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December 22, 2011

Mr. Michael E. Gans, Clerk of Court  
 United States Court of Appeals  
 for the Eighth Circuit  
 Thomas F. Eagleton U.S. Courthouse  
 111 South 10<sup>th</sup> Street, Room 24.329  
 St. Louis, Missouri 63102

**Re: Marcy A. Johnson v. West Publishing Corporation**  
**Case No. 11-8020**

Dear Mr. Gans:

Pursuant to Federal Rule of Appellate Procedure 28(j), West Publishing Corp. submits *Cook v. ACS State & Local Solutions, Inc.*, No. 10-3818, --- F.3d ---, 2011 WL 6221645 (8th Cir. Dec. 15, 2011), a recent decision of this Court affirming the dismissal of claims under the Driver's Privacy Protection Act (enclosed). This Court's interpretation of the DPPA in *Cook* directly addresses the statutory construction questions involved in the district court's order denying West's motion for judgment on the pleadings that West's has asked this Court to review pursuant to 28 U.S.C. § 1292(b). Indeed, *Cook's* controlling interpretation of the DPPA requires reversal of the district court's order and the entry of judgment in favor of West. *Cook*, therefore, supports West's request for interlocutory review of the district court's order.

More specifically, the legal question West seeks to have this Court review is: Did the district court err in concluding that bulk obtainment of motor vehicle information for resale for DPPA-permitted uses constitutes a *per se* violation of the DPPA? See Petition at 3. This Court's opinion in *Cook* answers that question in the affirmative and, consequently, the district court's order must be reversed. Based on a

Mr. Michael E. Gans  
December 22, 2011  
Page 2

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Careful examination of the DPPA's language and the relevant legislative history, this Court held: "Section 2721(c) explicitly permits the resale of drivers' information, and it does not require that resellers must first use the information themselves. We hold that Plaintiffs cannot establish a DPPA violation by alleging that Defendants obtained personal information with the sole purpose of selling it to third parties who have permissible section 2721(b) uses for the information." Slip op. at 12-13 (citations omitted).

West asks that this Court grant its Section 1292(b) petition, vacate the district court's August 3, 2011 order, and hear West's appeal. West further suggests that expedited briefing and summary consideration are appropriate in this case.

Very truly yours,

*/s/ Kim M. Watterson*

Kim M. Watterson

KMW/hh  
Enclosures

cc: All counsel of record