

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

CHARLENE FIGUEROA and JERMAINE)	
BURTON, individually and on behalf of all)	
others similarly situated,)	
)	No. 1:19-CV-01306
Plaintiffs,)	
)	Judge Gary Feinerman
v.)	
)	
KRONOS INCORPORATED,)	
)	
Defendant.)	

KRONOS INCORPORATED’S MOTION TO STAY

Defendant Kronos Incorporated (“Kronos”) hereby moves this Court to stay all proceedings in this lawsuit pending decisions by (i) the Seventh Circuit Court of Appeals in *Cothron v. White Castle System, Inc.*, No 20-3202, and (ii) the Illinois Appellate Court for the First Judicial District in *Tims v. Black Horse Carriers, Inc.*, Case No. 1-20-0562.¹ In support of its Motion, Kronos states as follows:

A stay in this case is proper pending resolution of the appeals in *Cothron* and *Tims*. The appeals in those cases each address issues that are fundamental to this case: statute of limitations and accrual. The outcomes of these appeals could result in dismissal of Plaintiffs’ claims. At a minimum, they will dramatically shape the remainder of this lawsuit by determining, and perhaps greatly limiting, the size of the putative class. Staying this case in its entirety pending the resolution of these appeals is advisable while key issues regarding Plaintiffs’ own claims, the scope and size of the putative class, and consequently the extent of permissible discovery, remain in flux. *See*

¹ The *Cothron*, and *Tims* orders granting leave to appeal are attached hereto as, respectively, Exhibits A and B.

e.g., Herron v. Gold Standard Baking, Inc., No. 20-CV-07469, 2021 WL 1340804, at *5 (N.D. Ill. Apr. 9, 2021) (Durkin, J.).

BACKGROUND

On November 9, 2020, the Seventh Circuit Court of Appeals granted a petition in *Cothron* brought pursuant to 28 U.S.C. § 1292(b) that will address the following crucial issue:

Whether a private entity violates Sections 15(b) or 15(d) of [BIPA] only when it is alleged to have first collected or to have first disclosed [‘biometric data’] of an individual without complying with those Sections, or whether a violation occurs under Sections 15(b) or 15(d) each time that a privacy entity allegedly collects or discloses the individual’s biometric data.

Cothron v. White Castle Sys., Inc., No. 1:19-cv-00382, Defendant White Castle System, Inc.’s Motion to Amend Ruling to Certify Question for Appeal, ECF No. 135, at 1 (N.D. Ill. Aug. 17, 2020). Briefing in *Cothron* is scheduled to be completed in May 2021. *Cothron v. White Castle Sys., Inc.*, No. 20-3202, ECF No. 13 (7th Cir. Mar. 2, 2021).

On April 23, 2020, the Illinois Appellate Court for the First Judicial District granted a petition for interlocutory appeal in *Tims* to determine whether BIPA claims are governed by a one-year or five-year statute of limitations. *See* Ex. B. The *Tims* appeal has been fully briefed since November 19, 2020.

ARGUMENT

This Court, like all district courts, “has broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”). As explained below, the outcome of the above appeals could have a significant impact on this lawsuit

and aid this Court's resolution of key legal issues. Kronos thus respectfully requests that the Court exercise its discretion to stay the case until the issues presented by the above appeals are decided.

I. Decisions in *Cothron* and *Tims* could bar Plaintiffs' claims.

Most importantly, if the First District² holds that BIPA claims are governed by a one-year statute of limitations, and the Seventh Circuit holds that only the initial collection of biometric data constitutes a violation of BIPA, Plaintiffs' claims would be time-barred. Plaintiffs' claims arise out of Plaintiffs' employment at Tony's Finer Foods and BWAY. Plaintiff Burton has alleged he worked for BWAY "from January through April 2017[.]" (Dkt. 1-1 at ¶ 49). Plaintiff Burton has alleged that she began working for Tony's Finer Foods on March 8, 2017. (Dkt. 1-1 at ¶ 35). If the Seventh Circuit holds that a BIPA claim can only accrue upon the initial use of a time clock, then Plaintiffs' claims accrued in January and March of 2017, respectively.

Plaintiffs initially filed the complaint in this case in the Circuit Court of Cook County on January 18, 2019. (*See* Dkt. 1-1). This was more than one year after Plaintiffs allege that they initially used the time clocks. As such, if a one-year statute of limitations is found to apply to BIPA, Plaintiffs' claims are time-barred.

A court assessing a motion to stay should consider whether staying the proceedings has the potential to save time, money, and effort for everyone concerned and, if so, weigh such benefits against potential hardships the stay will impose on the opponent. *Landis*, 299 U.S. at 254; *see also*, *e.g.*, *Berkeley*IEOR v. Teradata Operations, Inc.*, No. 17-cv-7472, 2019 WL 1077124, at *5 (N.D. Ill. Mar. 7, 2019) ("In determining whether to exercise its discretion to stay proceedings, the Court

² A decision on the statute of limitations by the Illinois Appellate Court would likely bind this Court. *See Vaughan v. Biomat USA, Inc.*, No. 1:20 CV 04241, 2020 WL 6262359, at *2 (N.D. Ill. Oct. 23, 2020) ("The Supreme Court of Illinois has not yet weighed in on the applicable statute of limitations for BIPA claims, so the Illinois Appellate Court's decision . . . would likely be binding here.") (citing *Nationwide Agribusiness Ins. Co. v. Dugan*, 810 F.3d 446, 450 (7th Cir. 2015).

considers (1) whether a stay will simplify the issues in question and streamline the trial; (2) whether a stay will reduce the burden of litigation on the parties and on the court; and (3) whether a stay will unduly prejudice or tactically disadvantage the non-moving party.”). Granting a stay is particularly appropriate where doing so will “avoid unnecessary litigation of the same issues.” *Munson v. Butler*, 776 F. App’x 339, 342 (7th Cir. 2019).

As other district courts have already concluded, staying a case in which a defendant could seek dismissal of a plaintiff’s BIPA claims on statute-of-limitations grounds pending the appeals courts’ decisions in *Cothron* and *Tims* will preserve time and resources the parties would otherwise expend drafting and arguing motions, conducting discovery, and litigating potential discovery disputes, and would expedite the resolution of issues before this Court. *See, e.g., Herron*, 2021 WL 1340804, at *4 (a stay based on BIPA appeals warranted because, based on the results, “the remaining issues will be simplified for both the Court and the parties”); *Roberson v. Maestro Consulting Servs. LLC*, No. 20-cv-00895-NJR, 2021 WL 1017127, at *2 (S.D. Ill. Mar. 17, 2021) (staying a case pending *Cothron* and *Tims* because a Seventh Circuit holding that BIPA claims accrue on initial use “may dispose of plaintiffs’ claim if the Illinois Appellate Court were to hold that a one-year statute of limitation applies.”) (cleaned up); *Kyles v. Hoosier Papa LLC*, No. 1:20-cv-07146, ECF No. 22 (N.D. Ill. Mar. 4, 2021) (Blakey, J.) (“[t]he Court agrees that definitive rulings from the Seventh Circuit . . . likely will help streamline the issues in this case”); *Varnado v. W. Liberty Foods*, No. 20-CV-2035, 2021 WL 545628, at *2 (N.D. Ill. Jan. 5, 2021) (Coleman, J.) (staying a BIPA case pending the appeal in *Tims* “significantly advance[s] judicial economy” because a one-year statute of limitations would dispose of the case); *Donets v. Vivid Seats LLC*, No. 1:20-cv-03551, ECF No. 37 at 4 (N.D. Ill. Dec. 15, 2020) (Valderrama, J.) (a stay based on *Tims* and *Cothron* warranted after “taking into account the economies to be gained” by a stay); *see*

also *Jenkins v. Regal Cinemas, Inc.*, No. 1:20-cv-03782, ECF No. 32 (N.D. Ill. Dec. 1, 2020) (Feinerman, J.) (partial stay of case pending *Cothron*).

This same principle holds true here. As noted above, if the Seventh Circuit holds that BIPA claims accrue only on the first use of a time clock, and the Illinois Appellate Court holds that a one-year statute of limitations applies to BIPA claims, Plaintiffs' claims will be barred. In that case, any effort and expense spent on litigating Plaintiffs' claims while the appeals were pending would be wasted.

II. The pending appeals will also impact any class certification proceedings.

The outcome of the appeals could also heavily impact class certification. The appeals in *Cothron* and *Tims* both have the potential to vastly influence the size of the class, as their combined outcome could limit or even eliminate putative class members' claims. Efforts to conduct adequate class discovery and litigate the issue of class certification make little sense while so many unanswered legal questions are being considered by the Illinois Appellate Court and the Seventh Circuit that will directly impact any class Plaintiffs could try to certify. This alone warrants a stay. *See Donets*, No. 1:20-cv-03551, ECF No. 37 at 4 (holding stay appropriate pending outcome in *Cothron* even if it will not dispose of the case because of the potential impact on class size); *Bell v. SDH Servs. W., LLC*, No. 1:20-cv-01381, ECF No. 22 at 3 (N.D. Ill. Aug. 27, 2020) (Ellis, J.) (granting a stay pending *Tims* because a ruling "could streamline discovery and class certification proceedings").

Temporarily staying this case will not prejudice Plaintiffs or the other putative class members. *See, e.g., Donets*, No. 1:20-cv-03551, ECF No. 37 at 4 (concluding that plaintiff's "concerns do not justify denying [defendant's] request for a stay, taking into account the economies to be gained from staying this litigation" and granting a stay pending *Cothron* and

Tims); see also *Varnado*, 2021 WL 545628, at *2 (staying a BIPA case pending the appeal in *Tims* because “[defendant’s] concerns do not outweigh the judicial economy of staying these proceedings under the circumstances”); *Vaughan v. Biomat USA, Inc.*, 2020 WL 6262359, at *3 (N.D. Ill. Oct. 23, 2020) (Aspen, J.) (noting that “courts have concluded that stays are appropriate considering countervailing interests weighing in favor of a stay” and granting stay pending *Tims*); *Bell*, No. 1:20-cv-01381, ECF No. 22 at 3 (“[T]he ruling in *Tims* could streamline discovery and class certification proceedings. In light of these considerations, the Court finds that Bell’s concerns of delay do not justify denying the request for a stay.”).

A stay in this case pending the ongoing BIPA appellate activity will fundamentally narrow the issues that this Court will address, even if the dispositions of the appeals do not decide this case entirely, without imposing prejudice on any party.

CONCLUSION

For the reasons discussed above, Kronos respectfully requests that the Court enter an order staying all proceedings pending decisions by the Seventh Circuit Court of Appeals in *Cothron v. White Castle Sys., Inc.*, No. 20-3202 and the Illinois Appellate Court for the First Judicial District in *Tims v. Black Horse Carriers, Inc.*, Case No. 1-20-0562.

Dated: April 12, 2021

Respectfully submitted,

KRONOS INCORPORATED

By: /s/ Melissa A. Siebert
One of Its Attorneys

Melissa A. Siebert (masiebert@shb.com)
Erin Bolan Hines (ehines@shb.com)
Maveric Ray Searle (msearle@shb.com)
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive, Suite 4700
Chicago, IL 60606

Debra Bernard (dbernard@perkinscoie.com)
PERKINS COIE L.L.P
131 South Dearborn St., Suite 1700
Chicago, IL 60603
Tel: (312) 324-8559
Fax: (312) 324-9400

Tel: (312) 704-7700
Fax: (312) 558-1195

Attorneys for Defendant Kronos Incorporated

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2021, I caused a true and correct copy of the foregoing to be filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all Counsel of Record. Parties may access this filing through the Court's system.

/s/ Melissa A. Siebert