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

CHRISTOPHER MCNAIR, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. _____
vs.	)	ON REMOVAL FROM THE CIRCUIT COURT OF COOK COUNTY,
TEMPLETON RYE SPIRITS, LLC, an Iowa limited liability company,	)	ILLINOIS
Defendant.	)	Cook County Case No. 14 CH 14583

Notice of Removal

Defendant, Templeton Rye Spirits, LLC ("Templeton"), hereby removes this action from the Circuit Court of Cook County, Illinois to the United States District Court for the Northern District of Illinois. Removal is based on 28 U.S.C. §§1332(d) and 1453 (the Class Action Fairness Act or "CAFA") and is authorized by 28 U.S.C. §§1441, 1446, and 1453. The procedural requirements for removal have been satisfied.

I. The State Court Action.

1. Plaintiff commenced a putative class action in the Circuit Court of Cook County, Illinois, on September 9, 2014, styled as *Christopher McNair, individually, and on behalf of all others similarly situated, v. Templeton Rye Spirits, LLC, an Iowa limited liability company*, case number 2014 CH 14583 (the "State Court Action"). A copy of the complaint is attached to this notice as Exhibit 1.

2. The complaint alleges that Templeton has engaged in deceptive marketing practices and purports to assert the following causes of action: Violation of the Iowa Consumer Fraud Act (Count I), Violation of the Illinois Consumer Fraud and Deceptive

Business Practices Act ("Illinois Consumer Fraud Act") (Count II), Consumer Fraud (Count III), Fraud by Omission (Count IV), and Restitution/Unjust Enrichment (Count V).

3. The complaint further indicates that Plaintiff seeks to bring the action on behalf of himself and a putative class consisting of "[a]ll individuals in the United States who purchased a bottle of Templeton Rye" and a subclass of "[a]ll individuals in the Class who are domiciled in the State of Illinois." (Compl., ¶38).

4. For relief, Plaintiff requests certification of the lawsuit as a class action; the appointment of his counsel as class counsel; an award of the aggregated monetary, actual, consequential, and compensatory damages of the class members who purchased Templeton Rye Whiskey, pre and post judgment interest, declaratory and injunctive relief, attorneys' fees and costs; and any other relief that may be appropriate. (Compl., Request for Relief, p. 23).

II. Removal is proper under CAFA.

5. The State Court Action is removable under CAFA. "The language and structure of CAFA…indicate[ ] that Congress contemplated broad federal court jurisdiction with only narrow exceptions." *Appert v. Morgan Stanley Dean Witter, Inc.*, 673 F.3d 609, 622 (7th Cir. 2012) (quotation marks omitted); *see* S. Rep. 109-14, at 43 (2005) (CAFA was intended to "expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions be heard in federal court if properly removed by any defendant"); *see also* H. Rep. 108-144, at 37 (2005).

6. Under CAFA, a putative class action may be removed if (a) any member of the putative class is a citizen of a state different from any defendant, (b) the amount in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and (c)

the number of members in the putative classes, in the aggregate, is no less than 100. 28 U.S.C. §§1332(d)(2)(A) and (d)(5)(B).

A. CAFA's minimum-diversity requirement is met.

7. Minimum diversity exists under CAFA if "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. §1332 (d)(2)(A). Here, the complaint establishes that minimum diversity exists in this case.

8. Plaintiff states that he "is a natural person and citizen of the State of Illinois." (Compl., ¶5).

9. Templeton, as correctly noted in the complaint, is a limited-liability company organized under the laws of Iowa with its principal place of business located in Iowa. (Compl. ¶6). CAFA provides that "an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized." 28 U.S.C. §1332 (d)(10); *see Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 699-700 (4th Cir. 2010) (an LLC is an "unincorporated association" as that term is used in 28 U.S.C. § 1332(d)(10)). Accordingly, Templeton is a citizen of the State of Iowa.

10. CAFA's minimal-diversity requirement is therefore satisfied.

B. CAFA's amount-in-controversy requirement is satisfied.

11. CAFA jurisdiction is proper if "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). Under CAFA, the amount in controversy in a putative class action is determined by aggregating the amount at issue for the claims of all members of the putative classes. 28 U.S.C. §1332(d)(6). The amount in controversy alleged by the plaintiff is not dispositive. *See Standard Fire Ins. Co. v.*

Knowles, 133 S. Ct. 1345, 1350 (2013) (putative class representative's disclaimer of damages above the jurisdictional threshold is ineffective because it does not bind the putative class members). A removing party need only establish that it is not "***legally impossible"*** for the amount in controversy to exceed $5 million. *Bloomberg v. Serv. Corp. Int'l*, 639 F.3d 761, 764 (7th Cir. 2011) ("Once the proponent of federal jurisdiction has explained plausibly how the stakes exceed $5,000,000 the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much") (internal citations omitted). That standard is satisfied here.

12. The complaint establishes that it is not legally impossible for the amount in controversy to exceed $5 million.[1] Plaintiff alleges that the members of the putative class have purchased "hundreds of thousands of bottles of…Templeton Rye…" (Compl., ¶2). He further alleges that the members of the putative class "have suffered actual damages in the form of the full or partial retail price of Templeton Rye, typically $34.99 or more." (Compl., ¶¶52). Taking Plaintiff's own allegations at face value, if Templeton sold hundreds of thousands of bottles—meaning a minimum of 200,000 bottles—and the price of each bottle was $34.99, the putative class would have suffered damages totaling $6,998,000. In fact, to reach the $5 million threshold, Templeton would only have needed to sell 142,898 bottles of whiskey. That is far from "legally impossible," given Plaintiff's allegation that "hundreds of thousands" of bottles were sold. *Bloomberg*, 639 F.3d at 764; (Compl., ¶2).

[1] Templeton denies that this case is appropriate for class treatment or that they are subject to any liability. Templeton further denies that Plaintiff and/or the purported class will ultimately be entitled to recover in any amount. Templeton does not admit that, if liability is found, it will exceed $5 million. Instead, the figures set forth herein are solely for purposes of establishing that taking the facts alleged in the Complaint as true solely for purposes of this Notice of Removal, the CAFA amount-in-controversy requirement is satisfied.

13. In addition, Plaintiff asserts a claim under the Illinois Consumer Fraud Act, which provides for punitive damages that should be included in the amount in controversy. *See Keeling v. Esurance Ins. Co.*, 660 F.3d 273, 275 (7th Cir. 2011) (noting that courts in Illinois have allowed punitive-damage multipliers in excess of *five times* the amount of actual damages in fraud cases). In other words, even if the aggregated actual damages of the nationwide class amounted to approximately $835,000, punitive damages could amount to an additional $4,175,000, putting the amount in controversy above the $5 million threshold. And to reach $835,000 in actual damages, Templeton would only have needed to sell 23,864 bottles of whiskey – well below the "hundreds of thousands" of bottles alleged in the complaint.

14. Plaintiff asserts in his complaint that he does not seek punitive damages "at this time." (Compl., ¶4). This is insufficient to remove punitive damages from the amount in controversy, however, absent a binding declaration that Plaintiff is waiving any and all rights to punitive damages. *See Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511-12 (7th Cir. 2006). (Compl., ¶¶2, 4). And, as noted above, in a class action any such declaration would be binding only on Plaintiff and not the putative class members. *See Knowles*, 133 S. Ct. at 1350. Punitive damages are therefore correctly considered part of the amount in controversy notwithstanding Plaintiffs effort to exclude them.

15. Plaintiff further seeks two forms of injunctive relief. (Compl, ¶¶70, p. 23). While the amount in controversy attributable to any injunction that may be entered is not necessary to meet the jurisdictional threshold in this case, the "cost of prospective relief cannot be ignored in the calculation of the amount in controversy." *Keeling*, 660 F.3d at 274,

Accordingly, Templeton reserves the right to supplement the amount in controversy pursuant to Plaintiff's request for injunctive relief should the need arise.

16. Finally, while the amount in controversy is established by the complaint, the jurisdictional threshold is further satisfied through the Declaration of Aaron Thompson, one of Templeton's record keepers. Mr. Thompson states that Templeton has sold approximately 1,473,000 bottles of Templeton Rye whisky over the past five years, according to company records. A copy of the declaration is attached to this notice as Exhibit 2. At approximately $34.00 per bottle as alleged by Plaintiff, the amount in controversy in this matter easily exceeds $5 million.

17. Reading facts alleged in the complaint together with the broad relief sought by Plaintiff on a class-wide basis, and the supplemental information provided by Templeton in support of removal, it is not "legally impossible" that the amount in controversy will exceed $5 million. CAFA's amount-in-controversy requirement is therefore satisfied.

C. CAFA's numerosity requirement is met.

18. Jurisdiction under CAFA is proper if the "number of members of all proposed plaintiff classes in the aggregate" is at least 100. 28 U.S.C. §1332(d)(5)(B).

19. Plaintiff is seeking to certify a class which he alleges includes "thousands of consumers across the country…" (Compl., ¶4). Thus, the putative class exceeds the 100 member threshold as set forth in 28 U.S.C. §1332(d)(5)(B).

III. All additional procedural requirements are satisfied.

20. Removal is Timely. Templeton was served on September 11, 2014. This Notice of Removal has thus been filed within thirty (30) days of receipt of the complaint by Templeton and is therefore timely in accordance with 28 U.S.C. §1446(b)(1).

21. Removal to Proper Court. Venue is proper pursuant to 28 U.S.C. §§1441(a) and 1446(a) because the Northern District of Illinois embraces the Circuit Court of Cook County, Illinois, where the State Court Action was originally commenced.

22. Notice. A copy of the Notice of Filing Notice of Removal will be timely filed with the clerk of the Circuit Court of Cook County, Illinois, and served on Plaintiff's counsel pursuant to 28 U.S.C. §1446(d).

23. Pleadings and Process. Attached as Exhibit 3 is a copy of all process, pleadings, and orders received by Templeton in the State Court Action (other than the complaint attached as Exhibit 1) pursuant to 28 U.S.C. §1446(a).

24. Consent. Templeton is the only defendant; there are no other defendants whose consent is required for removal. Regardless, the consent of all defendants is not necessary for removal under CAFA. *See* 28 U.S.C. §1453(b) ("A class action…may be removed by any defendant without the consent of all defendants").

25. Signature. This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11. 28 U.S.C. §1446(a).

26. Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1332(d) and 1453 and the claims may be removed to this Court under 28 U.S.C. §§1441, 1446, and 1453.

27. In the event Plaintiff seeks to remand this case, or the Court considers remand *sua sponte*, Templeton respectfully requests the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

For the reasons stated above, this case is hereby removed from the Circuit Court of Cook County, Illinois to this Court.

Dated: September 24, 2014

Respectfully submitted,

Templeton Rye Spirits, LLC

By: /s/ Simon Fleischmann
One of its Attorneys

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EXHIBIT 1

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

CHRISTOPHER MCNAIR, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

TEMPLETON RYE SPIRITS, LLC, an Iowa limited liability company,

Defendant.

Case No.

CLASS ACTION COMPLAINT

Plaintiff Christopher McNair brings this Class Action Complaint against Defendant Templeton Rye Spirits, LLC, ("Templeton" or "Defendant") based upon Defendant's practice of deceptively marketing its Templeton Rye whiskey. Plaintiff, for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF ACTION

1. Defendant is the owner of a "small-craft" whiskey brand—Templeton Rye—with its headquarters in the rural town of Templeton, Iowa.

2. Defendant's Templeton Rye is marketed as the revival of a prohibition-era whiskey recipe that was the favorite drink of Chicago mobster Al Capone. Since its rebirth within the past decade, Defendant has marketed Templeton Rye as being "small batch" and "made in Iowa." Consumers, seeking an alternative to mainstream, mass-produced alcoholic beverages have purchased hundreds of thousands of bottles of Defendant's Templeton Rye and

have paid a premium price over other whiskeys to obtain those qualities.

3. However, directly contrary to these representations, Defendant's whiskey isn't actually made in Iowa. The whiskey—despite being named after Templeton, Iowa and owned by a company that owns a distillery there—is instead distilled and aged at the Indiana factory of MGP Ingredients, Inc. that also distills and ages whiskey for countless other brands. In Defendant's own words once the source of its whiskey was publically revealed: "[i]t's very simply put: We buy the whiskey in barrels from (MGP)."[1]

4. Unfortunately, thousands of consumers across the country have been injured by Defendant's deceptive marketing practices. Those consumers, including Plaintiff, purchased Templeton Rye in reliance on the truth and accuracy of Defendant's representations and thought they were buying authentic Iowa whiskey and were unaware of the actual origin of its whiskey. Accordingly, Plaintiff McNair, on his own behalf and on behalf of a class of similarly situated individuals, brings this lawsuit and seeks injunctive relief, damages, and restitution, together with costs and reasonable attorneys' fees. At this time, Plaintiff does not seek a specific amount of damages, does not seek punitive damages, and does not seek damages (monetary and/or injunctive) and attorneys' fees that combined would meet or exceed $5,000,000 inclusive of costs and interest. Any calculation of total damages will be based on, and is in the possession of, Defendant.

PARTIES

5. Plaintiff Christopher McNair is a natural person and citizen of the State of Illinois.

6. Defendant Templeton Rye Spirits, LLC, is a limited liability company

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[1] *Templeton Rye to change labels, clarifies how much made in Iowa*, http://www.press-citizen.com/story/news/local/2014/08/28/templeton-rye-change-labels-clarifies-much-made-iowa/14766993/ (last visited Sept. 9, 2014).

incorporated and existing under the laws of the State of Iowa with its principal place of business located at 209 East 3rd Street, Templeton, Iowa 50211. Templeton does business in the State of Illinois, this County, and nationwide.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over this action pursuant to 735 ILCS 5/2-209(a)(1) because the Defendant does business in Illinois, Plaintiff McNair is a resident of Illinois, and Defendant committed tortious acts within Illinois.

8. Venue is proper because Defendant does business in Cook County and the causes of action arose, in substantial part, in Cook County.

COMMON FACTUAL ALLEGATIONS

A Brief Introduction to Templeton and its Templeton Rye Whiskey.

9. For about a decade, Defendant has produced "small batch" whiskey sold under the brand name Templeton Rye. Defendant claims that its rye is made according to a "nearly century-old recipe." To date, Templeton has produced over one million bottles of its Templeton Rye and has sold hundreds of thousands of bottles nationwide.

10. Defendant is headquartered and has a distillery in a building located in Templeton, Iowa, shown in Figure 1.

(**Figure 1**, showing Templeton's purported "distillery" as it appears on Facebook.com)

Templeton Deceives Consumers into Thinking that Templeton Rye is "Small-Batch" and Small-Town Whiskey

11. Since the reincarnation of the "Templeton" name, Defendant has had the singular aim of convincing consumers that its whiskey is an authentic Iowan product—unlike the hundreds of other whiskeys on the market. According to Defendant, Templeton Rye is an authentic, small-town whiskey made in Templeton, Iowa, population 362. Defendant represents that its recipe dates back to the prohibition era when distillers in Templeton made some of the finest whiskey in the country.

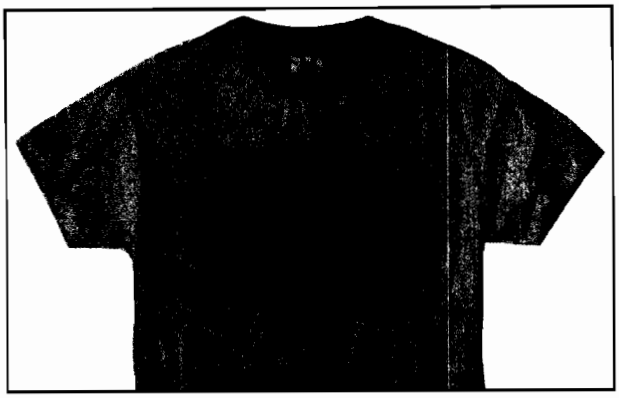
12. The whiskey was so good, Defendant claims, that notorious Chicago figures, such as Al Capone, drank it by the barrel. On its Facebook.com webpage, Templeton explains:

> When Prohibition outlawed the manufacture and sale of alcoholic beverages in 1920, many enterprising residents of the small town Templeton, Iowa, chose to become outlaws – producing a high caliber and much sought-after whiskey known as Templeton Rye.

13. But after prohibition was repealed, the recipe for "Templeton rye" was lost and the whiskey was not officially sold until it was revived in the early part of the 21st century by a man with apparent Iowan roots. That man, Scott Bush, then partnered with a local Templeton distiller to supposedly bring the prohibition-era recipe back to life.

14. Central to this story is the connection to Templeton, Iowa. Without this connection—and the fabled link to figures like Al Capone—Defendant's whiskey would be lost on the shelf. It follows, then, that Defendant crafted its marketing plan to influence the willingness of consumers to purchase its product by representing that Templeton Rye originates from Templeton, Iowa, and is produced in a manner substantially different from large alcohol conglomerates.

15. For example, Templeton has produced, sold, and given away t-shirts that say "TEMPLETON RYE MADE IN IOWA." (*See* Figure 2.)



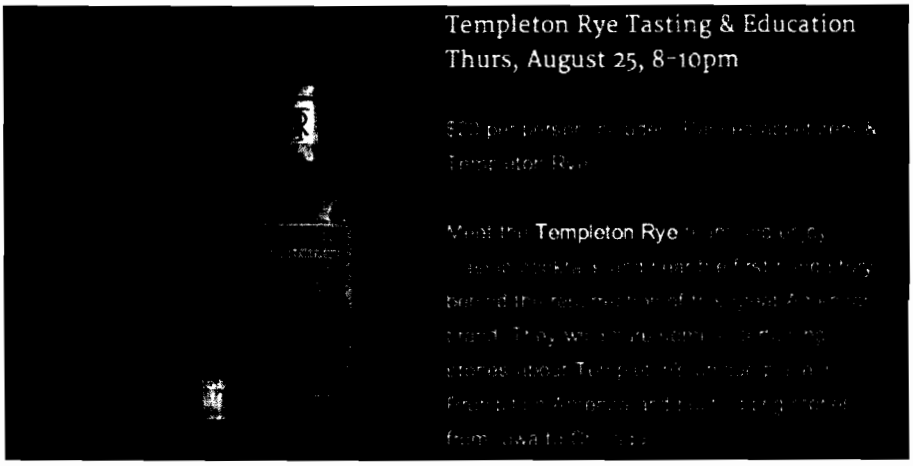
(Figure 2.)

16. Similarly, on its Twitter feed, Templeton offers salutations "from Templeton, Iowa, home of The Good Stuff [i.e., Templeton Rye]" and selected its location as "Templeton, Iowa." (*See* Figure 3.)

(Figure 3.)

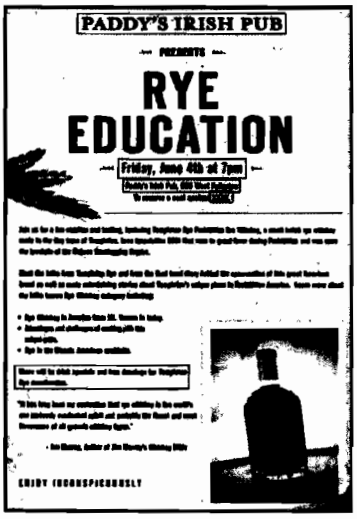
17. Defendant also markets to consumers by entering into partnerships with bars and restaurants for "tasting" and "education" events. At those events, Defendant's representatives and agents, amongst other things, celebrate the history of the original Templeton rye and represent to consumers that Defendant's Templeton Rye is true to that chronicle. For example, Figure 4 shows a screenshot of a website advertising a "Tasting & Education" event where the

"Templeton Rye team" will "share some entertaining stories about Templeton's unique place in Prohibition America and bootlegging stories *from Iowa to Chicago*." (*See* Figure 4) (emphasis added).



(Figure 4.)

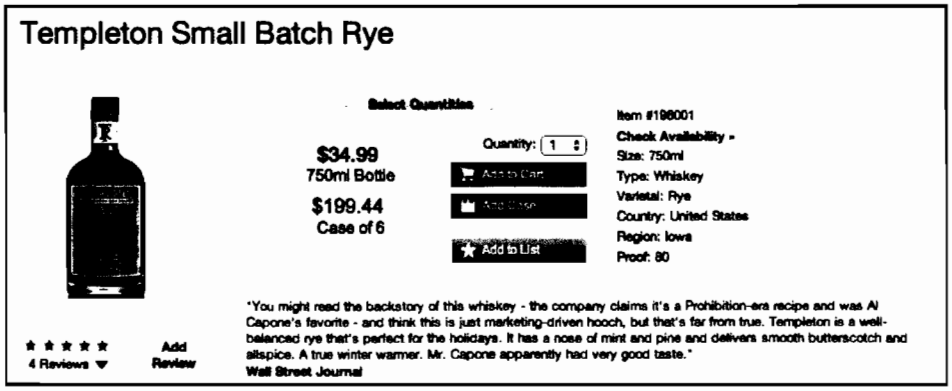
18. Likewise, Figure 5 shows a flyer promoting a "RYE EDUCATION" event at a local Chicago bar. There, the "folks from Templeton Rye" will provide a "seminar and tasting" of "Templeton Rye Prohibition Era Whiskey, a small batch rye whiskey made in the tiny town of Templeton, Iowa (population 350)."



(Figure 5.)

19. Defendant's scheme continues at the retail stores where Defendant sells its

Templeton Rye. For instance, on the Binny's Beverage Depot website, Defendant's caused the "Region" of the Whiskey to be populated with "Iowa" and the description to parrot the same "Prohibition-era" story. (*See* Figure 6.)



(Figure 6.)

20. Defendant also caused Bevmo.com, an online liquor store, to represent that Templeton Rye is "Produced in the small town of Templeton Iowa." (*See* Figure 7.)

(Figure 7.)

21. Defendant continues its deception even when consumers visit its headquarters and "distillery" in Templeton, Iowa. According to Defendant, consumers can pay $5 to go on a tour of Defendant's "production area, barrel warehouse, bottling line and tasting room." A Templeton-area newspaper reported on one such tour when the great-niece of Al Capone went to

Templeton as a brand spokeswoman.[2] In the article, the newspaper states that consumers can take a "tour of Templeton Rye Spirits distillery" in "Templeton," and that "for years, Templeton Rye has levered its colorful history for marketing purposes with Al Capone as a central figure of intrigue. To have the last living member of his family to carry the Capone name in the *local distillery*."

22. But as explained below, there is nothing "local" about the distillery where Defendant's Templeton Rye is made. Rather, it is actually made in a large Indiana factory that also makes other "cost effective" "alcohol products." As explained by Vern Underwood, Chairman of Templeton, after news of its deception was publicized, the choice to not distill its own product was made because "[w]hen we got involved in this thing, I thought, 'I'm not going to spend millions of dollars on the distillery not knowing if I'm going to get booted out of town or never sell any of this stuff.'"[3] As such, Defendant attempted to have the best of both worlds including cheap, large-scale production and a small-town story.

Templeton Rye Isn't "Made in Iowa"—Instead, it's Distilled in an Indiana Factory that Distills Whiskey for Dozens of Other Brands.

23. Taken as a whole, Defendant's marketing plan is clear: convince consumers that Templeton Rye is an authentic Iowan product and charge a premium for the product on that basis.[4] Unfortunately, this isn't the case. Defendant's Templeton Rye is distilled, barreled, and aged at a factory in Indiana that is owned by a company that also specializes in distilling

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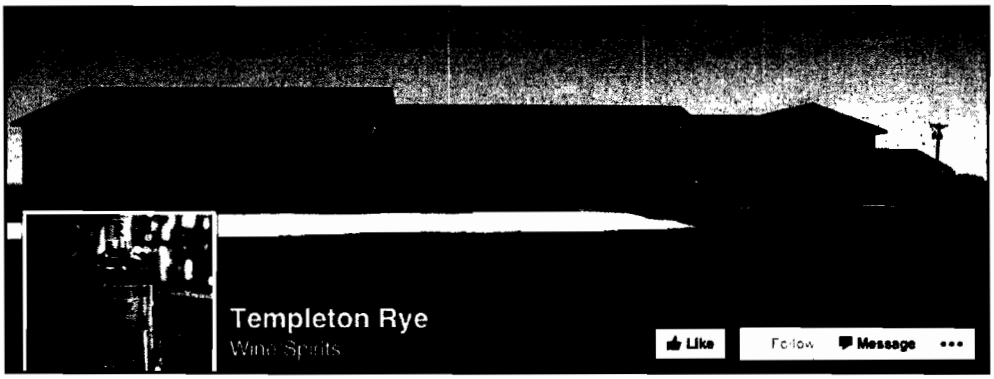
[2] *Templeton Rye's history roars back with Capone visit - Carroll Daily Times Herald*, www.carrollspaper.com/Content/Local-News-Archive/Features/Article/Templeton-Rye-s-history-roars-back-with-Capone-visit/1/284/14333 (last visited Aug. 28, 2014).

[3] *Templeton Rye to change labels, clarifies how much made in Iowa*, http://www.press-citizen.com/story/news/local/2014/08/28/templeton-rye-change-labels-clarifies-much-made-iowa/14766993/ (last visited Sept. 9, 2014).

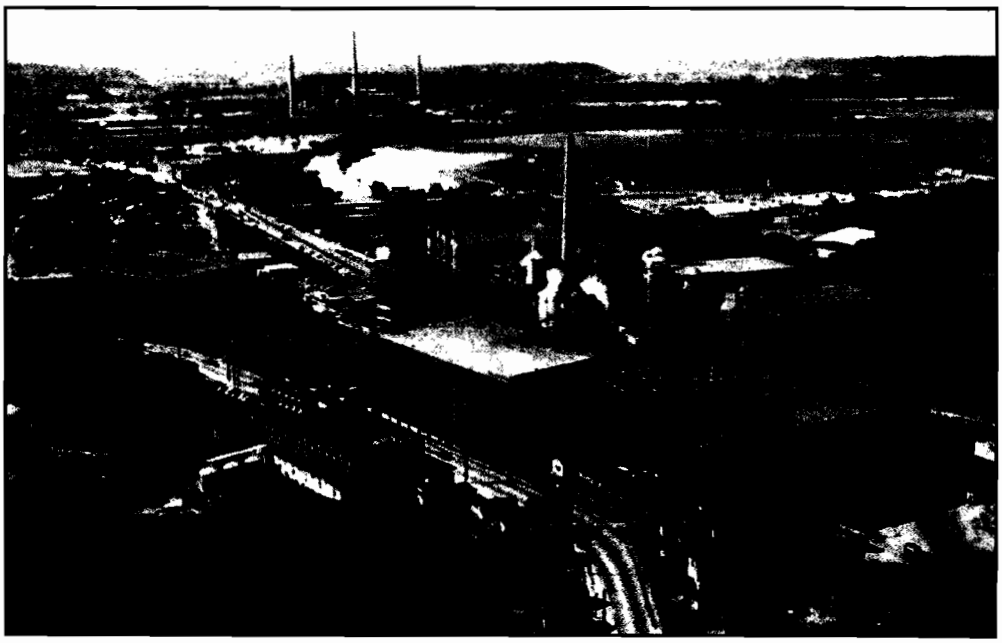
[4] For comparison, major commercial bourbon brands such as Jim Beam ($14.99), Maker's Mark ($26.99), Wild Turkey ($21.99), and Evan Williams ($12.99), all sell for considerably less for the same size bottle.

"industrial alcohol."

24. Though Defendant's headquarters are in Templeton, Iowa, shown in Figure 1 and reproduced below, and Defendant does own a distillery there, the Templeton Rye sold to the public is not distilled in that town. Instead, Templeton outsources its distillation needs to non-party MGP Ingredients, Inc., ("MGP") in Lawrenceburg, Indiana. (*See* Figure 8.) MGP is a massive international corporation with revenues in excess of $300 million.



(**Figure 1**, showing where Defendant represents Templeton Rye is made.)



(**Figure 8**, showing where Defendant's Templeton Rye is actually made.)

25. MGP states that the "beverage alcohol" it produces "consists primarily of world

class vodka, gins, bourbon and whiskeys and is sold in *bulk form*."[5] MGP goes on to state that "[c]ustomers who purchase unaged whiskey or bourbon may also enter into separate warehouse service agreements with us, allowing the product to age."[6]

26. And that is exactly the process Defendant uses for its Templeton Rye. Defendant first purchases MGP's unaged whiskey in bulk. Then Defendant has MGP fill barrel upon barrel with the whiskey and contracts with MGP to store the barrels *in Indiana* while the product ages for four years. Then, after aging, Defendant transports the barrels to Templeton, Iowa where it simply bottles the whiskey.

27. Thus, the only activity that occurs in Iowa is the emptying of the barrels and the filling of the bottles—hardly the "made in Iowa" Defendant represents.

28. Defendant further misrepresents the source and use of its "prohibition-era" recipe that it claims it revived through its small-batch rye whiskey. By its own recent admission, Defendant now admits that it buys whiskey distilled from a "stock" MGP recipe and "not one tied to Templeton's Prohibition era." The reasoning, Defendant states, is that "reproducing the [] family's recipe is impossible due to federal rules regulating the proof and production of rye whiskey."[7]

Consumers are Upset to Learn that the "Good Stuff" is not "Made in Iowa" but Made in a Factory in Indiana.

29. The consumers that have purchased Templeton Rye, such as Plaintiff, did so

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5 *MGP - Key Facts*, http://www.mgpingredients.com/about-mgp/facts/ (last visited Aug. 28, 2014) (emphasis added).

6 *MGP 2013 Annual Report & 10-K*, http://files.shareholder.com/downloads/MGPI/3430091596x0x745731/4DCDEB95-FFB8-4EF2-88EA-6A07056EF5A8/MGP _Annual_Report_FINAL.pdf (last visited Aug. 28, 2014).

7 *Templeton Rye to change labels, clarifies how much made in Iowa*, http://www.press-citizen.com/story/news/local/2014/08/28/templeton-rye-change-labels-clarifies-much-made-iowa/14766993/ (last visited Sept. 9, 2014).

because the small-scale processes used to make the whiskey and its place of origin matter to them and they are willing to pay a premium for a product with these qualities and characteristics. The unique qualities of Templeton Rye marketed by Defendant—such as its origin from Templeton, Iowa, its status as "Made in Iowa," and its connection to the prohibition-era "Templeton rye"—contributed greatly to Plaintiff's and the other consumers' decisions to purchase Defendant's whiskey.

30. Consumers believe they are purchasing Iowa whiskey, made in Iowa, distilled just like the prohibition-era "good stuff", and with Iowa ingredients (*e.g.*, Iowa water), when in fact, they are purchasing whiskey distilled in Indiana and with ingredients, including water, from Indiana. Defendant knows that consumers are willing to pay more for a "small-batch" Iowa whiskey because the quality is higher, and Plaintiff and consumers believe they are paying costs associated with higher-quality ingredients and for small-scale production.

31. It's not surprising, then, that since the media has uncovered that Defendant's Templeton Rye is mass-produced in Indiana, consumers have been frustrated and have turned to the internet to speak their minds. One man stated, "I'm just NOW learning about the deceptiveness of Templeton Rye. I'm from Iowa. This is sad."[8] Likewise, a woman referencing a news article that exposed Defendant's deception said that Defendant's practices are "Disappointing to say the least."[9] Another consumer succinctly explained his or her thoughts:

> Once word spread [of the production of Templeton Rye about a decade ago], it was impossible to find except in Iowa, and there in limited quantities. It wasn't unusual to be gifted a bottle from someone's private stash upon a special occasion. … Now jump again to a few years ago. Templeton magically starts

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[8] *The Chuck Cowdery Blog: News From Templeton Rye*, chuckcowdery.blogspot.com/2011/09/news-from-templeton-rye.html (last visited Aug. 28, 2014).

[9] *Comment by Johanna Madden*, https://www.facebook.com/templetonrye/timeline (last visited Aug. 28, 2014).

> appearing everywhere, and I picked up a bottle, but it didn't taste right. Previously Templeton had announced it was expanding, but there was no way they could have jumped to meet demand that quickly. Then the news hit - the new stuff was most likely from Indiana, not Iowa. Since then I've heard promises of bringing it all back to Iowa once they build out production, and for now I wait. … Sadly, meanwhile, the new Indiana made Templeton is not really as good and is ruining the brand. I would have rather had scarcity than what happened, but I'm sure Templeton is making money hand over fist. So, for those of you only tasting Templeton of new, have heart, maybe somehow, someday, you'll have that which was made in Iowa, and it will be oh so much better.[10]

32. Templeton's Chairman, Mr. Underwood, summed up Defendant's approach to selling whiskey in one simple statement: "[t]he whiskey is not the most important thing…[t]he town of Templeton is the most important thing and the state of Iowa. The whiskey, almost is the afterthought. It helps. It brings this to life."[11]

PLAINTIFF MCNAIR'S EXPERIENCE

33. Plaintiff McNair has purchased more than a dozen bottles of Templeton Rye since 2008, with his most recent purchases in 2014. Plaintiff McNair has "liked" Templeton on Facebook.com and has had countless Templeton messages appear on his computer while he browsed his Facebook newsfeed. In addition, Plaintiff McNair viewed numerous advertisements for Templeton Rye in bar and restaurant publications and other industry websites. The marketing and advertisements Plaintiff McNair viewed about Templeton Rye all represented or supported the fact that Templeton Rye was "Made in Iowa" and were substantially similar to the marketing in Figures 1–7.

34. None of the marketing or advertisements Plaintiff McNair saw from 2008 to the last time he purchased Templeton Rye disclosed the fact that Templeton Rye is distilled and aged

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[10] *Distillers vs. Bottlers | MetaFilter*, http://www.metafilter.com/141387/Distillers-vs-Bottlers (last visited Aug. 28, 2014).

[11] *Templeton Rye to change labels, clarifies how much made in Iowa*, http://www.press-citizen.com/story/news/local/2014/08/28/templeton-rye-change-labels-clarifies-much-made-iowa/14766993/ (last visited Sept. 9, 2014).

at MGP's facilities.

35. Instead, Defendant presented misleading information that Templeton Rye is distilled, aged, and bottled in Templeton, Iowa.

36. Relying on Defendant's misrepresentations, McNair purchased more than a dozen bottles of Templeton Rye from 2008 to 2014, paying approximately $34.99 per bottle at retailers including Benny's Beverage Depot and Gold Crown Liquors.

37. If Plaintiff knew that Templeton Rye was not made in Iowa but was distilled and aged at MGP's facilities in Indiana, he would not have purchased Templeton Rye or he would have paid less for each bottle.

CLASS ALLEGATIONS

38. **Class Definitions:** Plaintiff brings this action on behalf of himself and a Class defined as follows:

> **Class**: All individuals in the United States who purchased a bottle of Templeton Rye.
>
> **Illinois Subclass**: All individuals in the Class who are domiciled in the State of Illinois.

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

39. **Numerosity:** On information and belief, thousands of consumers fall into the Class and Illinois Subclass definitions. Members of the Class and Illinois Subclass can be identified through Defendant's records, discovery, and other third party sources.

40. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and Illinois Subclass, and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff's claims are representative of the claims of the other members of the Class and Illinois Subclass. That is, Plaintiff and the Class and Illinois Subclass members sustained damages as a result of Defendant's deceptive marketing, typically $34.99 for the price of one bottle. Plaintiff also has no interests antagonistic to those of the Class and Illinois Subclass, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and Illinois Subclass, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to the Class and Illinois Subclass.

41. **Appropriateness**: This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class and Illinois Subclass as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and Illinois Subclass and making final class-wide injunctive relief appropriate. Defendant's deceptive business practices apply to and affect the members of the Class and Illinois Subclass uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class and Illinois Subclass as a whole, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Class and Illinois Subclass will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by

Defendant's actions. Thus, it would be virtually impossible for the members of the Class and Illinois Subclass to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

42. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the Class and Illinois Subclass, and predominate over any questions affecting only individual members. Those questions with respect to the Class and Illinois Subclass include, but are not limited to:

(a) Whether Defendant's conduct violates the Iowa Consumer Fraud Act;

(b) Whether Defendant's conduct violates the Illinois Consumer Fraud and Deceptive Business Practices Act;

(c) Whether Defendant's conduct was fraudulent or misleading;

(d) Whether Defendant's conduct constitutes fraud by omission; and

(e) Whether Defendant's conduct resulted in unjust enrichment to Defendant.

COUNT I
Violation of the Iowa Consumer Fraud Act
(Iowa Code §§ 714H, *et seq.*)
(On Behalf of Plaintiff and the Class)

43. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

44. Iowa Code § 714H.3 makes unlawful any "unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely... [on it]... in connection with the advertisement, sale, or lease of consumer merchandise."

45. Templeton Rye is "merchandise" as defined by Iowa Code § 714.161.i because it is a good.

46. Defendant is a "person" as defined under section Iowa Code § 714.16.1.j.

47. Plaintiff and each member of the Class are "consumers" as defined under Iowa Code § 714H.2.

48. By bottling and distributing bottles of Templeton Rye throughout the State of Iowa and the country and by disseminating, designing, and orchestrating the marketing in Iowa, Defendant has affected commerce and trade within the State of Iowa.

49. Defendant engaged in unfair or deceptive acts or practices in violation of Iowa Code § 714H.3 when, in marketing and advertising Templeton Rye, Defendant failed to give Plaintiff and members of the Class adequate notice regarding the true origin of the whiskey (*i.e.*, Indiana) despite the fact that Defendant knew or should have known that the whiskey was not distilled and aged in Templeton, Iowa. Defendant intended that Plaintiff and the members of the Class would rely upon Defendant's failure to disclose the actual origin when purchasing Templeton Rye. Defendant knew of the actual origin of Templeton Rye and yet continued to sell, market, and distribute it to members of the Class and concealed the true origin of Templeton Rye from them. Defendant's acts and omissions possessed the tendency or capacity to mislead or created the likelihood of deception.

50. Defendant also engaged in unfair or deceptive acts or practices in violation of Iowa Code § 714H.3 by making misleading statements regarding the origin of Templeton Rye. Specifically, its marketing efforts were substantially similar, and consistent with, those illustrated in Figures 1–7 and sought to convince consumers that Templeton Rye is made in Templeton, Iowa when it is in fact made at MGP's factory in Lawrenceburg, Indiana.

51. Defendant's actions, as set forth herein, were acts related to the advertisement and sale of consumer merchandise and constitute unfair and deceptive trade practices in violation of Iowa Code § 714H.3.

52. As a direct and proximate result of these unfair, deceptive and unconscionable commercial practices, Plaintiff and the members of the Class have suffered actual damages in the form of the full or partial retail price of Templeton Rye, typically $34.99 or more. Had Plaintiff and the Class known that Templeton Rye was not made in Iowa but Indiana, they would not have purchased the whiskey or they would have only purchased the whiskey at a lower price. As such, Plaintiff and members of the Class are entitled pursuant to Iowa Code § 714.H5 to recover actual damages, treble damages and attorneys' fees.

53. Plaintiff's cause of action under Iowa Code §§ 714H.1 *et seq.* accrued on or after July 1, 2009, because Plaintiff did not discover the true origin of Templeton Rye until 2014 and was, therefore, unaware of the Defendant's fraudulent, unfair, or deceptive acts and concealments.

COUNT II
Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS §§ 505/1, *et seq.*) (On Behalf of Plaintiff and the Illinois Subclass)

54. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

55. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") (815 ILCS §§ 505/1, *et seq.*) protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

56. The ICFA prohibits any unlawful, unfair, or fraudulent business acts or practices including the employment of any deception, fraud, false pretense, false promise, false

advertising, misrepresentation, or the concealment, suppression, or omission of any material fact.

57. The ICFA applies to Defendant's actions and conduct as described herein because it protects consumers in transactions that are intended to result, or which have resulted, in the sale of goods or services.

58. Defendant is a "person" as defined under section 505/1(c) of the ICFA.

59. Plaintiff and each member of the Subclass are "consumers" as defined under section 505/1(e) of the ICFA.

60. Templeton Rye whiskey is "merchandise" within the meaning of section 505/1(b) and its sale is considered "trade" or "commerce" under the ICFA.

61. Defendant violated the ICFA by omitting and misrepresenting the true origin of Templeton Rye.

62. The fact that Templeton Rye was an authentic, made-in-Templeton, Iowa product was a material selling point of Templeton Rye, and a primary reason to purchase Defendant's products over other alternative whiskeys at a premium. Plaintiff and members of the Subclass relied on Defendant's omissions about the true origin of Templeton Rye and purchased bottles of Templeton Rye.

63. Had Plaintiff and the Subclass known that the true origin of Defendant's Templeton Rye is a factory in Indiana, they would not have purchased Templeton Rye or they would have paid less for the whiskey.

64. By omitting the actual origin of its product, Defendant violated section 510/2(a)(2) of the ICFA which prohibits Defendant from "caus[ing] likelihood of confusion or of misunderstanding as to the source … of goods."

65. In addition, Defendant violated section 510/2(a)(4) by "us[ing] deceptive

representations or designations of geographic origin in connection with goods."

66. Based upon Defendant's omissions described herein, Plaintiff and the Subclass reasonably expected that Templeton Rye was made in Templeton, Iowa. This is a reasonable and objective consumer expectations based upon the circumstances. It is equally reasonable for a consumer to believe that Templeton Rye was not made in MGP's factory in Lawrenceburg, Indiana.

67. Plaintiff and the Subclass reasonably relied upon Defendant's omissions and misrepresentations in paying to purchase Defendant's Templeton Rye.

68. Defendant's omissions and misrepresentations regarding the origin of Templeton Rye was an act likely to mislead Plaintiff and the members of the Subclass acting reasonably under the circumstances, and constitutes an unfair and deceptive trade practice in violation of the ICFA.

69. Defendant knew or should have known that it kept highly relevant and material information—namely, that Templeton Rye was not actually made in Iowa but that it was made at MGP's factory in Indiana—from its customers, and therefore violated the ICFA.

70. As a direct and proximate result of Defendant's violation of the ICFA, Plaintiff and each Subclass member have suffered harm in the form of monies paid for Defendant's Templeton Rye in that they paid more for Defendant's whiskey than they would have had they known the true qualities of the product. Plaintiff, on behalf of himself and the Class, seeks an order (1) requiring Defendant to cease the unfair practices described herein; (2) awarding damages, interest, and reasonable attorneys' fees, expenses, and costs to the extent allowable; and/or (3) requiring Defendant to restore to Plaintiff and each Subclass member any money acquired by means of unfair competition (restitution).

COUNT III
Consumer Fraud
(On Behalf of Plaintiff and the Class)

71. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

72. Defendant is not permitted to engage in, unfair or fraudulent business acts or practices, including the use of any deception, fraud, false pretense, false promise, misrepresentation.

73. Similarly, Defendant is prohibited from engaging in the concealment, suppression, or omission of any material fact. The place of origin of a consumer product is a material term of any transaction because it is likely to affect a consumer's choice of, or conduct regarding, whether to purchase a product. Any deception related to the origin of a consumer product is materially misleading.

74. Defendant's misrepresentation of the actual origin in all phases of the marketing and sale of Templeton Rye is likely to mislead a reasonable consumer who is acting reasonably under the circumstances.

75. Defendant has engaged in deceptive trade practices by selling its Templeton Rye without clearly and conspicuously disclosing its actual origin and by inducing Plaintiff and the Class to purchase its whiskey based on that misrepresentation.

76. Defendant caused substantial injury to consumers by inducing them to purchase Templeton Rye through deceptive marketing. The injury caused by Defendant's conduct is not outweighed by any countervailing benefits to consumers or competition, and the injury is one that consumers themselves could not reasonably have avoided.

77. Defendant intended that Plaintiff and the Class rely on its material

misrepresentations and deception in order to induce them purchase Templeton Rye.

78. Defendant's deception occurred during the marketing and sale of its Templeton Rye whiskey, and therefore, occurred in the course of trade and commerce.

79. Plaintiff and the Class have suffered harm in the form of actual damages as a proximate result of Defendant's violations of law and wrongful conduct described herein.

80. Plaintiff, on his own behalf, and on behalf of the Class, seeks damages for Defendant's wrongful conduct described herein, as well as interest and attorneys' fees.

COUNT IV
Fraud by Omission
(On behalf of Plaintiff and the Class)

81. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

82. Defendant has engaged in deceptive trade practices by selling its Templeton Rye whiskey while concealing material facts from consumers, by failing to clearly and conspicuously disclose the actual origin (Indiana) of Templeton Rye, and by inducing Plaintiff and the Class to proffer payment based on that omission and/or misrepresentation.

83. The origin of goods offered for sale is a material term of any transaction.

84. Based on Defendant's material omissions, Plaintiff and the members of the Class did not reasonably expect that a whiskey named after a small town in Iowa, linked to an Iowan recipe, connected to Midwestern history, and sold by company incorporated and headquartered in Iowa would be made by MGP *en mass* with dozens of other whiskeys in Indiana.

85. Defendant intended that Plaintiff and the Class rely on its concealment of material facts and deception in order to induce them to purchase bottles of Templeton Rye.

86. As a result of Defendant's concealment and misrepresentation of material facts,

Plaintiff and members of the Class were unaware of the true origin of Templeton Rye, and would not have purchased Templeton Rye, or only paid less for it, if they knew that it was not made in Iowa but was distilled and aged at MGP's facilities in Indiana.

87. Defendant had a duty to reveal the true origin of its Templeton Rye to consumers because: (1) Defendant was in a superior position to know the true origin of its whiskey; (2) Plaintiff and the Class members could not have reasonably been expected to learn or discover the whiskey's origin; and (3) Defendant's acts and omissions through its marketing, including marketing similar to those in Figures 1–7, created the misapprehension of material facts.

88. Defendant had the opportunity to design, distribute, and orchestrate its marketing to disclose the actual origin of its Templeton Rye but instead chose to design misleading marketing that concealed the true origin of its whiskey.

89. Plaintiff and the Class have suffered actual damages as a direct and proximate result of the Defendant's wrongful conduct described herein.

90. Plaintiff, on his own behalf, and on behalf of the Class, seeks damages for Defendant's wrongful conduct, as well as interest and attorneys' fees.

COUNT V
Restitution/Unjust Enrichment
(On behalf of Plaintiff and the Class)

91. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

92. Defendant has received and retained money belonging to Plaintiff and the Class members as a result of misleading marketing of its Templeton Rye whiskey. Defendant profits from each individual sale of its Templeton Rye.

93. Defendant appreciates or has knowledge of such benefit.

94. Under principles of equity and good conscience, Defendant should not be permitted to retain the money belonging to Plaintiff and members of the Class, which Defendant has unjustly received as a result of its unlawful actions described herein.

95. Plaintiff and other members of the Class suffered damages as a direct result of Defendant's conduct.

96. Plaintiff, on his own behalf, and on behalf of the Class, seeks restitution for Defendant's unlawful conduct, as well as interest and attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Christopher McNair, on behalf of himself and members of the Class and Illinois Subclass, prays for the following relief:

a. Certify this case as a class action on behalf of the Class and Subclass as defined above and appoint Christopher McNair as class representative and his undersigned attorneys as Class Counsel;

b. Enter judgment against Defendant Templeton Rye Spirits, LLC, for monetary, actual, consequential, and compensatory damages caused by its unlawful conduct;

c. Award Plaintiff and the Class reasonable costs and attorneys' fees;

d. Award Plaintiff and the Class pre- and post-judgment interest;

e. Enter judgment for injunctive, statutory and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and,

f. Award such other and further relief as equity and justice may require.

* * *

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Respectfully Submitted,

CHRISTOPHER MCNAIR, individually and on behalf of all others similarly situated,

Dated: August 29, 2014

By: /s/
One of Plaintiff's Attorneys

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Firm I.D.: 44146

EXHIBIT 2

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

CHRISTOPHER MCNAIR, individually and on behalf of all others similarly situated, Plaintiff, vs. TEMPLETON RYE SPIRITS, LLC, an Iowa limited liability company, Defendant.	Case No. _____ ON REMOVAL FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS Cook County Case No. 14 CH 14583

Declaration of Aaron Thompson

Aaron Thompson, deposes and states as follows:

1. I am Vice President of Business Development for Infinium Spirits, a division of Wilson Daniels, Ltd. Part of my job responsibility is to maintain case and bottle sale records for Templeton Rye Spirits, LLC ("Templeton").

2. I am knowledgeable about Templeton's record-keeping practices as they relate to the case and bottle sales of Templeton Rye whiskey. According to the company's records, over the past five years, Templeton has sold approximately 1,473,000 bottles of Templeton Rye whiskey.

3. I declare under penalty of perjury that the information in this Declaration is true and correct. If called as a witness I would testify competently to the information stated above.

DATED: September 23, 2014

Aaron Thompson
Aaron Thompson

EXHIBIT 3

Chancery Division Civil Cover Sheet - General Chancery Section **(Rev. 6/15/09) CCCH 0623**

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

CHRISTOPHER MCNAIR, individually, and on behalf of all others similarly situated,
Plaintiff

v.

TEMPLETON RYE SPIRITS, LLC, an Iowa limited liability company,
Defendant

2014CH14583
CALENDAR/ROOM 09
TIME 00:00
No. Class Action

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 line in front of the appropriate category which best characterizes your action being filed.

0005_____ **Administrative Review**
0001 X **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)**_____

2014 SEP -9 PM 5:22

By: Edelson PC
Attorney **Pro Se**

Atty. No.: 44146
Name: Edelson PC
Atty. for: Plaintiff, Christopher McNair
Address: 350 North LaSalle Street, Suite 1300
City/State/Zip: Chicago, Illinois 60654
Telephone: (312) 589-6370

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2120 - Served
2220 - Not Served
2320 - Served By Mail
2420 - Served By Publication
SUMMONS

2121 - Served
2221 - Not Served
2321 - Served By Mail
2421 - Served By Publication
ALIAS - SUMMONS

(2/28/11) CCG N001

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

No. 2014CH14583
CALENDAR/ROOM 09
TIME 00:00

CHRISTOPHER MCNAIR, individually, and on behalf of all others similarly situated,
(Name all parties)

v.

TEMPLETON RYE SPIRITS, LLC, an Iowa limited liability company,

Templeton Rye Spirits, LLC
Marc T. Beltrame as registered agent
666 Grand Ave, Suite 2000, Des Moines, Iowa 50309

◉ SUMMONS ○ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

◉ **Richard J. Daley Center, 50 W. Washington, Room** 802 **, Chicago, Illinois 60602**

○ **District 2 - Skokie**
5600 Old Orchard Rd.
Skokie, IL 60077

○ **District 3 - Rolling Meadows**
2121 Euclid
Rolling Meadows, IL 60008

○ **District 4 - Maywood**
1500 Maybrook Ave.
Maywood, IL 60153

○ **District 5 - Bridgeview**
10220 S. 76th Ave.
Bridgeview, IL 60455

○ **District 6 - Markham**
16501 S. Kedzie Pkwy.
Markham, IL 60428

○ **Child Support**
28 North Clark St., Room 200
Chicago, Illinois 60602

You must file within 30 days after service of this Summons, not counting the day of service.
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 44146
Name: Edelson PC
Atty. for: Plaintiff, Christopher McNair
Address: 350 North LaSalle Street, Suite 1300
City/State/Zip: Chicago, Illinois 60654
Telephone: (312) 589-6370

WITNESS, _____, _____

_____
Clerk of Court
DOROTHY BROWN SEP 09 2014

Date of service: _____, _____
(To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: _____
(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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

CHRISTOPHER MCNAIR, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

TEMPLETON RYE SPIRITS, LLC, an Iowa limited liability company,

Defendant.

Case No. 14CH14583

PLAINTIFF'S MOTION FOR AND MEMORANDUM IN SUPPORT OF CLASS CERTIFICATION

Plaintiff Christopher McNair, by and through his undersigned counsel, hereby respectfully moves the Court for an Order certifying this case as a class action pursuant to 735 ILCS 5/2-801, but requests that the Court enter and continue the instant motion until after the completion of discovery on class wide issues, at which time Plaintiff will submit a fulsome memorandum of points and authorities in support of class certification.[1]

I. INTRODUCTION.

This matter easily satisfies the prerequisites to class certification. Through a common course of conduct, Defendant Templeton Rye Spirits, LLC ("Templeton" or "Defendant") has deceptively marketed the origin of its Templeton Rye whisky.

Defendant's Templeton Rye is marketed as the revival of a prohibition-era whiskey

[1] Plaintiff filed this motion at the outset of the litigation to prevent Defendant from attempting a so-called "buy off" to moot his representative claims (*i.e.*, tendering to him the full amount of his individual damages alleged in the Complaint). *See Barber v. Am. Airlines, Inc.*, 241 Ill. 2d 450, 459 (2011); *see also Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011). Under Illinois law, "a named plaintiff who files a motion for class certification *prior* to a defendant's tender may avoid a mootness determination, at least until after the circuit court rules on the motion for class certification." *Barber*, 662 F.3d at 459 n.1.

recipe favored by Al Capone. Since its rebirth within the past decade, Defendant has marketed Templeton Rye as being "small batch" and "made in Iowa," the antithesis of mainstream, mass-produced whiskeys. So far, consumers have purchased hundreds of thousands of bottles of Templeton Rye and have paid a premium price over other whiskeys to obtain those qualities.

However, directly contrary to these representations, Defendant's whiskey isn't actually made in Iowa. The whiskey is instead distilled and aged at the Indiana factory of MGP Ingredients, Inc., that also distills and ages whiskey for countless other brands. Since the true source of Templeton Rye has been revealed, Defendant has stated that "[i]t's very simply put: We buy the whiskey in barrels from (MGP)." Unfortunately, consumers, including Plaintiff, have been injured because they purchased Templeton Rye in reliance on the truth and accuracy of Defendant's representations and thought they were buying authentic Iowa whiskey, completely unaware of the actual Indiana origin of the whiskey.

For these reasons and as discussed further herein, the proposed Class and Subclass readily satisfy the prerequisites to certification under Section 2-801, and, as such, the instant motion should be granted in its entirety. Notwithstanding, Plaintiff respectfully requests that the Court (1) enter and reserve ruling on Plaintiff's Motion for and Memorandum in Support of Class Certification; (2) allow for and schedule discovery to take place on class-wide issues; (3) grant Plaintiff leave to file a supplemental memorandum in support of his Motion for Class Certification upon the conclusion of class-wide discovery; (4) grant Plaintiff's Motion for Class Certification after full briefing of the issues presented herein; and, (5) provide all other and further relief that the Court deems reasonable and just.

II. FACTUAL BACKGROUND.

A. Facts Applicable to All Members of the Putative Class.

Defendant Templeton produces "small batch" whiskey sold under the brand name Templeton Rye that it claims is made according to a "nearly century-old recipe." (*See* Class Action Complaint ["Compl."], ¶ 9.) Defendant is headquartered and has a distillery in a building located in Templeton, Iowa. (*Id.* ¶ 10.)

Defendant's marketing scheme for Templeton Rye centers on the story of a prohibition-era recipe and its connection to Templeton, Iowa. (*Id.* ¶¶ 12–14.) Templeton has, for instance, produced and sold t-shirts that say "TEMPLETON RYE MADE IN IOWA," created a twitter account that hails "from Templeton, Iowa, home of The Good Stuff [i.e., Templeton Rye]," and has partnered with bars and restaurants for events that promote "Templeton Rye Prohibition Era Whiskey, a small batch rye whiskey made in the tiny town of Templeton, Iowa (population 350)." (*Id.* ¶ ¶ 15–21.)

Unfortunately, and as Defendant now admits, Templeton Rye is made entirely at a factory in Indiana owned by MGP Ingredients, Inc., ("MGP"). (*Id.* ¶ 22.) MGP is a massive international corporation with revenues in excess of $300 million that operates a distillery in Lawrenceburg, Indiana and also distills "industrial alcohol" and other "cost effective" whiskeys. (*Id.* ¶ 22.) Templeton purchases MGP's Indiana-distilled whiskey in bulk, has MGP age the whiskey in Indiana, and then ships the aged whiskey to Templeton, Iowa for bottling—hardly the "made in Iowa" Defendant represents. (*Id.* ¶¶ 26–27.)

Worse, Defendant has recently admitted that it does not even use the "prohibition era" recipe like it advertises. Instead, Defendant buys whiskey distilled from a "stock" MGP recipe—"not one tied to Templeton's Prohibition era"—because, Defendant states, "reproducing the []

family's recipe is impossible due to federal rules regulating the proof and production of rye whiskey." (*Id.* ¶ 28.)

The consumers that have purchased Templeton Rye, such as Plaintiff, did so because the small-scale processes used to make the whiskey and its place of origin matter to them and they are willing to pay a premium for a product with these qualities and characteristics. (*Id.* ¶ 29.) The unique qualities of Templeton Rye marketed by Defendant contributed greatly to Plaintiff's and the other consumers' decisions to purchase Defendant's whiskey. (*Id.*) Consumers believe they are purchasing Iowa whiskey, made in Iowa, distilled just like the prohibition-era "good stuff", and with Iowa ingredients (*e.g.*, Iowa water), when in fact, they are purchasing whiskey distilled in Indiana and with ingredients, including water, from Indiana. (*Id.* ¶ 30.)

Defendant knows that consumers are willing to pay more for a "small-batch" Iowa whiskey because the quality is higher, and Plaintiff and consumers believe they are paying costs associated with higher-quality ingredients and for small-scale production. (*Id.*) But because the whiskey is actually made in Indiana and not in Iowa, Plaintiff and the putative Class have paid more for the whiskey than they would have had they known the actual origin (and/or they purchased the whiskey when they otherwise would have not). (*Id.* ¶ 70.)

B. Facts Specific to Plaintiff Christopher McNair.

Since 2008, Plaintiff McNair has purchased more than a dozen bottles of Templeton Rye (*Id.* ¶ 33.) Throughout that time, Plaintiff McNair has seen many advertisements for Templeton Rye in bar and restaurant publications, industry websites, and on his Facebook.com newsfeed. (*Id.*) The marketing and advertisements Plaintiff McNair viewed about Templeton Rye all represented or supported the fact that Templeton Rye was "Made in Iowa" according to the "prohibition-era" recipe. (*Id.*) None of the marketing or advertisements Plaintiff McNair saw

from 2008 to the last time he purchased Templeton Rye disclosed the fact that Templeton Rye is distilled and aged at MGP's facilities. (*Id.* ¶ 34.) Instead, Defendant presented misleading information that Templeton Rye is distilled, aged, and bottled in Templeton, Iowa. (*Id.* ¶ 35.)

Relying on Defendant's misrepresentations, McNair purchased more than a dozen bottles of Templeton Rye from 2008 to 2014, paying approximately $34.99 per bottle at retailers including Benny's Beverage Depot and Gold Crown Liquors. (*Id.* ¶ 36.) If Plaintiff knew that Templeton Rye was not made in Iowa but was distilled and aged at MGP's facilities in Indiana, he would not have purchased Templeton Rye or he would have paid less for each bottle. (*Id.* ¶ 37.)

C. The Proposed Class and Subclass.

As a result of Defendant's conduct described above, Plaintiff brought the instant lawsuit and now seeks certification of a nationwide class of individuals (the "Class") and a subclass of Illinois individuals (the "Illinois Subclass"), defined as follows:

Class: All individuals in the United States who purchased a bottle of Templeton Rye.

Illinois Subclass: All individuals in the Class who are domiciled in the State of Illinois.

As demonstrated below, the proposed Class and Illinois Subclass meet each of Section 2-801's prerequisites to certification and therefore, the instant motion should be granted in its entirety.

III. THE PROPOSED CLASS AND ILLINOIS SUBCLASS SATISFY EACH OF THE REQUIREMENTS FOR CERTIFICATION.

Certifying a class in Illinois requires the plaintiff to establish that: "(1) [t]he class is so numerous that joinder of all members is impracticable[;] (2) [t]here are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members[;] (3) [t]he representative parties will fairly and adequately protect the

interest of the class[; and] (4) [t]he class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801.

In determining whether to certify a proposed class, the Court need not decide whether the plaintiff will ultimately prevail on the merits. *See Chultem v. Ticor Title Ins. Co.*, 401 Ill. App. 3d 226, 237 (1st Dist. 2010) (citing *Cruz v. Unilock Chi., Inc.*, 892 N.E.2d 78, 91-92 (Ill. App. 2d Dist. 2008)) (finding that an issue that goes to the merits of the underlying actions "is not appropriate to be considered when examining the propriety of class certification"). Rather, the Court should accept as true the allegations in the complaint, *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (1st Dist. 2007) (quoting *Clark v. TAP Pharm. Prods., Inc.*, 343 Ill. App. 3d 538, 544-45 (5th Dist. 2003)), and "should err in favor of maintaining class [certifications]." *Id.* (quoting *Clark*, 343 Ill App. 3d at 545). Though the plaintiff bears the burden of establishing all four of the prerequisites for maintenance of a class action under 735 ILCS 5/2-801, *S37 Mgmt., Inc. v. Advance Refrigeration Co.*, 961 N.E.2d 6, 10 (Ill. App. Ct. 1st Dist. 2011) (citation omitted), as described below, that burden is not a high hurdle here.

The putative Class and Illinois Subclass are sufficiently numerous, consisting of thousands—and potentially tens of thousands—of individual members. Second, resolution of the putative Class's claims will be predominated by common questions rather than individual ones. Third, Plaintiff and his counsel are adequate representatives of the proposed Class, with no potential conflicts or interests adverse to the Class. Finally, a class action is the most appropriate method to adjudicate the Class's claims given the small individual damages involved, the uniformity and widespread nature of Defendant's conduct, and the unlikelihood of members of the Class pursuing individual actions. Accordingly, this Court should grant class certification.

A. The Putative Class and Subclass Likely Consist of Thousands of Members and Therefore Readily Satisfy the Numerosity Requirement.

The first step in certifying a class is showing that "[t]he class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). This requirement is met when joining "such a large number of plaintiffs in a single suit would render the suit unmanageable and, in contrast, multiple separate claims would be an imposition on the litigants and the courts." *Gordon* v. *Boden*, 224 Ill. App. 3d 195, 200 (1st Dist. 1991) (citing *Steinberg* v. *Chi. Med. Sch.*, 69 Ill. 2d 320, 337 (1977)). "Plaintiffs need not demonstrate a precise figure for the class size, because a good-faith, nonspeculative estimate will suffice." *Unilock Chicago*, 892 N.E.2d at 97. Generally, "[t]he court is permitted to make common-sense assumptions that support a finding of numerosity." *Maxwell v. Arrow Fin. Servs., LLC*, 2004 WL 719278, at *2 (N.D. Ill. Mar. 31, 2004); *see also* 3 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 7.20, 66 (4th ed. 2001).

Here, McNair alleges—and discovery will show—that Defendant has sold hundreds of thousands of bottles of its Templeton Rye whiskey, likely to tens of thousands of individuals nationwide and thousands of individuals in Illinois. (Compl. ¶¶ 9, 39.) An allegation that the proposed class consists of more than a thousand members provides "ample basis" to support the conclusion that the class is so numerous that joinder of all members is impracticable. *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 427 (1st Dist. 1983); *see also Tassan v. United Dev. Co.*, 88 Ill. App. 3d 581, 594 (1st Dist. 1980) (finding more than 150 potential claimants would satisfy numerosity); *Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (finding even 35 class members could satisfy numerosity). Further, joinder of the Class's claims would be impracticable because their claims are small relative to the resources necessary to prosecute this litigation. As such, absent a class action few individuals could afford

to bring an individual lawsuit over the amounts at issue. *See Gordon*, 224 Ill. App. 3d at 204.

Accordingly, the proposed Class and Subclass satisfy the numerosity requirement.[2]

B. The Proposed Class Shares Many Common Questions of Law and Fact that Predominate Over Any Individual Issues.

Section 2-801's second prerequisite requires that there are "questions of fact or law common to the class" and that those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Common questions of law or fact are typically found to exist when the members of a proposed class have been aggrieved by the same or similar misconduct. *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 17 (1981); *Steinberg*, 69 Ill. 2d at 341; *McCarthy v. LaSalle Nat'l Bank & Trust Co.*, 230 Ill. App. 3d 628, 634 (Ill. Ct. App. 1992). After common questions of law or fact have been identified, these common questions must also predominate over any issues affecting only individual class members. *See O-Kay Shoes, Inc. v. Rosewell*, 129 Ill. App. 3d 405, 408 (Ill. Ct. App. 1984). Ultimately, commonality is a relatively low and easily surmountable hurdle. *See Scholes v. Stone, McGuire, & Benjamin*, 143 F.R.D. 181, 185 (N.D. Ill. 1992). "What matters to class certification . . . is not the raising of common 'questions'—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citing Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 131-132 (2009)).

Here, Plaintiff's and the Class's claims are based upon the same common contention: that Templeton has mislead consumers about the origin of its Templeton Rye. (Compl. ¶¶ 11–32.) That is, Defendant's singular marketing campaign has caused consumers to believe they are

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[2] To the extent the Court requires additional details regarding the number of members in the Class and Subclass, such information may be obtained from Defendant's records, retailer records, and other discovery sources.

purchasing Iowa whiskey, made in Iowa, distilled just like the prohibition-era "good stuff", and with Iowa ingredients (*e.g.*, Iowa water), when in fact, they are purchasing whiskey distilled in Indiana and with ingredients, including water, from Indiana. (*Id.*) Moreover, Defendant's unlawful conduct will be proven through the use of common and generalized evidence applicable to the Class and Subclass as a whole.

Defendant's conduct gives rise to several factual questions common to all members of the Class and Subclass, including: (i) whether Templeton Rye is "made in Iowa"; and (ii) whether Templeton Rye is made according to the "prohibition-era" recipe. (*Id.* ¶¶ 23–28.) These common factual questions lead to several legal questions common to the Class and Subclass, including: (i) whether Defendant's conduct constitutes a violation of the Iowa Consumer Fraud Act; (ii) whether Defendant's conduct constitutes a violation of the Illinois Consumer Fraud Act and Deceptive Business Practices Act; (iii) whether Defendant's conduct was fraudulent or misleading; and (iv) whether Defendant's conduct resulted in unjust enrichment to Defendant. (*Id.* ¶ 42.)

Accordingly, Section 2-801's commonality and predominance requirements are met.

C. Plaintiff and His Counsel are Adequate Representatives and Have No Conflicts with the Class.

The third prerequisite of Section 2-801 requires that "[t]he representative parties will fairly and adequately protect the interest of the class." 735 ILCS 5/2-801(3). This means a plaintiff must be able to maintain an individual cause of action against the defendant and cannot be seeking relief that is potentially antagonistic to the other class members. *Purcell & Wardrope Chartered v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988); *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 810 (3d Dist. 2007). In addition, plaintiff's counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *Steinberg*, 69 Ill. 2d at 339

(quoting *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968), *rev'd on other grounds*, 417 U.S. 156 (1974)). This ensures "that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Gordon*, 224 Ill. App. 3d at 203 (citations omitted).

In the present case, Plaintiff has the same interests as members of the proposed Class and Subclass. That is, they each bought bottles of Defendant's Templeton Rye based upon Defendant's misleading marketing regarding the origin of the whiskey. (Compl. ¶¶ 29–30.) As a result of Defendant's conduct, Plaintiff and the other members of the Class also suffered substantially the same harm in the form of damages in that they paid a premium associated with supposed higher-quality ingredients and small-scale production. (*Id.* ¶ 30.)

Additionally, Plaintiff's counsel are well respected members of the legal community, have regularly engaged in major complex litigation, and have had extensive experience in consumer class actions involving issues of similar or greater size, scope, and complexity as the present case. (*See* Declaration of Ari Scharg ["Scharg Decl."] at ¶ 4, a true and accurate copy of which is attached as Exhibit 1; *see also* Firm Resume of Edelson PC, a true and accurate copy of which is attached to the Scharg Decl. as Exhibit 1-A); *see also Gomez v. Ill. State Bd. of Educ.*, 117 F.R.D. 394, 401 (N.D. Ill. 1987) (finding persuasive that proposed class counsel had been found adequate in past cases).

Accordingly, both Plaintiff and his counsel satisfy (and exceed) the adequacy requirement.

D. This Class Action is the Most Appropriate Method to Adjudicate the Claims at Issue.

The final prerequisite for class certification is met where "[t]he class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-

801(4). "In applying this prerequisite in a particular case, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon*, 224 Ill. App. 3d at 203 (citation omitted). In practice, a "holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled." *Id.* at 204; *Purcell and Wardrope Chtd.*, 175 Ill. App. 3d at 1079 ("the predominance of common issues [may] make a class action . . . a fair and efficient method to resolve the dispute."). Additionally, a "controlling factor in many cases is that the class action is the only practical means for class members to receive redress...." *Gordon*, 224 Ill. App. 3d at 203; *Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 1004 (Ill. App. Ct. 1991) ("In a large and impersonal society, class actions are often the last barricade of consumer protection.").

Here, a class action is certainly the most appropriate method to fairly and efficiently adjudicate the claims at issue. The injuries suffered by Plaintiff and the individual members of the Class are small compared to the burden and expense of individual prosecution of the litigation necessitated by Defendant's conduct. (Compl. ¶ 41.) Absent a class action, members of the Class would likely not obtain relief from Defendant, and Defendant would continue to profit from its misleading marketing. (*Id.*) Thus, a class action is appropriate because Defendant acted on grounds generally applicable to the Class, requiring the Court to impose uniform relief and also making injunctive relief appropriate to each of the Class as a whole. Finally, the fact that Section 2-801's numerosity, commonality and predominance, and adequacy requirements have been satisfied, further demonstrates the appropriateness of proceeding with this case as a class action.

Accordingly, Section 2-801's final prerequisite is satisfied and the proposed Class

warrants certification.

IV. CONCLUSION.

For the foregoing reasons, Plaintiff Christopher McNair, individually and on behalf of the proposed Class and Subclass, respectfully requests that the Court (1) enter and reserve ruling on Plaintiff's Motion for and Memorandum in Support of Class Certification; (2) allow for and schedule discovery to take place on class-wide issues; (3) grant Plaintiff leave to file a supplemental memorandum in support of his Motion for Class Certification upon the conclusion of class-wide discovery; (4) grant Plaintiff's Motion for Class Certification after full briefing of the issues presented herein; and, (5) provide all other and further relief that the Court deems reasonable and just.

Respectfully submitted,

CHRISTOPHER MCNAIR, individually and on behalf of all others similarly situated,

Dated: September 9, 2014

By: _____
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EXHIBIT 1

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

CHRISTOPHER MCNAIR, individually, and on behalf of all others similarly situated, *Plaintiff,* *v.* TEMPLETON RYE SPIRITS, LLC, an Iowa limited liability company, *Defendant.*	Case No.

DECLARATION OF ARI SCHARG IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

I, Ari Scharg, pursuant to Section 1-109 of the Illinois Code of Civil Procedure, hereby declare and state as follows:

1. I am over the age of eighteen and am fully competent to make this declaration. I make this declaration based upon personal knowledge unless otherwise indicated.

2. I am an attorney at the law firm of Edelson PC, which has been retained to represent the named Plaintiff in this matter, Christopher McNair.

3. Attached hereto as Exhibit 1-A is a true and accurate copy of the firm resume of Edelson PC.

4. As shown in Exhibit 1-A, Edelson PC has significant experience prosecuting consumer class actions and complex litigation of a similar nature, scope, and complexity to the instant case.

5. Edelson PC and its attorneys have been appointed Class Counsel in numerous actions throughout the country.

6. To date, Edelson PC and its attorneys have diligently investigated, prosecuted,

and dedicated substantial resources to the claims in this matter, and will continue to do so throughout its pendency.

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

Executed this September 9th, 2014 at Chicago, Illinois.

Ari Scharg

EXHIBIT 1-A

EDELSON PC FIRM RESUME

EDELSON PC is a plaintiff's class action and commercial litigation firm with attorneys in Illinois, Colorado, and California.

Our attorneys have been recognized as leaders in these fields by state and federal legislatures, national and international media groups, the courts, and our peers. Our reputation for leadership in class action litigation has led state and federal courts to appoint us lead counsel in many high-profile class actions, including privacy suits against comScore, Netflix, Time, Microsoft, and Facebook; numerous Telephone Consumer Protection Act ("TCPA") cases against companies such as Google, Twentieth Century Fox, and Simon & Schuster; class actions against Citibank, Wells Fargo, and JP Morgan Chase related to reductions in home equity lines of credit; fraudulent marketing cases against software companies such as Symantec; mobile content class actions against all major cellular telephone carriers; the Thomas the Tank Engine lead paint class actions; and the tainted pet food litigation. We have testified before the United States Senate on class action issues and have repeatedly been asked to work on federal and state legislation involving cellular telephony, privacy, and other issues. Our attorneys have appeared on dozens of national and international television and radio programs to discuss our cases and class action and consumer protection issues more generally. Our attorneys speak regularly at seminars on consumer protection and class action issues, lecture on class actions at law schools, and are asked to serve as testifying experts in cases involving class action and consumer issues.

PLAINTIFFS' CLASS AND MASS ACTION PRACTICE GROUP

EDELSON PC is a leader in plaintiffs' class and mass action litigation, with a particular emphasis on consumer technology class actions, and has been called a "class action 'super firm.'" (Decalogue Society of Lawyers, Spring 2010.) As recognized by federal courts nationwide, our firm has an "extensive histor[y] of experience in complex class action litigation, and [is a] well-respected law firm[] in the plaintiffs' class action bar." *In re Pet Food Prod. Liab. Litig.*, MDL Dkt. No. 1850, No. 07-2867 (NLH) (D.N.J. Nov. 18, 2008). A leading arbitrator concurred, finding that Edelson was "extraordinarily experienced" in "consumer protection class actions generally," including "technology consumer protection class action[s]."

In appointing our firm interim co-lead in one of the most high profile cases in the country, a federal court pointed to our ability to be "vigorous advocates, constructive problem-solvers, and civil with their adversaries." *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10 C 3647 (N.D. Ill, July 16, 2010). After hard fought litigation, that case settled, resulting in the reinstatement of between $3.2 billion and $4.7 billion in home credit lines.

We have been specifically recognized as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." *In re Facebook Privacy Litig.*, No. C 10-02389, Dkt. 69 at 5 (N.D. Cal. Dec. 10, 2010) (order appointing the firm interim co-lead of privacy class action); *see also In re Netflix Privacy Litig.*, No. 11-cv-00379, Dkt. 59 at 5 (N.D. Cal. Aug. 12, 2011) (appointing us the sole lead counsel due, in part, to our "significant and particularly specialized expertise in electronic privacy litigation and class actions[.]").

Similarly, as recognized by a recent federal court, our firm has "pioneered the application of the TCPA to text-messaging technology, litigating some of the largest consumer class actions in the country on this issue." *Ellison v Steve Madden, Ltd.*, No. 11-cv-5935 PSG, Dkt. 73 at 9 (C.D. Cal. May 7, 2013).

We have several sub-specialties within our plaintiffs' class action practice:

PRIVACY/DATA LOSS

Data Loss/Unauthorized Disclosure of Data

We have litigated numerous class actions involving issues of first impression against Facebook, Apple, Netflix, Sony, Redbox, Pandora, Sears, Storm 8, Google, T-Mobile, Microsoft, and others involving failures to protect customers' private information, security breaches, and unauthorized sharing of personal information with third parties. Representative settlements and ongoing cases include:

- *Dunstan v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.): Lead counsel in certified class action accusing internet analytics company of improper data collection practices. The court has preliminarily approved a $14 million settlement.

- *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.): Lead counsel in data breach case filed against health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred. Case also resulted in the first class action settlement in the country to provide data breach victims with monetary payments irrespective of identity theft.

- *In re Netflix Privacy Litigation*, No. 11-cv-00379 (N.D. Cal.): Sole lead counsel in suit alleging that defendant violated the Video Privacy Protection Act by illegally retaining customer viewing information. Case resulted in a $9 million dollar *cy pres* settlement that has been finally approved (pending appeal).

- *Halaburda v. Bauer Publishing Co.*, No. 12-cv-12831 (E.D. Mich.); *Grenke v. Hearst Communications, Inc.*, No. 12-cv-14221 (E.D. Mich.); *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.): Consolidated actions brought under Michigan's Video Rental Privacy Act, alleging unlawful disclosure of subscribers' personal information. In a ground-breaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic $5,000 award to each aggrieved consumer.

- *Standiford v. Palm*, No. 09-cv-05719-LHK (N.D. Cal.): Sole lead counsel in data loss class action, resulting in $640,000 settlement.

- *In re Zynga Privacy Litigation*, No. 10-cv-04680 (N.D. Cal.): Appointed co-lead counsel in suit against gaming application designer for the alleged unlawful disclosure of its users' personally identifiable information to advertisers and other third parties.

- *In re Facebook Privacy Litigation*, No. 10-cv-02389 (N.D. Cal.): Appointed co-lead counsel in suit alleging that Facebook unlawfully shared its users' sensitive personally identifiable information with Facebook's advertising partners.

- *In re Sidekick Litigation*, No. C 09-04854-JW (N.D. Cal.): Co-lead counsel in cloud computing data loss case against T-Mobile and Microsoft. Settlement provided the class with potential settlement benefits valued at over $12 million.

- *Desantis v. Sears*, No. 08 CH 00448 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in injunctive settlement alleging national retailer allowed purchase information to be publicly available through the internet.

Telephone Consumer Protection Act

Edelson has been at the forefront of TCPA litigation for over six years, having secured the groundbreaking *Satterfield* ruling in the Ninth Circuit applying the TCPA to text messages. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009). In addition to numerous settlements totaling over $100 million in relief to consumers, we have over two dozen putative TCPA class actions pending against companies including Santander Consumer USA, Inc., Walgreen Co., Path, Inc., Nuance Communications, Inc., Stonebridge Life Insurance, Inc., GEICO, DirectBuy, Inc., and RCI, Inc. Representative settlements and ongoing cases include:

- *Rojas v CEC*, No. 10-cv-05260 (N.D. Ill.): Lead counsel in text spam class action that settled for $19,999,400.

- *In re Jiffy Lube Int'l Text Spam Litigation*, No. 11-md-2261, 2012 WL 762888 (S.D. Cal.): Co-lead counsel in $35 million text spam settlement.

- *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.): Lead counsel in $10 million text spam settlement.

- *Kramer v. B2Mobile*, No. 0-cv-02722-CW (N.D. Cal.): Lead counsel in $12.2 million text spam settlement.

- *Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D. Cal.): Lead counsel in class action alleging that defendant co-opted group text messaging lists to send unsolicited text messages. $6 million settlement provides class members with an unprecedented $500 recovery.

- *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.): Lead counsel in $10 million text spam settlement.
- *Miller v. Red Bull*, No. 12-CV-04961 (N.D. Ill.): Lead counsel in $6 million text spam settlement.
- *Woodman v. ADP Dealer Services*, No. 2013 CH 10169 (Cook County, IL): Lead counsel in $7.5 million text spam settlement.
- *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.): Lead counsel in class action alleging that defendants violated federal law by sending unsolicited text messages to cellular telephones of consumers. Case settled for $16 million.
- *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.): Co-lead counsel in in $10 million text spam settlement.
- *Weinstein v. Airit2me, Inc.*, No. 06 C 0484 (N.D. Ill): Co-lead counsel in $7 million text spam settlement.

CONSUMER TECHNOLOGY

Fraudulent Software

In addition to the settlements listed below, EDELSON PC has consumer fraud cases pending in courts nationwide against companies such as McAfee, Inc., Avanquest North America Inc., PC Cleaner, AVG, iolo Technologies, LLC, among others. Representative settlements include:

- *Drymon v. Cyberdefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $9.75 million.
- *Gross v. Symantec Corp.*, No. 12-cv-00154-CRB (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $11 million.
- *LaGarde v. Support.com, Inc.*, No. 12-cv-00609-JSC (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $8.59 million.
- *Ledet v. Ascentive LLC*, No. 11-CV-294-PBT (E.D. Pa.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $9.6 million.

- *Webb v. Cleverbridge, Inc.*, No. 1:11-cv-04141 (N.D. Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $5.5 million.

Video Games

EDELSON PC has litigated cases video-game related cases against Activision Blizzard Inc., Electronic Arts, Inc., Google, and Zenimax Media, Inc., and has active litigation pending, including:

- *Locke v. Sega of America*, No. 13-cv-01962-MEJ (N.D. Cal.): Pending putative class action alleging that Sega of America and Gearbox Software released video game trailer that falsely represented the actual content of the game.

MORTGAGE & BANKING

EDELSON PC has been at the forefront of class action litigation arising in the aftermath of the federal bailouts of the banks. Our suits include claims that certain banks unlawfully suspended home credit lines based on pre-textual reasons, and that certain banks have failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP trial plans under state law. The court noted that "[p]rompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements have restored billions of dollars in home credit lines to people throughout the country. Representative cases and settlements include:

- *In re JP Morgan Chase Bank Home Equity Line of Credit Litigation*, No. 10-cv-3647 (N.D. Ill.): Court appointed interim co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between $3.2 billion and $4.7 billion in credit to the class.

- *Hamilton v. Wells Fargo Bank, N.A.*, No. 09-cv-04152-CW (N.D. Cal.): Lead counsel in class actions challenging Wells Fargo's suspensions of home equity lines of credit. Nationwide settlement restores access to over $1 billion in credit and provides industry leading service enhancements and injunctive relief.

- *In re Citibank HELOC Reduction Litigation*, No. 09-cv-0350-MMC (N.D. Cal.): Lead counsel in class actions challenging Citibank's suspensions of home equity lines of credit. The settlement restored up to $653,920,000 worth of credit to affected borrowers.

- *Wigod v. Wells Fargo*, No. 10-cv-2348 (N.D. Ill.): In ongoing putative class action, obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP trial plans.

General Consumer Protection Class Actions

We have successfully prosecuted countless class actions against computer software companies, technology companies, health clubs, dating agencies, phone companies, debt collectors, and other businesses on behalf of consumers. In addition to the settlements listed below, EDELSON PC have litigated consumer fraud cases in courts nationwide against companies such as Motorola Mobility, Stonebridge Benefit Services, J.C. Penney, Sempris LLC, and Plimus, LLC. Representative settlements include:

Mobile Content

We have prosecuted over 100 cases involving mobile content, settling numerous nationwide class actions, including against industry leader AT&T Mobility, collectively worth over a hundred million dollars.

- *McFerren v. AT&T Mobility, LLC*, No. 08-CV-151322 (Fulton Cnty. Super. Ct., Ga.): Lead counsel class action settlement involving 16 related cases against largest wireless service provider in the nation. "No cap" settlement provided virtually full refunds to a nationwide class of consumers who alleged that unauthorized charges for mobile content were placed on their cell phone bills.

- *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 27 related cases alleging unauthorized mobile content charges. Case settled for $36 million.

- *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Case settled for $12 million.

- *Parone v. m-Qube, Inc.*, No. 08 CH 15834 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving over 2 dozen cases alleging the imposition of unauthorized mobile content charges. Case settled for $12.254 million.

- *Williams v. Motricity, Inc.*, No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 24 cases alleging the imposition of unauthorized mobile content charges. Case settled for $9 million.

- *VanDyke v. Media Breakaway, LLC*, No. 08 CV 22131 (S.D. Fla.): Lead counsel in class action settlement alleging unauthorized mobile content charges. Case settled for $7.6 million.

- *Gresham v. Cellco Partnership*, No. BC 387729 (L.A. Super. Ct., Cal.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Settlement provided class members with full refunds.

- *Abrams v. Facebook, Inc.*, No. 07-05378 (N.D. Cal.): Lead counsel in injunctive settlement concerning the transmission of allegedly unauthorized mobile content.

Deceptive Marketing

- *Van Tassell v. UMG*, No. 1:10-cv-2675 (N.D. Ill.): Lead counsel in negative option marketing class action. Case settled for $2.85 million.

- *McK Sales Inc. v. Discover Bank*, No. 10-cv-02964 (N.D. Ill.): Lead counsel in class action alleging deceptive marketing aimed at small businesses. Case settled for $6 million.

- *Farrell v. OpenTable*, No 11-cv-01785-si (N.D. Cal.): Lead counsel in gift certificate expiration case. Settlement netted class over $3 million in benefits.

- *Ducharme v. Lexington Law*, No. 10-cv-2763-crb (N.D. Cal): Lead counsel in CROA class action. Settlement resulted in over $6 million of benefits to the class.

- *Pulcini v. Bally Total Fitness Corp.*, No. 05 CH 10649 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in four class action lawsuits brought against two health clubs and three debt collection companies. A global settlement provided the class with over $40 million in benefits, including cash payments, debt relief, and free health club services.

- *Kozubik v. Capital Fitness, Inc.*, 04 CH 627 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in state-wide suit against a leading health club chain, which settled in 2004, providing the over 150,000 class members with between $11 million and $14 million in benefits, consisting of cash refunds, full debt relief, and months of free health club membership.

- *Kim v. Riscuity*, No. 06 C 01585 (N.D. Ill.): Co-lead counsel in suit against a debt collection company accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with full debt relief and return of all money collected.

- *Jones v. TrueLogic Financial Corp.*, No. 05 C 5937 (N.D. Ill.): Co-lead counsel in suit against two debt collectors accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with approximately $2 million in debt relief.

- *Fertelmeyster v. Match.com*, No. 02 CH 11534 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under Illinois consumer protection statutes. The settlement provided the class with a collective award with a face value in excess of $3 million.

- *Cioe v. Yahoo!, Inc.*, No. 02 CH 21458 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under state consumer protection statutes. The settlement provided the class with a collective award with a face value between $1.6 million and $4.8 million.

- *Zurakov v. Register.com*, No. 01-600703 (N.Y. Sup. Ct., N.Y. Cnty.): Co-lead counsel in a class action brought on behalf of an international class of over one million members against Register.com for its allegedly deceptive practices in advertising on "coming soon" pages of newly registered Internet domain names. Settlement required Register.com to fully disclose its practices and provided the class with relief valued in excess of $17 million.

PRODUCTS LIABILITY CLASS ACTIONS

We have been appointed lead counsel in state and federal products liability class settlements, including a $30 million settlement resolving the "Thomas the Tank Engine" lead paint recall cases and a $32 million settlement involving the largest pet food recall in the history of the United States and Canada. Representative settlements include:

- *Barrett v. RC2 Corp.*, No. 07 CH 20924 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement is valued at over $30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.

- *In re Pet Food Products Liability Litigation*, No. 07-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United States history. Settlement provided $24 million common fund and $8 million in charge backs.

INSURANCE CLASS ACTIONS

We have prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds. Representative settlements include:

- *Holloway v. J.C. Penney*, No. 97 C 4555, (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. The case settled in or around December of 2000, resulting in a multi-million dollar cash award to the class.

- *Ramlow v. Family Health Plan* (Wisc. Cir. Ct., WI): Co-lead counsel in a class action suit challenging defendant's termination of health insurance to groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination and eventually settled the case ensuring that each class member would remain insured.

Mass/Class Tort Cases

Our attorneys were part of a team of lawyers representing a group of public housing residents in a suit based upon contamination related injuries, a group of employees exposed to second-hand smoke on a riverboat casino, and a class of individuals suing a hospital and national association of blood banks for failure to warn of risks related to blood transfusions. Representative settlements include:

- *Aaron v. Chicago Housing Authority*, No. 99 L 11738, (Cir. Ct. Cook Cnty., Ill.): Part of team representing a group of public housing residents bringing suit over contamination-related injuries. Case settled on a mass basis for over $10 million.

- *Januszewski v. Horseshoe Hammond*, No. 2:00CV352JM (N.D. Ind.): Part of team of attorneys in mass suit alleging that defendant riverboat casino caused injuries to its employees arising from exposure to second-hand smoke.

The firm's cases regularly receive attention from local, national, and international media. Our cases and attorneys have been reported in the Chicago Tribune, USA Today, the Wall Street Journal, the New York Times, the LA Times, by the Reuters and UPI news services, and BBC International. Our attorneys have appeared on numerous national television and radio programs, including ABC World News, CNN, Fox News, NPR, and CBS Radio, as well as television and radio programs outside of the United States. We have also been called upon to give congressional testimony and other assistance in hearings involving our cases.

General Commercial Litigation

Our attorneys have handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes, to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to "bet the company" cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations and mediations.

OUR ATTORNEYS

JAY EDELSON is the founder and Managing Partner of EDELSON PC. He has been recognized as a leader in class actions, technology law, corporate compliance issues, and consumer advocacy by his peers, the media, state and federal legislators, academia, and courts throughout the country.

Jay has been appointed lead counsel in numerous state, federal, and international class actions, resulting in hundreds of millions of dollars for his clients. He is regularly asked to weigh in on federal and state legislation involving his cases. He testified to the U.S. Senate about the largest pet food recall in the country's history and is advising state and federal politicians on consumer issues relating to the recent federal bailouts, as well as technology issues, such as those involving mobile marketing. Jay also counsels companies on legal compliance and legislative issues in addition to handling all types of complex commercial litigation.

Jay has litigated class actions that have established precedent concerning the ownership rights of domain name registrants, the applicability of consumer protection statutes to Internet businesses, and the interpretation of numerous other state and federal statutes including the Telephone Consumer Protection Act and the Video Privacy Protection Act. As lead counsel, he has also secured settlement in cases of first impression involving Facebook, Microsoft, AT&T, and countless others, collectively worth hundreds of millions of dollars.

In addition to technology based litigation, Jay has been involved in a number of high-profile "mass tort" class actions and product recall cases, including cases against Menu Foods for selling contaminated pet food, a $30 million class action settlement involving the Thomas the Tank Engine toy train recall, and suits involving damages arising from second-hand smoke.

In 2009, Jay was named one of the top 40 Illinois attorneys under 40 by the Chicago Daily Law Bulletin. In giving Jay that award, he was heralded for his history of bringing and winning landmark cases and for his "reputation for integrity" in the "rough and tumble class action arena." In the same award, he was called "one of the best in the country" when it "comes to legal strategy and execution." Also in 2009, Jay was included in the American Bar Association's "24 hours of Legal Rebels" program, where he was dubbed one of "the most creative minds in the legal profession" for his views of associate training and firm management. In 2010, he was presented with the Annual Humanitarian Award in recognition of his "personal integrity, professional achievements, and charitable contributions" by the Hope Presbyterian Church. Starting in 2011, he has been selected as an Illinois Super Lawyer and, separately, as a top Illinois class action lawyer by Benchmark Plaintiff.

Jay is frequently asked to participate in legal seminars and discussions regarding the cases he is prosecuting, including serving as panelist on national symposium on tort reform and, separately, serving as a panelist on litigating high-profile cases. He has also appeared on dozens of television and radio programs to discuss his cases. He has taught classes on class action law at Northwestern Law School and The John Marshall Law School, and has co-chaired a 2-day national symposium on class action issues. He has been an adjunct professor, teaching a seminar on class action litigation at Chicago-Kent College of Law since 2010.

Jay is a graduate of Brandeis University and the University of Michigan Law School.

RYAN D. ANDREWS is a Partner at EDELSON PC, and the Chair of the Telecommunications Practice Group. Ryan has been appointed class counsel in numerous state and federal class actions nationwide that have resulted in nearly $100 million dollars in refunds to consumers, including *Satterfield v. Simon & Schuster, Inc.*, No. C 06 2893 CW (N.D. Cal.); *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.); *Lofton v. Bank of America Corp.*, No. 07-5892 (N.D. Cal.); *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.), *Parone v. m-Qube, Inc.* No. 08 CH 15834 (Cook County, Ill.); and *Kramer v. Autobytel*, Inc., No. 10-cv-2722 (N.D. Cal. 2010).

In addition, Ryan has achieved groundbreaking court decisions protecting consumers through the application of the Telephone Consumer Protection Act to emerging text-messaging technology. Representative reported decisions include: *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999 (N.D. Ill. 2010); *Satterfield v. Simon & Schuster, Inc.* 569 F.3d 946 (9th Cir. 2009); *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010); *In re Jiffy Lube Int'l Text Spam Litig*, No. 11-md-2261, 2012 WL 762888 (S.D. Cal. March 9, 2012).

Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Recently, Ryan has returned to Chicago-Kent as an Adjunct Professor of Law, teaching a third-year seminar on Class Actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, as well as a teaching assistant for both Property Law and Legal Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United States District Court for the Northern District of Illinois.

A native of the Detroit area, Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications.

Ryan is licensed to practice in Illinois state courts, the United States District Court for the Northern District of Illinois, the U.S. Court of Appeals for the Seventh Circuit, and the U.S. Court of Appeals for the Ninth Circuit.

RAFEY S. BALABANIAN is a Partner and the Chair of the Corporate Governance and Business Litigation Practice Group. Rafey's practice focuses upon a wide range of complex consumer class action litigation, as well as general business litigation.

On the plaintiff's side, Rafey has been appointed lead counsel in numerous class actions, including landmark settlements involving the telecom industry worth hundreds of millions of dollars. Rafey has been appointed Class Counsel in nationwide class action settlements against the major wireless carriers, aggregators, and providers of "mobile content," including *Van Dyke v. Media Breakaway, LLC*, No. 08-cv-22131 (S.D. Fla.); *Parone v. m-Qube, Inc.*, No. 08 CH 15834 (Cir. Ct. Cook County, Ill.); *Williams v. Motricity, Inc.*, et al., No. 09 CH 19089 (Cir. Ct. Cook County, Ill.); and *Walker v. OpenMarket, Inc., et al.*, No. 08 CH 40592 (Cir. Ct. Cook County, Ill.).

On the business side, Rafey has counseled clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and

attorneys. He has successful litigated numerous multi-million dollar cases, including several "bet the company" cases.

Rafey has first chaired jury and bench trials, mediations, and national and international arbitrations.

Rafey received his J.D. from the DePaul University College of Law in 2005. While in law school, he received a certificate in international and comparative law. Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.

CHRISTOPHER L. DORE is a Partner at Edelson and a member of the Technology and Fraudulent Marketing Group. Chris focuses his practice on emerging consumer technology issues, with his cases relating to online fraud, deceptive marketing, consumer privacy, negative option membership enrollment, and unsolicited text messaging. Chris is also a member of the firm's Incubation and Startup Development Group wherein he consults with emergent businesses.

Chris has been appointed class counsel in multiple class actions, including one of the largest text-spam settlements under the Telephone Consumer Protection Act, ground breaking issues in the mobile phone industry and fraudulent marketing, as well as consumer privacy. *See Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D.Cal.); *Turner v. Storm8, LLC*, No. 09-cv-05234 (N.D. Cal.); *Standiford v Palm, Inc.*, No. 09-cv-05719-LHK (N.D. Cal.); and *Espinal v Burger King Corporation*, No. 09-cv-20982 (S.D. Fla.). In addition, Chris has achieved groundbreaking court decisions protecting consumer rights. Representative reported decisions include: *Claridge v. RockYou, Inc.*, 785 F. Supp. 2d 855 (N.D. Cal. 2011); *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010); and *Van Tassell v. United Marketing Group, LLC*, 795 F. Supp. 2d 770 (N.D. Ill. 2011). In total, his suits have resulted in hundreds of millions of dollars to consumers.

Prior to joining Edelson, Chris worked for two large defense firms in the areas of employment and products liability. Chris graduated *magna cum laude* from The John Marshall Law School, where he served as the Executive Lead Articles for the Law Review, as well as a team member for the D.M. Harish International Moot Court Competition in Mumbai, India. Chris has since returned to his alma mater to lecture on current issues in class action litigation and negations.

Before entering law school, Chris received his Masters degree in Legal Sociology, graduating magna cum laude from the International Institute for the Sociology of Law, located in Onati, Spain. Chris received his B.A. in Legal Sociology from the University of California, Santa Barbara.

BENJAMIN H. RICHMAN is a Partner at EDELSON PC and is a member of the firm's Corporate Governance and Business Litigation Practice Group. He handles plaintiff's-side consumer class actions, focusing mainly on technology-related cases, represents corporate defendants in class actions, and handles general commercial litigation matters.

On the plaintiff's side, Ben has brought industry-changing lawsuits involving the marketing practices of the mobile industry, print and online direct advertisers, and Internet companies. He has successfully prosecuted cases involving privacy claims and the negligent storage of consumer data. His suits have also uncovered complex fraudulent methodologies of Web 2.0

companies, including the use of automated bots to distort the value of consumer goods and services. In total, his suits have resulted in hundreds of millions of dollars to consumers.

On the defense side, Ben has represented large institutional lenders in the defense of employment class actions. He also routinely represents technology companies in a wide variety of both class action defense and general commercial litigation matters.

Ben received his J.D. from The John Marshall Law School, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the Honorable John W. Darrah of the United States District Court for the Northern District of Illinois, in addition to acting as a teaching assistant for Prof. Rogelio Lasso in several torts courses. Ben has since returned to the classroom as a guest-lecturer on issues related to class actions, complex litigation and negotiation. He also lectures incoming law students on the core first year curriculums. Before entering law school, Ben graduated from Colorado State University with a B.S. in Psychology.

Ben is the director of EDELSON PC's Summer Associate Program.

ARI J. SCHARG is a Partner at EDELSON PC. He handles technology-related class actions, focusing mainly on cases involving the unlawful geo-locational tracking of consumers through their mobile devices, the illegal collection, storage, and disclosure of personal information, fraudulent software products, data breaches, and text message spam. His settlements have resulted in tens of millions of dollars to consumers, as well as industry-changing injunctive relief. Ari has been appointed class counsel by state and federal courts in several nationwide class action settlements, including *Webb v. Cleverbridge*, No. 11-cv-4141 (N.D. Ill.); *Ledet v. Ascentive*, No. 11-cv-294 (E.D. Penn.); and *Drymon v. CyberDefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.); and was appointed sole-lead class counsel in *Loewy v. Live Nation*, No. 11-cv-4872 (N.D. Ill.), where the court praised his work as "impressive" and noted that he "understand[s] what it means to be on a team that's working toward justice." Ari was selected as an Illinois Rising Star (2013) by Super Lawyers.

Prior to joining the firm, Ari worked as a litigation associate at a large Chicago firm, where he represented a wide range of clients including Fortune 500 companies and local municipalities. His work included representing the Cook County Sheriff's Office in several civil rights cases and he was part of the litigation team that forced Craigslist to remove its "Adult Services" section from its website.

Ari is very active in community groups and legal industry associations. He is a member of the Board of Directors of the Chicago Legal Clinic, an organization that provides legal services to low-income families in the Chicago area. Ari acts as Outreach Chair of the Young Adult Division of American Committee for the Shaare Zedek Medical Center in Jerusalem, and is actively involved with the Anti-Defamation League. He is also a member of the Standard Club Associates Committee.

Ari received his B.A. in Sociology from the University of Michigan – Ann Arbor and graduated magna cum laude from The John Marshall Law School where he served as a Staff Editor for The John Marshall Law Review and competed nationally in trial competitions. During law school, he

also served as a judicial extern to The Honorable Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois.

STEVEN LEZELL WOODROW is a Partner and Chair of the firm's Banking and Financial Services Practice Group. Steven focuses his practice on complex national class actions against some of the Country's largest financial institutions. Representative matters include cases against national banks and mortgage servicers for improper loan modification practices, unlawful home equity line of credit ("HELOC") account suspensions and reductions, and claims regarding the misapplication of payments.

Steven delivered the winning oral argument in *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547 (7th Cir. 2012), the first federal appellate court decision to allow borrowers to challenge bank failures to follow the federal Home Affordable Modification Program ("HAMP") under state law.

Courts have also appointed Steven as class counsel in nationwide class action settlements against cellphone companies, aggregators, and mobile content providers related to unauthorized charges for ringtones and other mobile content, including *Paluzzi v. Cellco Partnership*, No. 08-cv-00405 (N.D. Ill.); *Williams v. Motricity, Inc.*, No. 09 CH 19809 (Cir. Ct. Cook Cnty., Ill.); and *Walker v. OpenMarket Inc.*, No. 08 CH 40592 (Cir. Ct. Cook Cnty., Ill.).

Steven has also served as an Adjunct Professor of Law at Chicago-Kent College of Law where he co-taught a seminar on class actions. Prior to joining the firm, he worked as a litigator at a Chicago boutique where he tried and arbitrated a range of consumer protection and real estate matters.

Steven received his J.D. High Honors, Order of the Coif, from Chicago-Kent College of Law in 2005. During law school, Mr. Woodrow served as a Notes and Comments Editor for The Chicago-Kent Law Review, competed on Moot Court, and served as President of the Student Bar Association. He additionally spent a semester as a judicial extern for the Honorable Ann C. Williams on the United States Court of Appeals for the Seventh Circuit. Steven received the ALI-ABA Scholarship and Leadership Award for best representing the combination of leadership and scholarship in his graduating class as well as the Lowell H. Jacobson Memorial Scholarship, which is awarded competitively each year to a student from one of the law schools in the Seventh Circuit to recognize personal commitment and achievement.

Steven is admitted to practice in Colorado (2011) and Illinois (2005).

Steven received his B.A. in Political Science with Distinction from the University of Michigan—Ann Arbor in 2002.

COURTNEY BOOTH is an Associate at EDELSON PC. Courtney focuses her practice on consumer class actions.

Courtney received her J.D., *magna cum laude*, from The John Marshall Law School. While in law school, she was a staff editor of The John Marshall Law Review, a teaching assistant for Legal Writing and Civil Procedure, and a member of the Moot Court Honor Society. Courtney represented John Marshall at the Mercer Legal Ethics and Professionalism Competition where

she was a semi-finalist and won Best Respondent's Brief and at the Cardozo/BMI Entertainment and Communications Law Competition where she placed in the top three oralists. Courtney was recently nominated as a 2013 Member of the National Order of Scribes.

Prior to law school, Courtney attended Saint Louis University where she earned a B.A. in Communication. While there, she was a community relations intern for the St. Louis Blues.

MARK EISEN is an Associate at EDELSON PC, where he focuses on consumer class actions. Prior to joining the firm, Mark clerked for the Honorable Gary Allen Feess, United States District Court for the Central District of California.

Mark received his J.D., *magna cum laude*, from the Boston University School of Law. While in law school, he won the Homer Albers Prize Moot Court Competition, represented BU on the National Moot Court team, and was a note development editor on the BU International Law Journal. Mark's academic note, *Who's Running This Place? A Comparative Look at the Political Appointment System in the United States and Britain, and What the United States Can Learn*, was published in the International Law Journal in the spring of 2012. Most importantly, Mark was active with the Boston University School of Law Softball Team.

Prior to law school, Mark attended the University of Southern California where he earned a B.A., *magna cum laude*, in Political Science and Economics. While there, Mark was a teaching assistant to Professor Dan Schnur. Mark also traveled the country as part of the advance team for John McCain's 2008 presidential campaign.

CHANDLER GIVENS is an Associate at EDELSON PC, where his practice focuses on technology and privacy class actions. His lawsuits have centered on fraudulent software development, unlawful tracking of consumers through mobile devices and computers, illegal data retention, and data breach litigation.

Chandler leads a group of researchers in investigating complex technological fraud and privacy related violations. His team's research has lead to cases that have helped cause significant reforms to the utility software industry and resulted in tens of millions of dollars to U.S. consumers. On the privacy litigation front, Chandler plays an instrumental role in applying new technologies to federal and state statutes. His briefing of these issues has helped produce seminal rulings under statutes like the Stored Communications Act and establish data breach jurisprudence favorable to consumers.

A frequent speaker on emerging law and technology issues, Chandler has presented to legal panels and state bar associations on topics ranging from data privacy and security to complex litigation and social media. He has been featured on syndicated radio, quoted in major publications such as Reuters and PCWorld, and been an invited cyberlaw guest lecturer at his alma mater.

Chandler graduated from the University of Pittsburgh School of Law where he was a research assistant for Cyberlaw Professor Dr. Kevin Ashley, and a judicial extern for the Honorable David S. Cercone of the United States District Court for the Western District of Pennsylvania. He graduated cum laude from Virginia Polytechnic Institute and State University, with a B.S. in

business information technology, with a focus on computer-based decision support systems. Chandler sits on the ABA committees for Information Security and e-Discovery.

Before joining the legal profession, Chandler worked as a systems analyst. He has also interned at the Virginia Attorney General's Office as well as the U.S. Department of Justice in Washington, D.C.

ALICIA HWANG is an Associate at EDELSON PC. Alicia practices in the area of consumer class action and general litigation.

Alicia received her J.D. from the Northwestern University School of Law in May 2012, where she was an articles editor for the Journal of Law and Social Policy. During law school, Alicia was a legal intern for the Chinese American Service League, served as president of the Asian Pacific American Law Student Association and the Student Animal Legal Defense Fund, and was Chair of the Student Services Committee. She also worked as a student in the Northwestern Entrepreneurship Law Clinic and Complex Civil Litigation and Investor Protection Clinic.

Prior to joining EDELSON PC, Alicia worked as an Executive Team Leader for the Target Corporation, as well as a public relations intern for a tourism-marketing agency in London.

Alicia graduated *magna cum laude* from the University of Southern California, earning her B.A. in Communication in 2007. She is a member of the Phi Beta Kappa honor society.

NICK LARRY is an Associate at EDELSON PC. Nick practices in the area of consumer class action and general litigation.

Nick received his J.D., *cum laude*, from Northwestern University School of Law, where he was a senior editor of the Northwestern University Journal of International Law and Business.

Nick attended Michigan State University, where he graduated with a B.A. in General Business Administration/Pre-law in 2008 and played on the school's rugby team.

MEGAN LINDSEY is an Associate at EDELSON PC. Megan practices in the area of consumer class action, focusing on complex class actions in the banking industry.

Prior to joining EDELSON PC, Megan worked for several years as a commercial loan underwriter and portfolio officer at Merrill Lynch, Pierce, Fenner & Smith. Megan also worked as an analyst in the troubled asset group at Bank of America, helping to monitor and restructure high-risk loans.

Megan received her J.D. from Chicago-Kent College of Law in May 2011. During law school Megan externed for the Honorable William Bauer in the United States Court of Appeals for the Seventh Circuit and served as Vice President-Evening Division of the Student Bar Association and Vice President of the Moot Court Honor Society. Megan also represented Chicago-Kent at the National First Amendment Moot Court Competition in Nashville, Tennessee and the National Cultural Heritage Law Moot Court Competition in Chicago, Illinois.

Megan graduated with High Honors from DePaul University in July 2005, earning her B.S. in Finance.

DAVID I. MINDELL is an Associate at EDELSON PC. David practices in the area of technology and privacy class actions.

David has worked on cases involving fraudulent software products, unlawful collection and retention of consumer data, and mobile-device privacy violations. David also serves as a business consultant to private companies at all stages of development, from start-up to exit.

Prior to joining EDELSON PC, David co-founded several technology companies that reached multi-million dollar valuations within 12 months of launch. David has advised or created strategic development and exit plans for a variety of other technology companies.

While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cyber-security professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the Internet, intellectual property rights, and privacy issues.

David has given speeches related to his research to a wide-range of audiences.

AMIR MISSAGHI is an Associate at Edelson, where he focuses on technology and privacy class actions.

Amir received his J.D. from the Chicago-Kent College of Law, where he was a member of the Moot Court Honor Society and a teaching assistant in Property. Before law school, he attended the University of Minnesota, where he received his B.S. in Applied Economics. He then began working at a Fortune 50 company as a programmer and data analyst. During that time Amir started working on his graduate studies in Applied Economics where he focused on analyzing consumer choice in healthcare markets.

JOHN OCHOA is an associate at EDELSON PC, focusing his practice on protecting consumers with a special emphasis on plaintiffs' privacy class action litigation, including cases brought under the Telephone Consumer Protection Act. John prosecutes cases in both state and federal courts at the trial and appellate levels.

John has secured important court decisions protecting the rights of consumers, including *Elder v. Pacific Bell Telephone Co*, 205 Cal. App. 4th 841 (2012), where the California Court of Appeal held that consumers may pursue claims against telecommunications companies for placing unauthorized charges on consumers' telephone bills, a practice known as "cramming." John was also appointed class counsel in *Lee v. Stonebridge Life Insurance Co*, 289 F.R.D. 292 (N.D. Cal. 2013), a case where the defendants are alleged to have caused the transmission of unauthorized text messages to the cellular telephones of thousands of consumers.

He graduated *magna cum laude* from the John Marshall Law School in May 2010 and served as Managing Editor for the John Marshall Law Review. His student Comment, which examines bicycling and government tort immunity in Illinois, appears in Vol. 43, No. 1 of the John

Marshall Law Review. While in law school, John externed with Judge Thomas Hoffman at the Illinois Appellate Court, and competed in the ABA National Appellate Advocacy Competition.

John is active in the Illinois legal community, and serves as Co-Chair of the Membership Committee on the Young Professionals Board of Illinois Legal Aid Online (ILAO). ILAO is a non-profit organization committed to using technology to increase access to free and pro bono legal services for underserved communities throughout Illinois.

He received his B.A. with Honors in Political Science from the University of Iowa in 2004.

ROGER PERLSTADT is an Associate at EDELSON PC, where he concentrates on appellate and complex litigation advocacy. Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.

Prior to joining the firm, Roger spent several years at a litigation boutique in Chicago where his practice included employment and housing discrimination claims, constitutional litigation, and general commercial matters. In 2011, he was named a Rising Star by Illinois Super Lawyers Magazine.

Roger also spent time as a Visiting Assistant Professor at the University of Florida Law School where he taught Arbitration, Conflict of Laws, and Employment Discrimination, and has published articles on the Federal Arbitration Act in various law reviews.

EVE-LYNN RAPP is an Associate at EDELSON PC. Eve-Lynn focuses her practice in the areas of consumer and technology class action litigation.

Prior to joining EDELSON PC, Eve-Lynn was involved in numerous class action cases in the areas of consumer and securities fraud, debt collection abuses and public interest litigation. Eve-Lynn has substantial experience in both state and federal courts, including successfully briefing issues in both the United States and Illinois Supreme Courts.

Eve-Lynn received her J.D. from Loyola University of Chicago-School of Law, graduating cum laude, with a Certificate in Trial Advocacy. During law school, Eve-Lynn was an Associate Editor of Loyola's International Law Review and externed as a "711" at both the Cook County State's Attorney's Office and for Cook County Commissioner Larry Suffredin. Eve-Lynn also clerked for both civil and criminal judges (Honorable Yvonne Lewis and Plummer Lott) in the Supreme Court of New York.

Eve-Lynn graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

BEN THOMASSEN is an Associate at EDELSON PC. At the firm, Ben's practice centers on the prosecution of class actions cases that address federally protected privacy rights and issues of consumer fraud—several of which have established industry-changing precedent. Among other high profile cases, Ben recently played key roles in delivering the winning oral argument before the United States Court of Appeals for the Eleventh Circuit in *Curry v. AvMed*, 693 F.3d 1317

(11th Cir. 2012) (a data breach case that has, following the Eleventh Circuit's decision, garnered national attention both within and without the legal profession) and securing certification of a massive consumer class in *Dunstan v. comScore*, No. 11 C 5807, 2013 WL 1339262 (N.D. Ill. Apr. 2, 2013) (estimated by several sources as the largest privacy case ever certified on an adversarial basis).

Ben received his J.D., *magna cum laude*, from Chicago-Kent College of Law, where he also earned his certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. At Chicago-Kent, Ben was Vice President of the Moot Court Honor Society and earned (a currently unbroken firm record of) seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts.

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