

NOTICE OF CLASS ACTION SETTLEMENT & HEARING

in

Wilcox v. Swapp

Case No. 2:17-cv-275-RMP (E.D. Wash.)

A federal court authorized this Notice. This is not a solicitation from a lawyer.

If you were involved in a motor vehicle collision between September 1, 2013 and June 23, 2017, in the State of Washington, you may be a member of the Class entitled to benefits under this Proposed Class Action Settlement if Swapp Law purchased your Police Traffic Collision Report

- The lawsuit alleges that Swapp Law, PLLC, and James Craig Swapp purchased thousands of Police Traffic Collision Reports (“PTCRs”) from the Washington State Patrol for the purpose of marketing legal services, and that this practice violated the Driver’s Privacy Protection Act (“DPPA”), 18 U.S.C. § 2721 *et seq.*
- The Court has determined that this lawsuit can proceed as a class action on behalf of all drivers identified in PTCRs whose Personal Information in such PTCR was derived from a Washington Department of Licensing record and the report was obtained or used by the Swapp Law Firm or Mr. Swapp between September 1, 2013 and June 23, 2017 (the “Class”).
- The parties in this lawsuit have agreed to settle the case. Under the proposed Settlement, Defendants Swapp Law, PLLC, and James Craig Swapp have agreed to pay up to \$2,000,000, of which at least \$950,000 will be distributed to the Class, plus other prospective and remedial relief.
- The Court has preliminarily approved the Settlement. The Settlement will not become final unless and until the Court issues final approval after a hearing, which is currently scheduled for April 29, 2020. Your legal rights may be affected.

PLEASE READ THIS NOTICE CAREFULLY. IF YOU ARE A MEMBER OF THE CLASS, THIS SETTLEMENT WILL AFFECT YOUR RIGHTS.

A SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS	
Do Nothing	If you have already been identified by the parties as a Class Member and you do nothing, you will receive the payment that you may be entitled to receive under the Settlement.
Exclude Yourself	If you do not want to participate in the Settlement, you must send a letter requesting exclusion postmarked no later than March 9, 2020 , or else you will be bound by the Settlement.
Object	If you wish to object to the Settlement or the request for attorneys’ fees and reimbursement of expenses, you must follow the directions in this Notice and submit your objection by March 9, 2020 .

THESE RIGHTS AND OPTIONS, INCLUDING THE DEADLINES BY WHICH TO EXERCISE THEM, ARE EXPLAINED IN THIS NOTICE.

Questions?

Visit: www.SwappSettlement.com

Call: 1-833-513-0212

Email: Info@SwappSettlement.com

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BASIC INFORMATION

1. Why Did I Get This Notice?

You received this Notice because the Court in charge of this class action lawsuit has ordered this Notice be sent to persons who are members of the Class and you were identified by the Defendants as a member of the Class. The Court in charge of this case is the United States District Court for the Eastern District of Washington, and the case is called *Wilcox v. Swapp*, Case No. 2:17-cv-275-RMP (E.D. Wash.).

The purpose of this Notice is to inform you about this lawsuit, the certification of the Class, the terms of the proposed Settlement, and your rights in connection with the proposed Settlement and a hearing to be held before the Court on April 29, 2020 to consider the fairness, reasonableness, and adequacy of the proposed Settlement and related matters.

2. What Is This Lawsuit About?

The Driver's Privacy Protection Act ("DPPA") prohibits obtaining, using, or disclosing personal information from a motor vehicle record (such as a driver's license or a vehicle registration) except for certain authorized purposes.

Defendants in this case are a law firm, Swapp Law, PLLC, and an attorney, James Craig Swapp. The lawsuit alleges that the Defendants purchased thousands of Police Traffic Collision Reports ("PTCRs") from the Washington State Patrol for the purpose of marketing legal services. These PTCRs are prepared by police officers responding to a traffic collision and frequently contain personal information taken from the driver's licenses and vehicle registrations of persons involved in collisions. This suit alleges that Defendants' practice of acquiring this personal information and using it to market legal services violated the DPPA. All of the claims in this lawsuit are brought under the DPPA and are described in detail in the Amended Complaint in this lawsuit, which is available at www.SwappSettlement.com.

3. What Is a Class Action?

In a class action, one or more people called class representatives (in this case, Jade Wilcox) sue on behalf of people who have similar claims. If the Court "certifies" the class (i.e., approves the case for class treatment), the Court resolves the issues for all class members except for those who "exclude" themselves from the Settlement Class (otherwise known as "opting out" of the class and the class action settlement).

4. What has Happened in This Case?

Plaintiff filed this lawsuit on August 9, 2017. Defendants filed a motion to dismiss, which the Court denied. Thereafter, Defendants filed answers to the Complaint, in which they denied that they violated the DPPA and asserted numerous defenses. During the lawsuit, Plaintiff engaged in substantial discovery (a process through which the documents exchange information). As part of the process, Class Counsel sought, obtained, and reviewed thousands of pages of documents related to Plaintiff's claims, the PTCRs provided by the Washington State Patrol and purchased by Defendants, the methods by which PTCRs are prepared by police in Washington State, and drivers whose personal information was purchased by Defendants. Class Counsel also took four depositions. Defendants' counsel took the deposition of Plaintiff.

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Plaintiff filed an Amended Complaint on August 20, 2018. Defendants again filed a motion to dismiss, which the Court again denied. The Court entered an order certifying the Class on January 25, 2019 over Defendants' opposition.

After the Court certified the Class, Plaintiff, and Defendants agreed to explore settlement. As part of that process, Defendants produced thousands of pages of additional documents related to Defendants' financial situation, which revealed Defendants would be unlikely to satisfy a judgment of the full amount of damages of the Class, and Class Counsel hired a financial expert to assist in that analysis.

After receiving Defendants' financial disclosures, Plaintiff, Class Counsel and Defendants participated in an in-person mediation with the Hon. Lonny R. Suko on May 23, 2019. Based in part on those disclosures, the parties arrived at a settlement in principle at the end of the day of mediation and subsequently negotiated a final Settlement Agreement, which was executed on October 25, 2019.

On November 27, 2019, the Court preliminarily approved the Settlement with Defendants and has scheduled a Final Approval Hearing to evaluate the fairness and adequacy of the Settlement.

5. Who is in the Class in this Class Action and how do I know if I am a Class Member?

On January 25, 2017, the court overseeing this lawsuit—the United States District Court for the Eastern District of Washington—certified a Class in this case. The Class is defined as follows:

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

Excluded from the Class are (a) current and former clients of Defendants; (b) individuals identified on the same PTCRs as Defendants' clients; (c) individuals who provided written consent to Defendants for the disclosure of their Personal Information (as defined by the DPPA) prior to Defendants obtaining their personal information; (d) employees (and attorneys) of Defendants and members of their immediate families; and (e) the presiding judge and anyone working in the presiding judge's chambers and the members of their families.

Based on data from the Washington State Patrol and Defendants, Class Counsel has identified approximately 32,300 Class Members who meet the definition of the Class certified by the Court. For purposes of the Settlement, the Class is limited to those identified in those records. If you received this Notice in the mail (without requesting that the Notice be mailed to you), you are one of the Class Members who has been identified. If you would like to confirm that you are a Class Member, please contact the Settlement Administrator at the contact information provided in Section 23.

6. Why Is There a Settlement?

The Court did not decide in favor of Plaintiffs or the Defendants. Instead, both sides agreed to the proposed Settlement to avoid a trial and to provide compensation to the Class Members. In deciding to settle the lawsuit, the Class Representatives and Class Counsel considered, among

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other things, (a) the strength of the Class's claims as determined from a review of the law and an investigation of the facts; (b) the potential monetary recovery, including the financial ability of Defendants to satisfy a judgment; (c) the expense and length of continued proceedings, including possible trial and post-trial proceedings and appeals, necessary to prosecute the lawsuit; (d) the risks arising from the existence of unresolved questions of law and fact; (e) the nature and strength of defenses asserted by and available to Defendants; and (f) the risks and uncertainties of continued class action litigation of this nature. The Class Representatives and Class Counsel believe that the proposed Settlement is fair, reasonable, adequate and in the best interests of the Class.

7. How Do I Know If I Am Part of the Settlement?

If you are a member of the Class described in Section 5, above, and were identified in the records produced by the Washington State Patrol or Defendants, you are part of the proposed Settlement. If you aren't sure about your status as a Class Member, then you can contact the Settlement Administrator at the address identified in Section 23.

THE PROPOSED SETTLEMENT – ESSENTIAL TERMS

8. What are the Terms of the Proposed Settlement?

The proposed Settlement requires Defendants to pay a total of \$2 million plus other prospective and remedial relief.

Defendants will pay \$950,000 into a Settlement Fund that, other than amounts used to pay the Settlement Administrator to administrate the Settlement, will compensate Class Members for the unlawful acquisition and use of their personal information from PTCRs purchased by Defendants from the Washington State Police in violation of the DPPA. The payment that each eligible Class Member will receive from the \$950,000 Settlement Fund will be determined by a Plan of Allocation that Class Counsel has recommended and must be approved by the Court. The proposed Plan of Allocation is described in the Appendix to this Notice.

Defendants have also agreed to cease using any PTCRs obtained from the State of Washington for the purposes of acquiring contact information for potential clients or to send marketing materials to persons who are identified on such PTCRs, to destroy any such PTCRs, to notify third parties to whom they provided such PTCRs and personal information derived from such PTCRs that Class Counsel views such information as protected by the DPPA, and to refrain from purchasing PTCRs for marketing purposes in the future.

In addition to the \$950,000 into the Settlement Fund, Defendants have agreed to pay between \$900,000 and \$1,050,000 over the course of the next two and a half years. Out of this amount, Class Counsel is entitled to apply to the Court for the payment of attorneys' fees and out-of-pocket costs and also a service award to the Plaintiff. If the amount that the Court approves for attorneys' fees, expenses and the service award does not equal the amount that Defendants have agreed to pay, then the excess will be distributed to the Class, if administratively feasible, or distributed to a non-profit organization chosen by the Court.

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COMPENSATION FOR CLASS MEMBERS

9. How Can I Receive Compensation Under the Settlement and How Much Compensation Can I Receive?

Class Members who have previously been identified from the records of the Washington State Patrol or of Defendants do not need to do anything in order to receive compensation under the proposed Settlement. (If you received this Notice, you have been identified as a Class Member. If you are not certain, you can contact the Settlement Administrator to confirm that you were previously identified as a Class Member).

Eligible Class Members will be compensated in the following manner.

A. Payments from the \$950,000 Settlement Fund

Class Members will receive payments from the Settlement Fund. The Settlement Fund will be distributed based on the Court-approved Plan of Allocation. The proposed Plan of Allocation can be found on the Settlement Website at www.SwappSettlement.com and is described in the Appendix to this Notice.

B. Payment of Service Award.

Class Counsel will ask the Court to award a service award to Plaintiff Jade Wilcox that is not more than \$ 10,000. The proposed service award recognizes the service that Plaintiff provided in this case, including appearing for a deposition, attending hearings and attending the mediation. Other than this service award, Plaintiff will receive payments like other Class Members according to the Plan of Allocation.

RELEASE

10. What Am I Giving up as a Result of This Settlement?

If the Court grants final approval of the Settlement and the Settlement becomes effective, then all Class Members who do not opt out of the Settlement on a timely basis will give up – in legal terms, release – their right to sue Defendants for acquiring and using PTCRs containing their personal information (as defined by the DPPA) from September 1, 2013 to June 23, 2017. Unless you opt out of the lawsuit, you will be covered by the Release. The full details of the Release are contained in Section 12 of the Settlement Agreement, which can be found on the Settlement Website at www.SwappSettlement.com

THE LAWYERS REPRESENTING YOU AND THE CLASS

11. Do I Have a Lawyer in this Case?

Yes. The Court has appointed Block & Leviton LLP and the Law Offices of Thomas G. Jarrard to represent the Class Members. Together, the lawyers are called Class Counsel. Unless you elect to exclude yourself from the Settlement, you will be represented by Class Counsel in the litigation, including with the implementation of the Settlement, throughout the duration of the terms of the Settlement. Although it is not necessary, you have the right, if you wish to do so, to retain your own attorney at your own expense.

If you have questions about the terms of the proposed Settlement, you may contact Class Counsel at the addresses below:

Questions?

Visit: www.SwappSettlement.com

Call: 1-833-513-0212

Email: Info@SwappSettlement.com

R. Joseph Barton, Esq.
Block & Leviton LLP
1735 20th Street NW
Washington, DC, 20009
(202) 734-7046
swappsettlement@blockesq.com

Thomas G. Jarrard, Esq.
Law Office of Thomas Jarrard
1020 N. Washington Street
Spokane, WA 99201
(425) 239-7290
tjarrard@att.net

If you have questions about issues related to this Notice, you should contact the Settlement Administrator. Their contact information is included in Section 23.

12. How Will The Lawyers Be Paid?

Class Counsel will ask the Court for an award of attorneys' fees and costs, from an amount of between \$900,000 and \$1,050,000 (separate from the \$950,000, minus settlement administration expenses, to be paid to the Class). This amount will be paid by Defendants in three equal payments over the course of two and a half years. Class Counsel will also ask the Court to approve the reimbursement of their out-of-pocket costs, which are approximately \$31,544.92. Class Counsel will be paid from these payments in an amount approved by the Court and not from the Settlement Fund on which compensation for Class Members will be drawn. The fees will pay Class Counsel for investigating the facts, litigating the case, and negotiating and implementing the Settlement. Class Counsel do not intend to seek more than the actual lodestar (i.e. hours times the hourly rate) that they have incurred in investigating and litigating this case. To date, Class Counsel has collectively spent more than 2,603 hours litigating the case which currently has a value of at least \$1,095,700 (and Counsel will continue to incur time and expenses to finalize the Settlement). The Court may award less than these requested amounts to Class Counsel. The Court will examine the request for fees and reimbursement of expenses of Class Counsel at the Fairness Hearing, as well as any objections to that request, and determine the amount of fees and expenses to award.

HOW TO PROCEED

13. What Are My Options?

After reviewing the terms of the proposed Settlement set forth in this Notice, you have two options. You must decide at this stage whether you want to: (1) remain a Class Member and retain an opportunity to participate in the Settlement; (2) opt-out and exclude yourself from participating in the Settlement.

OPTION #1: REMAIN A CLASS MEMBER

14. How Do I Remain in the Class?

If you are a member of the Class and you do not request to be excluded, you will remain a part of the Class and all Released claims will be barred by this Settlement.

If you have previously been identified as a Class Member by the parties and you do not request to be excluded, you will receive the payment that you may be entitled to receive under the Settlement based on the Plan of Allocation described in the Appendix to this Notice. If you have *not* been previously identified as a Class Member, you will not receive a payment from the Settlement, and

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you will not give up any right to pursue claims against the Defendants separately about the claims covered by the Settlement.

If your contact information changes after you receive this Notice, you should contact Class Counsel at the addresses in Section 11.

OPTION #2: OPTING OUT OF THE SETTLEMENT

15. Who Should Opt Out of the Class?

If (1) you want to keep the right to sue or continue to sue any of the Defendants regarding their acquisition and use of PTCRs containing your personal information from September 1, 2013 to June 23, 2017, or (2) you do not want to be bound by the Settlement of this lawsuit, then you should take steps to exclude yourself from the Settlement. This is called “opting out” of the Settlement. If you opt out, you will receive no benefits under this Settlement. You will be able to assert your claim on your own, but Defendants will retain the right to assert any and all defenses your claim, including the defense that your claim is untimely.

16. How Do I Opt Out of the Class?

To opt out of the Settlement, you must mail a written, signed statement that you are opting out of the Settlement to the **Settlement Administrator** at the address below:

Class Action Opt Out
c/o Swapp Settlement
P.O. Box 58220
Philadelphia, PA 19102

To be effective, the opt-out statement must (1) contain your name, address, email(s), and telephone number(s); (2) contain the title of the lawsuit, *Wilcox v. Swapp*, Case No. 2:17-cv-275-RMP (E.D. Wash.), (3) include a written statement stating “I wish to be excluded from the Class”; and (4) be signed and dated. To be effective, this opt-out statement must be mailed via First Class United States Mail, postage prepaid, to the Settlement Administrator, and must be postmarked on or before March 9, 2020.

Please note that if you submit a timely and valid request for exclusion you will have no right to object to the Settlement in Court and will no longer be represented by Class Counsel.

OBJECTING TO THE SETTLEMENT

17. How Do I Tell the Court That I Don't Like the Settlement?

The Court must assess the overall fairness and reasonableness of the Settlement to the Class. If you are a Class Member and you do not opt out, then you can object to the Settlement if you don't like any part of it, and the Court will consider your views. To object to the Settlement and have your objection considered by the Court, you must submit a written objection to the Settlement which must be postmarked on or before March 9, 2020. Your objection needs to contain (1) your name, address, email(s), and telephone number(s) and an appearance on behalf of any counsel representing you (if any); (2) the title of the lawsuit, *Wilcox v. Swapp*, Case No. 2:17-cv-275-RMP (E.D. Wash.), (3) a written statement of the grounds for your objection, including any evidence supporting your objection; (4) a statement of whether you intend to appear at the Final Approval

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Hearing, and, if you will appear through counsel, the identity of your counsel, and (5) your signature and the date.

Your objection needs to be addressed to the Settlement Administrator:

Swapp Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

18. What is the Difference Between Objecting and Opting Out?

Objecting is simply telling the Court that you do not like or disagree with an aspect of the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you cannot object to the Settlement because you will not be bound by the Settlement.

THE COURT'S FAIRNESS HEARING

19. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Final Approval Hearing (called a Fairness Hearing) at 1:30 p.m. on April 29, 2020, in the courtroom of the Honorable Rosanna Malouf Peterson, at 920 W Riverside Ave., Rm. 840, Spokane, WA 99201.

At the Fairness Hearing, the Court will determine whether the proposed Settlement is fair, reasonable, and adequate. If there are any objections, then the Court will consider them. The Court will also consider whether the motion of Class Counsel for an award of attorneys' fees and reimbursement of expenses should be approved, whether Plaintiffs' motion for service award for the Class Representative should be approved, and whether, in accordance with the Settlement, a final order and judgment should be entered bringing the litigation to a conclusion.

20. Do I Have To Come To The Fairness Hearing?

No. Class Counsel and the Defendants' counsel will answer questions that the Judge may have. If you send an objection, then you don't have to come to Court to talk about it, but you are entitled to if you want to. As long as you mailed your written objection on time, the Court will consider it.

21. May I Speak at the Hearing?

You may speak at the Fairness Hearing only if you have filed an objection. You may appear either in person or through a lawyer hired at your own expense. You may withdraw your objections at any time.

SETTLEMENT NOT YET FINAL

22. Can the Settlement be Terminated?

If there is no final Court approval of the proposed Settlement in this case, or if Class Counsel or Defendants withdraw from the Settlement in accordance with the Settlement Agreement, or if the Settlement is not consummated for any other reason, the Settlement Agreement will become null and void, and the parties will resume their former positions in the lawsuits.

Questions?

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GETTING MORE INFORMATION

23. Where Can I Get More Information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement, the proposed Plan of Allocation, and other relevant documents by visiting the Settlement Website www.SwappSettlement.com, or by contacting the Settlement Administrator or Class Counsel. If you have further questions or are still not sure whether you are included, you can get free help by contacting the Settlement Administrator by email at Info@SwappSettlement.com or by telephone at 1-833-513-0212, or by calling or writing to Class Counsel in this case at the contact numbers/address listed in Section 11.

Again, the important deadlines are:

Last Day To “Opt-Out” Of The Class: March 9, 2020

Last Day To Object To The Settlement: March 9, 2020

Final Approval Hearing: April 29, 2020

PLEASE DO NOT CALL OR CONTACT THE COURT, THE OFFICE OF THE CLERK OF COURT, OR DEFENDANT WITH QUESTIONS REGARDING THIS NOTICE.

Dated: January 8, 2020

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APPENDIX – DESCRIPTION OF PLAN OF ALLOCATION

1. **The Net Class Settlement Fund.** The Net Class Settlement Fund shall consist of (a) \$950,000 paid by Defendants into the Escrow Account under Section 4.1 of the Settlement Agreement, less any amounts used to pay Court approved settlement administration expenses, and (b) any amount of the \$900,000 (or additional amount of up to \$1,050,00 if not paid in 2020) paid by Defendants under Section 10.3 of the Settlement Agreement that is not approved by the Court as attorneys' fees, reimbursement of litigation expenses, other costs of settlement administration or a service award to Plaintiff and which is then paid into the Settlement Fund under Section 4.2 of the Settlement Agreement.

2. **Authorized Claimants.** An Authorized Claimant will be any individual who both (a) appeared on PTCRs purchased by Defendants during the Class Period as reflected by the data produced by Defendants to Class Counsel, and (b) falls within the Class definition (and is not excluded from the Class definition), but (c) has not opted out of the Class.

3. **Allocating the Net Class Settlement Fund.** The Net Class Settlement Fund will be initially allocated among Authorized Claimants on an equal basis as calculated by dividing the total dollar value of the Net Class Settlement Fund by the number of Authorized Claimants.

4. **Initial Distributions to Authorized Claimants.** Unless otherwise modified by the Court, an initial distribution of the Net Class Settlement Fund (the "Initial Distribution") will be issued to Authorized Claimants within 90 days of the later of either (a) the time that Defendants have fully paid \$950,000 into the Escrow Fund as provided by Section 4.1 of the Settlement Agreement or (b) the date on which the Settlement is Final. The check for the Initial Distribution will state that it is void 90 days from the date of issuance. On either the check or a document accompanying the check will bear the following:

By endorsing this check, you declare under penalty of perjury that all of the following information is true and correct: (1) You had a driver's license between 2013 and June 2017; (2) You were involved in an automobile accident in Washington State sometime between 2013 and June 2017; (3) You are not a current or former client of the Swapp Law firm or Craig Swapp; (4) You did not provide consent to the Swapp Law Firm or Craig Swapp to obtain your personal information; (5) You are not a current or former employee of the Swapp Law Firm (or a relative of such employee).

If ALL of the above information is not true, you should NOT endorse this check, but should contact the Settlement Administrator by email at Info@SwappSettlement.com or by phone at 1-833-513-0212.

5. **Second Distributions to Authorized Claimants.** A second distribution will be made to those Authorized Claimants who endorsed their Initial Distribution checks within 90 days after issuance from the Initial Distribution only if after the Initial Distribution: the Net Settlement Fund contains or subsequently has sufficient monies to pay the costs of administering a second distribution to Authorized Claimants; a second distribution is economically feasible; and the amount to be distributed to those Authorized Claimants (after expenses) would be \$5 or more. The check for the second distribution will state that it is void 90 days from the date of issuance.

6. **Residual Funds.** After any second distribution to Authorized Claimants or if there are not sufficient funds to make a second distribution to the Authorized Claimants pursuant to Paragraph 5 of this Plan of Allocation, any residual funds in the Net Class Settlement Fund will be distributed consistent with Section 5.4 of the Settlement Agreement.

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