

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

2017 JAN 27 PM 4:26  
CIRCUIT COURT OF COOK COUNTY  
CLERK OF COURT  
DEBORA F. BROWN

EDWARD SANCHEZ, individually and as )  
the representative of a class of similarly )  
situated persons, )

Plaintiff, )

v. )

CHICAGO PARKING METERS, LLC, LAZ )  
PARKING CHICAGO, LLC, THE CITY OF )  
CHICAGO, ILLINOIS , and JOHN DOES )  
1-12 )

Defendants. )

Case No. 2017CH01351  
CALENDAR/ROOM 10  
TIME 00:00  
Class Action

**CLASS ACTION COMPLAINT**

Plaintiff EDWARD SANCHEZ (“Plaintiff”), brings this action on behalf of himself and all other persons similarly situated and, except for those allegations pertaining to Plaintiff and his attorneys, which are based upon personal knowledge, alleges the following upon information and belief against defendants CHICAGO PARKING METERS, LLC, LAZ PARKING CHICAGO, LLC, the CITY OF CHICAGO, ILLINOIS, and John Does 1-12 (collectively “Defendants”):

**PRELIMINARY STATEMENT**

1. Plaintiff brings this lawsuit alleging claims arising from misleading marketing of Defendants’ ParkChicago application and its failure to perform, giving rise to false parking tickets, improper fees, penalties and other losses for users of the application.

2. ParkChicago is a software application or “platform” that purports to

provide an “easy” and “convenient” way to pay for metered parking in Chicago using a mobile phone or web browser.

3. According to ParkChicago’s marketing, the application allows the user to avoid the inconvenience of having to purchase a proof-of-payment parking voucher from a parking box on the street. The marketing asserts that ParkChicago benefits the user because the users phone number and license plate replace the pay box and dashboard receipt. The marketing for ParkChicago also represents that each time the application is used, enforcement personnel will determine if the user has paid by looking up the user’s license plate number and payment status.

4. However, nearly since the application was rolled out, Defendants have known that ParkChicago fails to perform as marketed. Plaintiff and other users of the application have paid for metered parking sessions using the application, but have nonetheless received parking tickets during the parking period for which payment had been made. Defendants were aware of the application’s problems, but continued to market it without disclosing the failures.

5. As a result, Plaintiff and others similarly situated have suffered damages, inconvenience, incurred parking liabilities, paid fees for an application that does not perform as marketed, and lost the time use of money in their account balances.

6. Plaintiff brings the following claims on behalf of himself and a class of similarly situated persons: (1) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; (2) breach of implied warranty of fitness; (3)

unjust enrichment; (4) breach of fiduciary duty; (5) accounting; (6) injunctive relief.

### **PARTIES, JURISDICTION, AND VENUE**

7. Plaintiff EDWARD SANCHEZ is a resident of Cook County, Illinois.

8. Defendant CHICAGO PARKING METERS, LLC. ("CPM") is a Delaware limited liability company with its principal office in Chicago, Illinois.

9. Defendant LAZ PARKING CHICAGO, LLC ("Laz") is a Connecticut limited liability corporation with its principal place of business in Hartford, Connecticut.

10. Defendant CITY OF CHICAGO, ILLINOIS (the "City") is an Illinois municipal corporation.

11. The John Doe Defendants 1-12 are persons yet unknown to Plaintiff who actively participated in the conduct at issue in this lawsuit.

### **JURISDICTION AND VENUE**

12. The Court has subject matter and personal jurisdiction over Plaintiff's causes of action under 735 ILCS 5/2-209(a)(1) in that they involve the transaction of business within this State; under 2-209(a)(2) in that they involve tortious acts committed within this State; under 2-209(a)(3) in that they involve the ownership, use or possession of real estate in the State; and under 2-209(a)(7) in that they involve the making or performance of contract(s) or promise(s) substantially connected with this State.

13. Venue is proper in Cook County, Illinois because the transactions out of which the causes of action arose (or some portion thereof) took place here, and

because one or more of the Defendants reside here.

### **THE CHICAGO METERED PARKING SYSTEM AND CONCESSION**

14. The City's metered parking system (the "System") is the third largest in the country, comprising some 36,000 metered parking spaces.

15. The City's Municipal Code, 9-64-190, regulates the use of designated parking meter spaces and zones. It is unlawful to park any vehicle in a designated parking meter zone or space without depositing currency of the denomination indicated on the meter, including by electronic or mobile pay. The Code also provides that upon expiration of the time paid for, including as designated on electronic receipt, the operator of the vehicle must remove the vehicle and not permit it to remain in the same parking meter zone for an additional consecutive time period. The Code permits for enhanced penalties when the parking spot in question is in Chicago's Central Business District.

16. Effective February 13, 2009, the City leased the System to CPM for a 75-year term for a one-time payment to the City of about \$1.2 billion. As a result, the System is the largest metered parking system in the country to be operated through a private concession.

17. Under the Concession Agreement, CPM has the exclusive right and franchise to operate the System, and to collect and retain all parking meter revenues from the System.

18. Laz is a parking management company that acts as the operator of the System on behalf of CPM on a day to day basis.

19. Under the Concession Agreement, the City retains certain rights and duties with respect to the System. Although revenue from the System inures to CPM, the City continues to have responsibility for enforcing meter violations by issuing and adjudicating tickets.

### THE PARKCHICAGO APPLICATION

20. As part of its operation of the System, CPM provides street pay boxes where users of the System can purchase the right to use metered parking spaces for a set period of time and obtain receipts to display in their vehicles.

21. In 2014, Defendants CPM and Laz released the ParkChicago application. Since then, hundreds of thousands of people have registered for ParkChicago.

22. The ParkChicago application is free to download.

23. To register as a user of the software, however, users must set up an account and provide financial information allowing CPM and Laz to draw a minimum \$20 initial deposit against which parking payments are drawn. Users also agree that CPM and Laz will automatically replenish their accounts from the user's designated payment source by at least \$20 any time the account balance falls below \$10.

24. As a result, CPM and Laz have custody and control of the use of users' funds and are able to gain revenue through interest and investment gain from the use of the funds.

25. In addition, whenever a user pays for a parking session of less than

two full hours, CPM and Laz charge an additional 35 cent “convenience” fee.

### **PARKCHICAGO MARKETING**

26. ParkChicago is advertised by CPM and Laz as providing greater ease and convenience for users.

27. On the ParkChicago website, parkchicago.com, maintained by CPM and Laz, the software is advertised as “an easy and convenient way to pay for metered parking in Chicago using a mobile phone or web browser.” The website highlights that the “benefits” of the software are “Pay for parking using your phone,” “No need to use the pay box,” “No need to place a receipt on your dashboard.”

28. In its marketing, CPM and Laz assert that ParkChicago users will not receive tickets because parking enforcement personnel will look up the vehicles’ license plate number and determine that metered parking has been paid for that vehicle. As stated on the website: “Without a dashboard receipt, how do parking enforcers know that I have paid for parking? Each time you use ParkChicago, you will enter your license plate number that identifies your parking session. Enforcement personnel determine if you have paid by looking up your license plate number and payment status.”

29. On “app” stores such as “Google play” and “iTunes,” where ParkChicago can be downloaded, it is advertised as “the easy and convenient way to park for parking on-the-go without having to visit a pay box,” and its features are described as including “Pay for parking without having to visit a pay box or place a

receipt on your dashboard.”

30. Defendants CPM and Laz intended that the rollout of the ParkChicago application would increase revenues to them because users in a hurry who might otherwise not pay for parking at all would use the application because of its alleged greater ease and convenience.

### **PARKCHICAGO FAILS TO PERFORM**

31. Despite these representations of “ease” and “convenience,” within months after ParkChicago was rolled out in 2014, Chicago media reported that the application was not working properly. Numerous users who had properly registered and paid for parking had nonetheless received improper tickets for metered parking violations during the parking period they had paid for with the software.

32. As a result of these media reports and complaints they had received, Defendants were aware that the software did not perform as intended or as marketed.

33. The reason that the ParkChicago software fails to perform properly is not clear, and the failure may result from either failures of the technology, human errors of the enforcement officers, other causes, or a combination of these causes. Based on media reports, it may be that the central database on which the software records payments can take as long as fifteen minutes to update, and therefore information on payments may not be accurate when an enforcement officer runs the license plate before giving a ticket. It may also be that certain enforcement officers fail to check properly before issuing tickets. Whatever the causes of the improper

performance of the software, Defendants were aware that the software was not functioning properly.

34. Defendants were further aware that ParkChicago's failures resulted in great inconvenience to some users. Users experienced the inconvenience of receiving unwarranted notices of violation. In some instances, users did not understand the error, or did not take the time to correct it, and thus ended up paying unwarranted parking tickets. In other instances, users were subjected to the inconvenience of needing to contest the improper parking tickets either by providing proof of payment by mail or in person in traffic court.

35. Despite knowledge of this inconvenience, CPM and Laz continued to market the software by falsely representing, without qualification, that it was a "convenient" and "easy" way to pay for parking. CPM and Laz failed to disclose the inconvenience caused in the numerous instances when the software did not perform as intended or represented.

36. Despite knowledge of the improper functioning of the software, the City continued to issue improper tickets, relying on the efforts of users to correct the erroneous violations by presenting proof of payment. The City took no measures to inform users of the risk of improper tickets. The City also failed to perform an audit or require CPM and Laz to perform an audit to identify improper tickets that had been issued to persons who had paid for parking through the software at the time the ticket was issued.



## FACTS AS TO PLAINTIFF

37. Plaintiff downloaded the ParkChicago software onto his mobile phone and registered with it in about May 2015.

38. Upon registration, Plaintiff provided financial information and was charged \$20 by CPM and Laz. Thereafter, his account was automatically replenished by \$20 whenever the balance dropped below \$10.

39. CPM and Laz had the use of Plaintiff's funds that were in his ParkChicago account balance, invested those funds and earned interest and other income, and did not pay Plaintiff any of that interest or income.

40. Plaintiff used the application regularly after registering. On several occasions, Plaintiff registered for a parking session of less than two hours, and was charged a "convenience fee" of 35 cents by CPM and Laz.

41. On at least one occasion, on November 8, 2016, Plaintiff registered for a parking session and received a false ticket by enforcement personnel despite the fact that his parking time had not expired. Plaintiff received a parking ticket (violation notice) for \$65 for allegedly illegally parking at about 242 North Franklin Street, Chicago, Illinois at 12:49 p.m. and violating Municipal Code section 90-64-190(b) based on "Central Business District Expired Meter."

42. However, at the time in question, Plaintiff had paid with ParkChicago for a parking stay at 242 North Franklin Street, on November 8, 2016, from 11:32 a.m. to 1:34 p.m.

43. Accordingly, the time for Plaintiff to occupy the space had not expired,

and the ticket he received was unlawful. Plaintiff has contested the violation and requested a hearing.

### UNENFORCEABLE TERMS OF USE

44. ParkChicago's website contains purported "Terms of Use" for the application.

45. Among other things, the Terms of Use contain various purported waivers of basic legal rights without adequate disclosure. Taken separately or together, these purported waivers are unconscionable and unenforceable.

46. The Terms of Use purport to waive any and all warranties by CPM and its "affiliates": "Company and its parents, subsidiaries, officers, employees, and contractors and each of their officers, employees and agents (collectively, "Company Affiliates") make no representation or warranty whatsoever regarding the completeness, accuracy, timeliness or adequacy of any information, facts, views, opinions, statements or recommendations contained on the Platform."

47. The Terms of Use further purport to disclaim any warranties with respect to the application: "THE PLATFORM (INCLUDING ALL APPLICATION PLATFORM UPDATES) AND THE CONTENT ARE MADE AVAILABLE ON AN "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. COMPANY AND THE COMPANY AFFILIATES SPECIFICALLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH RESPECT TO

THE PLATFORM AND THE CONTENT. COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED, PROVIDED OR ENABLED BY OR THROUGH THE PLATFORM (INCLUDING ANY APPLICATION PLATFORM UPDATES) WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE PLATFORM, (INCLUDING ANY APPLICATION PLATFORM UPDATES) WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PLATFORM (INCLUDING ANY APPLICATION PLATFORM UPDATES) WILL BE CORRECTED.”

48. In addition, the Terms of Use purport to waive any and all consumer claims for compensatory or other damages against CPM: “YOU AGREE THAT COMPANY AND THE COMPANY AFFILIATES ARE NOT LIABLE TO YOU FOR DAMAGES OF ANY KIND, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING IN ANY WAY FROM OR IN CONNECTION WITH: (I) THE PLATFORM OR THE CONTENT; (II) ANY ERRORS OR OMISSIONS IN THE TECHNICAL OPERATION OR CONTENT OF THE PLATFORM; (III) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY COMPANY, LAW ENFORCEMENT OR OTHER AUTHORITIES REGARDING YOUR USE OF THE PLATFORM OR THE CONTENT; (IV) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OWNERS; OR (V) THE CONDUCT, ACTIONS OR INACTIONS OF PLATFORM

USERS OR YOUR INTERACTIONS OR RELATIONSHIPS WITH PLATFORM USERS, EVEN IF COMPANY OR THE COMPANY AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO, THE PLATFORM OR ITS RELATED INFORMATION OR PROGRAMS.”

49. Confusingly, the Terms of Use then disclaim the foregoing warranty disclaimers in bold face: **“SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS, OR THE DISCLAIMER OF SOME TYPES OF DAMAGES, SO SOME OF THE ABOVE MAY NOT APPLY TO YOU.”**

50. The Terms of Use also purport to bar class actions arising out of the use of the ParkChicago application: “You further agree that any disputes, claims and causes of action arising out of or connected with the Platform and/or this Agreement, will be resolved individually, without resort to any form of class action.”

51. These purported disclaimers and waivers are procedurally and substantively unconscionable and therefore unenforceable.

52. The waivers and disclaimers, singly and collectively, are unenforceable for numerous reasons including the following.

53. They are included in a lengthy contract of adhesion drafted by Defendants CPM and LAZ, with no ability for a user to negotiate or reject the term.

54. Users of the application are not required or prompted to read the terms of use, and are not advised of important legal waivers purportedly contained in fine print therein. Instead, consumers are forced to “accept” the Terms of Use as the first step in the process of registering for the application.

55. Although a link is available to the Terms of Use, the mere existence of the link, without an automatic prompt or “pop up” to read the Terms of Use, or disclosure of the disclaimers and waivers, is insufficient.

56. The application’s mere link to the terms without clearer disclosure of the waivers and disclaimers is particularly insufficient because of the substantial likelihood that a reasonable consumer would seek to register for the application while in the process of parking a vehicle, and therefore be in a rush to complete the registration.

57. Moreover, users are most likely to register using a mobile phone, and the mobile phone screen is not conducive to reading and understanding a lengthy legal document.

58. Because users were required to deposit funds through ParkChicago to maintain an account balance in order to register or use the application, as holders of those funds Defendants CPM and Laz were fiduciaries to Plaintiff and the other users. Their status as fiduciaries heightened their duty to make clear actual disclosure of any purported limitations of liability, and require that any ambiguities or doubts be drawn against them.

59. The purported disclaimers and waivers are not clearly disclosed within

the Terms of Use. The disclaimers and waivers of warranties and damages claims are unconscionable because Defendants had knowledge that the application did not perform as intended but failed to disclose that information.

60. The purported disclaimers of representations and/or warranties are also unenforceable because they are contrary to the marketing that Defendants CPM and Laz used to induce consumers to register for the application. As set forth above, CPM and Laz warranted that the application was “easy” and “convenient,” and that “enforcement personnel determine if you have paid by looking up your license plate number and payment status.” These affirmative statements of the application’s “benefits,” when Defendants knew but failed to disclose that the application does not always perform as intended or reasonably expected, negate any claimed disclaimer of warranties. Moreover, the necessity to read a long legal document is hardly consistent with “ease” and “convenience.”

61. The purported disclaimers and waivers of implied warranties are ineffective because, at the time users of the application were triggered to accept the Terms of Use, the users had not had any opportunity to use or inspect the application to determine any defects in it.

62. Moreover, the purported disclaimers of warranties and damages are ambiguous because the Terms of Use expressly state that these disclaimers may not be enforceable in “some jurisdictions” and “some of the above may not apply to you.” Because such waivers often are not enforceable in Illinois, the waivers are by their own terms a nullity and should not be enforced against Plaintiff or other putative

class members.

63. In addition, the purported “class action” waiver is buried in online fine print in the middle of a paragraph at the end of the terms of use entitled “General Information” and addressing disparate subjects ranging from electronic signatures to statute of limitations to section titles; and the terms and implications of the clause are not written in language that an ordinary consumer would fully understand. The clause fails to set forth that the amounts at issue might not be substantial enough to be worth litigating on an individual basis, either pro se or with assistance of counsel. The inability to pursue these claims on a classwide basis effectively prevents legal recourse. The Terms of Use also fail to provide an alternative, affordable or effective means to resolve individual claims. Indeed, the Terms of Use purport to insulate CPM and its affiliates from liability of any kind, while purporting to impose liability for damages on consumers who copyright violations or through indemnification. For all these additional reasons, the “class action” waiver should not be enforced.

#### **CLASS ACTION ALLEGATIONS**

64. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated as members of a class, initially defined as follows:

Each person who registered for the ParkChicago application.

65. Plaintiff also seeks certification of the following proposed subclasses:

Each person who registered for the ParkChicago application, and paid a fee for a parking period of less than two hours through the application (the “Fee” subclass).

Each person who registered for the ParkChicago application, and received a violation notice for time during a period for which such person had paid for parking through the ParkChicago application (the "Ticket" subclass).

66. Excluded from the classes are Defendants, any entity in which Defendants have a controlling interest, each of Defendants' officers, directors, legal representatives, heirs, successors, and assigns, and any Judge assigned to this action, including his or her immediate family.

67. Plaintiff expressly reserves the right to modify the proposed class definitions or propose subclasses.

68. This action is brought and may properly be maintained as a class action pursuant to 735 ILCS 5/2-801. This action satisfies the numerosity, commonality/predominance, adequacy, and appropriateness requirements of 735 ILCS 5/2-801.

69. **Numerosity/impracticality of joinder.** On information and belief, the class consists of more than 39 persons and, thus, is so numerous that individual joinder of each member is impracticable. The precise number of class members and their identities are unknown to Plaintiff, but will be obtained from Defendants' records or the records of third parties.

70. **Commonality and predominance.** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting only individual members of the class. These common legal and factual questions, which do not vary from one class member to another, and which may be determined without reference to the individual circumstances of any class member,



include, but are not limited to the following:

- a. Whether certain Defendants omitted material information in the marketing of the ParkChicago application, and intended to induce users to register for and use the application as a result;
- b. Whether certain Defendants practices were unfair;
- c. Whether the application is a “good”;
- d. Whether certain Defendants knew that users intended to use the application as an easy and convenient way to pay for metered parking and avoid parking tickets, whether there was an implied warranty of fitness for that use, and whether certain Defendants breached that warranty;
- e. Whether Defendants may enforce any purported disclaimers or waivers in the “Terms of Use” for the application;
- f. Whether Defendants were unjustly enriched;
- g. Whether certain Defendants owed fiduciary duties to users of the application and whether they breached such duties;
- h. Whether Defendants’ practices caused damages to users, and if so the amount(s) of damages;
- i. Whether punitive damages should be imposed on some or all Defendants;
- j. Whether Defendants should be ordered to provide an accounting;
- k. Whether Defendants should be preliminarily or permanently enjoined from continuing the challenged practices.

71. **Adequacy of representation.** Plaintiff is an adequate representative of

the classes because his interests do not conflict with the interests of the classes he seeks to represent. Plaintiff has retained counsel competent and experienced in complex consumer class action litigation, and Plaintiff intends to vigorously prosecute this action. Plaintiff and his counsel will fairly and adequately protect the interest of members of the class.

72. **Prosecution of separate claims would yield inconsistent results.** Even though the questions of fact and law in this action are predominantly common to Plaintiff and the putative class members, separate adjudication of each class member's claims would yield inconsistent and varying adjudications. Such inconsistent rulings would create incompatible standards for Defendants to operate under if or when class members bring additional lawsuits concerning the same matters.

73. A class action is the superior method of adjudicating the common questions of law or fact that predominate over individual questions. A class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all class members is economically unfeasible and procedurally impracticable. The likelihood of individual class members prosecuting separate claims is remote, and even if every class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiff's rights under the laws herein alleged

and with respect to the class would be proper. Plaintiff envisions no difficulty in the management of this action as a class action.

**COUNT I**  
**ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES**

74. Plaintiff incorporates the preceding paragraphs 1 to 73 as though fully set forth herein.

75. Plaintiff brings Count I on behalf of himself and a class of similarly situated persons against Defendants CPM and Laz.

76. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILC3 505/2 (“ICFA”), forbids unfair or deceptive acts or practices by those involved in the conduct of any trade or commerce.

77. The events complained of herein occurred within the stream of commerce.

78. Omission or concealment of a material fact in the conduct of trade or commerce constitutes consumer fraud in violation of the ICFA.

79. Defendants omitted material information regarding the known failures of ParkChicago to perform as intended and expected, including numerous false parking tickets issued for time periods when users had paid for parking through the application, which information would have influenced Plaintiff’s and other users’ decisions whether to register for, fund or use the application.

80. By omitting information about the application’s failures, Defendants intended to induce Plaintiff and the Class members to use the application to deposit funds, pay for parking, and incur charges through the application.

81. Defendants' practice is unfair because it violates the public policy of the state of Illinois in that it causes consumer confusion and damages, leads to confusion with regard to use of public parking spaces, and leads to errors in enforcement and adjudication of public parking ordinances, including unfair imposition of penalties where there was no violation.

82. Defendants' practice caused and continues to cause substantial injury to a Class of persons.

83. Defendants' practice caused monetary damages to Plaintiff and the other members of the purported Class.

84. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in his favor and against Defendants CPM and Laz, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for the Class;

B. That the Court award damages;

C. That the Court award punitive damages;

D. That the Court award attorneys' fees and costs, pursuant to 815 ILCS 505/10a (c); and

E. Award such further relief as the Court may deem just and proper.

**COUNT II  
IMPLIED WARRANTY**

85. Plaintiff incorporates the preceding paragraphs 1 to 73 as though fully

set forth herein.

86. Plaintiff brings Count II on behalf of himself and a class of similarly situated persons against Defendants CPM and Laz.

87. Under the Uniform Commercial Code, as adopted by the State of Illinois at 810 ILCS 5/2-315, where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is (unless properly excluded or modified) an implied warranty that the goods shall be fit for such purpose.

88. The ParkChicago software application is a "good" for purposes of 810 ILCS 5/2-315.

89. The ParkChicago software was sold by Defendants to Plaintiff and other users at the time they registered and funded their online accounts.

90. At the time of sale, Defendants had reason to know that Plaintiff and other users of ParkChicago intended to use the application as an easy and convenient way to pay for metered parking and thereby avoid parking tickets during the time parking had been paid for.

91. Accordingly, there was an implied warranty that the application would be fit for the purpose of paying for metered parking and thus avoiding parking tickets during the time parking was paid for.

92. The warranty was not properly excluded or modified by Defendants. Although Defendants purported to disclaim any implied warranty of fitness,

Defendants failed to do so in an enforceable way. *See* 810 ILCS 5/2-316.

93. Moreover, Defendants, who had superior knowledge, knew that the products were not fit for the intended and expected purposes.

94. Defendants breached the implied warranty of fitness because the ParkChicago application fails to perform properly and leads to false parking tickets for users of the application.

95. As a result of the breach of warranty, Plaintiff and members of the putative Class suffered injury and damages.

96. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for the Class;

B. That the Court award appropriate damages;

C. That the Court award costs of the suit; and

D. Award such further relief as the Court deems just and proper.

### COUNT III UNJUST ENRICHMENT

97. Plaintiff incorporates the preceding paragraphs 1 to 73 as though fully set forth herein.

98. Plaintiff brings Count III on behalf of himself and a Class of similarly situated persons against Defendants CPM and Laz.

99. Defendants have been unjustly enriched by the marketing of their ParkChicago application without appropriate disclosures of the risk the application would fail.

100. Plaintiff and others similarly situated conferred a benefit on Defendants by permitting Defendants to hold and receive interest and investment income on funds advanced to their respective balance accounts, by paying fees for parking sessions of under two hours, and by paying parking meter charges through the application and then also incurring penalties for falsely imposed parking meter tickets.

101. Defendants' practice is a detriment to Plaintiff and others similarly situated because they incur disproportionate monetary loss in comparison to the cost of paying for parking without using the application.

102. But for the foregoing misleading, deceptive, and unfair omissions by Defendants, Plaintiff and others similarly situated would not have agreed to download, register, fund or use the application.

103. Moreover, by requiring Plaintiff and other members of the putative Class to fund their ParkChicago account balances in advance of using the application, and holding those balance funds, Defendants became fiduciaries of Plaintiff and the Class. As fiduciaries, Defendants had a duty to disclose material facts about the application prior to drawing funds from the account balances.

104. As Defendants' receipt of the meter payments, interest and investment income, fees were derived through misleading, deceptive, and unfair conduct and

omission, and fiduciary breaches, their receipt of those sums was, therefore, unearned. As a result, retention of these amounts violates the fundamental principles of justice, equity and good conscience.

105. The circumstances are such that it would be inequitable for Defendants to retain the benefit of those amounts that it unjustly obtained from Plaintiff and others similarly situated.

106. Plaintiff and others similarly situated have suffered damages and Defendants have been unjustly enriched from the unscrupulous conduct described herein.

107. Plaintiff and others similarly situated are entitled to restitution as a result of the unjust enrichment of Defendants to the detriment of Plaintiff and the Class.

108. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for the Class;

B. That the Court award appropriate damages;

C. That the Court award costs of the suit; and

D. Award such further relief as the Court deems just and proper.



**COUNT IV  
FIDUCIARY DUTY**

109. Plaintiff incorporates the preceding paragraphs 1 to 73 as though fully set forth herein.

110. Plaintiff brings Count IV on behalf of himself and a class of similarly situated persons against Defendants CPM and Laz.

111. By requiring Plaintiff and other members of the putative Class to fund their ParkChicago account balances in advance of using the application, and holding those balance funds, Defendants became fiduciaries of Plaintiff and the Class.

112. As fiduciaries, Defendants had a duty to disclose material facts about the application prior to drawing funds from the account balances.

113. Defendants had a conflict of interest because moneys drawn against the account balances inured to their own benefit, thus enhancing their fiduciary duties.

114. Defendants breached their fiduciary duties by failing to disclose what they knew about users who paid through the application for parking meter charges sometimes receiving parking tickets anyway due to technical or human error, with resulting inconvenience.

115. As a result of their fiduciary breaches, Defendants profited by receiving the use of the balances held on behalf of Plaintiff and the Class, parking meter charges paid through the application, and fees charged for use of the application.

116. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award appropriate damages;

C. That the Court order the disgorgement of any sums received by Defendants from Plaintiff and members of the putative Class;

D. That the Court award costs of the suit; and

E. Award such further relief as the Court deems just and proper.

#### COUNT V ACCOUNTING

117. Plaintiff incorporates the preceding paragraphs 1 to 73 as though fully set forth herein.

118. Plaintiff brings Count V on behalf of himself and a class of similarly situated persons against all Defendants.

119. Defendants, acting in concert under the Concession Agreement, assessed and collected parking meter violation penalties from Plaintiff and members of the putative class for times at which Plaintiff and members of the putative class, respectively, had properly paid for parking through the ParkChicago application.

120. These improper assessments were made despite the fiduciary

relationship between some Defendants and Plaintiff and the members of the putative Class.

121. These improper assessments were made without disclosure of the failures of the ParkChicago application, failures that were known to all Defendants.

122. Plaintiff and members of the putative Class have a need for discovery from all Defendants concerning (1) all parking meter violations that were issued to Plaintiff and members of the putative Class, (2) parking meter payments that were made to Defendants through the application at the time those violations allegedly occurred.

123. Plaintiff and members of the putative Class have a need for discovery from CPM and Laz of (a) all payments for parking they made through the application, (b) all interest or investment income collected by Defendants Laz and CPM from the account balances, (c) all fees charged for use of the application. Plaintiff and members of the putative Class have a need for discovery from the City of all amounts paid by users of the ParkChicago application and the dates and times of the alleged violations so that information can be checked against the records of Defendants CPM and Laz.

124. The accounts through which the payments were made to and among Defendants are complex in nature and, on information and belief, may not be derivable from any single Defendant.

125. Plaintiff and the members of the class have no adequate remedy at law to obtain a complete accounting of all such transactions.

126. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for the Class;

B. That the Court order Defendants to account for any and all sums obtained from Plaintiff and the other members of the Class;

C. That the Court award costs of the suit; and

D. Award such further relief as the Court deems just and proper.

#### COUNT VI INJUNCTION

127. Plaintiff incorporates the preceding paragraphs 1 to 73 as though fully set forth herein.

128. Plaintiff brings Count I on behalf of himself and a class of similarly situated persons against all Defendants.

129. Plaintiff and others similarly situated have clear and ascertainable rights (a) to disclosure of defects in the ParkChicago application for which they registered; (b) to not receive tickets for or be found liable for unwarranted and unlawful parking violations at times when they had respectively properly paid for parking through the ParkChicago application.

130. Plaintiff and others similarly situated will suffer irreparable harm if Defendants continue to charge fees and collect interest on funds deposited for an

application with undisclosed defects, subjecting them to the inconvenience of needing to defend and pay for unwarranted and false parking violations.

Plaintiff and other members of the Class have no adequate remedy at law to compel full disclosure by Defendants, prevent ongoing improper fees, lost use of money, and unwarranted and false parking violations.

131. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for the Class;

B. That the Court enter a preliminary and then a permanent injunction ordering all Defendants

1. to disclose the scope of known defects with and failures of the ParkChicago application;

2. to refrain from issuing violation notices to Plaintiff and other members of the Class without taking all reasonable actions necessary to assure that no ParkChicago payment has been made;

3. to refrain from adjudicating violations asserted against Plaintiff and other members of the Class without first double checking against Defendants CPM and Laz's records to determine if in fact payment was made; and

4. to extend the time period for Plaintiff and other Class members to obtain refunds for improperly determined violations;

C. That the Court award costs of the suit; and

D. Award such further relief as the Court deems just and proper.

Respectfully submitted,

EDWARD SANCHEZ, individually and as  
the representative of a class of similarly-  
situated persons

By: /s/ Phillip A. Bock

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