IN THE SUPREME COURT OF IOWA

CASE NO. 24-1133

VICTORIA ABRAHAMSON, HANA SCHROEDER, JODY SCHROEDER, TERRY SCHROEDER, SAMANTHA JOHNSON, BRE AHNA BOGGESS (f/k/a Bre Ahna Payne), REBECCA BATES, TAWNI HANSON, DARBY JONES, HUNTER MINER, and the STATE OF IOWA Ex rel. VICTORIA ABRAHAMSON, HANA SCHROEDER, JODY SCHROEDER, TERRY SCHROEDER, SAMANTHA JOHNSON, BRE AHNA BOGGESS, REBECCA BATES, TAWNI HANSON, DARBY JONES, HUNTER MINER,

Plaintiffs/Appellees,
v.

BENJAMIN SCHEEVEL, Individually and in his Official Capacity as Officer for the Estherville Police Department, BRENT SHATTO, Individually and in his Official Capacity as Chief of the Estherville Police Department, CITY OF ESTHERVILLE, IOWA, ACADIA INSURANCE COMPANY, and JOHN DOE

Defendants/Appellants.

RELATING TO THE IOWA DISTRICT COURT IN AND FOR EMMET COUNTY (CASE NO. CVCV022475)
HON. SHANE MAYER, DISTRICT COURT JUDGE

APPELLANTS' JOINT BRIEF

(TRIAL HAS NOT BEEN SET)

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STATEMENT OF THE ISSUES

I. Whether the District Court erred by applying the incorrect statutory limitation period to Plaintiffs' Count I (Dissemination, Request, and Receipt of Criminal History or Intelligence Data pursuant to Iowa Code § 692.6).

II. Whether the District Court erred by holding Plaintiffs' claims, which were brought under the Iowa Municipal Tort Claims Act on July 7, 2023 and are based on conduct occurring no later than May of 2019, are not barred by the Iowa Municipal Tort Claims Act's two-year limitation period.

ROUTING STATEMENT

Defendants/Appellants acknowledge that the statute of limitations under § 670.5 of the Iowa Municipal Tort Claims Act is a well settled area of law and presents the application of existing legal principles, which would otherwise allow the Court to summarily resolve the issues raised in this appeal. *See* Iowa R. App. P. 6.1101(3). However, while the language of Iowa Code § 692.6 unambiguously states that "[a]ny person may institute a civil action for damages under chapter 669 or 670" for violation of the chapter, this case presents the specific issue of whether the limitations in Iowa Code § 670.5 apply to such a claim. As such, Defendants/Appellants respectfully submit that the Iowa Supreme Court consider retaining this appeal on one or more of the bases enumerated in Iowa R. App. P. 6.1101(2).

NATURE OF THE CASE

This is an interlocutory appeal arising from a case brought under the Iowa Municipal Tort Claims Act ("IMTCA") relative to conduct occurring no later than May of 2019. Plaintiffs/Appellees ("Plaintiffs") did not file suit until July 7, 2023—more than four (4) years later. Plaintiffs claim they first "became aware of" the claimed conduct within two (2) years of filing suit. The IMTCA contains a two-year statutory limitation period, which is not tolled by the discovery rule. Accordingly, Defendants moved to dismiss Plaintiffs' claims on the basis they are time-barred. More than six months after hearing on the Motions to Dismiss, the Court denied the Motions.

Defendants respectfully submit the District Court erred in denying Defendants' motions. To wit, the District Court failed to apply the relevant statutory limitation period to Plaintiffs' Count I and, in effect, allowed Plaintiffs' discovery of the alleged tortious conduct to toll the relevant statutory limitation period in contravention to the text of the IMTCA and the Iowa Supreme Court's interpretation of the same. Defendants hereby request this Court reverse the District Court's ruling on the basis of legal error.

STATEMENT OF THE FACTS

On July 7, 2023, Plaintiffs filed the Petition in this case "under Chapter 692 of the Code of Iowa" and against Benjamin Scheevel and Brent Shatto (individually and in their official capacities), the City of Estherville, Iowa, and John Doe. *See* D0002, Pet. (July 7, 2023). Therein, Plaintiffs asserted the following causes of action:

- Count I (Against All Defendants) - Dissemination, Request, and Receipt of Criminal History or Intelligence Data Pursuant to Iowa Code § 692.6;
- Count II (Against All Defendants) - Invasion of Privacy;
- Count III (Against All Defendants) - Civil Conspiracy; and
- Count IV (Against Defendants Scheevel, Shatto, and Doe) - Action on the Bond Pursuant to Iowa Code § 64.18.

See id.

Plaintiffs allege that between August of 2016 and May of 2019, Defendant Scheevel—then a Police Officer for the City of Estherville Police Department—used a law enforcement database to access Plaintiffs' personal information under false pretenses. *Id.* They further allege Defendants Shatto (the Chief of Police for the City of Estherville Police Department) and the City of Estherville were aware of these instances of improper database access, but failed to take appropriate disciplinary

action. *Id.* Plaintiffs contend they themselves became aware of the alleged improper database access between July 9, 2021 and "late April 2022." *Id.*

On July 12, 2023, Defendant Scheevel filed a Motion to Dismiss on the basis (1) Counts I-III are barred by the two (2) year statutory limitation period within the Iowa Municipal Tort Claims Act (Iowa Code § 670.5); and (2) Count IV depends on the viability of Counts I-III and is, therefore, futile. *See* D0008, Mot. to Dismiss (July 12, 2023). On July 31, 2023, Defendants Shatto and the City of Estherville filed a Motion to Dismiss on the same bases as Defendant Scheevel's Motion. *See* D0014-15, Mot. to Dismiss (July 31, 2023). On August 3, 2023, Defendant Scheevel filed a Renewed Motion to Dismiss, following Plaintiffs' filing of an Amended Petition. D0016, Renewed Mot. to Dismiss.[1] Virtual Hearing on the Motions was held on November 7, 2023.

On June 13, 2024, the District Court denied the Motions on the basis (1) the IMTCA's statutory limitation period does not govern claims based on violations of

[1] On July 21, 2023, Plaintiffs filed an Amended Petition, identifying Acadia Insurance Company as an additional (unserved) defendant in all counts, but otherwise asserting the same causes of action. *See* D0013, Am. Pet. (July 21, 2023). Defendants City/Shatto's motion and Defendant Scheevel's renewed motion both cited the Amended Petition, despite the Amended Petition having been filed without a motion to amend or court order granting the amendment pursuant to Iowa R. Civ. P. 1.402(4). *See* D0014 at 2. The District Court adopted the Amended Petition, deciding that "[s]ince a Motion is not a pleading, its filing cannot interrupt the time the Plaintiff has to amend their petition prior to a responsive pleading." *See* D0031 at 6, Ruling Mts. to Dismiss (June 13, 2024).

Iowa Code section 692.6 (though section 692.6 expressly provides civil actions brought for such violations are brought under the IMTCA);[2] and (2) Plaintiffs' injury occurred when they first "learned of" the alleged violations (though the Iowa Supreme Court has repeatedly held the discovery rule does not apply to claims brought under the IMTCA).[3] *See* D0031 at 6. Ruling Mts. to Dismiss (June 13, 2024).

On July 10, 2024, Defendants timely applied to the Supreme Court of Iowa for interlocutory review. Plaintiffs did not resist the application. On September 5, 2024, the Supreme Court of Iowa granted Defendants' application and stayed proceedings below.

[2] Notably, the District Court reached this issue absent Plaintiffs' assertion, briefing, or argument.

[3] A copy of this Order is attached as Attachment A, pursuant to Iowa R. App. P. 6.903(2)(b)(1).

ARGUMENT

I. Standard of Review and Preservation

This Court reviews district court rulings on motions to dismiss for correction of errors at law. *Venckus v. City of Iowa City*, 930 N.W.2d 792, 798 (Iowa 2019) ("This court reviews rulings on motions to dismiss for the correction of legal error.").

Defendants preserved these issues by moving to dismiss and timely applying for interlocutory review on these bases. *See* Attachment A.

II. The IMTCA's two-year limitation period applies to Plaintiffs' section 692.6 claim.

Plaintiffs' Count I alleges "Dissemination, Request, and Receipt of Criminal History or Intelligence Data Pursuant to Iowa Code § 692.6." Iowa Code section 692.6 provides:

> Any person may institute a civil action for damages *under chapter 669 or 670* or to restrain the dissemination of the person's criminal history data or intelligence data in violation of this chapter. *Notwithstanding any provisions of chapter 669 or 670 to the contrary*, any person, agency, or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

Iowa Code § 692.6 (emphasis supplied). Iowa Code Chapter 670 is the IMTCA. The IMTCA contains a two-year statutory limitation period. *See* Iowa Code § 670.5.

Though Plaintiffs did not assert this issue in their briefing or oral argument,

the District Court held that because Iowa Code section 692.6 provides liability and damages arise from violations of Chapter 692 "[n]otwithstanding any provisions of chapter 669 or 670 to the contrary," "no provision in Iowa Code Chapter 669 or 670 can defeat a claim under Iowa Code § 692.6 if the elements of [a] 692.6 claim are proven." *See* D0031, Ruling, at 7 (June 13, 2024). As a consequence, the District Court determined the applicable statutory limitation period for Plaintiffs' Count I is not Iowa Code section 670.5 (the two-year IMTCA limitation period), but Iowa Code section 614.1(4) (the five-year limitation period applicable to actions not otherwise specified within the section). *Id.*

The District Court's reading of section 692.6 and application of section 614.1(4) are erroneous because (A) it violates well-settled principles of statutory interpretation; (B) the District Court's reading disregards dispositive considerations of governmental immunity; (C) the two-year limitation period is not "contrary" to section 692.6; and (D) absent the IMTCA period, the two-year statutory limitation period for personal injury would apply.

A. Well-settled principles of statutory interpretation counsel for application of the two-year period.

The aim of statutory interpretation is to effectuate the intent of the legislature. *See Star Equip., Ltd. v. State, Iowa Dep't of Transp.*, 843 N.W.2d 446, 455 (Iowa 2014). When interpreting a statute, Iowa courts "assess the statute in its entirety, not just isolated words or phrases." *In re Estate of Bockwoldt,* 814 N.W.2d 215, 223

(Iowa 2012) (quoting *Doe v. Iowa Dep't of Human Servs.,* 786 N.W.2d 853, 858 (Iowa 2010)). Statutes should be interpreted to be in harmony, rather than conflict, with one another. *Ronnfeldt v. Shelby Cnty. Chris A. Myrtue Mem'l Hosp.*, 984 N.W.2d 418, 421–22 (Iowa 2023) ("In the event of an apparent conflict between statutes, 'they shall be construed, if possible, so that effect is given to both.' " (quoting Iowa Code § 4.7)).

As applied to section 692.6, the dispositive question is which statutory provision can "not withstand," or falls to, the other. The District Court's interpretation of the word "notwithstanding" is that limiting provisions of the IMTCA, including the limitation period, fall to section 692.6. The District Court's interpretation is contrary to section 692.6 when read as a whole.

To wit, the first sentence of section 692.6 indicates any civil claim thereunder must be brought under the IMTCA or the Iowa Tort Claims Act. By the District Court's reading, though a civil claim for a violation of Chapter 692 must be brought pursuant to the IMTCA, a plaintiff may disregard *any* limiting provision of the same. If this were the intent of the legislature, there would be no need for section 692.6's first sentence and the claim could exist independent of the IMTCA. That is not what section 692.6 says.

The District Court's interpretation of the term "notwithstanding" in section 692.6 unnecessarily creates a conflict between that section and the IMTCA, which

otherwise applies to all torts committed by municipalities. Indeed, the IMTCA is intended to be "exclusive of any other civil action or proceeding by reason of the same subject matter." Iowa Code § 670.4(2). The first sentence of section 692.6 conforms with this exclusivity. The District Court's interpretation of the second sentence, which would place a tort claim against a municipality beyond the scope of the IMTCA, does not.

The interpretation which best serves to facilitate legislative intent is that section 692.6 cannot withstand the limiting provisions of the IMTCA. In other words, "[n]otwithstanding any provisions of chapter 669 or 670 [which would preclude liability or provide immunity to the State, City, or their employees], any person, agency, or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable . . ."

This interpretation ensures internal consistency and harmonization with the language and policies underlying the IMTCA. Because section 692.6 falls to the limiting provisions of the IMTCA, the two-year statutory limitation period applies to each of Plaintiffs' causes of action, including Count I. Accordingly, the two-year limitation period bars Plaintiffs' claims.

B. Application of the two-year limitation period is consistent with long-standing governmental immunity principles.

The District Court's reading of section 692.6 ignores the long-standing rule

that governments and their agents are immune from civil suits absent an express, statutory exception. Iowa courts "derive legislative intent not only from the language used but also from the statute's subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of the various interpretations." *Id.* (quoting *Postell v. Am. Family Mut. Ins. Co.*, 823 N.W.2d 35, 49 (Iowa 2012) (internal quotation marks omitted)).

The IMTCA "allow[ed] people to assert claims against municipalities that otherwise would have been barred by governmental immunity." *Sutton v. Council Bluffs Water Works*, 990 N.W.2d 795, 797 (Iowa 2023) (citing *Venckus v. City of Iowa City*, 930 N.W.2d 792, 809 (Iowa 2019)); *see Jahnke v. Inc. City of Des Moines*, 191 N.W.2d 780, 784 (Iowa 1971) (recognizing "the general rule of governmental immunity prevail[ed] until recent years"— when the IMTCA was adopted).

The Act authorizes claims against municipal entities and their agents for "torts," which are defined as:

> every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute or rule of law.

Iowa Code § 670.1(4). The Supreme Court of Iowa has interpreted this definition broadly. *Sutton v. Council Bluffs Water Works*, 990 N.W.2d at 797 (holding strict

liability claims may be brought under the IMTCA).

This broad, statutory exception to governmental immunity was cabined by the procedural prerequisites within the IMTCA, including the un-tollable two-year limitation period. *See Doe v. New London Cmty. Sch. Dist.*, 848 N.W.2d 347, 351-54 (Iowa 2014). Similarly, the IMTCA "eliminated the right to pursue claims against municipalities that the Act itself doesn't authorize." *Sutton v. Council Bluffs Water Works*, 990 N.W.2d at 797.

Section 692.6 comports with this framework, as it specifies that actions predicated on violations of Chapter 692 fall within the IMTCA's exceptions to the general rule of governmental immunity. Iowa Code § 692.6 ("Any person may institute a civil action for damages under chapter 669 or 670 . . ."). Yet, it also expressly implicates the procedural limitations imposed under Chapter 670. *Id.* The District Court's reading impermissibly expands the liability of municipalities and their agents beyond the exceptions within the IMTCA. When considering governmental immunity principles, the reading of section 692.6 that best effectuates the legislature's intent is that the shorter, two-year limitation period applies to the claim brought pursuant to the IMTCA.

C. Even if the District Court's reading of "notwithstanding" was consistent with principles of statutory interpretation (it is not), the two-year limitation period is not "contrary" to section 692.6.

Iowa Code section 670.5 is not "to the contrary" of any language within

section 692.6. Indeed, section 692.6 contains no reference to the timeliness of a claim under Chapter 692. Rather, it merely imposes potential liability for a particular cause of action. As is the case with *every* civil suit, certain procedural prerequisites must be met to proceed with a claim. *See, e.g.*, Iowa R. Civ. P. 1.301(1) ("For all purposes, a civil action is commenced by filing a petition with the court. The date of filing shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy."). With respect to claims against municipalities and their agents, those procedural prerequisites are outlined in the IMTCA.

In *Nahas v. Polk Cnty.*, 991 N.W.2d 770 (Iowa 2023), interpreting provisions within the IMTCA, the Supreme Court of Iowa recognized the distinction between legal rights and procedural limitations. *See Nahas v. Polk Cnty.*, 991 N.W.2d 770, 782 (Iowa 2023) (holding a provision that would preclude the plaintiff from bringing the claim *at all* was retrospective and did not apply, but that a provision requiring that the claim be brought *pursuant to procedural prerequisites* was prospective, applied, and barred the claims). Applied here, section 692.6 confers a right of action, but that right was forfeited by Plaintiffs' failure to comply with the IMTCA's procedural prerequisites. Sections 692.6 and 670.5 are not "contrary" to one another, and the two-year, procedural limitation in section 670.5 bars Plaintiffs' section 692.6 claim.

D. Even if the two-year IMTCA limitation period did not apply (it does), the two-year period applying to personal injury claims would control.

The District Court's application of Iowa Code section 614.1(4), the five-year limitation period for "other actions," is likewise erroneous.[4] Plaintiffs' claims—by Plaintiffs' own assertion—fall within the scope of the IMTCA. *See* D0013, Am. Pet. at ¶ 16-20 (identifying Defendants as "a political subdivision existing and organized under the laws of the State of Iowa" and its agents "acting in the scope of [their] employment"). However, if they did not, the two-year limitation period for personal injury would apply because Plaintiffs and the District Court cast Plaintiffs' claims as breach of privacy claims. *See* D0031, Ruling at 6. Breach of privacy claims (when not asserted against a municipality and its agents) are subject to a two-year limitation period. *In re Marriage of Tigges*, 758 N.W.2d 824, 830 (Iowa 2008) ("The statute of limitations for invasion-of-privacy tort claims is two years. Iowa Code § 614.1(2).").

Nevertheless, Plaintiffs asserted their claims against a municipality and its agents acting in the course and scope of that agency and pursuant to section 692.6. Iowa Code section 670.5 applies and bars Plaintiffs' claims as a matter of law.

[4] As with its analysis of section 692.6's language, the District Court reached this conclusion without Plaintiffs' assertion, briefing, or oral argument.

III. The two-year IMTCA limitation period bars Plaintiffs' claims.

The District Court correctly articulated that the dispositive question relative to whether Plaintiffs' claims are barred by the IMTCA's two-year statutory limitation period is when an individual is "injured" by a violation of Chapter 692. *See* D0031, Ruling, at 9 (June 13, 2024). However, citing no legal authority in support, the District Court incorrectly held "the date of injury . . . is the date the Plaintiffs *discovered* the wrongful acts of Defendant Scheevel and the alleged involvement of others in said wrongful acts, and said date is the date of injury under Iowa Code [s]ection 670.5." D0031, Ruling, at 11 (emphasis supplied).

Plaintiffs' Amended Petition begins, "[t]his is an action brought under Chapter 692 of the Code of Iowa[,]" and continues, "so far as it is applicable, pursuant to chapter 670 of the Iowa Code, as amended and known as the Municipal Tort Claims Act" D0013, ¶ 1-2. The Municipal Tort Claims Act in Chapter 670 applies to torts alleged against "municipalities" and their employees. Iowa Code § 670.2; *Rucker v. Humboldt Comm. School Dist.*, 737 N.W.2d 292, 293 (Iowa 2007) ("Iowa Code Chapter 670 is the exclusive remedy for torts against municipalities and their employees."). Tort is defined broadly under Iowa Code § 670.1(4):

> "Tort" means *every civil wrong which results in* wrongful death or *injury to person* or injury to property or injury to personal or property rights *and includes but is not restricted to actions based upon* negligence; error or omission; nuisance; *breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute or rule of law.*

Iowa Code 670.1(4) (emphasis added). Under this definition and Iowa Code Chapter 692, all of Plaintiffs' claims are governed by the provisions of Iowa Chapter 670.

Counts I-III are predicated on a "violation of Chapter 692." *Id.* at ¶¶ 185-88, 197-200, 202-05, 213. As the above definition indicates, Chapter 670 covers any breach or violation of any statute, and Chapter 692 plainly states that a violation of Iowa Code Chapter 692 may be civilly prosecuted under Iowa Code Chapter 670, or the IMTCA. *See* Iowa Code § 692.6. Further, the claim for civil conspiracy is governed by Chapter 670 as the alleged conspiracy is based on violations of Chapter 692. *See* D0013, ¶ 213 ("Defendants engaged in a civil conspiracy with other to disseminate, or request and receive, in violation of Chapter 692."). As the Iowa Supreme Court has stated:

> Civil conspiracy is not in itself actionable; rather it is the acts causing injury undertaken in furtherance of the conspiracy that give rise to the action . . . Thus, conspiracy is merely an avenue for imposing vicarious liability on a party for the wrongful conduct of another with whom the party has acted in concert.

Wright v. Brooke Group, Ltd., 652 N.W.2d 159, 172 (Iowa 2002) (internal citations, quotations, alterations omitted). Therefore, even if civil conspiracy somehow did not fit within the broad definition of "tort" above, it is still governed by Chapter 670. Lastly, in addition to being predicated on violation of Chapter 692, invasion of

privacy is—by definition—a tort. *See Winegard v. Larsen*, 260 N.W.2d 816, 818 (Iowa 1977) ("We recognize a common law tort for invasion of privacy in Iowa.").

Actions under the IMTCA must be filed within two (2) years of the date of *injury*. Iowa Code § 670.5. "Under Iowa law, an injury occurs at the time of the unlawful act that gives rise to the claim." *Klein v. Steinkamp*, 44 F.4th 1111, 1114 (8th Cir. 2022) (affirming the lower court's determination that the claims under the IMTCA are time-barred) (citing *Doe v. New London Cmty. Sch. Dist.*, 848 N.W.2d at 351-54; *Venckus v. City of Iowa City*, 930 N.W.2d 792, 809 (Iowa 2019)).

Iowa courts distinguish injury from the accrual of a cause of action. *Venckus*, 930 N.W.2d at 792 ("[W]e have repeatedly held the IMTCA bars any claim not filed within the requisite time period as measured from the date of injury rather than date of accrual."); *Montgomery v. Polk Cnty.*, 278 N.W.2d 911, 914-15 (Iowa 1979). "The discovery rule is that a cause of action based upon negligence does not accrue until plaintiff has in fact discovered his injury or by exercise of reasonable diligence should have discovered it." *Montgomery*, 278 N.W.2d at 914-15.

"The discovery rule [is] not applicable to claims brought under the [IMTCA]." *Doe*, 848 N.W.2d at 352. Indeed, "the time to file the action commence[s] upon the date of injury and not the date of accrual." *Venckus*, 930 N.W.2d at 807 (citing *Montgomery*, 278 N.W.2d at 916-17). Iowa's Supreme Court has recognized that "[o]ne of the practical consequences of *Montgomery*, as reaffirmed in *Doe*, is that

an action can be barred before the accrual date if the action was not filed within two years of the date of injury." *Venckus*, 930 N.W.2d at 808 (citing *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 392, 396 (Iowa 1983), where the Court held the claim was barred even though the time to commence the action preceded the discovery of the injury and, accordingly, the accrual date) (emphasis supplied).

The limitation period bars Plaintiffs' claims because, per the allegations within the Amended Petition, the conduct giving rise to the actions occurred between August of 2016 and May of 2019. Specifically, the Amended Petition identifies when the alleged searches were conducted:

- **Victoria Abrahamson** – April 10, 2019. (D0013 at ¶¶ 32-34, 36);[5]
- **Hana Schroeder** – 2017 or 2018. (D0013 at ¶¶ 54, 79, 83) (noting that the alleged conduct began "[o]n or about 2017" and lasted for roughly a year);
- **Jody and Terry Schroeder** – 2017 or 2018. (D0013 at ¶¶ 54, 83) (noting that the alleged conduct began on or about 2017 and lasted for roughly a year);
- **Samantha Johnson** – April of 2018 to November of 2018. (D0013 at ¶ 93);
- **Bre Ahna Boggess (f/k/a Bre Ahna Payne)** – October 2017 to April 2019. (D0013 at ¶ 106);

[5] This fact was also alleged in the case of *Abrahamson v. Scheevel*, C21-3014-LTS-KEM, 2022 WL 3928385, at *4 (N.D. Iowa Aug. 31, 2022), a federal case brought by Victoria Abrahamson arising from these same operative facts, and in which the court granted summary judgment in favor of Defendants the City of Estherville, Shatto, and Scheevel.

- **Rebecca Bates** – August 2016. (D0013 at ¶ 117);
- **Tawni Hanson** - June to October 2018. (D0013 at ¶ 128); and
- **Darby Jones and Hunter Miner** – February 4, 2019 (D0013 at ¶ 136).

Further, Plaintiffs' Amended Petition concedes that Defendant Scheevel was placed on administrative leave on April 15, 2019, and resigned on May 3, 2019, or in other words, that all such searches occurred prior to that date. (D0013 ¶¶ 157-158). Suit was not filed until July 7, 2023—more than four (4) years later. *See* D0014-16. Pursuant to Iowa Code section 670.5, suit under the IMTCA should have been brought within two years of the alleged database searches, and—at the very latest for the most recent alleged searches—by May of 2021.

Contrary to the District Court's holding, that Plaintiffs characterize their discovery of the injury (and thus, the accrual of the action) as the injury itself does not toll the two (2) year filing requirement. *See Venckus*, 930 N.W.2d at 808 (holding an action may be barred before the discovery or accrual date if it is not brought within two (2) years of the injury); *Klein*, 44 F.4th at 1114 (determining an injury is the unlawful act giving rise to the claim). The District Court's determination that the *injury* occurred when Plaintiffs *discovered* the alleged conduct is belied by the plain language of the statutory limitation period and the Supreme Court of Iowa's consistent interpretation of the same. The District Court's denial of the Motions to Dismiss should be reversed as a result of this legal error.

Because the claimed injuries giving rise to Counts I-III occurred—by Plaintiffs' own allegation—between August of 2016 and May of 2019, and because suit predicated on these injuries was not filed until July 7, 2023, the claims are untimely as a matter of law.

CONCLUSION

For the reasons stated herein, the Court should reverse the District Court's Order.

REQUEST FOR NONORAL SUBMISSION

Because the Court may summarily resolve the issues raised in this appeal, oral argument is not warranted. Defendants/Appellants do not ask to be heard in oral argument, unless argument is granted to Plaintiffs/Appellees.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 6, 2024, I electronically filed the foregoing Brief of Appellants with the Clerk of the Supreme Court of Iowa by using the Iowa Electronic Document Management System (EDMS), which will send notice of electronic filing to the following:

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December 6, 2024
Date

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) and 6.903(1)(i)(1) or (2) because:

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December 6, 2024
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