

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

KATHRYN FARMER, Individually,)
and as Representative of a Class of)
Similarly-Situated Persons and Entities,)
)
Plaintiff,)
)
CITY OF CHICAGO, an Illinois)
Municipal Corporation,)
)
Defendant.)

Case No. 2021 CH 04583
Jury Demand

PLAINTIFF’S REPLY TO DEFENDANT CITY OF CHICAGO’S ANSWER AND AFFIRMATIVE DEFENSES

Plaintiff, Kathryn Farmer (“Plaintiff”), by and through her attorneys, individually, and on behalf of a class of similarly situated persons and entities and pursuant to 735 ILCS § 5/2-602 states in reply to Defendant City of Chicago’s (the “City”) affirmative defenses stated in its Answer to Plaintiff’s Fourth Amended Complaint (“FAC”):

The City asserts two affirmative defenses in its Answer to Plaintiff’s FAC.

Affirmative Defense 1:

The City asserts that Plaintiff “lacks standing” to challenge the City’s Water and Sewer rates imposed prior to 2019 because she was “not paying water or sewer rates before 2019” and thus, according to the City, does not have standing to challenge the City’s water or sewer rates for years 2016, 2017 and 2018. The City’s first Affirmative Defense stated in its entirety:

1. Plaintiff was not a City water and sewer customer prior to 2019.
2. “A challenge to standing in a civil case is an affirmative defense.” *U.S. Bank, N.A. v. Kosterman*, 2015 IL App (1st) 133627, ¶ 10.
3. The doctrine of standing requires that a party have a “real interest” in the resolution of the case. *In re Estate of Wellman*, 174 Ill. 2d 335, 344 (1996).
4. Because Plaintiff was not paying water or sewer rates before 2019, she does not have a real interest in the resolution of this case to the extent it concerns water and sewer rates for years before 2019, and therefore, does not have standing to challenge the City’s water or sewer rates for years 2016, 2017 and 2018. [Answer to FAC at pp. 72-73.]

Plaintiff's Reply:

Plaintiff has standing to pursue claims for the entire class period on behalf of all similarly-situated class members. “To have standing to sue as a class representative it is essential that a plaintiff must be a part of that class, that is, he must possess the same interest and suffer the same injury shared by all members of the class he represents.” *Harmon v Shell Oil Co*, 2023 U.S. Dist. LEXIS 157163, at *12-13 (SD Tex, 2023)(Exhibit 3) *citing Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974) (emphasis added).

Harmon was an ERISA action wherein plaintiffs alleged breach of fiduciary duty claims against Shell Oil Co. and the trustees of Shell’s two 401(k) plans in which plaintiffs were enrolled participants. Plaintiffs sought to certify two classes based upon the separate plans. Pertinent to the issues raised by the City in this Case, Shell argued that the representative plaintiffs’ standing should be limited to the time period in which they actually invested in the respective plans. *Harmon* at *14. The court disagreed, expressly noting that standing to pursue claims on behalf of a class does not require that a representative plaintiff allege injury for the entire class period:

As evidenced by Plaintiffs’ supplemental briefing and evidence, [plaintiff] invested in at least 13 Tier III funds that paid revenue sharing between January 21, 2014 and November 2018. *See id* at 1-3. **Although this time period does not cover the entire class period, Article III standing does not require a participant to allege injury for the entire class period.** *See Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 591-93 (8th Cir. 2009) (“[T]he district court erred in concluding that [the plaintiff] lacked standing to maintain claims for the period before he began participating in the Plan.”). “[B]ecause [plaintiff] has alleged actual injury to his own Plan account,” he “has satisfied the requirements of Article III.” *Id.* at 592. [*Harmon*, at *14-15 (emphasis added).]

As explained by the 8th Circuit in *Braden v. Wal-Mart*, the case cited in *Harmon*:

Article III generally requires injury to the plaintiff’s personal legal interests, see *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771-72, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000), **but that does not mean that a plaintiff with Article III standing may only assert his own rights or redress his own injuries.** To the contrary, constitutional standing is only a threshold inquiry, and “so long as [Article III] is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, **may have standing to seek relief on the basis of the**

legal rights and interests of others.” *Id.* at 501. **In such a case, a plaintiff may be able to assert causes of action which are based on conduct that harmed him, but which sweep more broadly than the injury he personally suffered.** See *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 128 S. Ct. 2531, 2543, 171 L. Ed. 2d 424 (2008) (“[F]ederal courts routinely entertain suits which will result in relief for parties that are not themselves directly bringing suit.”). [588 F3d at 591-92 (emphasis added).]

In *Braden*, the 8th Circuit ultimately determined that the district court erred when it held a plaintiff lacked standing to maintain claims for the period *before* he began participating in the Plan—very similar to the affirmative defense the City now posits. But, as in *Braden* and *Harmon* this argument should be rejected. As stated in *Braden*, “[t]he **question whether recovery might be had for the period before Braden personally suffered injury is not one of constitutional standing, but turns instead on whether the statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff’s position a right to judicial relief.**” 588 F.3d at p. 593 (emphasis added). This question the *Braden* court “answered in the affirmative.” *Id.*

See also *Dennis v. Andersons, Inc.*, No. 20 C 4090, 2025 LX 58424 (N.D. Ill. 2025), a securities case wherein the court found that the claims of representative plaintiff to be typical of the class even though plaintiff did not transact during the entire class period:

The claims of class members who transacted in either or both December 2017 and March 2018 SRW futures center on the same alleged manipulative conduct. **Defendants do not explain why the claims of a class member who transacted only in March 2018 SRW futures would diverge from those of a class member who transacted in only December 2017 SRW futures (or both categories) in any meaningful sense other than at the calculation of damages. Thus, the claims of [plaintiff] are typical of the class even though it transacted only in March 2018 SRW contracts.** [*Dennis v Andersons*, at *10-12 (emphasis added).]

Affirmative Defense 2:

Second the City reframes its challenge to Plaintiff’s “standing” and “adequacy” to pursue claims for the entire class period asserting an affirmative defense based upon the “statute of limitations.” While the City correctly notes that the statute of limitations for Plaintiff’s claims is five years, which would set the start of the class period in September 2016—five years prior to the date

that Plaintiff filed her original complaint in September 2021—the City asserts that because Plaintiff was not a City water and sewer customer prior to 2019 she cannot seek relief for years prior to 2019. As such, the City posits, any claims for relief for years 2016, 2017, and 2018 are barred by the statute of limitations.

The City’s second Affirmative Defense stated in its entirety:

1. The statute of limitations on Plaintiff’s claims is five years.
2. Plaintiff cannot seek relief for claims prior to 2019 because she was not a City water and sewer customer prior to 2019.
3. Claims about water and sewer rates in 2016, 2017, and 2018 are now more than five years old.
4. Plaintiff’s claims for 2016, 2017, and 2018 are barred by the statute of limitations.

Plaintiff’s Reply:

The City’s affirmative defense based upon statute of limitations must fail for the same reasons that the City’s challenge to Plaintiff’s “standing” to pursue claims or the entire class period must fail. As an initial matter, the City’s statute of limitations “defense” is a misnomer, as applied to Plaintiff. The City acknowledges that Plaintiff has been a water and sewer customer since 2019. Because her claims are governed by a five-year statute of limitations, all of Plaintiff’s personal claims are timely.

Given this reality, the City instead argues that the **claims of absent class members** for Water and Sewer Charges imposed in years 2016, 2017, and 2018 are barred by the five-year limitations period. This argument is legally wrong because the filing of a class action tolls the statute of limitations for absent class members.

In *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 554, 94 S. Ct. 756, 38 L. Ed. 2d 713, (1974), the United States Supreme Court established the class action tolling rule and held that “the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.” 414 U.S. at 554. The Illinois courts faithfully apply the American Pipe rule. *See, e.g.,*

Steinberg v. Chicago Medical School, 69 Ill. 2d 320, 342-43, 371 N.E.2d 634, 13 Ill. Dec. 699 (1977) (holding that the “commencement of the class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit continued as a class action”). Thus, while Plaintiff herself may not have claims arising out of Water and Sewer Charges imposed in 2016, 2017 and 2018, her filing of this class action tolled the statute of limitations for absent class members who did pay such Charges in 2016, 2017 and 2018.

Based upon the foregoing, Plaintiff has standing to pursue claims on behalf of herself and the class she seeks to represent. She is a member of the class she seeks to represent and has the exact same interest in the litigation as all other class members—simply, Plaintiff has a strong incentive to prove the City’s uniform wrongful conduct as to all class members because her claims arise from that same uniform conduct. Plaintiff has suffered the same injury shared by all members of the class. And, importantly, she does not have to allege that she was harmed for the entire class period (*Harmon, Braden*) but **in her representational capacity** may challenge the uniform wrongdoing of the City that “sweep(s) more broadly than the injury [s]he personally suffered.” *Braden, supra*, 588 F3d at 591-92.

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By: /s/Gregory D. Hanley

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CERTIFICATE OF SERVICE

I, Jamie Warrow, an attorney, certify under penalty of perjury pursuant to 735 ILCS 5/1-109 that on September 29, 2025, I served a copy of *Plaintiff's Reply to Defendant City of Chicago's Answer and Affirmative Defenses* by the Odyssey electronic filing system and by e-mailing a copy of same to the parties listed below from e-mail jwarrow@kickhamhanley.com.

/s/ Jamie Warrow

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