

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SHARON TAYLOR, et al.,

Plaintiffs,

v.

ACXIOM CORPORATION, et al.,

Defendants.

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CAUSE NO. 2:07cv01 (TJW)

**SUPPLEMENTAL BRIEF IN SUPPORT OF AMENDED JOINT MOTION OF
DEFENDANTS REED ELSEVIER, INC., SEISINT, INC. AND CHOICEPOINT
ENTITIES TO DISMISS FIRST AMENDED COMPLAINT OR,
ALTERNATIVELY, TO STAY PLAINTIFFS' ACTION**

TO THE HONORABLE T. JOHN WARD:

COME NOW, Defendants Reed Elsevier Inc., Seisint, Inc., ChoicePoint Inc., ChoicePoint Public Records Inc., and ChoicePoint Services Inc. (“Defendants”), and file this Supplemental Brief in Support of Amended Joint Motion of Defendants Reed Elsevier, Inc., Seisint, Inc. and ChoicePoint Entities to Dismiss First Amended Complaint or, Alternatively, to Stay Plaintiffs’ Action. In support, Defendants respectfully show the Court as follows:

On February 8, 2007, Defendants filed a Joint Motion of Defendants Reed Elsevier, Inc., Seisint, Inc. and ChoicePoint Entities to Dismiss First Amended Complaint or, Alternatively, to Stay Plaintiffs’ Action, with Request for Oral Argument (“Joint Motion”) (Doc. No. 7-1).¹ By their Joint Motion, Defendants seek to dismiss or,

¹ Defendants subsequently filed an Amended Joint Motion of Defendants Reed Elsevier, Inc., Seisint, Inc. and Choicepoint Entities to Dismiss First Amended Complaint or, Alternatively, to Stay Plaintiffs’ Action (Doc. No. 19). Plaintiffs responded to Defendants’ Joint Motion on February 23, 2007 (Doc. No. 14-1).

alternatively, stay this action as to them pursuant to FED. R. CIV. P. 12(b) and the first-to-file rule, because the claims alleged by Plaintiffs in this case are duplicative of claims encompassed in a nationwide class action against the same Defendants in a case styled *Fresco, et al. v. Automotive Directions, et al.*, U.S. District Court, SD Florida, Case No. 03-cv-61063-JEM ("*Fresco*"). Defendants file this supplemental brief in support of their Joint Motion to briefly address recent developments in the *Fresco* litigation that impact the Court's consideration of their Joint Motion.

Specifically, on May 11, 2007, the judge in *Fresco*, the Honorable Jose E. Martinez, entered three orders that significantly impact the present case. First, Judge Martinez entered an Order Granting Motion for Preliminary Approval of Proposed Settlement and Order Preliminary Approving Class Action Settlement, Certifying Conditional Settlement Class, Appointing Class Counsel, Approving and Directing Notice Plan, and Appointing Notice Administrators ("Preliminary Approval Order"). See **Exhibit A**. In addition to conditionally approving the class settlement, Judge Martinez ordered that

[u]nder 28 U.S.C. § 1651 and Federal Rule of Civil Procedure 23, the settlement class members are temporarily enjoined from commencing, continuing or taking any action in any judicial proceeding in any state or federal court or any other judicial or arbitral forum against the released parties in the proposed Settlement with respect to any of the claims or issues covered by the proposed Settlement.

Id. at 17. The Plaintiffs here are members of the *Fresco* settlement class, and thus are enjoined by the Preliminary Approval Order from proceeding at this time with their claims against Defendants.

Defendants filed a reply brief on March 5, 2007 (Doc. No. 21), to which Plaintiffs filed a sur-reply on March 12, 2007 (Doc. No. 22-1).

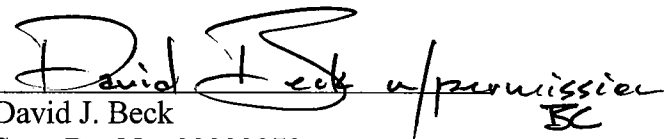
Second, Judge Martinez entered an Order Denying Motion for Limited Intervention. *See Exhibit B*. The intervention motion was filed by and on behalf of the Plaintiffs in this case. After hearing oral argument on the motion to intervene, Judge Martinez denied the motion holding that the “Proposed Limited Intervenors may more appropriately voice their objections through the settlement approval process.” *Id.* at 2. Judge Martinez further noted that “the Proposed Limited Intervenor’s suit in Texas has the same objective [as in *Fresco*]: to enforce the Driver Privacy Protection Act (“DPPA”), 18 U.S.C. §§ 2721-2725, As a result, a legal presumption arises that Plaintiff in this case [*Fresco*] adequately represent the Proposed Limited Intervenors’ Interests.” *Id.* at 2-3, *citing United States v. City of Miami*, 278 F.3d 1174, 1178 (11th Cir. 2002).

Lastly, Judge Martinez entered an Omnibus Order Resolving Various Pending Motions Related to the Proposed Second Amended Complaint and the Pending Motion to Sever (“Omnibus Order”). *See Exhibit C*. Among the various rulings in the Omnibus Order, Judge Martinez found that Second Amended Complaint was filed properly as to the Settling Defendants and “deemed filed as of December 20, 2006.” *Id.* at 2. In their Opposition to Defendants’ Joint Motion, Plaintiffs had argued that the Second Amended Complaint was not properly filed in the *Fresco* litigation, and thus Plaintiffs were not precluded by the first-filed rule from proceeding with their claims in this litigation. Judge Martinez’s Omnibus Order demonstrates unequivocally that the *Fresco* litigation is the first-filed case.

In light of these recent orders entered in the *Fresco* litigation, Defendants respectfully submit that Plaintiffs’ claims against them in this case should be dismissed

or, alternatively stayed. Accordingly, and as more fully set forth in Defendants' Joint Motion and supporting briefs, Defendants respectfully request that the Court: (1) grant the Amended Joint Motion of Defendants Reed Elsevier Inc., Seisint, Inc. and ChoicePoint Entities to Dismiss First Amended Complaint or, Alternatively, to Stay Plaintiffs' Action; (2) dismiss or, alternatively stay Plaintiffs' action pursuant to FED. R. CIV. P. 12(b) and the first-to-file rule; and (3) award Defendants such other relief as they may show themselves to be justly entitled.

Respectfully submitted,

Handwritten signature of David J. Beck in black ink, with the name written in cursive and a large 'BC' monogram at the end.

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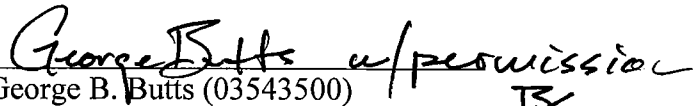
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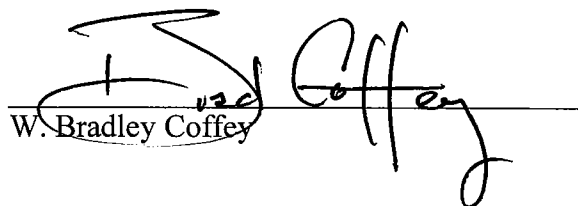
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service per Local Rule CV-5(a)(3)(A).


W. Bradley Coffey