilized by Defendant.

45. More so than most companies, Godiva was on heightened notice of the risks associated with identity theft. In May 2013, Defendant sent a letter to several attorneys general related to the compromised personal data contained on a flash drive. The data included the name, address, and Social Security number of several thousand employees and job applicants.

46. In November 2014, Godiva sent a letter to an undisclosed number of people due to the theft of a laptop which again contained the personal information of many of its employees, including name, address, and Social Security number – and in some case sensitive medical information as well.

Alleged Misdeeds

47. At all times relevant herein, Defendant was acting by and through its agents,

servants and/or employees, each of which were acting within the course and scope of their agency or employment, and under the direct supervision and control of the Defendant.

48. At all times relevant herein, the conduct of the Defendant, as well as that of its agents, servants and/or employees, was in willful and reckless disregard for federal law and the rights of the Plaintiff.

49. It is Defendant's policy and procedure to issue an electronically printed receipt to individuals at the point of sale – *i.e.*, immediately upon receipt of credit or debit card payment.

50. Consistent with Defendant's policy and procedure, Defendant knowingly included more than the last 5 digits of the card number on its electronically printed receipts. Specifically, it printed the first six and last four digits of the card numbers.

51. The digits appearing on the receipt are not printed accidentally; the equipment and software used to print the receipts and electronically store an image of same must be programmed to display certain information, and likewise, programmed not to display certain information.

52. Given the law and the fact Defendant's store staff could see on the face of each receipt Defendant printed that it was disclosing the first six and last four digits of consumers card numbers on the receipts day in and day out, Defendant's violations were knowing or at least reckless.

53. To paraphrase the words of Judge Richard Posner in *Redman v. Radioshack Corp.*, 768 F.3d 622 (7th Cir. 2014), Defendant engaged "in conduct that creates an unjustifiably high risk of harm that is either known or so obvious that it should be known..." *Id.* at 627.

CLASS ACTION ALLEGATIONS

54. Plaintiff brings this class action on behalf of himself and the following class:

(i) All persons in the United States (ii) who, when making payment for goods or services at a Godiva retail store located in the United States, (iii) made such payment using a credit or debit card (iv) and were provided with a point-of-sale receipt (v) which displayed more than the last 5 digits of said credit or debit card number (vi) between April 6, 2013, and November 20, 2015.

Notwithstanding the foregoing, in compliance with 28 U.S.C. §455, this class specifically excludes persons in the following categories: (A) the judge presiding over this case and the judges of the appellate court; (B) the spouses of those in category (A); (C) any person within the third degree of relationship of those in categories (A) or (B); and (D) the spouses of those within category (C).

55. The class contains more than three-hundred-thousand members and thus, it is so numerous that joinder of all members would be impracticable.

56. This case presents questions of law and fact common to all the members of the Class that predominate over any questions affecting only individual members. These common questions include:

a. Whether, during the class period, Defendant printed customer transaction receipts that disclosed more than the last five digits of the cardholders' debit or credit card numbers;

b. Whether Defendant's FACTA violations were knowing or reckless, thus entitling Plaintiff and the class to statutory damages; and

c. The appropriate amount of statutory damages to award.

57. Plaintiff is a member of the class, he will fairly and adequately protect the interests of the Class, and has retained attorneys experienced in class and complex litigation, including class action litigation under FACTA.

58. A class action is an appropriate method for resolving the claims raised in this lawsuit because: (i) the prosecution of separate actions by the members of the class would wastefully burden the judicial system with the need to resolve the common factual and legal

questions this case presents over and over; (ii) requiring members of the class to prosecute their own individual lawsuits would work an injustice, as it would prevent class members who are unaware they have a claim, or who lack the ability or wherewithal to bring their own lawsuit and find a lawyer willing to take their case, to obtain relief; and (iii) requiring individual class member lawsuits would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests, or create conflicting and incompatible standards of conduct for Defendant.

59. Proceeding on a class basis will not create any significant difficulty in the management of this litigation.

COUNT I – VIOLATIONS OF 15 U.S.C. § 1681(c)(g)

60. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

61. 15 U.S.C. §1681c(g) states as follows:

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

62. This section applies to any “device that electronically prints receipts” (hereafter “Devices”) at point of sale or transaction. 15 U.S.C. §1681c(g)(3).

63. Defendant employed the use of said Devices for point of sale transactions at the various locations of Defendant.

64. On or before the date on which Plaintiff originally filed his complaint, Defendant provided Plaintiff and members of the class with receipts that did not comply with the Receipt Provision.

65. At all times relevant to this action, Defendant was aware of the Receipt Provision as well as the need to comply with said provision.

66. Notwithstanding the three-year period to comply with FACTA and its accompanying provisions, and the subsequent years since FACTA became effective, and having knowledge of the Receipt Provision and FACTA as a whole, Defendant knowingly or recklessly violated the Receipt Provision.

67. By printing the first six (6) and the last four (4) digits of Plaintiff's credit card number on Plaintiff's transaction receipt, Defendant caused Plaintiff to suffer a material risk of identity theft, exposed Plaintiff's private information to others who may have handled the receipt, and forced Plaintiff to take action prevent further disclosure of the private information displayed on the receipt.

68. As a result of Defendant's willful violations of the FCRA, Defendant is liable to Plaintiff and members of the class pursuant to 15 U.S.C. § 1681n for statutory damages, punitive damages, attorney's fees and costs.

WHEREFORE, Plaintiff, Dr. David Muransky, respectfully requests that this Court enter orders for the following relief against Defendant:

- a. Granting certification of the class;
- b. Awarding statutory and punitive damages;
- c. Awarding attorneys' fees, litigation expenses and costs of suit; and
- d. Awarding such other relief as the Court deems just.

Dated: December 8, 2020

Respectfully submitted,

s/Keith J. Keogh
Keith J. Keogh, Esq.

Michael S. Hilicki, Esq.
KEOGH LAW, LTD.
55 W. Monroe, Ste. 3390
Chicago, IL. 60603
Tel: 312-726-1092
Keith@Keoghlaw.com
MHilicki@Keoghlaw.com
Firm No. 39042

Bret L. Lusskin, Jr., Esq.*
BRET LUSSKIN, P.A.
20803 Biscayne Blvd., Suite # 302
Aventura, FL 33180
Tel: 954-454-5841

Scott D. Owens, Esq.*
SCOTT D. OWENS, P.A.
3800 S. Ocean Dr., Ste. 235
Hollywood, FL 33019
Tel: (954) 589-0588

*Pending admission *pro hac vice*

Illinois Supreme Court Rule 222 Declaration

I, Keogh J. Keogh, one of the attorneys for Plaintiff, declare that the relief sought in this action exceeds \$50,000.

s/ Keith J. Keogh
One of Plaintiff's Attorneys

FILED DATE: 12/8/2020 5:16 PM 2020CH07156

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Dr. David Muransky

Plaintiff
v.
Godiva Chocolatier, Inc.

Defendant

No. _____

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

- 0005 Administrative Review
- 0001 Class Action
- 0002 Declaratory Judgment
- 0004 Injunction

- 0007 General Chancery
- 0010 Accounting
- 0011 Arbitration
- 0012 Certiorari
- 0013 Dissolution of Corporation
- 0014 Dissolution of Partnership
- 0015 Equitable Lien
- 0016 Interpleader
- 0017 Mandamus
- 0018 Ne Exeat

- 0019 Partition
- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
- 0023 Reformation of a Contract
- 0024 Rescission of a Contract
- 0025 Specific Performance
- 0026 Trust Construction
- Other (specify) _____

By: /s/ Keith J. Keogh
 Atty. No.: 39042 Pro se 99500
 Name: Keith J. Keogh
 Atty. for: Plaintiff
 Address: 55 W. Monroe St, Suite 3390
 City/State/Zip: Chicago, IL 60603
 Telephone: 312-726-1092
 Primary Email: Keith@KeoghLaw.com
 Secondary Email: MSeckel@KeoghLaw.com
 Tertiary Email: RWollenschlager@KeoghLaw.com

Pro Se Only: I have read and agree to the terms of the **Clerk's Office Electronic Notice Policy** and choose to opt in to electronic notice from the **Clerk's Office** for this case at this Email address:

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