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**UNITED STATES DISTRICT COURT
EASTERN OF WASHINGTON**

JADE WILCOX, ON BEHALF OF)	CASE NO.: 2:17-CV-275-RMP
HERSELF, AND ALL OTHERS)	
SIMILARLY SITUATED,)	AMENDED COMPLAINT --
)	CLASS ACTION FOR DAMAGES
PLAINTIFFS,)	AND OTHER RELIEF UNDER
)	THE DRIVER'S PRIVACY
VS.)	PROTECTION ACT, AND JURY
)	DEMAND
SWAPP LAW, PLLC, DBA CRAIG)	
SWAPP AND ASSOCIATES; AND)	
JAMES CRAIG SWAPP,)	RELATED TO CASE
INDIVIDUALLY,)	NO. 2:17-CV-00122-RMP
)	
DEFENDANTS.)	
)	

Plaintiff, Jade Wilcox, on behalf of herself and all others similarly situated, by and through her undersigned attorneys, bring this lawsuit for monetary damages and declaratory and injunctive relief based upon Defendants' violations of the federal Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721, *et seq.*

I. INTRODUCTION

1
2 1.1 This Action arises from Defendants' purchase of thousands of
3 records that included the personal information of Plaintiff and the Class from
4 motor vehicle records, which Defendants knowingly obtained without
5 consent, for the purpose of sending Plaintiff and the Class marketing
6 materials, in violation of the Driver's Privacy Protection Act ("DPPA") 18
7 U.S.C. § 2721 *et seq.*
8

9 1.2 Congress enacted the DPPA, in part, based upon concerns
10 about "States' common practice of selling personal information to
11 businesses engaged in direct marketing and solicitation. To address these
12 concerns, the DPPA establishes a regulatory scheme that restricts the
13 States' ability to disclose a driver's personal information without the driver's
14 consent." *Maracich v. Spears*, 133 S. Ct. 2191, 2198 (2013) (citations and
15 quotation marks omitted).
16
17

18 1.3 Between September 2013 and June 23, 2017, Defendants
19 purchased more than 10,000 accident reports prepared by law enforcement
20 officers in the State of Washington, known as Police Traffic Collision
21 Reports, ("Collision Reports") from the Washington State Patrol that were
22 created following motor vehicle accidents, utilizing personal information
23 populated from motor vehicle records maintained by the Washington
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1 Department of Licensing (“DOL”). Defendants obtained the Collision
2 Reports from the Washington State Patrol, typically at a price of \$9.50 or
3 \$10.50 and then used the protected personal information of Plaintiffs and
4 the Class to mail numerous letters and glossy pamphlets advertising their
5 services to motorists, including Plaintiff and the Class, who had been
6 involved in automobile accidents.
7

8 1.4 When Defendants obtained the personal information from the
9 Washington State Patrol, Defendants had not obtained the written consent
10 of Plaintiff or other members of the Class and had no permissible purpose
11 to obtain, use or disclose the personal information that they obtained about
12 Plaintiff or the Class. As the Supreme Court had held in 2013 that obtaining
13 such personal information without consent for purposes of legal marketing
14 was *not* a permissible purpose under the DPPA, Defendants knew (or at the
15 least were reckless in not knowing) that they were violating the DPPA.
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18 1.5 On June 9, 2017, this Court entered a preliminary injunction
19 preventing the Washington State Patrol from selling Collision Reports
20 containing personal information protected by the DPPA unless and until the
21 requestor certifies that the information is sought for a permissible purpose
22 under the DPPA.
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1 1.6 As relief for Defendants’ violations of the DPPA by purchasing
2 and misusing the personal information of thousands of people, this action
3 seeks an injunction preventing Defendants from using any of the personal
4 information obtained about Plaintiff or the Class and from attempting to
5 obtain such personal information without consent in the future as well as
6 damages and other relief as permitted under the DPPA.
7

8 **II. PARTIES**

9 2.1 Plaintiff Jade Wilcox (“Ms. Wilcox”) is an individual who resides
10 in Spokane, Washington. At all times material to this action, she has had a
11 motor vehicle registered and titled with the DOL, and she has held a
12 Washington driver's license issued by the DOL.
13

14 2.2 Defendant, Swapp Law, PLLC, dba Craig Swapp and
15 Associates (“the Swapp Firm”), is a Utah Professional Limited Liability
16 Company, with offices in, among other places, Spokane, Washington.
17 According to the Swapp Firm’s website, its office is located at 16201 E.
18 Indiana Ave., Suite 1900, Spokane Valley, WA 99216. The Swapp Firm’s
19 website currently identifies at least 11 attorneys (Swapp, Bunnell, Dyer,
20 Ermola, Larson, Peterson, Swainston, Ranz, Childs, Ryan Swapp and
21 King) admitted to practice in Washington State of which at least 2
22 attorneys (Larson and King) are located in the Spokane office.
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1 2.3 Defendant James Craig Swapp (“Mr. Swapp”) is a lawyer who
2 has been admitted to practice law in the State of Washington since 2004.
3 Upon information and belief, Mr. Swapp is the principal shareholder of the
4 Swapp Firm. As his biography on the Swapp Firm website acknowledges,
5 Mr. Swapp is “the familiar face of Craig Swapp & Associates’ ‘One Call,
6 That’s All’ advertising campaign,” which includes having his face displayed
7 on numerous billboards in Spokane, Washington, and Spokane Valley,
8 Washington advertising the services of the Swapp Firm.
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11 **III. JURISDICTION AND VENUE**

12 3.1 This Court has original subject matter jurisdiction over this
13 Action pursuant to 18 U.S.C. § 2724(a) and 28 U.S.C. § 1331.
14

15 3.2 This Court has personal jurisdiction over the Swapp Firm,
16 because it is licensed to do business, and regularly transacts business,
17 within the State of Washington, including but not limited to its solicitation of
18 Plaintiffs. The Swapp Firm also maintains offices in Washington.
19

20 3.3 This Court has personal jurisdiction over Mr. Swapp, a lawyer,
21 because, according to his law firm website he is licensed to practice law in
22 the State of Washington, regularly transacts business within the State of
23 Washington, including but not limited to his solicitation of the Plaintiffs.
24

25 3.4 Venue is proper under 28 U.S.C. § 1391(b) and (c).

IV. FACTUAL ALLEGATIONS

The DPPA

1
2
3 4.1 Congress enacted the DPPA in response to concerns over the
4 collection of individuals' personal information by state motor vehicle
5 departments and the subsequent sale of that personal information by the
6 states. Congress was concerned, in part, by "States' common practice of
7 selling personal information to businesses engaged in direct marketing and
8 solicitation. To address these concerns, the DPPA establishes a regulatory
9 scheme that restricts the States' ability to disclose a driver's personal
10 information without the driver's consent." *Maracich*, 133 S. Ct. at 2198
11 (citations and quotation marks omitted).
12
13

14 4.2 To obtain a driver's license or motor vehicle registration from the
15 DOL, or from any state's motor vehicle department, individuals must
16 disclose personal information, such as names, addresses, telephone
17 numbers, birth dates, social security numbers, medical information, vehicle
18 descriptions, and photographs.
19
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21 4.3 Prior to the DPPA, third parties could, and routinely did,
22 purchase individual's personal information to conduct invasive
23 investigations, mine the data on an aggregated basis, and resell the
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1 resulting targeted information to marketers and engage in direct marketing
2 and solicitation.

3 4.4 In enacting the DPPA, Congress intended to prevent the
4 disclosure of this personal information, prevent activities using this personal
5 information and render these invasive acts to be subject to fines and
6 penalties.
7

8 4.5 Section 2724(a) of the DPPA provides that “[a] person who
9 knowingly obtains, discloses or uses personal information, from a motor
10 vehicle record, for a purpose not permitted under this chapter shall be liable
11 to the individual to whom the information pertains ...”
12

13 4.6 “Personal Information” is defined in the DPPA to mean
14 “information that identifies an individual, including an individual's
15 photograph, social security number, driver identification number, name,
16 address (but not the 5-digit zip code), telephone number, and medical or
17 disability information, but does not include information on vehicular
18 accidents, driving violations, and driver's status.” 18 U.S.C. § 2725.
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21 4.7 A “motor vehicle record” is defined in the DPPA to mean “any
22 record that pertains to a motor vehicle operator’s permit, motor vehicle title,
23 motor vehicle registration, or identification card issued by a department of
24 motor vehicles.” *Id.*
25

1 4.8 DPPA Section 2721(b) provides a set of “permissible uses” of
2 personal information. The permissible use exemptions to the DPPA allow
3 the use of such information for a limited number of purposes designed to
4 promote the public welfare.
5

6 4.9 The Supreme Court in *Maracich* held that communications for
7 the predominant purpose of solicitation of legal services was not a
8 “permissible use.” exempt from DPPA liability under (b)(4). No other
9 provision of the DPPA permits Personal Information to be obtained,
10 disclosed, or used for marketing or solicitation purposes, including for the
11 solicitation or advertising of legal services.
12

13 ***Collision Reports in the State of Washington Contain Personal***
14 ***Information From Motor Vehicle Records***

15 4.10 As the Court found in *Wilcox v. Baptiste [sic]*, No. 17-cv-00122
16 (E.D. Wash.) (*Batiste*), following automobile accidents in Washington State,
17 the Washington State Patrol prepares Collision Reports containing personal
18 information protected by the DPPA.
19

20 4.11 The same Police Traffic Collision Report form is also used by
21 the majority of local law enforcement in Washington.
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1 4.12 This Court held in *Batiste* that the personal information used to
2 prepare those Collision Reports is obtained from DOL motor vehicle
3 records.

4 4.13 The DOL's motor vehicle records pertain to motor vehicle
5 operator's permits, motor vehicle titles, motor vehicle registrations, or
6 identification cards issued by the DOL, and drivers and vehicle owners are
7 required to supply such Personal Information when they obtain permits,
8 licenses, titles and registrations.
9

10 4.14 Prior to June 2017—*i.e.*, when the *Batiste* Court issued a
11 preliminary injunction preventing the practice—the Washington State Patrol
12 was selling those collision reports to any third party—*e.g.*, such as
13 Defendants—without redacting personal information protected by the DPPA
14 or taking any steps to ensure that the requesting party had a permissible
15 purpose under the DPPA. The Washington State Patrol collects and
16 maintains all Collision Reports created statewide, including Collision
17 Reports created by other law enforcement agencies.
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21 4.15 Following the issuance of the preliminary injunction, the
22 Washington State Patrol is now required to “put into place a system of
23 redacting addresses, driver license numbers, dates of birth, sex, height, and
24 weight of registered owners from all traffic collision reports that it discloses
25

1 unless and until the requestor of such information certifies under penalty of
2 perjury that the information is sought for one of the fourteen permissible
3 purposes under 18 U.S.C. § 2721(b).”

4 4.16 Law enforcement officers preparing Collision Reports typically
5 use a software program called SECTOR, which is installed on their police
6 car computers. In addition to the Washington State Patrol, 96% of local law
7 enforcement agencies in the State of Washington utilize SECTOR in the
8 preparation of Collision Reports.
9

10 4.17 SECTOR allows an officer to scan the bar codes on drivers’
11 licenses and registrations to prepare Collision Reports. When scanning the
12 bar code, SECTOR uses information contained on the bar code to auto-
13 populate field in the Collision Report.
14

15 4.18 The bar codes on drivers’ licenses and registrations contain data
16 from the DOL. The information on the bar codes of the drivers’ licenses and
17 registrations constitutes motor vehicle records within the meaning of the
18 DPPA.
19

20 4.19 The information contained on the bar codes of drivers’ licenses
21 in the State of Washington includes drivers’ names, addresses, license
22 numbers and dates of birth, among other information. The information
23 contained on the bar codes of the motor vehicle registrations in the State of
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1 Washington include vehicle owners' names and addresses, as well as
2 information about the vehicle, including its make, model, year, use class and
3 weight. Information about the names, addresses, drivers' license and dates
4 of birth contained on the barcodes of drivers' licenses and motor vehicle
5 registrations constitutes Personal Information within the meaning of the
6 DPPA.
7

8 4.20 The SECTOR User Manual advises law enforcement officers
9 that the preferred method of obtaining data about drivers for the Collision
10 Reports is to scan the registration, then the drivers' license, in that order.
11 Law enforcement officers should only manually enter information from a
12 registration or drivers' license in the event that the information on the bar
13 code cannot be scanned. In addition, SECTOR keeps a record of whether
14 the information from the Collision Report was scanned from a bar code or
15 manual entered.
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18 4.21 In the event that the drivers' actual address does not match the
19 address scanned from the driver's license, the PTCR Form contains a "new
20 address" box. If the Collision Report is created by scanning a drivers' license
21 using SECTOR, the new address box is automatically checked if new
22 address information is added that differs. Law enforcement officers are
23 trained that the "new address" box on the collision report form should be
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1 checked if they list an address on the form that is different from the address
2 listed on the motorists' driver's license.

3 4.22 Law enforcement officers in the State of Washington can also
4 obtain Personal Information by utilizing the "ACCESS" message switch on
5 their patrol car or dispatch computers to obtain a "driver's return" directly
6 from databases maintained by the DOL. The driver's return includes
7 motorists' names, addresses, dates of birth, and license status, among other
8 information. Officers can typically obtain the same information by making a
9 radio call to their dispatchers.
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11

12 4.23 Law enforcement officers in the State of Washington can also
13 obtain Personal Information by utilizing the "ACCESS" message switch on
14 their patrol car or dispatch computers to obtain "vehicle returns." The vehicle
15 return includes the registered owners' names and addresses among other
16 information.
17

18 ***Defendants Systematically Purchase Personal Information for***
19 ***Purpose of Direct Marketing***

20 4.24 Defendant Craig Swapp, a lawyer admitted to practice law in the
21 State of Washington, and his law firm, the Swapp Firm, focus their practice
22 in personal injury and, in particular, automobile accidents. On its website,
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1 the Swapp Firm prominently advertises itself as “Your Auto Accident
2 Lawyers.”

3 4.25 As explained in a July 21, 2016 article in the *Inlander*,
4 Defendants have repeatedly and routinely obtained DPPA-protected
5 personal information for the purpose of marketing legal services. Such
6 Personal Information about drivers on Collision Reports not involving
7 accident for then-existing Swapp clients was obtained for the sole purpose
8 of marketing. The overwhelming majority of Collision Reports obtained by
9 Defendants between 2013 and 2017 concerned accidents that did not
10 involve then-existing Swapp clients.
11
12

13 4.26 According to records provided by the Washington State Patrol,
14 on more than 10,000 occasions between September 2013 and July 2016,
15 the Swapp Firm purchased accident reports from the Washington State
16 Patrol, at a cost of either \$9.50 or \$10.50 per report. In response to
17 Interrogatories, Defendants admitted to having purchased 10,555 reports
18 between September 1, 2013 and June 23, 2017 “excluding what appear to
19 be duplicate purchases.”
20
21

22 4.27 As explained in the July 21, 2016 *Inlander* article, Defendants
23 systematically ordered Collision Reports electronically and then harvested
24 those reports for Personal Information, including names and addresses.
25

1 Defendants' purchases of Collision Reports were predominately for
2 marketing purposes.

3 4.28 The July 21, 2016 *Inlander* article described the procedures that
4 the Swapp Firm's marketing employee, Mariam Ibarra, utilizes to collect
5 Collision Reports and therefore the personal information of auto accident
6 victims:
7

8 All Ibarra has to do is open up WSP's Requests for
9 Electronic Collision Records site, enter a date in the
10 search field, and start clicking tiny shopping cart
11 icons next to the list of names. The only speed
12 bump? You're capped at ordering 15 records at a
13 time. So at 8:56am, Ibarra orders another 15. Then
14 another. Within 35 minutes, Ibarra has already
15 purchased more than 60 Washington accident
16 collision records for Swapp.

17 4.29 In answers to Interrogatories, Defendants averred that in order
18 to obtain reports "for purposes of direct-mail marketing, a Swapp Law
19 employee ... would periodically visit the WSP website page through which
20 WSP made Accident Reports available for purchase. The employee would
21 search for reports by location and number of parties involved, with the goal
22 of identifying accidents that occurred in Eastern Washington and involved
23 at least two vehicles. ... After selecting the desired reports, following the
24 instructions of the WSP, the Swapp Law employee would indicate via a form
25 on the WSP website that the firm's involvement in the accident in question

1 was “Other” and would further indicate that the reports were being
2 purchased for a “marketing” purpose. The employee would then click
3 through to order and submit payment for the reports. WSP typically
4 delivered the reports between several hours and several days after the
5 purchase was made ...”
6

7 4.30 Utilizing the Personal Information on these Collision Reports,
8 the Swapp Firm sent letters with the signature of Craig Swapp (including the
9 ones received by Plaintiff) and glossy pamphlets marketing their legal
10 services to people who had just been involved in motor vehicle accidents,
11 often within a matter of days of their accidents, and prior to these accident
12 victims ever contacting Mr. Swapp or the Swapp Firm. Defendants admitted
13 in answer to Interrogatories that one of their employees “would review the
14 reports with the goal of determining which of the parties involved in the
15 accident was not at fault (if any).” Defendants would then send marketing
16 materials to the party that they considered not to be at fault in the accident.
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20 4.31 Defendants’ practice of bulk-purchasing collision reports, in
21 order to obtain and use this personal Information, was the subject of a
22 grievance filed with the Washington State Bar Association (“WSBA”).
23 During the bar grievance, Defendants were advised that their bulk purchase
24 of personal information for solicitation purposes was a violation of the DPPA.
25

1 4.32 In an April 28, 2015 letter, Mr. Swapp advised the WSBA that
2 his law firm, “a for-profit organization,” requested “auto-accident reports”
3 and using the information from those reports, the Swapp Firm had a practice
4 of sending “direct mailings” to the persons identified in those reports along
5 with “how-to’ guides in dealing with their property damage and medical bills,
6 along with a free police report.”
7

8 4.33 Thereafter, in a June 5, 2015 letter, Mr. Swapp advised the
9 WSBA that the Swapp Firm “was obtaining comprehensive police reports,
10 which comprise a myriad of information” and that information was then used
11 by Mr. Swapp and his Spokane law firm to communicate with “the person
12 who has been in an accident.” The June 5, 2015 letter acknowledges that
13 these mailings were sent to auto accident victims who had not previously
14 contacted the Swapp Firm to entice these “persons [who] would be
15 interested in retaining our firm to help in this process, which may include
16 litigation” and these materials were sent for the sole purpose of “offer[ing]
17 our legal services.”
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21 4.34 On May 27, 2016, WSBA Disciplinary Counsel Christine Gray
22 issued a letter setting forth the following findings: “The facts here are
23 uncontested... On a regular basis, Mr. Swapp’s office has obtained reports
24 from the Washington State patrol ... On a regular basis, Mr. Swapp’s office
25

1 has used some information on those reports to send solicitation letters to
2 potential clients... [It is undisputed] Craig Swapp obtained collision reports
3 from the Washington State Patrol and used information from those reports
4 to solicit potential clients by mail.”

5
6 4.35 Accident victims receiving Defendants’ solicitations and
7 marketing materials had not consented to the contact or waived any privacy
8 rights they have under the DPPA.

9
10 ***Defendants Obtain & Use Plaintiffs’ Personal Information***

11 4.36 Ms. Wilcox was involved in an automobile accident on August 1,
12 2015. The Spokane Police Department created a traffic collision report on
13 August 2, 2015, utilizing Personal Information obtained from the DOL’s
14 motor vehicle records. It was assigned a report number E448140 by the
15 Washington Department of Transportation.
16

17 4.37 Consistent with Defendants’ systematic and continual practice,
18 they purchased the collision report from the Washington State Patrol.
19

20 4.38 Ms. Wilcox was involved another automobile accident on July 9,
21 2016. She was driving a motor vehicle registered in her name, and to her
22 address. The Washington State Patrol created a traffic collision report on
23 July 11, 2016, utilizing Personal Information obtained from the DOL’s motor
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1 vehicle records. It was assigned a report number E562485 by the
2 Washington Department of Transportation.

3 4.39 Consistent with Defendants' systematic and continual practice,
4 they purchased the collision report from the Washington State Patrol.
5

6 4.40 Utilizing Ms. Wilcox's Personal Information obtained from the
7 collision report, Defendants sent Ms. Wilcox a letter on July 14, 2016 signed
8 by Mr. Swapp, advertising their services. The letter explained that Ms.
9 Wilcox's Personal Information was obtained from Washington public
10 records.
11

12 **Defendants' Conduct Was Knowing and Willful and/or Reckless**

13 4.41 By at least June 17, 2013, when the United States Supreme
14 Court issued its decision in *Maracich v. Spears*, Defendants knew or were
15 reckless in not knowing that communications for the predominant purpose
16 of solicitation of legal services was not a permissible use of personal
17 information under the DPPA.
18

19 4.42 The majority, if not every, attorney listed on the Swapp Firm's
20 website claims to practice in the area of automobile accidents. As all of the
21 attorneys identified on the Swapp Firm website as being admitted to practice
22 in the State of Washington claim to handle or focus on automobile accident
23 cases, and the concentration of the Swapp Firm's practice in automobile
24 cases, and the concentration of the Swapp Firm's practice in automobile
25

1 accident cases in general, Defendants must have known (and certainly
2 should have known) that the personal information in the collision reports
3 was populated with personal information from motor vehicle records.

4 4.43 The July 21, 2016 *Inlander* article, for which Mr. Swapp was
5 interviewed and extensively discusses the Swapp Firm's data mining and
6 marketing practices, specifically identified the existence of a class action
7 lawsuit alleging that because "collision reports often contain information
8 obtained from driver's licenses, when lawyers use them to contact accident
9 victims, they are violating the federal Driver's Privacy Protection Act."
10
11

12 **V. CLASS ACTION ALLEGATIONS**

13 5.1 Plaintiff brings this action as a class action pursuant to Federal
14 Rule of Civil Procedure 23(a) and (b)(3), on behalf of the following Class:

15
16 All drivers identified in Police Traffic Collision Reports
17 whose Personal Information, as defined by the
18 DPPA, was derived from a Department of Licensing
19 record (e.g. license, registration or database) and the
20 Report was obtained by the Swapp Law Firm (d/b/a
21 Craig Swapp & Associates) or Mr. Swapp from the
22 Washington State Patrol between September 1,
23 2013 and June 23, 2017.

24 Excluded from the Class are (a) current and former clients of
25 Defendants (b) individuals identified on the same PTCRs as Defendants'
clients, (c) individuals who provided written consent to Defendants for the

1 disclosure of their Personal Information (as defined by the DPPA) prior to
2 Defendants obtaining their personal information, (d) employees (and
3 attorneys) of the Defendants and members of their immediate families, and
4 (d) the Judge to whom this action is assigned and anyone working in the
5 Judge's chambers and the members of their families.
6

7 **Impracticability of Joinder**

8 5.2 The Class is so numerous that joinder of all members is
9 impracticable. According to records produced by the Washington State
10 Patrol, as well as Defendants' own answers to Interrogatories, Defendants
11 purchased more than 10,000 collision reports containing Personal
12 Information between 2013 and 2017 predominantly involving accidents in
13 the Spokane area. While the precise number of the Class members are
14 unknown to Plaintiffs and their counsel, the members of the Class are also
15 geographically dispersed across the State of Washington.
16
17

18 **Commonality**

19 5.3 The central question concerns whether Defendants' admitted
20 practice of obtaining personal information contained in accident reports,
21 which is populated from records from the DOL, to solicit business from
22 accident victims without their consent violates the DPPA. Subsidiary
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1 common questions of law or fact which will have common answers including
2 the following:

3 a) whether Defendants obtained, disclosed and/or used
4 the Personal Information derived from the motor vehicle records
5 of the DOL, of Plaintiffs and the Class when they purchased the
6 traffic collision reports from the Washington State Patrol;

7
8 b) Whether Defendants had any permissible purpose,
9 within the meaning of 18 U.S.C. § 2721(b), when they obtained
10 the Personal Information of Plaintiffs and the Class;

11
12 c) Whether Defendants knowingly obtained, disclosed
13 or used the Personal Information of Plaintiff and the Class in
14 violation of the DPPA and are therefore liable to Plaintiff and the
15 Class;

16
17 d) whether Defendants systematic conduct was willful
18 or in reckless disregard of the law, warranting the award of
19 punitive damages against Defendants and in favor of Plaintiff and
20 the class members, as expressly provided under 18 U.S.C. §
21 2724(b)(2) of the DPPA;

1 e) the appropriate equitable and damage remedies that
2 should be awarded to Plaintiffs and the Class as a result of
3 Defendants

4 **Typicality**

5 5.4 Plaintiffs' claims are typical of the claims of other members of
6 the Class because Plaintiff and Class members' claims all arise from the
7 same course of conduct and are all premised upon the same legal theory.
8 Defendants obtained personal information about Plaintiff and the other
9 Class Members in bulk through numerous requests to the Washington State
10 Patrol. After obtaining this protected information about Plaintiff and the
11 Class, Defendants then used Plaintiff' and Class members' Personal
12 Information without consent for purposes of marketing legal services.
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16 **Adequacy**

17 5.5 Plaintiff will fairly and adequately protect the interests of the
18 Class. Plaintiff has no conflict with other members of the Class. Plaintiff
19 understands her obligations to the Class, is committed to vigorously
20 litigating this matter and will fairly and adequately protect and represent the
21 interests of the Class.
22

23 5.6 Defendants have no unique defenses against Plaintiff that would
24 interfere with her representation of the Class.
25

1 5.7 Plaintiff has engaged counsel experienced in class action
2 litigation.

3 **Rule 23(b)(3)**

4 5.8 The Class is suitable for certification under Fed. R. Civ. P.
5 23(b)(3). The questions of law or fact common to Class members
6 predominate over any questions affecting only individual members, and a
7 class action is superior to other available methods for fairly and efficiently
8 adjudicating this controversy.
9

10 5.9 Common questions of law and fact will predominate over any
11 individual ones as the significant questions in this case focus on the legality
12 of Defendants' conduct. As illustrated by the article in the *Inlander*, the
13 Swapp Firm, engaged in bulk downloading of collision reports, purchasing
14 as many as 60 reports in 35 minutes and mining the personal information
15 contained in those reports for purposes of marketing their legal services. As
16 a result, Defendants' own conduct will determine their liability based upon
17 law and fact common to all Class members. Even though predominance is
18 not required for damages, the DPPA establishes a minimum amount of
19 liquidated damages
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23 5.10 A class action is superior to other available methods of suit,
24 because a class action would be more manageable and efficient than other
25

1 means. As Plaintiff and the Class members identified on approximately
2 10,000 Collision Reports have essentially identical claims focused on
3 Defendants' conduct, it is far more efficient to litigate these claims in a single
4 proceeding rather than to require each Class member to file suit separately,
5 particularly as the vast majority, if not all, of class members' damages will
6 not exceed the liquidated damage amount.
7

8 5.11 There are no other pending lawsuits in which members of the
9 Class have raised similar allegations against the Defendants. The only
10 other related litigation alleging claims involving the DPPA concerning the
11 sale of accident reports by the Washington State Patrol is pending in this
12 District.
13

14 5.12 This is an appropriate forum for these claims because, among
15 other reasons, jurisdiction and venue are proper, Defendants have utilized
16 the Personal Information they obtained to engage in marketing in this
17 District, and, as a result of those activities, a significant portion of the Class
18 likely resides in this District.
19
20

21 5.13 There are no difficulties in managing this case as a class action.
22

23 **VI. CLAIM FOR RELIEF**
24 **VIOLATION OF THE DRIVER'S PRIVACY PROTECTION ACT**
25 **(18 U.S.C. § 2721, et seq.)**

1 6.1 Plaintiffs repeat and reallege the allegations in the foregoing
2 paragraphs as if fully set forth herein.

3 6.2 The DPPA, 18 U.S.C. § 2722 makes it “unlawful for any person
4 knowingly to obtain or disclose personal information, from a motor vehicle
5 record, for any use not permitted under Section 2721(b)” of the DPPA.
6

7 6.3 The DPPA, 18 U.S.C. § 2724(a) provides that a “person who
8 knowingly obtains, discloses or uses personal information, from a motor
9 vehicle record, for a purpose not permitted under this chapter shall be liable
10 to the individual to whom the information pertains.
11

12 6.4 The DPPA, 18 U.S.C. § 2725(1) defines “motor vehicle record”
13 to mean “any record that pertains to a motor vehicle operator’s permit, motor
14 vehicle title, motor vehicle registration, or identification card issued by a
15 department of motor vehicles.”
16

17 6.5 The DPPA, 18 U.S.C. § 2725(3) defines “personal information”
18 to mean information that identifies an individual, including an individual’s
19 photograph, social security number, driver identification number, name,
20 address (but not the 5-digit zip code), telephone number, and medical or
21 disability information, but does not include information on vehicular
22 accidents, driving violations, and driver’s status.”
23
24
25

1 6.6 Defendants obtained approximately 10,000 collision reports
2 from the Washington State Patrol between 2013 and 2017, including those
3 involving Plaintiff and the Class. Collision reports obtained by Defendants
4 contained “personal information from a motor vehicle record” within the
5 meaning of 18 U.S.C. §§ 2722 & 2725(1), (3). By obtaining such information
6 and reports, Defendants obtained the Personal Information, within the
7 meaning of 18 U.S.C. § 2725(3) of Plaintiff and the Class.
8

9 6.7 Defendants obtained the collision reports for the express
10 purpose of obtaining, using and/or disclosing Plaintiff and Class Members’
11 Personal Information, in order to and as part of Defendants’ efforts to market
12 legal services.
13

14 6.8 The marketing of legal services is not a “permissible use” of
15 personal information under the DPPA, 18 U.S.C. § 2721(b).
16

17 6.9 Defendants had no permissible purpose, within the meaning of
18 18 U.S.C. § 2722(a) or § 2721(b), to obtain the personal information of
19 Plaintiff and the Class and did not use the personal information for a
20 permissible purpose.
21

22 6.10 Defendants obtained the personal information of Plaintiff and the
23 Class knowing that they were obtaining their personal information from a
24
25

1 motor vehicle record and knew that they had no permissible use under the
2 DPPA.

3 6.11 As a result of Defendants' conduct, Plaintiff and the Class have
4 suffered harm, and are entitled to recover the damages available under the
5 DPPA, plus costs and attorneys' fees, as provided under 18 U.S.C. §
6 2724(b) of the DPPA.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray
10 that judgment be entered against Defendants, jointly and severally, and
11 request that the Court award the following relief:
12

13 A. Declare that Defendants' practice of obtaining Personal
14 Information contained in traffic collision reports from the Washington State
15 Patrol about Plaintiff and the Class for purpose of marketing Defendants'
16 legal services violated the DPPA;
17

18 B. Enter a preliminary and permanent injunction preventing and
19 restraining Defendants (and any of their attorneys, employees, agents,
20 representatives or anyone acting on their behalf) from obtaining traffic
21 collision reports issued by the Washington State Patrol unless Defendants
22 have obtained that person's express written consent or Defendants have
23 certified under penalty of perjury to the Washington State Patrol that the
24
25

1 information is sought for one of the permissible purposes under 18 U.S.C. §
2 2721(b) and identifying the permissible purpose.

3 C. Enter a preliminary and permanent injunction preventing
4 and restraining Defendants (and any of their attorneys, employees,
5 agents, representatives or anyone acting on their behalf) from
6 disclosing or using the personal information about Plaintiff and the
7 Class, and requiring Defendants to destroy all personal information
8 about Plaintiff and the Class that Defendants have in the possession,
9 custody or control.
10
11

12 D. Require Defendants to identify under penalty of perjury
13 all manners how the Personal Information of Plaintiff and the Class
14 have been used or disclosed and confirming that all personal
15 information about Plaintiff and the Class has been destroyed.
16

17 E. Award monetary damages, the exact amount to be determined
18 at trial, in an amount not less than the statutory-provided liquidated
19 damages, for each Plaintiff and each member of the Class, of not less than
20 \$2500 for each separate violation of DPPA by Defendant under 18 U.S.C. §
21 2724(b)(1);
22
23
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1 F. Award punitive damages, the exact amount to be determined at
2 trial, for Defendants' willful and reckless disregard of the DPPA and to deter
3 such future violations, pursuant to 18 U.S.C. § 2724(b)(2);

4 G. Require Defendants to pay pre-judgment interest and post-
5 judgment interest;
6

7 H. Award reasonable attorney's fees and other litigation costs
8 pursuant to 18 U.S.C. § 2724(b)(3) and/or order payment of reasonable
9 fees and expenses in this action to Plaintiff's counsel on the basis of the
10 common benefit and/or common fund doctrine out of any money or benefit
11 recovered for the Class in this action;
12

13 I. Grant any other relief that this Court determines is appropriate
14 pursuant to 18 U.S.C. § 2724(4) and grant any other relief to which Plaintiff
15 is entitled pursuant to Rule 54(c) of the Federal Rules of Civil Procedure.
16

17 **TRIAL BY JURY**

18 Plaintiffs demand trial by jury of all issues so triable.
19

20 DATED August 20, 2018

21 /s Thomas G. Jarrard

22 THOMAS G. JARRARD

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2018, I caused the forgoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

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