NO. 11-8020

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MARCY A. JOHNSON,
ON BEHALF HERSELF AND THE CLASS,

Plaintiff – Respondent,

v.

WEST PUBLISHING CORPORATION

Defendant – Petitioner.

BRIEF IN OPPOSITION TO WEST PUBLISHING CORPORATION'S PETITION FOR AN INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(b)

From an Order Denying a Motion for Judgment on the Pleadings, Certified for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b), By the United States District Court for the Western District of Missouri
No. 2:10-Cv-04027-NKL
The Honorable Nanette K. Laughrey

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PRELIMINARY STATEMENT

The sole issue on this appeal is whether Plaintiff's complaint pleads a cause of action. West's Petition for an Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) ("Petition") is a symbol of its dissatisfaction with the District Court's ruling denying its motion for judgment on the pleadings—a preliminary motion filed at the very early stages of this litigation. Now that West has lost its motion, it asks this Court for a second bite at the apple on its failed motion.

Until now, West has made every attempt to keep the litigation moving forward. West has pushed for the completion of discovery in this case and has produced virtually all of its documents. Contrary to West's assertions, and depending on the outcome of any dispositive motions, a trial may be unnecessary. Thus, an appeal now will not likely avoid expensive and protracted litigation; rather, any appeal is likely to drag this litigation out longer than the time it would take to bring the litigation to a final judgment. Because this case is at an advanced stage nearing summary judgment, and possibly trial, West's attempt to delay this case should not be allowed and the Court should deny West's Petition.

FACTUAL BACKGROUND

This is an action seeking relief for the defendant West Publishing Corporation's ("West") violations of Plaintiff's and other Class members' privacy interests protected and guaranteed by the Driver's Privacy Protection Act ("DPPA"). 18 U.S.C. §§ 2721, *et. seq*. Plaintiff has alleged that West unlawfully obtained her and other Class members' personal information and/or highly restricted personal information from a third party for the sole purpose of re-selling said information for a profit. This is not one of the

permissible purposes explicitly listed under § 2721(b) of the DPPA, and West does not obtain said information for any of § 2721(b)'s purposes. And, because West is not an "authorized recipient" under the DPPA, West is not entitled to obtain such information, and any resale of such information is unlawful under the DPPA. Plaintiff brought this action seeking injunctive relief and damages for West's violations of the DPPA.

On August 3, 2011, the District Court denied West's Motion for Judgment on the Pleadings (which is the subject of this Petition) and, on August 9, 2011, the Court certified the Class.[1]

I. Standard of Review for Interlocutory Appeals Under 28 U.S.C. § 1292(b)

Interlocutory appeals are reserved for a limited line of cases where an early review may bring an arduous and expensive journey to an early end. With this case on the threshold of summary judgment—and with discovery nearly complete—this action fails to meet the standards for interlocutory appeal. As the Court has noted, "[i]t has, of course, long been the policy of the courts to discourage piece-meal appeals because most often such appeals result in additional burdens on both the court and the litigants. Permission to allow interlocutory appeals should thus be granted sparingly and with discrimination." *Control Data Corp. v. Int'l Bus. Machs. Corp.*, 421 F.2d 323, 325 (8th Cir. 1970). And, "[i]n accordance with this policy, § 1292(b) 'should and will be used only in exceptional cases where a decision on appeal may avoid protracted and expensive litigation, as in antitrust and similar protracted cases.'" *White v. Nix*, 43 F.3d 374, 376 (8th Cir. 1994) (quoting S. Rep. No. 2434, 85th Cong., 2d Sess. (1958), *reprinted in* 1958

[1] West has concurrently petitioned the Court, pursuant to Fed. R. Civ. p. 23(f), for leave to appeal the District Court's order certifying the Class. *See* Appeal No. 11-8019.

U.S.C.C.A.N. 5255, 5260). West bears a "heavy burden" in meeting this standard, and as explained below, has failed to do so here. *Id.*

II. The District Court's Order Does not Involve a Controlling Question of Law

As the Eighth Circuit has noted, "[w]hile it might be conceivable that an issue includes a controlling question of law, and while it might be seemingly apparent that it is a difficult question as to which there is a substantial ground for difference of opinion, and while a decision thereon might materially advance the ultimate outcome, the case must be of sufficient ripeness so that this can be determined from the record." *Paschall v. Kansas City Star Co.*, 605 F.2d 403, 406 (8th Cir. 1979).

West's approach to this litigation—which includes aggressively pushing the completion of discovery—warrants, at a minimum, the briefing of potentially case-dispositive summary judgment motions, which will then provide the appropriate "ripeness" that is required for review of this case by the Court. A review of the District Court's denial of West's motion for judgment on the pleadings would be premature and inappropriate at this time. Contrary to purpose, it would foster piecemeal litigation.

West filed a motion for judgment on the pleadings, which is akin to a motion to dismiss for failure to state a claim. The denial of this motion is not outcome determinative and does not involve a controlling question of law—if that were indeed the standard, the denial of nearly every such motion would warrant an interlocutory appeal, which is not the case. Rather, the denial of West's motion simply means that Plaintiff has stated a claim and her case can proceed. Should West deem it prudent to file a motion for summary judgment—a far more outcome determinative motion—then it is free to do so. Resolution of issues involving liability on a motion for summary judgment should

proceed, which will provide a richer record for any interlocutory appeal that West may wish to seek at a later point in time, and which will provide a reviewing court with a complete factual and legal record upon which to rule.

III. There is No Substantial Ground for Difference of Opinion Regarding the Scope of the DPPA or the Issue of Standing

West fails to mention that the majority of cases interpreting the DPPA has dealt with entities that obtained Motor Vehicle Records *directly* from the states. This is a critical distinction from West's conduct here. Unlike the authorities it cites, West obtains Motor Vehicle Records from a third party for the sole purpose of reselling said records for a profit.

The District Court's denial of West's motion for judgment on the pleadings is the most thorough and extensive analysis of the DPPA to date—particularly with respect to the obtainment of Motor Vehicle Records from a third party for the sole purpose of re-sale for a profit. The DPPA is clear: it is unlawful to obtain, use, or disclose protected information unless the obtainer meets one of the permissible purposes under § 2721(b). West obtained the information at issue from a third party for the sole purpose of reselling that information for a profit. This purpose is not among the permissible purposes listed in § 2721(b); in fact, West does not even claim it meets one of these permissible purposes. Despite this, West asserts that it is immune from the DPPA's prohibitions by virtue of the DPPA's "reseller" provision—§ Section 2721(c). As the District Court recognized, however, this argument distorts the plain language of the DPPA.

On the facts of this case, as set forth above, West has no permissible purpose for obtaining Plaintiff's and the Class' motor vehicle records. Nor is there any rational basis for claiming Plaintiff lacks standing. As several courts have already held, other plaintiffs

in the same position as Plaintiff here have standing to pursue their claims. West's arguments in support of its Petition are, therefore, without merit.

A. West's Conduct of Obtaining Motor Vehicle Records in Bulk from a Third Party for the Sole Purpose of Re-selling Said Records for a Profit Violates the DPPA

West's arguments are founded almost entirely on its interpretation of the term "authorized recipient" from § 2721(c).[2] West argues that it need not comply with the information protections of the DPPA solely *because* West intends to resell protected information. In support of this self-serving point of view, West points to § 2721(c), which provides, generally, that an "authorized recipient" of protected information may resell protected information to other entities who also meet an exception to the DPPA. As West is not an authorized recipient of Plaintiff's and other Class members' information, its conduct violates the DPPA.

West devotes much of its Petition to describing why the term "recipient" renders it immune from the prohibitions of the DPPA. Yet, conspicuously, West barely makes mention of how the term "authorized" from the statute (as in "authorized recipient") impacts its behavior. The plain language of § 2721(c) directly contradicts West's

[2] 18 U.S.C. § 2721(c) provides in full:

> (c) Resale or Redisclosure.— An authorized recipient of personal information (*except a recipient under subsection (b)(11) or (12))* may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). *An authorized recipient under subsection (b)(11)* may resell or redisclose personal information for any purpose. *An authorized recipient under subsection (b)(12)* may resell or redisclose personal information pursuant to subsection (b)(12). *Any authorized recipient (except a recipient under subsection (b)(11))* that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(c) (emphasis added).

position that it need not meet an exception to the DPPA in order to obtain protected information.

In order to be an "authorized recipient" of protected information, one must be more than a mere recipient—one must be "authorized." Thus, the chief concern in defining what Congress left undefined ("authorized recipient") is not whether one obtains information, but rather, whether one is *authorized* to obtain the information. Fortunately, § 2721(c) provides ample guidance as to when a reseller such as West is authorized to obtain information protected under the DPPA.

Section 2721(c) refers back to the DPPA's permissible purposes listed in § 2721(b) in describing when a reseller is "authorized" to obtain information. For instance, § 2721(c) regulates when an "authorized recipient" of information "under subsection (b)(11) or (b)(12)" can legally resell information. Similarly, § 2721(c) states that an entity can only be "authorized" to obtain protected information if it is permitted to do so "under [a] subsection" from § 2721(b). In other words, § 2721(c) is written with the obvious implication that to be "authorized" to obtain information, one must fall within one of the permissible purposes listed in § 2721(b).

It is unreasonable to conclude that Congress would have referred to permissible purposes in § 2721(c)'s reseller provision without intending that an "authorized recipient" also have a permissible purpose for obtaining such information before selling it. West has no answer for this obvious contradiction within its argument. As the District Court sagely opined, "[g]iven the strict linkage between the method of obtainment and the restrictions on resale, Congress could not have intended to create a gaping hole in the statute for resellers by authorizing them to obtain the entire drivers license database

simply by identifying themselves as a reseller." *Johnson v. West*, Case No. 2:10-cv-04027, at 14 (W.D. Mo. Aug. 3, 2011). Otherwise, there is no limit to how many times and through how many channels Plaintiff's and the Class' Motor Vehicle Records could be sold and re-sold, all under the guise of West's contorted interpretation of "authorized recipient."

A common sense understanding of the privacy protections inherent in the DPPA defies West's interpretation of the statue. According to West's view, it is "authorized" to obtain massive databases of information for no other reason than its self-serving declaration that it intends to resell the information in compliance with the DPPA. Such an interpretation wipes out the privacy protections of the DPPA and the specific permissible purposes outlined in § 2721(b)—surely an absurd result.

West's interpretation turns the statute's information disclosure protections upside down: the prohibition on obtaining protected information can be avoided as long as any obtainer plans on disclosing the protected information to those with a permissible purpose under § 2721(b). West's argument renders the modifier "authorized" from the statutory term "authorized recipient" meaningless—effectively writing the term out of the statute, contrary to established rules of statutory construction—and in the process, similarly renders the crucial privacy protections of the DPPA meaningless. If all one needs to do in order to obtain an entire state's database of information is to claim that it is a reseller, then the term "authorized" from the statute is surplusage. In short, the only thing in the DPPA that qualifies one to be a "reseller" is that such a reseller must be "authorized." "Authorized" must mean something, and from the plain language of the DPPA, it means

that a recipient for the purpose of resale is only qualified to obtain information by meeting one of § 2721(b)'s explicit permissible purposes.

West points to the current appeal in *Cook v. ACS State & Local Solutions*, 756 F. Supp. 2d 1104, 1106 (W.D. Mo. 2010), which is now before the Court. But *Cook* involves entities obtaining Motor Vehicle Records *directly* from the states, and thus deals with a different issue than that which is set forth before the Court in West's Petition. And even if the issue was the same (it is not), it would be counterproductive to initiate another appeal with the Court before this case has been more fully developed, as explained *supra*. Further, it is respectfully suggested that *Cook* did not seriously consider the legal and statutory construction issues at hand—the *Cook* court devoted one sentence to the authorized recipient/reseller legal issue present in this case: "[r]egarding reselling, the Court agrees with *Taylor* that a reseller does not need to have its own permissible use." *Id*. at 1109. Compared to the convincing and comprehensive analysis of the District Court in the present case on similar issues, the *Cook* opinion on this subject is neither authoritative nor persuasive.

Other authorities relied on by West in support of its position are not only distinguishable in some notable respects, but actually support Plaintiff's position and argument that substantial grounds of a difference of opinion do not exist. For instance, *Roth v. Guzman*, No. 10-3542, 2011 WL 2306224 (6th Cir. June 13, 2011), involves the narrow issue of whether the bulk disclosure of Motor Vehicle Records by the state of Ohio pursuant to an explicit request made under § 2721(b)(3) of the DPPA—for "use in the normal course of business"—was permissible at the time of the disclosures. 2011 WL

2306224, at *3–5.[3] In *Roth*, a company obtained Ohio Motor Vehicle Records in bulk by expressly requesting said records from the state for "use in the normal course of business." 2011 WL 2306224, at *3. The plaintiffs sued Ohio officials over the disclosures, alleging that the company falsely represented its true use for the records, which was bulk resale. 2011 WL 2306224, at *3. *Roth* held that regardless of the representation made when obtaining the records, *Ohio officials* were not liable because such disclosures under § 2721(b)(3) are permissible and there was no "clearly established" duty to inquire into the legitimacy of the request *at the time* of the disclosures. 2011 WL 2306224, at *7, 11. *Roth* relied on *Taylor v. Acxiom Corp.*, 612 F.3d 325 (5th Cir. 2010), which also involved bulk disclosures by states *directly* to third parties under § 2721(b)(3). 2011 WL 2306224, at *9–11. Judge Clay noted, in dissent, that the majority's ruling "renders much of the language of the DPPA completely superfluous." 2011 WL 2306224, at *13. Additionally, *Roth* distinguishes the plaintiff's reliance on *Locate.Plus.Com, Inc. v. Iowa Dept. of Transp.*, 650 N.W.2d 609, 616 (Iowa 2002), noting that "reformatting [Motor Vehicle Records] for resale to law enforcement agencies" was not a permissible purpose. 2011 WL 2306224, at *10 n.9. Thus, *Roth* effectively holds that the very conduct of which Plaintiff complains of here—West's practice of purchasing Motor Vehicle Records in bulk from a third party and then reselling the records—is not a permissible purpose under the DPPA.

Howard v. Criminal Information Services, Inc., 2011 WL 3559940 (9th Cir. Aug. 15, 2011), also cited by West, supports Plaintiff's position. *Howard* involved the defendants' acquisition of Motor Vehicle Records directly from the states for purposes of

[3] *Roth* involved an appeal of the denial of qualified immunity for Ohio officials, and the court found that the law was not clearly established and, therefore, the officials were entitled to immunity.

each defendant using the records, whereby the plaintiffs admitted that said uses by each of the defendants are permissible under the DPPA. 2011 WL 3559940, at *1. As the court points out, "Defendants obtained the information so that *they* would be able to use it." 2011 WL 3559940, at *2 (emphasis added). Here, on the other hand, not only does Plaintiff allege that West did not obtain Motor Vehicle Records directly from the states, but West also did not obtain Plaintiff's Motor Vehicle Record for any of the permissible purposes in § 2721(b) or for its own proper use. West claims that its conduct of obtaining Plaintiffs' Motor Vehicle Records in bulk format from a third party for the sole purpose of reselling the information for a profit is permissible under § 2721(c). Such conduct is in fact condemned by the *Howard* court's ruling—the DPPA focuses "on the 'end' sought by the purchaser . . . . That is what should be considered in determining whether the acquisition of the information is permitted under the statute." *Id.* at 10833. Further, "[t]he DPPA only requires that Defendants obtained the information for a permitted purpose." 2011 WL 3559940, at *3. Thus, under *Howard*, because West has not obtained Plaintiff's Motor Vehicle Record for any permissible purpose, its conduct violates the DPPA.

The District Court's ruling is consistent with the plain meaning of the statute, the statute's legislative history, and the intent of Congress in enacting the statute. The vast majority of other courts taking up the DPPA and its reseller provision, on the other hand, have simply deferred to the court's reasoning in *Taylor v. v. Acxiom Corp.*, 2010 WL 2765261 (5th Cir. July 14, 2010). The District Court's denial of West's motion explains why *Taylor*—and the courts following its lead—are wrong, and West's disagreement with that interpretation is no grounds for granting its Petition. Nothing in the DPPA

allows West to obtain Plaintiff and the Class' Motor Vehicle Records in bulk format from a third party for the sole purpose of resale for a profit.

B. The Clear Language of the DPPA, and West's Violation Thereof, Provides Plaintiff with the Requisite Standing to Litigate Her Claims

As the Supreme Court held in *Lujan v. Defenders of Wildlife*:

> The irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact" -- an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" . . . . Second, there must be a causal connection between the injury and the conduct complained of -- the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992) (internal citations omitted).

Plaintiff alleges that West improperly obtained her and other members of the Class' protected information. Plaintiff's legally protected interests, as set forth by the DPPA, have been compromised by West's conduct. West's conduct creates an injury and a wrong that can be "redressed" pursuant to law and statute.

Additionally, the very case that West clings to in arguing that its Petition should be granted (*Cook*) reached the opposite conclusion on standing that West is asking this Court to find. Indeed, the *Cook* court found that the plaintiffs had standing and had pled an injury-in-fact by pleading obtainment and disclosure violations under the DPPA. *Cook*, 756 F. Supp. 2d at 1106-07.

1. Plaintiff Has Suffered Harm Sufficient to Confer Standing

West argues that Plaintiff has no standing to bring this action because she cannot show actual harm or an "injury in fact." West argues this point despite the fact that (1) the

DPPA expressly provides for liquidated damages independent of showing actual damages, where all damages are subject to the Court's discretion, and (2) the overwhelming weight of the case law contradicts West's argument.

First, by the express terms of the DPPA, there is no need to show actual damages in order to recover damages. The remedy for a violation of the DPPA is unambiguous under the plain terms of the statute:

> (b) Remedies.--The court *may* award--
>
> (1) actual damages, but not less than liquidated damages in the amount of $2,500;
>
> (2) punitive damages upon proof of willful or reckless disregard of the law;
>
> (3) reasonable attorneys' fees and other litigation costs reasonably incurred; and
>
> (4) such other preliminary and equitable relief as the court determines to be appropriate.

18 U.S.C. § 2724(b)(1) (emphasis added). The amount of damages ultimately awarded is within the province and discretion of the District Court, as the Court noted in its ruling denying West's Motion for Judgment on the Pleadings, and explicitly includes more than simply monetary damages. For example, Plaintiff has standing to seek, and does seek, injunctive relief. West's unlawful obtainment of Plaintiff's and the Class' Motor Vehicle Records places them at risk of the future unlawful release of these records. A proper remedy could also include enjoining West from obtaining said records in the future, and purging those in its possession.

West's interpretation of the statute ignores the plain language of the statute. The plain language of the DPPA contradicts West's assertion that actual damages must be

shown in order to achieve relief under the DPPA. Not surprisingly, virtually every case to address the issue has reached the opposite conclusion sought by West.

The DPPA creates a statutory privacy right designed to protect an individual's data footprint from unauthorized disclosure or obtainment by unauthorized entities. "Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Linda v. Texas*, 410 U.S. 614, 617 n.3 (1973). "The actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing …." *Warth v. Seldin*, 422 U.S. 490, 500 (1975).

Two Circuit Courts of Appeals have addressed the DPPA standing issue raised by the West and both have rejected West's position. In *Kehoe v. Federal Bank & Trust*, the Eleventh Circuit held, based on the unambiguous language of the DPPA, that actual damages are not necessary in order to recover under the liquidated damages provision of the DPPA. 421 F.3d 1209, 1212 (11th Cir. 2005) (citing *Doe v. Chao*, 540 U.S. 614 (2004)). West has failed to distinguish the Eleventh Circuit's *Kehoe* decision, which directly contradicts its position on this issue. Plaintiff submits that she does not have to plead or prove actual damages under the express wording of the DPPA in order to achieve standing.

Similarly, in *Pichler v. Unite*, the Third Circuit was confronted with the question of whether two individuals who were not specifically identified in a motor vehicle record could have standing to sue under the DPPA. 542 F.3d 380, 391 (3d Cir. 2008). In holding that those individuals did not have standing under the DPPA, the Third Circuit ruled that

it was "undisputed" that any individual whose information was obtained in violation of the DPPA had a viable cause of action. *Id*.

Doe v. Chao, the Supreme Court of the United States decision cited by West in support of its position on standing, actually supports Plaintiff with respect to standing. 540 U.S. 614 (2004). *Doe* involved a claim brought under the Privacy Act of 1974 for the disclosure of the plaintiff's social security number. The Supreme Court ruled, on the basis of the language of the Act, that the plaintiff must show some measure of actual damages prior to receiving the minimum statutory award of $1,000.00 available under the Act. The Supreme Court's opinion was based on the specific language of the Privacy Act. Significantly, however, the Court indicated under what statutory language the Plaintiff would have been entitled to damages independent of showing actual damages: "Congress could have accomplished its object simply by providing that [defendant] would be liable to the individual for *actual damages 'but in no case ... less than the sum of $1,000*'". *Id*. at 1210 (emphasis added). That suggested language, approved by the Supreme Court in *Doe*, is virtually identical to the language at issue in the DPPA. The District Court's ruling on this issue is directly supported by the opinions of two Circuit Courts of Appeals and the Supreme Court. Accordingly, the District Court's ruling should not be disturbed on this request for interlocutory review.

Moreover, even though pleading actual damages is not required under the case law or express terms of the DPPA, Plaintiff has pled "injury in fact" in order to confer standing—Plaintiff alleged that her personal information was obtained by West for a purpose not permitted under the DPPA. This type of conduct is precisely the kind of

action that leads to the most severe kind of identity theft or other personal security problems that the DPPA was designed to remedy.

2. The Legislative History of the DPPA Demonstrates Clear Congressional Intent to Create a Tangible Privacy Right, the Violation of Which Is a Tangible Harm Conferring Standing

The legislative history of the DPPA also supports Plaintiff's position regarding standing. Consistent and continual statements from sponsors of the DPPA indisputably demonstrate Congress' effort to place the individual in control of his or her own Motor Vehicle Record information. Indeed, West's interpretation of the DPPA would completely eviscerate the function and purpose of the privacy protections afforded under the DPPA.

Congress enacted the DPPA in order to curb the common practice by many states of selling information in Motor Vehicle Records to businesses, marketers, and individuals. See *Reno v. Condon*, 528 U.S. 141, 143–44 (2000). Congressman Moran, the sponsor of the original 1994 bill, emphasized that the purpose of the DPPA was to give individuals "control" over whether their personal information was released or obtained:

> This legislation before the Committee is designed to give individuals control over the release of their personal information and give them the opportunity to make choices as to whether this information is released . . . in bulk.

Hearing before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary, 103d. Cong. (1994) (statement of Rep. James P. Moran, Sponsor), available at 1994 WL 212835.

In fact, when the DPPA was amended in 1999, the changes in the law were intended to eliminate the practice of selling personal information. Senator Shelby, the

principal sponsor, warned against "unrelated secondary uses" of motor vehicle information without prior approval (i.e., for commercial sale in the open market), when the records have been obtained only for the purpose of vehicle registration. Senator Shelby underlined that the purpose of the DPPA was to ensure that individuals must "grant their consent" before the state or a third party can sell or release highly restricted personal information "when it is to be used for the purpose of direct marketing, solicitations, *or individual look-up*."[4] *Hrg. Before the Subcomm. on Transp. of the S. Comm. on Appropriations, 106th Cong.* (2000) (statement of Sen. Shelby, Sponsor), available at 2000 WL 374404 (emphasis added). He stressed that the need for privacy in Motor Vehicle Records is akin to the need for "doors" on citizens' houses.[5] *Id.*

The Congressional record is clear: the core aims of the DPPA are to prevent the unauthorized obtainment of a citizen's personal information and the statute creates a tangible right to have one's information secure. The violation of that security is a harm that supports standing. West's argument to the contrary lacks merit.

IV. Certification Will Not Materially Advance the Ultimate Termination of the Litigation

In *Roberts v. Source for Pub. Data*, 75 Fed. R. Serv. 3d 25 (W.D. Mo. 2009), which similarly dealt with the unlawful obtainment and dissemination of Motor Vehicle

[4] "Individual look-up" is precisely what West turned the Class members' information into when they made the information available over the Internet for purchase.

[5] "It boils down to this: we have doors on our homes so that outsiders who seek entry must knock and ask our permission to enter. When we want such people to come in, we invite them. When we do not want them in, they are not permitted to enter. Doors provide us with the means to control our interaction with other people. **American citizens should have the power to put 'doors' on all aspects of their private lives and to expect that anyone who wants to enter must seek and gain consent**." *Hrg. Before the Subcomm. on Transp. of the S. Comm. on Appropriations, 106th Cong.* (2000) (statement of Sen. Shelby, Sponsor), available at 2000 WL 374404 (emphasis added).

Records under the DPPA, the court granted the plaintiff's motion for class certification. The defendants petitioned this Court for leave to appeal under Fed. R. Civ. P. 23(f); the Court denied that petition. *See Roberts v. Source for Public Data*, Case No: 09-8018 (8th Cir. Dec. 12, 2009). The Court saw no need to intervene in *Roberts*, which involved a nearly identical legal issue, and there is no need to intervene now. West's Petition is a premature and wasteful effort at this point in the litigation, and merely serves as an attempt to stall this litigation from proceeding.

Finally, there is no protracted and expensive litigation ahead for the parties. Extensive discovery by the parties has taken place and is nearly completed. Significant motion practice has taken place, with the matters being fully briefed and decided by the District Court, all that remains are dispositive motions and, possibly, a short trial. West's disappointment with the District Court's rulings to date should play no part in the orderly and efficient process of the litigation, and its Petition should be denied.

CONCLUSION

Wherefore, for the reasons set forth above, West's Petition should be denied.

Respectfully submitted,

/s/ Mitchell L. Burgess

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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