

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

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00001  
VERSUS JUDGE DONALD E. WALTER  
ACXIOM CORPORATION, ET AL.

**AND**

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00013  
VERSUS JUDGE DONALD E. WALTER  
ACS STATE & LOCAL SOLUTIONS,  
INC., ET AL.

**AND**

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00014  
VERSUS JUDGE DONALD E. WALTER  
TEXAS FARM BUREAU MUTUAL  
INSURANCE COMPANY, ET AL.

**AND**

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00017  
VERSUS JUDGE DONALD E. WALTER  
SAFEWAY, INC., ET AL.

**AND**

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00018  
VERSUS JUDGE DONALD E. WALTER  
BIOMETRIC ACCESS COMPANY, ET  
AL.

**AND**

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00410  
VERSUS JUDGE DONALD E. WALTER  
FREEMAN PUBLISHING COMPANY

**ZEBEC DATA SYSTEMS, INC.'S RESPONSE TO PLAINTIFFS' STATEMENT OF  
VIOLATIONS OF THE DRIVERS' PRIVACY PROTECTION ACT AND  
SUPPLEMENT TO CONSOLIDATED MOTION TO DISMISS ON COMMON ISSUES**

Pursuant to the Court's March 4, 2008 Order, (Doc. No. 193), Zebec Data Systems, Inc. ("Zebec") files its Supplemental Response to Plaintiffs' Statement of Violations of the Drivers' Privacy Protection Act (the "Statement"), and specifically re-urges its Motion to Dismiss.<sup>1</sup> In the March 4 Order, the Court permitted Plaintiffs to file the Statement, and ordered Plaintiffs to "stat[e] specifically the basis for their claims against each individual defendant stating the alleged obtainment, disclosure or use of that plaintiff's information from the Texas state motor vehicle records for a purpose not permitted under the DPPA." (March 4 Order at p. 2). Plaintiffs failed to identify a single impermissible purpose.

Plaintiffs' Statement with regard to Zebec does not allege any facts beyond the conclusory assertions in their First Amended Complaint, (Doc. No. 3), or those taken from Zebec's agreement with the Texas DPS. The agreement is referred to in and central to the complaint, and properly considered on a Rule 12(b)(6) motion. (*See* Doc. No. 95, Exhibit "A-1"). While Plaintiffs allege in the Statement that certain named Plaintiffs are aware of a business relationship with Zebec but others are not, this contention does not materially depart from the allegation in the complaint that Zebec "may have a permissible use under the DPPA for obtaining 'personal information' for some of the people in the database." (Compl. ¶ 70).

Plaintiffs now postulate the erroneous legal theory that Zebec must have had an immediate use for each piece of information obtained. (*See* Statement at p. 80-82). Plaintiffs continue their strained interpretation of the DPPA and argue that entities such as Zebec may only purchase driver information from the DPS on a case-by-case basis, and may not purchase the information in bulk because this constitutes a "continuing use." (*Id.*) Nothing in the DPPA or case law in this Circuit construing the statute supports this construction. Plaintiffs are, quite

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<sup>1</sup> Zebec's Motion to Dismiss was filed on May 1, 2007. (Doc. No. 95). Plaintiffs responded to Zebec's motion on May 16, 2007. (Doc. No. 107). Zebec filed its reply in support of its motion on June 8, 2007. (Doc. No. 115). Zebec's motion is fully briefed and ripe for the Court's consideration.

simply, wrong. Moreover, Plaintiffs do not challenge the permissible purposes Zebec certified to the Texas DPS for obtaining motor vehicle information as set forth in its interrogatory response.

Because the allegations contained in the Statement do not alter Zebec's pending Motion to Dismiss, Zebec hereby re-urges its motion in addition to joining in the Consolidated Motion to Dismiss on Common Issues and Response to Plaintiffs' Statement of Violations ("Consolidated Motion") filed on behalf of certain Defendants on this date. In summary, and in an abundance of caution, the bases for dismissal in Zebec's motion are as follows:

- The Court should dismiss pursuant to Rule 12(b)(1) because no Plaintiff alleges an actual injury; therefore, Plaintiffs lack standing. In short, Plaintiffs' conclusory allegations do not allege an injury in fact, a causal connection between allegedly obtaining their personal information and their hypothetical "injuries," and redressability.
- The Court should dismiss pursuant to Rule 12(b)(6) because Plaintiffs failed to allege plausible DPPA claims for the following reasons:
  - The DPPA authorizes the purchase of bulk data—whether for use by the purchaser or for resale—and does not prohibit the non-use of personal information obtained for a permissible purpose under section 2721. 18 U.S.C. § 2721(b). Accordingly, Plaintiffs failed to state a plausible improper obtainment claim.
  - Plaintiffs failed to allege a plausible improper use claim pertaining to any named Plaintiff's personal information, particularly because the DPPA authorizes resale. 18 U.S.C. § 2721(c).
  - The DPPA's legislative history verifies that legitimate businesses can obtain motor vehicle data for permissible purposes. This includes an authorized recipient who may resell or redisclose information for permitted purposes. 18 U.S.C. § 2721(c). Therefore, Plaintiffs' "continuing use" allegation is meritless.
  - Texas law also authorizes the purchase of bulk data. Nothing in the Texas statutes requires the immediate use of personal information. Again, Plaintiffs' "continuing use" allegation is meritless.
  - Plaintiffs cannot contest Zebec's certification and its contract with the DPS. Congress left enforcement to the government.



**CERTIFICATE OF SERVICE**

I hereby certify that on the April 18, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following:

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