

CASE NO: 03-80593-CIV-HURLEY-LYNCH

**NIGHT BOX
FILED**
RB **APR 23 2004**
**CLARENCE MADDOX
CLERK, USDC/ SDFL/ WPB**

JAMES KEHOE, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

FIDELITY FEDERAL BANK
AND TRUST,

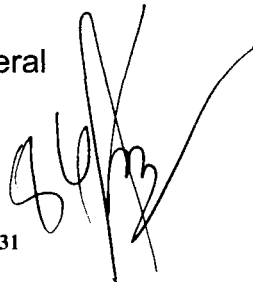
Defendant.

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S
RENEWED MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Defendant, FIDELITY FEDERAL BANK AND TRUST ("FIDELITY") admits that it requested and received over 500,000 names of Florida drivers in violation of the Federal Driver's Privacy Protection Act ("DPPA"). FIDELITY'S Renewed Motion for Summary Judgment ("Renewed Motion") rests on the spurious theory that all statutory damage remedies in privacy lawsuits have been eliminated by the United States Supreme Court's Opinion in *Doe v. Chao*, 124 S.Ct. 1204, 2004 W.L. 33043 (2004). Defendant is wrong.

First, FIDELITY'S interpretation of the *Chao* case as holding that, unless a Plaintiff can prove actual damages, statutory liquidated damages have been eliminated in all privacy lawsuits under all federal statutes, stretches *Chao's* meaning and impact far beyond its breaking point. *Chao* does not stand for that proposition. The United States Supreme Court did not intend to, nor did it, create the equivalent of new Federal



In *Chao*, the United States Supreme Court simply interpreted, through a “straightforward textual analysis,” of the Federal Privacy Act of 1974 (“*Chao* Statute”), the meaning behind the specific language which Congress employed in that Act - - a statute which is completely different than the DPPA. *Chao*, 124 S.Ct. at 1208. There are at least three reasons why the DPPA and the *Chao* Statute are vastly different and are subject to different treatment by this Court: (i) the text of the *Chao* Statute limits eligibility for statutory damages to “persons entitled to recovery,” a phrase not utilized by Congress in either the DPPA or any of the Privacy Statutes cited above; (ii) the *Chao* Statute is expressly limited to suits against the government in contrast to the DPPA, which also authorizes suits against private parties such as FIDELITY; and (iii) the Supreme Court explicitly recognized that the Legislative History of the *Chao* Statute reflected Congressional intent to limit privacy lawsuits against the Government to only

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¹ Driver’s Privacy Protection Act, 18 U.S.C. §2721, et. seq. (2003)

² Electronic Communications Privacy Act, 18 U.S.C. §2510, et. seq. (2003)

³ Video Privacy Protection Act, 18 U.S.C. §2710, et. seq. (2003)

⁴ Cable Communications Policy Act, 47 U.S.C. §521, et. seq. (2003)

⁵ Telephone Consumer Protection Act, 47 U.S.C. §227, et. seq. (2003)

those “persons entitled to recovery” - - i.e.; those individuals who have suffered actual damages. Produced at JDSUPRA™
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Both the Brief filed by the Solicitor General of the United States and the transcript of the oral argument in *Chao* (the “*Chao* Transcript”)⁶ amply support KEHOE’S position. See KEHOE’S Notice of Supplemental Authority, DE #62, Tabs 1, 2. For example, in his Brief filed on behalf of the United States, (the “Brief”), the Solicitor General took the position which was ultimately adopted by the Supreme Court that the *Chao* Statute, as drafted by Congress, did not provide for statutory, liquidated damages in the absence of actual damages. See Brief for the Respondent Sec’y of Labor at 30-32, *Doe v. Chao*, 124 S. Ct. 1204 (2004) (No. 02-1377), DE#62, Tab 1 at 30-32; See also <http://www.abanet.org/publiced/preview/briefs/dec03.html#doe>.

The Solicitor General then proceeds to distinguish the *Chao* Statute from several Federal Privacy Statutes - - including the DPPA - - which do **not** require proof of actual damage before entitlement to liquidated damages. See Brief at 30-32. In essence, the Solicitor General used this distinction between the *Chao* Statute and the DPPA, to successfully convince the *Chao* Court to limit the applicability of the *Chao* Statute civil remedy provision to persons “entitled to recovery”. Moreover, a prominent subject at the oral argument in *Chao* was the fact that the *Chao* Statute is limited to suits against the Government. Tr. at 32-33. An obvious factor relied upon by the Court in *Chao* was the protection of the United States Treasury from large damage claims. *Id.* FIDELITY is simply not entitled to that same protection either as a matter of statutory construction, Legislative History, or public policy. Were this Court to construe *Chao* in the manner urged by Defendant, such a construction would stand in stark contrast to years of jurisprudence interpreting the Privacy Statutes and would send a message to the

⁶ All cites to the *Chao* Transcript shall be henceforth referred to as “Tr.”

violators of those statutes that, even though there has been a plain violation of the law, there are no consequences to such a violation.

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FIDELITY'S other primary argument is that it did not know about the DPPA and it should therefore not be liable for its admitted repeated violations over a three year period. Ignorance of the law is not now, and has never been, a valid defense. See e.g., Tr. at 12. The deposition of FIDELITY'S officers demonstrate that FIDELITY knew what it was doing when it "obtained and used", over a period of several years, more than 500,000 names from the Florida Department of Highway Safety and Motor Vehicles ("FDHSMV"). In fact, FIDELITY'S Director of Marketing, Dennis Casey, testified that he knew that disseminating such information was likely "illegal". See Transcript of Dennis Casey deposition, D.E. #75 at 27-28. That is more than enough to satisfy the "knowingly" requirements of the DPPA. That Casey (or others) did not know that it was violative of the DPPA is irrelevant.

II. FACTS

Plaintiff James KEHOE filed this class action based upon the Defendant's repeated violations of the DPPA. The Complaint alleges that the Defendant violated the DPPA by obtaining and using personal information contained in Florida's motor vehicle records without first obtaining the express permission of those individuals to obtain and use their personal information. Both the Affidavit of Dennis Casey, submitted by the Defendant in support of its Motion for Summary Judgment and Casey's deposition testimony establish that, from June 1, 2000, to June 20, 2003, FIDELITY obtained the "personal information" of 565,000 individuals from FDHSMV and used that "personal information" to mail solicitations for automobile loans to those individuals. See e.g., DE #12, 75. After passage of the DPPA, 49 out of 50 states followed the DPPA by restricting the dissemination of driver's license information to the public. Florida is the

Contrary to Defendant's claim, *Chao* actually supports KEHOE's argument in this case. For example, the *Chao* Court recognized that "[t]raditionally, the common law has provided... victims [of privacy invasions] with a claim for 'general' damages, which for privacy and defamation torts are...presumed damages: a monetary award calculated without reference to specific harm." *Id.* at 1209 (footnote omitted). In fact, the Court also recognized this basic proposition of law at oral argument when it stated: "...that's because the invasion of privacy or the infringement of privacy is regarded simply as – as injury per se." Tr. at 21. The *Chao* Court went on to find that this general principle would not pass muster under the *Chao* Statute, not because it is not a correct statement of the law, but because the *Chao* Statute, by its terms, does not authorize statutory liquidated damages. *Id.* Moreover, the *Chao* Court recognized that the Legislative History of the *Chao* Statute reflected that Congress "cut out the very language in the bill that would have authorized any presumed damages." *Id.* At 1209-1210. The Supreme Court determined that the omission of presumed damages from the final bill version of the *Chao* Statute was a "deliberate elimination of any possibility of imputing harm and awarding presumed damages." *Id.* The Court found that the deletion of this language "precludes" any hope of a sound interpretation of entitlement to recovery without reference to actual damages. *Id.* Additionally, as the Solicitor General pointed out in his Brief to the Supreme Court on this issue: "draft bills that expressly provided for liquidated damages and did not use the phrase 'person entitled to recovery' were considered and rejected in both the House and Senate." Brief at 40. The language, "persons entitled to recovery," was obviously included by Congress in the *Chao* Statute

Cir. 1989); *Johnson v. Department of Treasury*, 700 F.2d 971, 977, and n.2 (5th Cir. 1983); *Fitzpatrick v. I.R.S.*, 665 F.2d 327, 330-331 (11th Cir. 1982). These were all cases relating to the Privacy Act., 5 U.S.C. §552, et. seq. (2003).

as a means to limit potential damages which could be awarded against the Government.

In order for this Court to understand the profound differences between the *Chao* Statute and the DPPA, the Court should begin with a comparison and analysis of the language of the two statutes. This analysis will make clear the conclusion that the two statutes are completely different.

The *Chao* Statute provides that, once liability is shown, the government is liable for "actual damages sustained by the individual . . . , but in no case shall **a person entitled to recovery** receive less than . . . \$1000." 5 U.S.C. § 522a(g)(4)(A) (emphasis added). Justice Souter, writing for the majority, based his holding, that only persons who are "entitled to recovery" by showing actual damages are entitled to the \$1000 minimum, on a strict dissection of the Statute. The *Chao* Statute, according to Justice Souter, limits the \$1000 minimum to persons "entitled to recovery," and persons "entitled to recovery" are, in turn, limited to persons who first demonstrate actual damages:

[T]he Government's position is supported by a **straightforward textual analysis**. When the statute gets to the point of guaranteeing the \$1,000 minimum, it not only has confined any eligibility to victims of adverse effects caused by intentional or willful actions, but has provided expressly for liability to such victims for "actual damages sustained." It has made specific provision, in other words, for what a victim within the limited class may recover. When the very next clause of the sentence containing the explicit provision guarantees \$1,000 to a "person entitled to recovery," the simplest reading of that phrase looks back to the immediately preceding provision for recovering actual damages, which is also the Act's sole provision for recovering anything (as distinct from equitable relief). **With such an obvious referent for "person entitled to recovery" in the plaintiff who sustains "actual damages,"** Doe's theory is immediately questionable in ignoring the "actual damages" language so directly at hand . . .

Id. at 1208 (emphasis added).

Importantly, Justice Souter pointed out that plaintiff Doe's efforts to read the statute as providing aggrieved parties actual damages "but in no case . . . less than the sum of \$1000," is overly broad because it "leaves the reference to 'entitlement to recovery' with no job to do." *Id.* at 1210. Thus, it is clear that the "person entitled to recovery" limitation that immediately follows the actual damages clause forms the basis of the majority opinion. Thus, there simply can be no dispute that the *Chao* holding rests squarely on the shoulders of the phrase "entitled to recovery." *Id.* At 1208-1209. If that "limiting phrase" were not in the *Chao* Statute, the holding would be different. That limiting phrase does not appear in the DPPA.

The differences accorded to lawsuits against the Government and those against private parties creates another important distinction between the DPPA and the Privacy Act, and, therefore, between this case and *Chao*. At the oral argument of *Chao*, the Court recognized that: "Congress did not want to bankrupt the Treasury, destroying Medicare, social security and every other programs [sic] we give \$1 trillion in damages and people..." Tr. at 32-33; (in which the Solicitor General recognizes that there are several other privacy based statutes with provisions similar to the Privacy Act but that "most of these don't apply to suits against the United States..." Tr. at 46; (recognizing that Congress crafted different language in the Privacy Act than in other federal privacy statutes because "it may be that most of these statutes are not dealing with suits against the United States, and Congress may be more protective of the public fisc."). Tr. at 47.

Justice Souter actually makes reference to other statutes which are very similar to the DPPA, such as the Tax Reform Act of 1976 and the Electronic Communications

Privacy Act of 1986 – in which Congress authorized “true liquidated damages remedies without regard to actual damages – and distinguishes them from the *Chao* Statute. *Chao*, 124 S.Ct. at 1212. Justice Souter found that “as to §1201(i)(2)(A) of the Tax Reform Act, the text is too far different from the language of the Privacy Act to serve as any sound basis for analogy; it does not include the critical limiting phrase ‘entitled to recovery.’”⁸ *Id.* Justice Souter’s analysis would equally apply to the DPPA statute. Simply put, Justice Souter himself articulates the inapplicability of *Chao* to the instant action. *Id.* The *Chao* case cannot be extrapolated to create new Federal Legislation which would overrule all liquidated damages remedies of the Privacy Statutes. See, e.g., *Sherman v. United States*, 356 U.S. 369, 373, 78 S. Ct. 819, 822-823 (1958) (The Supreme Court does not ordinarily decide issues not presented by the parties); *Tyler v. Judges of the Court of Registration*, 179 U.S. 405, 408-409, 21 S. Ct. 206, 208 (1900) (The Court is not empowered to decide abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the ruling in issue in the case before it).

Like the “far different” statutes referenced by Justice Souter, the DPPA provides a true liquidated damages remedy, because it **does not include** any “limiting phrase” like “a person entitled to recovery.” To the contrary, the DPPA provides relief to anyone whose protected information was obtained or used in violation of the DPPA by providing that the violator “shall be liable to the individual to whom the information pertains.”⁹ Liability does not depend on actual harm. Moreover, the DPPA provides that any

⁸ The particular Tax Reform Act provision that Justice Souter refers to reads: “actual damages sustained by the person but in no case shall a person be entitled to receive less than the sum of \$1,000”. 26 U.S.C. §6110(j)(2)(A).

⁹ A contrary interpretation of *Chao* would turn the liability determining element “shall be liable” into “may be liable depending on whether the aggrieved party can prove damages.” Of course, such a tortured analysis of the statute would erroneously fail to give effect to the plain words Congress wrote. *U.S. v. Menasche*, 348 U.S. 528, 538-39 (1955).

aggrieved person – not just those that are “entitled to recovery” like in the *Chao* Statute – shall receive “not less than liquidated damages in the amount of \$2500.” 18 U.S.C. §2724(b)(1)(2003). In fact, Justice Souter has already opined that you cannot analogize the *Chao* Statute with language akin to the DPPA. *Chao* at 1212.

Finally, as Justice Ginsburg observed in her dissenting opinion in *Chao*, “the remedy of minimum statutory damages is a fairly common feature of federal legislation.” *Id.* at 1220. Although the inclusion of the limiting phrase “a person entitled to recovery” following a clause tying liability to actual damages made the issue a close call in *Chao* (indeed, it led to a majority opinion by Justice Souter and dissents by Justices Ginsburg and Breyer), there is no such limiting phrase in the DPPA, and the issue here, accordingly, is not a close call. Persons whose information is obtained from the DMV without their consent are entitled to a minimum award of \$2,500 under the clear wording of the DPPA.

In their Renewed Motion, and at the hearing on their Motion to Dismiss (which the Court denied and which concerned the same subject matter), Defendants engaged in a tortured analysis of the above-referenced language. Toward that end, Defendant belabors the statute’s meaning using graphs and charts to try to interpret what Congress must have meant when it created the DPPA. However, KEHOE urges this Court to ignore Defendant’s statutory gymnastics and simply read the language of the DPPA juxtaposed with the language of the *Chao* statute. After this court reviews the plain language of the statute, KEHOE strongly believes that the Court will come to the inescapable conclusion that the remedies provision of the statute provides that each individual whose rights have been violated is entitled to *not less than* liquidated damages in the amount of \$2,500.00. Liquidated damages in the amount of \$2,500.00 is a floor, not a ceiling.

There are a legion of cases interpreting Federal privacy statutes which hold that

litigants in privacy cases under those statutes are entitled to liquidated damages without being required to show actual damages. See, e.g., *Bartnicki v. Vapper*, 532 U.S. 514, 520, 121 S. Ct. 1753, 1758, n. 2 (2001) (Either actual damages or statutory liquidated damages, whichever is the greater of \$100 a day for each day of violation, or \$10,000, may be recovered under ECPA); *Desilets v. Walmart Stores, Inc.*, 171 F.3d 711, 714 (1st Cir. 1999) (If violations occur on 100 days or less, then the minimum statutory liquidated damages of \$10,000 must be paid; if violations occur on more than 100 days, then the higher statutory award of \$100 per day must be paid, pursuant to ECPA).¹⁰

Significantly, not one of these cases has been marked “overruled” or “questioned” in Shepard’s Citations as a result of *Chao*. The cases under the Privacy Act, however, which formed the basis for the conflict in the Circuits, have all been denominated as “overruled” in Shepard’s Citations.

Finally, FIDELITY misses the mark when it cites *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003). *Campbell* concerned the imposition of punitive damages by the State upon a defendant in a civil case. *Id.* at 412. The statute at issue here, the DPPA, has a specific provision in it for the application of

¹⁰ See also, *Halperin v. Kissinger*, 606 F.2d 1192, 1208, (D.C. Cir. 1979), cert. granted, 446 U.S. 951 (1980), *aff’d in part and cert. dismissed in part*, 452 U.S. 713 (1981) (In case brought under ECPA, court held that even if constitutional violation inflicts only intangible injury, monetary compensation is still appropriate); *Dirkes v. Borough of Runnemede*, 936 F. Supp. 235, 239, n.4 (D.N.J. 1996) (The Plaintiffs can show that they are “aggrieved” by showing a violation of the [VPPA]; No additional proof of harm is required); *Forman v. Data Transfer, Inc.*, 164 F.R.D. 400, 404 (E.D. Pa. 1995) (TCPA allows recipients of unsolicited advertisements by facsimile to recover greater of actual monetary loss of \$500 in damages for each violation); *Metrovision of Livonia, Inc. v. Wood*, 864 F. Supp. 675, 680 (E.D. Mich. 1994) (Cable T.V. customers were entitled to recover statutory liquidated damages even in absence of actual damages, pursuant to CPPA); *Warner v. American Cablevision of Kansas City, Inc.*, 699 F. Supp. 851, 859 (D. Kan. 1988) (Where cable operator twice failed to comply with CPPA when it failed to give subscriber required disclosures at time of installation and moreover, subsequently gave him incomplete disclosure, subscriber was entitled to recover statutory liquidated damages of \$1,000 for each violation); *Chagnon v. Bell*, 468 F. Supp. 927, 930-931 (D.C. Dist. 1979), *aff’d*, 642 F.2d 1248 (D.C. Cir. 1979), cert. den., 453 U.S. 911 (1979) (Where Plaintiffs were wiretapped for 258 days, they satisfied the amount in controversy required for statutory liquidated damages under ECPA, providing for recovery of liquidated damages at \$100 per day of illegal wire tap).

punitive damages. That provision has not been implicated on this motion. Nonetheless, Filed at JDSUPRA™
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in *Campbell*, the Supreme Court found that the punitive damages awarded were in no relation to the harm suffered and that, therefore, those damages were considered to be unconstitutional. *Id.* at 415. This case is different because this is a class action, not an individual action as *Campbell* was. Here, each class member is simply entitled to a statutorily determined minimum damage award of \$2,500.00. That is certainly not the same thing as a jury, as in *Campbell*, which awarded punitive damages to a single Plaintiff based upon a 145 to 1 ratio. Here, the United States Congress has determined that each person whose privacy rights have been violated are entitled to receive a liquidated sum. FIDELITY'S argument that the aggregate damages awarded, in the event that the case is certified as a class, is disproportionate has been treated in the context of the class certification motion. There is no reason to address that issue again here.

The Renewed Motion also ignores the reason for the enactment of the DPPA. Senator Boxter, during a November 16, 1993 Senate Committee Hearing, described the basis for the need to enact the DPPA.

Mr. President, today I join the Senator from Virginia [Mr. WARNER] and 26 other cosponsors, to offer an amendment to protect the privacy of all Americans.

In California, actress Rebecca Schaeffer was brutally murdered in the doorway of her Los Angeles apartment by a man who had obtained her home address from my State's DMV.

In Iowa, a gang of teenagers copied down the license plate numbers of expensive cars, obtained the home addresses of the owners from the Department of Transportation, and then robbed them at night.

In Tempe, AZ, a woman was murdered by a man who had obtained her home address from that State's DMV.

And, in California, a 31-year-old man copied down the license plate numbers of five women in their early twenties, obtained their home

address from the DMV and then sent them threatening letters at home. I want to briefly read from two of those letters. Document hosted at JDSUPRA™
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I'm lonely and so I thought of you. I'll give you one week to respond or I will come looking for you.

Another one read:

I looked for you though all I knew about you was your license plate. Now I know more and yet nothing. I know you're a Libra, but I don't know what it's like to smell your hair while I'm kissing your neck and holding you in my arms.

When they apprehended him, they found in his possession a book entitled "You Can Find Anyone" which spelled out how to do just that using someone's license plate.

In 34 States, someone can walk into a State Motor Vehicle Department with your license plate number and a few dollars and walk out with your name and home address. Think about this. You might have an unlisted phone number and address. But, someone can find your name or see your car, go to the DMV and obtain the very personal information that you may have taken painful steps to restrict.

Mr. President, the American people think that this is wrong. In a recent Lou Harris survey, 80 percent of the people were uncomfortable with one person obtaining this type of information about another.

Can we afford to wait until every State has their own tragedy? That is not the way to legislate. Our Representatives are elected to lead, to think ahead and-at every turn-to find ways to protect the people they represent. In many States, police officers, public figures and other victims of these privacy abuses have been allowed to request that the DMV keep their home addresses confidential. Of course, these people deserve privacy and protection. But, so do all of our people¹¹.

The reason for the DPPA's enactment makes it unmistakably clear that if Congress had intended that a private cause of action under the DPPA be limited to those individuals who suffered actual damages, it would not have needed to establish a minimum statutory recovery for those persons "entitled to recovery". It would not have

¹¹ Upon information and belief, the driver's license information of all Federal Judges in Florida was blocked on the FDHMSV database by the United States' Marshall's Service more than ten years ago.

B. FIDELITY Violated the DPPA and, as a Result, is Liable for Statutory Damages to Plaintiff and the individual Class Members

FIDELITY'S director of marketing, Dennis Casey, has twice admitted that Fidelity caused a DPPA search to be made - - (1) In his Affidavit submitted in support of FIDELITY'S Motion to Dismiss or, in the alternative, for Summary Judgment (See DE #12); and (2) At his deposition.¹² See DE #75. At that deposition, Casey testified as follows:

- Q. Starting at June of 2000, you made a request to the DMV for records of used car owners, correct?
- A. That is correct.
- Q. In going backwards, obviously, back in time, time period prior to June 2000, correct?
- A. Right.
- Q. And how many years backwards?
- A. I believe we go back three years.
- Q. And this was a request you made every month?
- A. That's right.
- Q. And for a limited amount of counties?
- A. Yes.
- Q. For the counties in which the bank does business?
- A. That is correct.
- Q. Palm Beach, Martin and St. Lucy, right?
- A. That's correct.

Casey Depo. at 40.

¹² All cites to the Deposition of Dennis Casey shall be henceforth referred to as "Casey Depo".

* * *

Q. So if I lived in Palm Beach County and I bought in 2001 and registered in Palm Beach County, then my name would be on the list, right?

A. Safe to say, yes.

Casey Depo. at 42.

* * *

Q. So what was the information that you were getting from the DMV on these list?

A. The name, address, used and - - the new and used car owners.

Casey Depo. at 47.

Thus, FIDELITY has admitted, on at least two separate occasions, that it obtained over 500,000 names from numerous FDHMSV lists. This is enough to establish FIDELITY'S liability as a matter of law. See, e.g., *Margan v. Niles*, 203 F. Supp. 2d 63, 69 (N.D. N.Y. 2003)(“A person who unlawfully obtains an individual's address from a motor vehicle record is liable to that individual”); *Luparello v. Garden City*, 290 F. Supp. 2d 341 (E.D.N.Y. 2003)(Plaintiff must only plead and prove two things in a DPPA case – “That Defendants caused a DPPA search to be made as to each Plaintiff; and that the search was not permitted by any exception to the DPPA”); *Cowan v. Codelia*, 2001 WL 856606, *8 (S.D.N.Y. 2001), *aff'd* 2002 WL 31478922 (2d Cir. 2002) (To establish a claim under the DPPA, the Plaintiffs must establish: (i) the defendants caused a DMV search to be made as to each plaintiff; and (2) that the search was not permitted by any exception to the DPPA).

C. FIDELITY Does Not Satisfy Any Exception To DPPA Liability

Fidelity also attempts to escape liability by claiming that it was somehow subject to one of the DPPA exceptions for information obtained for marketing purposes where motor vehicle owners had provided their express consent 18 U.S.C. §2721(b)(12) (2003). However, FIDELITY tangles itself in knots when it tries to explain exactly how it believed that over 500,000 people had all expressly consented to allow their information to be released to FIDELITY. FIDELITY'S confusion on this point was amplified by Casey at his deposition:

Q. Do you know whether the people whose names you obtained on the list from the DMV had given their express consent for their personal information to be released?

A. I don't know that as well.

Casey Depo. at 45.

* * *

Q. . . . At the time you received these lists starting in June of 2000 going to 2003, did you know whether the people whose names were on the list had given their express consent to have that personal information released to FIDELITY FEDERAL or someone else?

A. I have no knowledge of that.

Q. So you don't know whether they did or they didn't?

A. I don't know whether they did or they didn't .

Casey Depo. at 49.

* * *

Q. Sitting here today, do you believe that everyone on the list that you received that FIDELITY FEDERAL ordered to the DMV had given their express consent to have their personal information released?

A. Yes I do.

Q. Do you believe that they did give their consent?

A. Yes I do.

Q. And what is that belief based upon?

A. The belief is that, there is nothing to make me think that they wouldn't.

Casey Depo. at 50.

* * *

Q. You never saw a piece of paper in which any of the people whose names are on the list indicated that they had consented to release this information?

A. I did not.

Casey Depo. at 54.

* * *

Q. And you didn't talk to any of the 500,000 people and asked them whether they had given their consent, did you?

A. No.

Casey Depo. at 55.

Not only is there not one shred of evidence in this case indicating that even a single person whose name was on the FDHSMV list which FIDELITY purchased had given their express consent to have their personal information released to FIDELITY, no such consent had ever been obtained. In fact, Dennis Casey, FIDELITY'S Director of Marketing, was on the list himself. Casey Depo. at 52. Casey did not recall giving the DMV his express consent to have his information released. *Id.* Finally, the FDHSMV testified that unless a Florida driver requested *in writing*, that access to his protected information be withheld from requests by the public, this information would be provided.

D. FIDELITY Had The Necessary Knowledge to Be Held Liable For Civil Damages Under the DPPA

Defendant is also wrong in its interpretation of what “knowingly” means under the DPPA. In the context of imposing a civil fine or penalty, there is no requirement that the Defendant know that it is violating the law. “Knowingly” only means that the defendant acted with knowledge of the acts constituting the offense, as opposed to knowledge of the law. *Bryan v. United States*, 524 U.S. 184, 193 (1988) (unless the text of the statute dictates a different result, the term “knowingly” merely requires proof of **knowledge of the facts** that constitute the offense); *Smith v. Coldwell Banker Real Estate Services, Inc.*, 122 F.Supp.2d 267, 273 (D.Conn. 2000); See also Black’s Law Dictionary (defining “knowingly” as “consciously and intentionally” with respect to the violation of a statute). Unlike “mens rea”, which is necessary to impose a criminal penalty, in construing the term “knowingly” for purposes of imposing statutory civil penalties, there is no requirement to show that a defendant knew that his actions amounted to a violation of the law. *United States v. Allied Chemical Corp.*, 431 F.Supp. 361, 369 (W.D. N.Y. 1977). In fact, the Supreme Court raised this very issue during the oral argument of the *Chao* case:

sorts of statutes that use the word willful, which simply means that you intended to do the act that you did, not that you knew it violated the law.¹³ Tr. at 12.

Thus, there also is no requirement, nor could there be, that Plaintiff show that the Defendant knew that its actions violated the DPPA.

The term “knowingly” is not in any way ambiguous and this Court should provide its common meaning in interpreting the statute. Nonetheless, since FIDELITY has seemingly argued that the statute is somehow ambiguous, by citing the DPPA’s legislative history, KEHOE feels that the citation and reliance upon such history may provide the Court with additional bases upon which to rule in its favor. The legislative history of the DPPA reflects that Congress originally proposed two standards - - one for willful violations and the other for non-willful violations. See e.g., Congressional record, 103rd Congress, 27328, November 3, 1993, DE #62, Tabs 3-9. For willful violations, Congress proposed that an individual either be fined or imprisoned. *Id.* at Tabs 3-6. With respect to non-willful violations, Congress had proposed a \$5,000.00 civil penalty. *Id.* As the Court is aware, the current version of the DPPA does not make any such distinction. Accordingly, it is apparent that Congress knew how to create a distinction between willful and non-willful violations and chose not to do so. *Id.* at Tabs 7-9. Instead, Congress simply decided that there should be one standard - - i.e., knowingly.¹⁴ *Id.*

The standard which FIDELITY advances would mandate that before anyone can be liable for violating a Federal Statute that person must be aware of the statute.

¹³ The transcript of the argument does not indicate which of the Justices made this comment.

¹⁴ Ironically, this method of statutory construction is the same one employed by the Supreme Court in *Chao* when the Court was able to determine Congressional intent with respect to the Privacy Act, by not only focusing on what Congress said in the final bill version of the Privacy Act, but by recognizing what language Congress removed from the Bill’s original draft before passage.

standard in this case would set a dangerous precedent. Arguably, any statute which imposes liability upon actors who act “knowingly” will now require that each individual be aware that his or her conduct was actually violative of the law. That is a tall order to impose upon Plaintiffs and prosecutors and would simply encourage and promote ignorance.

Nonetheless, FIDELITY’S feigned ignorance of the DPPA has become, at the very least questionable, and a question of fact in this case based upon the deposition testimony to date. For example, Dennis Casey, FIDELITY’S Director of Marketing understood the concept of individual privacy rights at his deposition:

Q. Does the bank have a privacy policy?

A. Yes it does.

Casey Dep. at 26-27.

* * *

Q. You wouldn’t sell the names of the bank’s customers to someone, would you?

A. No.

Q. Why not?

A. First of all, I believe that it is **illegal**. Second of all, I don’t think it is good business practice in any form. . .

Id. at 28 (emphasis added).

Moreover, Casey testified that issues concerning obtaining FDHSMV lists were regularly reviewed at internal FIDELITY meetings of its marketing committee. Casey Depo. at 19-21. Casey testified that Christopher Cook, FIDELITY’S in-house general counsel was present at those meetings and during those discussions. Casey Depo. at

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FIDELITY relies upon certain cases decided under Resource Conversation Recovery Act ("RCRA") in support of its interpretation of the "knowingly" standard. However, the RCRA cases are different. In those cases, the Court found that the Defendants had to be "knowingly" aware that the materials which they were transporting were hazardous actually before they would be held liable. That is a far different set of facts from those which FIDELITY advances here in which it is claiming that it must have been aware of the DPPA. Defendants in the RCRA cases did not argue, nor could they, that they were unaware that transporting hazardous waste was illegal. Such an argument would have been resoundingly rejected.

Nonetheless, the question of knowledge is typically an issue of fact not properly determinable on a Motion for Summary Judgment, particularly in a case in which discovery is not complete.¹⁵ See e.g., *Central National Life Insurance Company v.*

¹⁵ Kehoe has filed a Renewed Motion to Defer Determination of FIDELITY Summary Judgment Motion and the Rule 56(f) pending completion of discovery. Discovery in this action is due to be completed June 15, 2004. As of the date that this response was filed, Kehoe has taken the depositions of FDHSMV employees, has scheduled additional depositions of FIDELITY Officers, and the deposition of

(Summary Judgment should not be granted where it is not perfectly clear that there is no dispute about either the facts of the controversy or the inferences to be drawn from such facts; *Slavin v. Curry*, 574 F. 2d 1256, 1267 (5th Cir. 1978)(overruled on other grounds). Cases in which the underlying issue is one of motivation, intent, or some other subjective fact [such as knowledge] are particularly inappropriate for Summary Judgment in which the issues turn on the credibility of the affiants. *Kelly v. Municipal Court of Marion County*, 852 F. Supp. 724, 736 (S.D. Ind. 1994)(motive or intent is a question of fact that the Court is unable to resolve when passing on a Motion for Summary Judgment).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that FIDELITY's Renewed Motion for Summary Judgment be denied.

the company charged with sending out mailing(s) to consumers which is an entity independent from FIDELITY known as The Bureau, and Kehoe fully expects to meet the Court's deadline on discovery.

CERTIFICATE OF SERVICE

We certify that a copy hereof was sent Via FedEx to Page, Mrachek, Fitzgerald & Rose, P.A., 505 S. Flagler Drive, Suite 600, West Palm Beach, Florida 33401 on April 23rd, 2004.

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EXHIBIT “A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 03-80593 CIV-HURLEY/LYNCH

JAMES KEHOE,

Plaintiff,

v.

FIDELITY FEDERAL BANK
AND TRUST,

Defendant.

SWORN DECLARATION OF JAMES KEHOE

I declare under penalty of perjury that the forgoing is true and correct.

1. Declarant's name in James Kehoe.
2. Declarant has personal knowledge as to those matters set forth herein.
3. Sometime after March 8, 2003 Declarant learned that the Florida Department of Highway and Safety Motor Vehicles ("FDHSMV") made available to the general public personal information about Affiant which information should have been protected pursuant to the Federal Driver's Privacy Protection Act ("DPPA").
4. Declarant then proceeded to access the web-site of the FDHSMV, which allowed Declarant to electronically activate the DPPA block thereby preventing the FDHSMV from further releasing Declarant's information unless such release was in accordance with the DPPA. Prior to Declarant having done this, Declarant was not afforded the protection of the DPPA.

Executed on the 23 day of April, 2004.
James Kehoe

EXHIBIT “B”

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JAMES KEHOE,

Plaintiff,

vs.

CASE NO.: 03-80593 CIV

FIDELITY FEDERAL BANK
AND TRUST,

Defendant.

_____ /

DEPOSITION OF DAVID PERRYMAN

Taken in the above-styled cause, pursuant to
Notice, at the Florida Department of Motor Vehicles, Neil
Kirkman Building, 2900 Apalachee Parkway, Tallahassee,
Florida, on April 22, 2004, commencing at 10:10 a.m.

Reported by:

CLARA C. ROTRUCK

Court Reporter

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1 A 3/17/48.

2 Q And what is your current occupation?

3 A Employed by State of Florida, Department of
4 Highway Safety and Motor Vehicles, Division of Motor
5 Vehicles.

6 Q What is your job title?

7 A Records technician.

8 Q And do you mind if I call the Department of
9 Highway Safety and Motor Vehicles the DMV for today's
10 purposes?

11 A That will be fine.

12 MR. DAVIDSON: Any objection to that?

13 MR. ALDERMAN: No.

14 BY MR. DAVIDSON:

15 Q You have given your deposition before, is that
16 correct?

17 A Correct.

18 Q In fact, you gave a deposition in the case also
19 involving the Driver's Privacy Protection Act, is that
20 correct?

21 A Correct.

22 Q If I recall correctly, that was the case involving
23 the transfer of motor vehicle information to a law firm by
24 the name of George Hartz Lundeen, is that correct?

25 A Correct.

1 Q And how long ago was that, sir?

2 A I don't remember. It's probably been one or two
3 months.

4 Q Was that the only time you had given your
5 deposition before, or were there other times?

6 A I did one last year on a different type of case.

7 Q What was that case about?

8 A It's about the environmental testing of vehicles
9 in specific counties.

10 Q How did that involve you?

11 A I provide the database.

12 Q I'm just going to go over with you some very brief
13 rules involving your deposition today that I'm sure you're
14 already familiar with, but I want to put them on the record
15 and remind you of them.

16 Number one, Mr. Perryman, you need to do as you're
17 doing, which is speak clearly and answer out loud. Do you
18 understand that, sir?

19 A Correct.

20 Q You can't nod your head or shake your head
21 because, since I'm not sitting there with you, I don't know
22 what you're saying if you do that, and the court reporter
23 can't take that down. Do you understand that?

24 A That's correct.

25 Q Just make sure, David, that you listen to the

1 question that I pose or that Mr. Fitzgerald poses and answer
2 only the question that's asked, okay?

3 A Okay.

4 Q Since we're doing this telephonically, you may
5 have trouble understanding some of the questions. If that's
6 the case, I don't want you to speculate as to what the
7 question was. I'd rather you'd ask the question -- or to
8 restate the question. Do you understand that?

9 A Yes.

10 Q If you need to ask any question of us, don't
11 hesitate to do so. If you need to speak to Mr. Alderman,
12 your counsel, just let us know that you'd like to break to
13 speak with your lawyer, and we'll give you that opportunity
14 to do so. If you need to take a quick break for whatever
15 reason, just let us know, okay?

16 A Yes.

17 Q I'm hoping that this depo can be over by noon, it
18 may go a little bit past that, but we'll just play it by ear
19 and see how it goes. If anyone decides a break is
20 necessary, just let us know.

21 Mr. Perryman, you have been placed under oath. Do
22 you know what that means?

23 A Yes, sir.

24 Q What does that mean to you?

25 A Tell the truth.

1 Q And are you under any drugs or medication today
2 that would prevent you from being able to tell the truth
3 today?

4 A No.

5 Q Mr. Perryman, did you review any documents before
6 you came to your deposition today in preparation for your
7 deposition?

8 A Yes.

9 Q Can you explain what documents you reviewed, sir?

10 A The information that you had FedExed up to Mike
11 Alderman.

12 Q What information was that, to the best of your
13 recollection?

14 A The Plaintiff's exhibits, which appears to be
15 the -- copies of the original letters from Fidelity Federal
16 to my office, and it looks like an annual statement from
17 Fidelity Federal to their shareholders.

18 Q Did you recognize the letters, the groups of
19 letters, from Fidelity Federal to your office, did you
20 recognize those letters?

21 A Yes.

22 Q Had you seen those before?

23 A Yes.

24 Q Did you review any other documents in preparation
25 for your deposition today?

1 A Just what was in that package.

2 Q Okay. Did you meet with Mr. Alderman, then, or
3 any other attorney in preparation for your deposition?

4 A Just to look at those documents. He was asking me
5 questions about them, and --

6 Q I don't want you to go into what Mr. Alderman
7 talked to you about, because that would be attorney-client
8 privileged, but you did meet with Mr. Alderman, is that
9 correct?

10 A Yes.

11 Q David?

12 A Yes.

13 Q Other than those documents, did you review any
14 other documents other than the ones you testified about?

15 A No.

16 Q David?

17 A I did not look at any other documents.

18 Q Can you tell us -- again, your current job title
19 is records technician?

20 A Correct.

21 Q How long have you held that position?

22 A Approximately 10 years.

23 Q And what were you're doing before that? Were you
24 also with the DMV?

25 A Yes, I was.

1 Q What was your position 10 years ago?

2 A Law enforcement teletype operator.

3 Q Is that basically, when a law enforcement officer
4 calls in to get some information on a tag or an arrest, they
5 will call in and you will get that information for them?

6 A Correct.

7 Q How long did you do that for?

8 A Four and a half years.

9 Q So is it fair to say that you have extensive
10 computer knowledge?

11 A Well, in using a PC.

12 Q Did you have any training in computers before you
13 took the job at DMV as the teletype operator and now as a
14 records technician?

15 A Teletype operator, you have to pass FDLE
16 qualification standards set by the FBI in order to use law
17 enforcement teletype.

18 Q And that's the Florida Department of Law
19 Enforcement, for the record?

20 A Yes, sir.

21 Q And you currently work for the Division of Motor
22 Vehicles at the Department of Motor Vehicles, is that
23 correct?

24 A Correct.

25 Q How many other divisions are there?

1 A Three or four.

2 Q Can you name them?

3 A Highway Patrol, Driver's License, Information
4 Systems, and Administration.

5 Q What is the Division of Motor Vehicles, what
6 responsibilities does that Division have?

7 A The way I understand it, our task is to be a
8 repository of the registration and title information for the
9 state of Florida.

10 Q When you say depository, you mean you hold that
11 information for all the drivers and the vehicles in the
12 state of Florida, you hold the personal information?

13 A Yes, sir.

14 Q And what are your job responsibilities as a
15 records technician at the Division?

16 A I do law enforcement support where I submit work
17 orders to the Data Center to provide partial tag look-ups
18 for law enforcement officers.

19 Q How come that wouldn't be send to the teletype
20 operator?

21 A Teletype cannot do database searches on personal
22 tags.

23 Q Okay, so the teletype is not a database itself?

24 A Teletype is just a communication device.

25 Q I understand. And what other job responsibilities

1 do you have other than supporting law enforcement?

2 A I also handle public requests for portions of the
3 database.

4 Q Can you repeat that answer, please?

5 A I work with the public requests for whatever
6 segment of the database, vehicle database, the customer
7 would like to have.

8 Q Can you explain for us what you mean by vehicle
9 database? Can you give us a description of what that is?

10 A The vehicle database contains the vehicle
11 registrations and title information.

12 Q And is that information held on a server at DMV?

13 A It's held on our mainframe computer.

14 Q Where is the mainframe located, to the best of
15 your knowledge?

16 A In our building.

17 Q And do you have access to the mainframe from your
18 office, is that what you do? You're able to do a search on
19 your PC for information that's contained in that mainframe?

20 A Not for the customers, no, sir.

21 Q What do you do?

22 A I submit a written work request to our Data
23 Center, and they pull the data.

24 Q Is that Data Center part of the Division of Motor
25 Vehicles?

1 A No, sir, it's part of Department of Highway Safety
2 and Motor Vehicles.

3 Q I guess I'm a little bit confused. The vehicle
4 database that you were talking about, this is the database
5 that contains registration and title information, is that
6 correct?

7 A Correct.

8 Q And do you have access to that database?

9 A I do not have direct access to it, no.

10 Q What do you have direct access to?

11 A PC, which is basically I use to write up my work
12 requests to send to the Data Center.

13 Q Okay, so the Data Center is the one that actually
14 pulls the data upon request by a member of the public, is
15 that correct?

16 A Correct, given the search parameters that I
17 provide them that the customer is requesting.

18 Q So you type up the job request based upon the
19 public request, is that correct?

20 A Correct.

21 Q And you put in the parameters that the Data Center
22 will then punch into the mainframe to pull the requested
23 information?

24 A Correct.

25 Q I understand. So you do not have direct access to

1 the Data Center?

2 A That is correct.

3 Q I understand. Let me ask you this: Maybe this is
4 just the nature of bureaucracy, but why aren't the public
5 requests directed straight to the Data Center? Why do they
6 go through you?

7 A Well, with the money that's being involved, the
8 Data Center apparently did not want to be involved in the
9 money situation, so --

10 Q You also handle collection of the payments for the
11 public records requests?

12 A Yes, sir.

13 Q Do you do that personally?

14 A Yes, sir.

15 Q And are you responsible, if somebody sends a check
16 in to pay for a records request, do you physically receive
17 that check?

18 A The check either comes directly to me or to the
19 area in Accounting that handles my money.

20 Q I understand. And then you would get notified
21 somehow that payment has been made?

22 A Correct.

23 Q I understand.

24 Okay, let me just summarize a little bit about
25 your job responsibilities, and you will tell me if I'm

1 wrong. One of your job responsibilities is to handle
2 support for law enforcement, is that correct?

3 A Correct.

4 Q Is your support for law enforcement similar to
5 your support for the public request, insofar as if law
6 enforcement asks for a particular piece of information, you
7 will then send that to the Data Center to collect that
8 information?

9 A That is correct.

10 Q And another responsibility of yours is to obtain
11 public requests for motor vehicle records and submit that
12 order to the Data Center to obtain that information, is that
13 correct?

14 A Correct.

15 Q And another responsibility of yours is to collect
16 or ensure collection of funds prior to providing the
17 requested information to the requesting party, is that
18 correct?

19 A Correct.

20 Q Are there any other job responsibilities that you
21 have that we have not discussed?

22 A Any requests that might come in from a government
23 agency, such as Department of Revenue or a tax collector,
24 city government, county government, federal agencies.

25 Q I understand. With government agencies, it

1 would -- am I correct in stating that you would do the same
2 procedure, the same process, as far as sending the request
3 to the Data Center to pull the requested information?

4 A Correct.

5 Q Now, do you -- once the Data Center collects or
6 gathers the information, based upon the parameters that you
7 have given them, do they then send the information that they
8 have gathered to you to send to the requesting party, or do
9 they send it to the requesting party themselves?

10 A Well, it all depends upon the type of media the
11 customer is requesting.

12 Q If somebody requests personal information from
13 motor vehicle records, a member of the public makes that
14 request, who would be the party responsible for actually
15 sending the information that they -- the public requested to
16 that requesting party?

17 A If the customer requested the output to be on
18 magnetic tape, a CD or on paper, my office would be the
19 responsible party of shipping it out. If it was going out
20 by what is commonly referred to as FTP, the data is held in
21 the Data Center, and then once I have collected all of the
22 money to cover the cost of that data, then the Data Center
23 will actually do the FTP transfer.

24 Q FTP stands for file transfer protocol?

25 A Correct.

1 Q I will get into this a little later, depending on
2 your answer now, but do you have knowledge about how an FTP
3 transfer works with respect to providing a member of the
4 public with motor vehicle record information?

5 A I have a basic knowledge of it.

6 Q Let me ask you this: How many people work in the
7 Data Center that are responsible for complying with your
8 records requests?

9 A There's basically three data entry people plus a
10 supervisor that handles my requests.

11 Q Who handles your requests, all four of them, or --

12 A It depends on the type of request and also who's
13 present that day.

14 Q I understand. What is the turnaround for a
15 request? When you send it to the Data Center, what is the
16 turnaround that the Data Center either sends it back to you
17 or sends it out directly to the requesting party?

18 A Normally, once I submit the work request to the
19 Data Center, the data is normally ready for shipping to the
20 customer by whatever means 24 hours later.

21 Q Can you give me the names of those three data
22 entry people and their supervisor, please?

23 A The supervisor is Ruby Williams.

24 Q Is that a male or a female?

25 A Female, Ruby.

1 Q And who are the data entry people?

2 A The one that handles the majority of my requests

3 is Linda King.

4 Q Can you spell that last name?

5 A K-i-n-g.

6 Q Okay.

7 A Another one is Carol Anderson.

8 Q Anderson?

9 A Correct.

10 Q And you said there is one more?

11 A And the third one is Leslie Alford.

12 Q Crawford?

13 A Alford, A-l-f-o-r-d.

14 Q Do you know how to spell Leslie, Mr. Perryman?

15 A L-e-s-l-i-e.

16 Q Appreciate that.

17 Do you have a supervisor yourself?

18 A Yes, I do.

19 Q What is his or her name?

20 A His name is Phil Shelton.

21 Q And what is Mr. Shelton's title?

22 A He's supervisor in charge of Inventory Control and

23 Data Listing Unit.

24 Q And does he have any responsibilities other than

25 supervising you?

1 A He supervises the Inventory Control section, which
2 is the section --

3 Q Can you explain a little bit what the Inventory
4 Control section is?

5 A That is the office that's controlling the shipping
6 of the tags to all the different tag offices throughout the
7 state.

8 Q So let's get back to the information that you
9 handle, the requests that you handle. One of the things you
10 testified to a moment ago was that you handle requests from
11 the public for title and registration information, is that
12 correct?

13 A Correct.

14 Q Would this be any member of the public?

15 A Yes, sir.

16 Q And could it be any member of the public in the
17 entire world?

18 A Yes, sir.

19 Q Was that a yes?

20 A Yes, that's correct.

21 Q Okay. And can you tell us what actual data we're
22 talking about here? When we talk about title and
23 registration information at the DMV, what type of
24 information are we talking about?

25 A It's the basic registration information on a

1 vehicle.

2 Q Which contains what, to the best of your
3 knowledge?

4 A Name, address, date of birth, make of vehicle,
5 year of vehicle, VIN number.

6 Q Does it include the tag number?

7 A Yes, sir, and a title number.

8 Q And a title number. Does it include the color of
9 the vehicle?

10 A If the tag clerk entered it.

11 Q Is there any -- when you say the name, is this the
12 registrant's name, the person who registered the vehicle?

13 A It has positions for two different registrants if
14 it's co-owned, and also for two owners, so there's two
15 registrant possibilities and two owner possibilities.

16 Q That answers my next question, which is, would a
17 registrant's name ever differ from the owner's name?

18 A It can.

19 Q Let me ask you this other question regarding
20 registration: Do you have a general understanding as to how
21 a vehicle is registered with the State of Florida?

22 A A basic understanding, since I have to register my
23 own vehicles.

24 Q Is it your understanding that the address for a
25 registrant is the county of registration for that vehicle?

1 Do you understand my question?

2 A Well, the address is whatever the owner or
3 registrant supplies.

4 Q How would one know whether the -- what county a
5 vehicle is registered in?

6 A The database contains a county activity code and a
7 registrant county.

8 Q Would those ever differ?

9 A It can, because you're allowed to renew or title
10 your vehicle in any county in Florida, no matter what county
11 you live in.

12 Q Now, is there any information in that title and
13 registration information that you just talked about, the
14 name, address, VIN number, et cetera, is there any data
15 that's not included -- strike that question. Let me ask it
16 this way.

17 If a member of the public requests the
18 registration and title information, is there any information
19 in the DMV's database that would not be included, that is
20 contained in the database but doesn't get forwarded to the
21 requesting party?

22 A Social Security number and insurance information
23 is not provided.

24 Q But because you need insurance to register a
25 vehicle, the DMV would have that information, correct?

1 A Yes.

2 Q Do you know why those items of information are not
3 included?

4 A For privacy, by, the way I understand it, Florida
5 law.

6 Q Can you explain to me what -- you say you use a PC
7 to create a job request form, is that correct?

8 A Correct.

9 Q David?

10 A Yes.

11 Q Did you answer yes to that question?

12 A That is correct.

13 Q Do you use just a general word processing program?

14 A Yes.

15 Q What do you use to do that?

16 A Microsoft Word.

17 Q And when some -- when a member of the public makes
18 a request for information, does that request always get
19 directed to you personally?

20 A It gets directed to my office.

21 Q Are there any other individuals in your office who
22 could also receive a job request?

23 A One other.

24 Q Who is that?

25 A Alvin Speights.

1 Q Can you spell that?

2 A A-l-v-i-n; last name, S-p-e-i-g-h-t-s.

3 Q Thanks. When a requesting party submits a
4 request, does that request have to be in writing?

5 A Yes.

6 Q Has that always been the case at the DMV?

7 A Since I've been in the position, yes, sir.

8 Q So that would be for the last ten years?

9 A Yes, sir.

10 Q And is there any particular type of information
11 that must be included in that writing?

12 A I always tell the customer to tell me exactly what
13 they want to look for and in what counties.

14 Q And is there any other piece of information that
15 absolutely must be included in that per either law or DMV
16 regulations?

17 A A minimum deposit of \$50.

18 Q Explain what you mean by minimum deposit.
19 Somebody has to give you a check or some form of payment
20 prior to the -- or at least at the time of the request?

21 A Yes, sir.

22 Q What is the purpose of that?

23 A To cover the initial cost of the computer time to
24 provide the information.

25 Q I understand that. And can this deposit be made

1 in a number of different ways?

2 A Only by check.

3 Q Only by check. So is the normal course of
4 business to receive a request along with a check in the
5 amount of \$50 to cover the deposit?

6 A Yes, sir. There is the possibility where the
7 customer requests that we hold excess money in a non-
8 interest-bearing escrow account for them so they can
9 maintain a deposit amount with us.

10 Q And is that your understanding of what Fidelity
11 Federal Bank and Trust -- what their relationship was with
12 you?

13 A Yes.

14 Q Do you know how much -- do you know when -- strike
15 that.

16 Mr. Perryman, who opens the non-interest-bearing
17 account to hold money in escrow?

18 A The customer will send me a letter requesting that
19 they be allowed to have an escrow account with us, and they
20 include a check. Then I forward that to our accounting
21 department, and they are the ones that maintain the books on
22 those accounts.

23 Q Do you have any recollection of when Fidelity
24 Federal first requested that an escrow account be opened in
25 their name?

1 A No, sir.

2 Q Well, let me ask you this: Do you remember the
3 first time that Fidelity Federal asked your Department to
4 obtain motor vehicle records for them?

5 A No, sir.

6 Q Do you know if it was before the year 2000?

7 A I really don't know for sure without going back
8 through my records.

9 Q Did you know how much money was in Fidelity
10 Federal's escrow account at the DMV during any particular
11 period in time?

12 A The accounting department does supply me with an
13 account balance sheet on a periodic basis.

14 Q Even if there was not an outstanding request?

15 A Correct.

16 Q Let me ask you this question: To the best of your
17 knowledge, does Fidelity Federal still have an escrow
18 account at the DMV?

19 A No, sir, they do not.

20 Q How do you know that?

21 A Because I closed it out last year, I believe it
22 was.

23 Q Do you know approximately what month you closed it
24 out?

25 A No, sir.

1 Q Did you physically close it out or did you
2 physically instruct the Accounting Department to close it
3 out? How did that come about?

4 A I sent a memo to the Accounting Department to
5 close the account and refund whatever balance was in their
6 account.

7 Q Did you receive a written request by Fidelity to
8 do that?

9 A No, sir.

10 Q I'm sorry, I didn't hear the answer.

11 A No, sir. As my policy, and I have informed all
12 customers that are on the escrow account basis, that if the
13 account is inactive for 90 days, I will automatically close
14 the account.

15 Q Is that what you did in Fidelity Federal's case?

16 A That is correct.

17 Q And you don't remember whether this was the spring
18 of last year, the summer of last year, the winter of last
19 year, anything like that?

20 A I don't recall.

21 Q Had you had any communication at all with Fidelity
22 prior to the expiration of that 90 days?

23 A Only on their last request.

24 Q Do you remember when that last request was?

25 A No, sir.

1 Q To the best of your knowledge, Mr. Perryman, was
2 the last request in or around July of 2003?

3 A I don't recall.

4 Q I'm sorry?

5 A I don't recall what date it was.

6 Q We'll get back to that in a second.

7 Did you have any communications with anybody at
8 Fidelity before you sent the memo to Accounting to close out
9 their escrow account?

10 A The only -- last communication that I remember is
11 contacting them and asking them if they were going to pay
12 for their last request.

13 Q Was there not enough funds in the escrow account
14 at that time?

15 A That is correct.

16 Q And do you remember who you spoke with at
17 Fidelity?

18 A Probably the person that signed the letter.

19 Q Would that be Jackie, which is J-a-c-k-i-e,
20 Larish, L-a-r-i-s-h?

21 A She was my normal point of contact.

22 Q But you don't recall whether she was the one you
23 spoke with about payment for the last request?

24 A I can't state for sure, but more than likely she
25 was the one I talked to.

1 Q Do you remember what the response was from the
2 representative of Fidelity when you called to ask about
3 payments?

4 A From what I can recall, she said that they
5 probably would not pay for it.

6 Q And do you remember what happened after that?

7 A After a period of 30 days, we forfeited the cost
8 of that run, which is the basic \$50 deposit, so we debited
9 her account for \$50. Then the account laid idle for more
10 than 90 days. Then I closed the account.

11 Q I understand. Now, I just want to go back a
12 second.

13 When a request comes in to you, Mr. Perryman, that
14 request asks for specific information regarding motor
15 vehicle titles and registration, is that correct?

16 A Correct.

17 Q And then my understanding is that you will then go
18 into your Microsoft Word program and type up what is known
19 as a computer job request with the parameters in the request
20 from the requesting party, is that correct?

21 A Correct.

22 Q Then you will then forward that computer job
23 request on to your data entry individuals, who will then
24 start gathering --

25 (TELEPHONE CONNECTION BROKEN.)

1 BY MR. DAVIDSON:

2 Q Where we last left off, we were talking about when
3 you get a request, you then punch the parameters from the
4 request into your computer and create a computer job request
5 form, is that correct?

6 A Correct.

7 Q And then after payment is made, you either
8 personally create a CD-ROM or a tape or a printout and send
9 it to the requesting party, or Data Entry transfers it to
10 the requesting party via FTP, correct?

11 A No.

12 Q Tell me where I'm wrong.

13 A I will create a CD. The tape or printout is
14 created by the Data Center, I only hold it.

15 Q Who mails it out?

16 A My office.

17 Q Okay, I understand that now. And Data Entry does
18 the FTP transfer, is that correct?

19 A Once I give them directions to go ahead and
20 release it.

21 Q And those directions are given after payment has
22 been received, correct?

23 A Yes.

24 Q Mr. Perryman, I'm going to have Mr. Alderman show
25 you what has been previously marked in other depositions as

1 Plaintiff's Exhibit 1. It's a stack of pages that has on
2 the first page -- it's a July 1, 2000, letter to you from
3 Fidelity Federal from Jackie Larish. Do you see that stack
4 of documents?

5 A Yes, I do.

6 Q Have you seen these documents before, sir?

7 A Yes, sir.

8 Q How do you recognize them?

9 A They're addressed to me.

10 Q You had an opportunity to review these before you
11 came to your deposition today, is that correct?

12 A Correct.

13 Q And do these appear to be true and correct copies
14 of the letters you received from Fidelity Federal from July,
15 2000, through July, 2003?

16 A I did go back in my archive files and compare
17 several of them, and they are good copies, but on the copies
18 you provided, there are some handwritten notations that have
19 been made by others.

20 Q So outside of the handwritten notations on a
21 couple of the letters in Plaintiff's Exhibit 1, but for
22 those notations, everything else appears to be true and
23 correct copies of documents that you have seen, is that
24 correct?

25 A Yes, sir.

1 Q And you remember receiving them, is that correct?

2 A The ones that I have in my files, I have my date
3 stamp on it saying Received, so they have come into my
4 office.

5 Q I appreciate that.

6 On the first page of Plaintiff's 1, you will see
7 at the first line of the second paragraph, "Please send data
8 via FTP to this address: 12.150.194.30." Do you see that
9 line, sir?

10 A Yes, sir.

11 Q What does that mean to you?

12 A That is an IP address.

13 Q Stands for Internet protocol?

14 A Yes, sir.

15 Q Do you know who that IP address belonged to?

16 A No, sir.

17 Q Am I correct that all -- why don't we do this.
18 Let me ask you to look at Plaintiff's Exhibit 2 that has
19 previously been marked that also starts with the July 1,
20 2000, letter. Do you see those documents, sir?

21 A Yes.

22 MR. DAVIDSON: I want Plaintiff's 1 and 2 also
23 entered into this deposition as well as exhibits.

24 BY MR. DAVIDSON:

25 Q Just like Plaintiff's Exhibit 1, you recognize the

1 documents in Plaintiff's Exhibit 2, is that correct, sir?

2 A Yes.

3 Q They also appear to be true and correct copies,
4 except for the handwritten notations on them?

5 A Correct.

6 Q And you also had an opportunity to review those
7 documents as well before you came to your deposition today,
8 correct?

9 A Correct.

10 Q Now, am I correct that there are IP addresses in
11 each of the -- in each of the letters?

12 A Correct.

13 Q And you do not know who those IP addresses belong
14 to, is that correct?

15 A That is correct.

16 Q Have you ever heard of a company known as The
17 Bureau?

18 A Yes, sir.

19 Q What do you know about them?

20 A I have discussed with them about transfer of data
21 to their server.

22 Q Did you have those discussions in relation to
23 Fidelity Federal?

24 A That is a possibility.

25 Q Why do you believe that's a possibility?

1 A From my memory, I talked to Resa Arnold.

2 Q Is that R-e-s-a?

3 A Correct.

4 Q And who is she with?

5 A I believe she is with The Bureau.

6 Q And what do you recall speaking to her about?

7 A About transfer problems.

8 Q On behalf of Fidelity Federal?

9 A Possible.

10 Q Do you know whether the IP addresses in
11 Plaintiff's Exhibits 1 and 2 belong to The Bureau?

12 A I do not know for sure.

13 Q Is it your belief that they do belong to The
14 Bureau?

15 A There is that possibility, yes.

16 Q Do you know whether the information requested in
17 Plaintiff's -- the letters in Plaintiff's 1 and 2, whether
18 that information was in fact transferred to that IP address
19 in the letter on behalf of Fidelity Federal?

20 A More than likely it was.

21 Q Why do you believe that?

22 A Because that's what they had requested, and if the
23 job was completely paid for, it would have been transferred
24 to that IP address.

25 Q And do you know how this transfer takes place?

1 What is your understanding of what an FTP transfer is?

2 A On our end, our data entry people write a computer
3 instruction routine which instructs it to pick up whatever
4 data set we have written, and then it will go out to that
5 particular IP address, log in, and then once the receiving
6 server acknowledges that it's a valid log-in, then the
7 actual transfer takes place automatically.

8 Q So it's your understanding that in order to make
9 an FTP transfer to an IP address such as that on Plaintiff's
10 Exhibits 1 and 2, that there needs to be a password and log-
11 in to enter that IP address server, is that correct?

12 A Correct.

13 Q I don't see that any of the letters in Plaintiff's
14 1 or 2 there is a user ID or user log-in and password along
15 with the IP address. How would that have taken place?

16 A The password and log-in could have been provided
17 to me by telephone conversation, by e-mail, by fax or
18 written letter.

19 Q What is your recollection as to how Fidelity got
20 you the user log-in and password?

21 A I have no idea.

22 Q Mr. Perryman?

23 A Correct.

24 Q What is your understanding as to how you got that
25 user log-in and password?

1 A I don't remember how it was provided.

2 Q Do you have a recollection of receiving that
3 information?

4 A I probably did, since we did several transfers
5 over the months.

6 Q Do you know whether the data from the DMV is given
7 to that IP address as a file to copy?

8 A It's raw data that's placed onto their server.

9 Q Not as a file to be copied, but as an original
10 file?

11 A Well, electronic data is never an original. We
12 create a database subset based on their parameters, and then
13 that data is transferred to the customer by whatever means.

14 Q And once the transfer is complete, that data
15 belongs on the IP server that it was sent to, is that
16 correct?

17 A It's on their server.

18 Q It's on their server. Who has access to that
19 server? Only someone who has access to that IP address?

20 A Whoever controls that server.

21 Q Does the DMV, do the data entry people completely
22 release that information, or do they hold onto an electronic
23 copy of that information?

24 A Any data that we pull is retained temporarily on
25 in-house tapes and then the tapes are cycled through and

1 reused, so the data is removed.

2 Q How often does that recycling take place?

3 A The way I understand it, they hold it for about 90
4 days.

5 Q And then they reuse it?

6 A Reuse the tapes, yes, sir.

7 Q My next question to you is, how much do you charge
8 for each -- how much does the DMV charge for each request?

9 A By Florida statutes, it's one penny per vehicle.

10 Q If a member of the public makes a records request
11 for that information, are there any other fees that are
12 tacked onto that besides the one penny?

13 A Yes, sir. There is a \$4.50 transfer fee that we
14 charge to cover the computer time to do the data transfer.

15 Q Is the \$50 deposit, is that something that's taken
16 out of the final bill?

17 A That is applied towards the cost of the job.

18 Q That was my question. I appreciate you rephrasing
19 it that way.

20 And the \$4.50 transfer fee, is that fee paid no
21 matter what form of transfer is made, whether it be paper
22 form, CD or FTP transfer?

23 A Unless the customer provides a prepaid shipping
24 document where they're paying for the shipping.

25 Q I understand that. Do you charge -- is that \$4.50

1 fee also charged for FTP transfers?

2 A Yes, sir.

3 Q Let me ask you this: Does the DMV still, to this
4 day, provide personal information in motor vehicle records
5 to the public upon request?

6 A Of the records that are not blocked, we do provide
7 names and addresses, date of birth.

8 Q The same information that you provided to Fidelity
9 Federal?

10 A Yes, sir.

11 Q When was the last time that you had to do that?

12 A I sent some jobs down this morning.

13 Q I'm sorry, sir?

14 A I sent jobs to our Data Center this morning for
15 some new requests.

16 Q Okay. And when you say that unless someone is
17 blocked, unless someone's information is blocked, what do
18 you mean by that?

19 A If the individual has requested that their
20 personal information be blocked, it's not released to the
21 general public.

22 Q So is it your understanding that the policy of the
23 DMV is that unless a person has actually blocked their
24 information or opted out of the DMV producing their
25 information, that the DMV will provide that information to a

1 requesting party upon request, is that your understanding?

2 A That is correct.

3 Q And that a person has to actually ask the DMV or
4 direct the DMV to block their information?

5 A Correct.

6 Q How does that request take place? Is there a form
7 that someone fills out?

8 A There are multiple ways. The individual can do it
9 when they go in to renew their tag or the initial issue of
10 the tag.

11 Q Is there a form that they would fill out when they
12 renew their tag?

13 A I think it can be done verbally to the tag clerk,
14 and the tag clerk will enter it upon the customer's request.

15 Q How else may someone do that?

16 A The individual can go to the Department's Web site
17 and enter it themselves via the Internet.

18 Q Do you know when that ability became available to
19 the public to go onto the Web site to block their
20 information?

21 A Officially, I do not know, but --

22 Q What is your understanding?

23 A I have heard rumors that it started approximately
24 a year ago for the Internet capability.

25 Q Where did you hear that information?

1 A From some people that I have had conversations
2 with over the months.

3 Q Okay. Now -- so I want to point you to basically
4 page 1 of Exhibit 1 again. Do you have that in front of
5 you, the July 1, 2000, letter?

6 A Correct.

7 Q Correct me if I'm wrong, but according to this
8 letter, Fidelity Federal, Ms. Larish, is asking for all
9 motor vehicle titles registered in the state of Florida from
10 June 1, 2000, to June 31, 2000, in Palm Beach, Martin, St.
11 Lucie and Broward Counties. Did I read that correctly?

12 A Correct.

13 Q And Fidelity also asked for a list to include only
14 new 2000 motor vehicles, is that correct?

15 A Correct.

16 Q So what you would have done is you would have
17 taken this request from Fidelity Federal and created a
18 computer job request form, is that correct?

19 A Correct.

20 Q And then submitted that to Data Entry?

21 A Yes.

22 Q And Data Entry would pull the requested
23 information, correct?

24 A Correct.

25 Q But if a person had informed the DMV that they

1 wanted their information blocked, it would not show up in
2 this request, correct?

3 A That is correct.

4 Q To your knowledge, is the DMV's policy with
5 respect to producing public -- personal information on motor
6 vehicle records, to your knowledge, is that in compliance
7 with the federal Driver's Privacy Protection Act?

8 A I have no idea, sir.

9 Q That is beyond the scope of your job
10 responsibilities, is that correct?

11 A That is correct.

12 Q Do you know how, if at all, Florida law differs
13 from the Driver's Privacy Protection Act?

14 A I have no idea, sir.

15 Q What is your understanding as to you're required
16 to -- why you believe you're required to produce information
17 upon request from the public?

18 A State law being that Florida is a Sunshine state.

19 Q And you're referring to the Government in the
20 Sunshine --

21 A That is correct.

22 Q So your understanding is that the Florida DMV
23 produces public information on motor vehicles because public
24 records are supposed to be made available to the public, is
25 that your understanding?

1 A That is correct.

2 Q Do you know how many requests Fidelity has made to
3 your department for information, for personal information on
4 motor vehicle records?

5 A No, sir.

6 Q Did you happen to count the number of letters to
7 you from Fidelity that are attached as Plaintiff's Exhibit 1
8 and 2?

9 A No, sir, I did not.

10 Q You would agree with me that these are letters
11 that date from July of 2000 to July of 2003, a three-year
12 period, is that correct?

13 A Yes, sir.

14 Q And that Plaintiff's 1 deals with requests during
15 that period only for new vehicles, and Plaintiff's 2 deals
16 with requests during that period for used vehicles, is that
17 your understanding as well?

18 A Yes, sir.

19 Q If I told you that there were 74 separate requests
20 in Plaintiff's 1 and 2, would that appear to be accurate to
21 you? Would you have any reason to dispute that?

22 A Without actually counting them, I could not say
23 for sure.

24 Q Do you recall complying or directing Data Entry to
25 comply with these requests?

1 A Since more than likely I received these requests,
2 I would have sent a job order down to Data Entry.

3 Q And do you have a recollection of whether these
4 requests were in fact completed and sent to those IP
5 addresses on the letters?

6 A More than likely they were.

7 Q And do you know how Fidelity paid for these
8 requests for these transfers?

9 A Either directly by check or by debiting their
10 escrow account.

11 Q One of the two, most likely?

12 A Yes, sir.

13 Q And you would not have completed these requests
14 and transferred the actual information requested, the actual
15 data, unless Fidelity had somehow paid for that transfer,
16 correct?

17 A That's correct, because that's the law.

18 MR. DAVIDSON: Okay. Mr. Alderman, are you there?

19 MR. ALDERMAN: Yes.

20 MR. DAVIDSON: Did you receive a packet of
21 documents this morning?

22 MR. ALDERMAN: Yes, I did.

23 MR. DAVIDSON: Do you have those in front of you,
24 sir?

25 MR. ALDERMAN: Yes.

1 MR. DAVIDSON: Do you have a set of documents, the
2 first page of which is a computer job request form with
3 Sequence No. 92695?

4 MR. ALDERMAN: Hang on a minute. Let me see what
5 I've got here.

6 (Discussion off the record.)

7 MR. DAVIDSON: Mr. Alderman, if you would show
8 Mr. Perryman a document that appears to be a photocopy
9 of a Florida vehicle registration?

10 MR. ALDERMAN: Just a minute. (Tenders document.)

11 He's got it.

12 BY MR. DAVIDSON:

13 Q Go back to Plaintiff's Exhibit 1, because we're
14 missing some of the documents, but I think I can deal with
15 this. Do you have Plaintiff's Exhibit 1 in front of you?

16 A Yes, we do.

17 Q Seven pages from the last one, I want you to find.
18 It's a letter dated January 6, 2002.

19 MR. FITZGERALD: Which exhibit was that?

20 MR. DAVIDSON: We're on Exhibit 1. Michael, let
21 me know when you're all set.

22 THE WITNESS: January 6, 2002?

23 MR. DAVIDSON: Correct.

24 MR. ALDERMAN: We have it.

25 MR. DAVIDSON: Great. I'm going to first speak

1 about that letter.

2 BY MR. DAVIDSON:

3 Q Mr. Perryman, do you have that letter in front of
4 you?

5 A Yes, I do.

6 Q Have you seen that letter before, sir?

7 A More than likely.

8 Q Do you recognize that as a letter you likely
9 received from Fidelity Federal?

10 A Yes, sir.

11 Q Does this appear to be a true and correct copy but
12 for some handwriting at the top?

13 A Yes, sir.

14 Q I want you to look at the date on that letter and
15 also look at the requested dates in the body of the letter,
16 and let me know if it appears if there's any typos or
17 anything in error on that letter.

18 A It doesn't appear to be.

19 Q It says that -- the letter says that it was sent
20 on January 6, 2002, is that correct?

21 A Correct.

22 Q And if you look on the first paragraph of the
23 letter, it says that, "This letter is my request for a list
24 of all motor vehicle titles registered in the state of
25 Florida from December 1, 2002, to December 31, 2002." Do

1 you see that, sir?

2 A Yes, sir, I do.

3 Q Does it appear -- could a letter have been sent to
4 you in January of 2002 requesting registered vehicles for 12
5 months later, or is it more likely that January 6, 2002,
6 should actually be January 6, 2003?

7 A There is that possibility.

8 Q Do you believe it's more likely than not that
9 Fidelity sent you a letter at the beginning of January,
10 2003, requesting vehicles for the previous months registered
11 in the state of Florida?

12 A There is that possibility, because usually a
13 customer would not send a request in and ask us to hold it
14 for 12 months. So there's always that possibility with --

15 Q This letter asks for data from December 1, 2002,
16 through December 31, 2002, is that correct?

17 A Yes, sir.

18 Q And the letter also requests motor vehicles
19 registered in Palm Beach, Martin, St. Lucie and Broward
20 Counties, correct?

21 A That is correct.

22 MR. DAVIDSON: Just for the record, I would like
23 this one page marked as -- do you have this letter
24 separate, Michael, that I faxed to you?

25 MR. ALDERMAN: What do you mean, do we have it

1 separate?

2 MR. DAVIDSON: A separate letter that I faxed you
3 this morning.

4 MR. ALDERMAN: Yes, we have it.

5 MR. DAVIDSON: I would rather you show that to
6 Mr. Perryman.

7 BY MR. DAVIDSON:

8 Q Mr. Perryman, do you see that letter that Mr.
9 Alderman is showing you?

10 A Yes.

11 MR. DAVIDSON: I would like this marked as
12 Plaintiff's 12 for this deposition.

13 (Whereupon, Exhibit No. 12 was marked for
14 identification.)

15 BY MR. DAVIDSON:

16 Q Is that letter substantially similar to the one
17 that's in Plaintiff's Exhibit 1?

18 A Yes, sir.

19 Q But unlike Plaintiff's Exhibit 1, it has a
20 Received stamp at the top, correct?

21 A Yes.

22 Q Thank you. Mr. Perryman, what does the Received
23 stamp say on Plaintiff's 12?

24 A "Received, January 8, 2003, Data Listings Unit."

25 Q Does it appear to you that it's almost certainly a

1 typographical error on the date of the letter where it says
2 January 6, 2002, based upon that Received stamp?

3 A Yes, sir.

4 Q So you would agree with me that this is a letter
5 dated January 6, 2003?

6 A Yes, sir; also because of the fax date.

7 Q I see there is a fax line, a header at the top of
8 the letter, is that correct?

9 A Yes, sir.

10 Q And who does that fax say it's from?

11 A Fidelity Federal Savings.

12 Q What is the date of that fax?

13 A January 7, 2003, at 4:14.

14 Q P.M., is that correct?

15 A Yes, sir.

16 Q And this was received by your Data Listings Unit
17 the next day?

18 A Yes, sir.

19 Q Once again, as I stated, I'm correct that this
20 letter, Plaintiff's 12, requests motor vehicle titles
21 registered in Florida from December 1, 2002, to December 31,
22 2002, correct?

23 A That is correct.

24 Q And it requests that information just for Palm
25 Beach, Martin, St. Lucie and Broward Counties, correct?

1 A Yes, sir.

2 Q Is that correct, sir?

3 A Yes, sir.

4 Q And it further requests only new 2002 and 2003
5 automobiles, correct?

6 A Well, automobiles, vans, pickups.

7 Q Pickup trucks, is that correct?

8 A Yes, sir, that's correct.

9 Q Okay. Now, I want Mr. Alderman to show you the
10 vehicle registration.

11 MR. DAVIDSON: Do you have that, Michael?

12 MR. ALDERMAN: The witness has it now.

13 THE WITNESS: I have it.

14 MR. DAVIDSON: Let me have this marked as
15 Plaintiff's 13 and have the court reporter stamp it as
16 such.

17 (Whereupon, Exhibit No. 13 was marked for
18 identification.)

19 BY MR. DAVIDSON:

20 Q Mr. Perryman, you have never seen this document
21 before, is that correct, sir?

22 A That is correct.

23 Q What does this document, Plaintiff's 13, appear to
24 be to you?

25 A It appears to be two documents that have been

1 photocopied together.

2 Q And what does the first document at the top
3 reflect?

4 A In the middle of it, it says Florida Vehicle
5 Registration.

6 Q When does it say the date was issued?

7 A Date issued, December 12, '02.

8 Q And who does it say this was issued to?

9 A James E. Kehoe.

10 Q And where is Mr. Kehoe's address?

11 A 11191 Laurel Walk Road, Wellington, Florida, ZIP
12 33467-8345.

13 Q Do you know where Wellington, Florida, is?

14 A No, sir.

15 Q If I told you it was in Palm Beach County, would
16 you have any reason to doubt that?

17 A No. I'd have to take your word on it.

18 Q What type of vehicle was registered, based upon
19 this Florida vehicle registration in Plaintiff's 13?

20 A It's a Jeep, model year 2003.

21 Q And can you tell from this whether it was a new
22 vehicle or an old vehicle?

23 A Not from the registration, no, sir.

24 MR. DAVIDSON: Michael, you still have not
25 received the FedEx, is that correct?

1 MR. ALDERMAN: I'm not in my office. I could go
2 see if it's come in.

3 MR. DAVIDSON: Let's take a quick break and see if
4 you can locate that FedEx.

5 MR. ALDERMAN: Okay.

6 (Brief recess.)

7 BY MR. DAVIDSON:

8 Q Mr. Perryman, the last thing we were speaking
9 about was the vehicle registration for Mr. Kehoe, is that
10 correct?

11 A Correct.

12 Q And you had indicated that -- and this was marked
13 as Plaintiff's 13 -- that this is for a 2003 Jeep that was
14 registered on December 12, 2002, is that correct?

15 A Date of issuance, yes.

16 Q Can you, for the record, read off the VIN number
17 attached to that registration?

18 A 1J4GX48S03C500891.

19 Q Thank you, sir.

20 Now, if you will also look at documents I am going
21 to have Mr. Alderman show you that has at the top, Simple
22 Finance Charge? Let me know when you have that document.

23 A I have it.

24 MR. DAVIDSON: We'll have this marked as
25 Plaintiff's 14.

1 (Whereupon, Exhibit No. 14 was marked for
2 identification.)

3 MR. ALDERMAN: Do you want just the first page or
4 the whole thing?

5 MR. DAVIDSON: You should have three pages, Bates-
6 stamped KEH00131 to KEH00133.

7 MR. ALDERMAN: Got it.
8 BY MR. DAVIDSON:

9 Q Mr. Perryman, I'm asking Mr. Alderman to show you
10 what has been marked Plaintiff's 14. You have never seen
11 this document before, is that correct, sir?

12 A That is correct.

13 Q This document purports to be a finance agreement
14 for a buyer by the name of James Kehoe, correct?

15 A At the top it says Simple Finance Charge.

16 Q There appears to be something cut off above that?

17 A Yes.

18 Q I'm going to ask you to read the next block down
19 below the names. Do you see that there is a table that
20 starts with New/Used/Demo?

21 A Yes, sir.

22 Q What is in that box, sir?

23 A New.

24 Q What year is in that box, sir?

25 A 2003.

1 Q What make and model is in the next box, sir?

2 A Jeep Grand.

3 Q Read off the vehicle identification number for the

4 record, please.

5 A 1J4GX48S03C500891.

6 Q Now, comparing Plaintiff's 14 with the vehicle

7 registration on Plaintiff's 13, does it appear to you that

8 the vehicle registration is for the same vehicle on

9 Plaintiff's 14?

10 A Yes, sir.

11 Q And the VIN numbers match?

12 A Yes.

13 Q The year of the vehicle matches?

14 A Yes.

15 Q The make of the vehicle matches?

16 A Yes, sir.

17 Q The name of the individual matches?

18 A Yes, sir.

19 Q The addresses match?

20 A Yes, sir.

21 Q So you would agree with me that the vehicle

22 registered on -- that according to these documents, the

23 vehicle registered on December 12, 2002, was a new 2003 Jeep

24 Grand, is that correct?

25 A It appears to be so, yes, sir.

1 Q That was done by Mr. Kehoe, is that correct?

2 A Yes, sir.

3 Q Now, if you will pick back up Plaintiff's 12,
4 which is that January 6th letter?

5 A Yes, sir.

6 Q Comparing the registration for the vehicle and the
7 finance agreement for the vehicle with the letter to you
8 from Fidelity, which is Plaintiff's 12, does it appear to
9 you that this vehicle would have been included in the data
10 that Fidelity was requesting through Plaintiff's 12?

11 A There is a possibility.

12 Q Is there more than just a possibility?

13 A I don't know for sure because I do not know if the
14 record was blocked.

15 Q If I gave you the hypothetical that Mr. Kehoe's --
16 this record for this vehicle and Mr. Kehoe was not blocked
17 as of January, 2003, would that assist you in providing a
18 different answer?

19 A If the record was not blocked, it would more than
20 likely would have been included in that data set.

21 MR. DAVIDSON: And I'm going to then ask that the
22 court reporter have marked a -- it is a Computer Job
23 Request Form, and it appears the sequence number is
24 88802 at the top.

25 Michael, do you see that?

1 MR. ALDERMAN: What batch of exhibits would that
2 have been included in?

3 MR. DAVIDSON: I believe that's one of the ones I
4 faxed to you this morning. The sequence number at the
5 top right is 88802.

6 MR. ALDERMAN: Yes, the number is partly cut off,
7 but this is the one you faxed to me and it looks like
8 it could be 88802.

9 MR. DAVIDSON: It says Date Sent beneath that,
10 "1/13/03."

11 MR. ALDERMAN: Yes, we have that.

12 MR. DAVIDSON: Would you please have this marked
13 as Plaintiff's 15?

14 (Whereupon, Exhibit No. 15 was marked for
15 identification.)

16 BY MR. DAVIDSON:

17 Q Mr. Perryman, I'm going to have Mr. Alderman show
18 you what has been marked as Plaintiff's 15 for
19 identification. Do you recognize that document, sir?

20 A Yes, sir.

21 Q How do you recognize that document?

22 A It is a job request form that I have apparently
23 written, or my associate has written, plus it has our Mailed
24 date-stamp on it.

25 Q That's on the right side in the middle?

1 A Yes, sir.

2 Q What does that mean, Mailed, with a date?

3 A That means the data has been transferred to the
4 customer by some means.

5 Q Who is the customer according to Plaintiff's 15?

6 A Fidelity Federal.

7 Q Whose initials are those?

8 A Which initials are you referring to?

9 Q Under Mailed, the stamp Mailed.

10 A That's Alvin Speights, my associate.

11 Q Does this appear to be a true and correct copy of
12 a computer job request form from your Department?

13 A Yes, sir.

14 Q Is this a document that's kept in the ordinary
15 course of business at the Department of -- the Division of
16 Motor Vehicles?

17 A Yes, sir.

18 Q And it's customary practice to create these
19 documents?

20 A Yes, sir.

21 Q Do you know who created this document?

22 A More than likely I did.

23 Q Where it says at the top, it says To: "Production
24 Control," and then beneath that it says From: "David
25 Perryman," what does that mean to you?

1 A That's just the form that I created. It is the
2 same form that Alvin would use if I'm not here.

3 Q So either you or Alvin created this job request
4 form?

5 A Yes, sir.

6 Q And I think you've already testified that the
7 requester for this information was Fidelity Federal, is that
8 correct?

9 A That's correct.

10 Q Based upon reviewing Plaintiff's 15, what were the
11 parameters for the request? And let's start with the year
12 of the registration.

13 A Year Make was 2002 and 2003.

14 Q And what were the parameters as far as the
15 beginning and the end dates for your searches?

16 A The title issue date from 12/1/02 through
17 12/31/02.

18 Q And what were the parameters in the request from
19 Fidelity as far as the counties of registration goes?

20 A Counties 06, 10, 24 and 42.

21 Q Do you know who those correspond to, those
22 numbers?

23 A County 06 is Palm Beach, County 10 is Broward
24 County, and 24 and 42, I can never keep them straight, but
25 one is Martin County and the other one is St. Lucie County.

1 Q Thank you. Can you tell from this job request
2 form, Plaintiff's 15, whether you were asked pursuant to
3 this job request to look for new vehicles for 2002 and 2003
4 or used vehicles?

5 A The title transaction code that's entered on this
6 code is OR, which stands for original, which means a brand
7 new vehicle being purchased.

8 Q Had it been a used vehicle, what would the title
9 transaction code been?

10 A It could have been TR if it had been purchased in
11 state, or it would be OU for original used if the vehicle
12 had been bought out of state.

13 Q At the bottom of that document, there's some
14 handwriting. Can explain what that is?

15 A The Received in PC, which means received in
16 Production Control, date, 1/13/03, by L.K., and that's Linda
17 King.

18 Q That's Data Entry?

19 A Yes, sir.

20 Q That's after you submitted this job request to
21 Data Entry, is that correct?

22 A That shows that they received our request.

23 Q On January 13th?

24 A Correct.

25 Q And what other handwriting is there that you can

1 tell us about?

2 A Then on the same line it says Dispatched:

3 "1/17/03," By: "L.K."

4 Q Linda King?

5 A Yes.

6 Q What does Dispatched mean?

7 A That means they have completed the job and ready
8 for us to pick up the data.

9 Q And how do you know that you picked up the data
10 based upon this job request form?

11 A On the copy that Production Control retains, we
12 initial it and date it.

13 Q Is that on this request?

14 A No.

15 Q So this is not your department's copy, is that
16 correct?

17 A This is a copy of -- copy of the form that we
18 would retain in my office.

19 Q Why doesn't it show that you received this
20 information from Data Entry?

21 A Just as a matter of time savings, we don't initial
22 our own copies.

23 Q I understand. Is there anything on this form that
24 leads you to believe that it's more likely than not that you
25 did receive this data from Ms. King?

1 A Because we shift the information to the customer.

2 Q What tells you that, sir?

3 A The Mailed Date/Initials stamp.

4 Q And can you tell from Plaintiff's 15 how many
5 items of data were produced to Fidelity Federal pursuant to
6 this request?

7 A 10,914 records.

8 Q How do you know that, sir?

9 A The Record Count at the bottom left.

10 Q Is it your testimony, Mr. Perryman, that Fidelity
11 Federal transmitted the 10,914 items of information from the
12 DMV on or about January 17, 2003?

13 A It was transmitted to wherever they directed us to
14 transmit it to.

15 Q Okay. Now, if you will go back to Plaintiff's 12,
16 sir, which is the letter from Fidelity Federal?

17 A Yes, sir.

18 Q Does it appear to you that the job request form,
19 Plaintiff's 15 that we were just speaking about, corresponds
20 with the letter which is Plaintiff's 12?

21 A There's a good possibility, yes.

22 Q Why do you say that, sir?

23 A Because of the dates of request, the dates that
24 they wanted to include in the request and the counties that
25 they're looking for.

1 Q Which is December 1, 2002, to December 31, 2002?

2 A Correct.

3 Q And the counties in the letter were Palm Beach,
4 Martin, St. Lucie and Broward, as well as those are the same
5 counties on the job request form, is that correct?

6 A That's correct.

7 Q And the letter, Plaintiff's 12, requests only new
8 2002 and 2003 automobiles, vans and pickups, correct?

9 A Correct.

10 Q Those are the same parameters that you put in the
11 computer job request, is that correct?

12 A That's correct.

13 Q And you have testified already that if Mr. Kehoe's
14 information was not blocked that he would have been included
15 in this -- he very likely would have been included in this
16 request, is that correct?

17 A There is a good possibility, yes, sir.

18 Q And you don't know when Mr. Kehoe's information
19 was blocked, if at all, at the DMV, is that correct?

20 A That's correct.

21 Q Now, I would like you to -- Mr. Alderman to show
22 you what I will have marked as Plaintiff's 16, which is a
23 large stack of documents beginning with a job request.

24 MR. ALDERMAN: Do you want the whole stack marked
25 as a composite exhibit?

1 MR. DAVIDSON: Yes.

2 (Whereupon, Composite Exhibit No. 16 was marked
3 for identification.)

4 BY MR. DAVIDSON:

5 Q Mr. Perryman, do you see these documents marked as
6 Plaintiff's 16, sir?

7 A Yes, sir.

8 Q What are we looking at here? If you could take a
9 look -- why don't we take a minute, or as long as you need,
10 and take a look through these documents and then let me know
11 when you are finished looking at them. It's a job request
12 form with a sequence number 82695.

13 MR. ALDERMAN: Your Federal Express package just
14 came in, and I think the copies are better that you
15 gave to me on the e-mail, so we're going to switch and
16 have them marked and use them, okay?

17 MR. DAVIDSON: Yes, they should be the exact
18 thing.

19 MR. ALDERMAN: We're going to do another marking.

20 (Brief pause.)

21 MR. ALDERMAN: The witness has finished looking at
22 the documents.

23 BY MR. DAVIDSON:

24 Q Okay. Mr. Perryman, you have had an opportunity
25 to review Plaintiff's 16, is that correct?

1 A That's correct.

2 Q What are we looking at here, sir?

3 A It appears to be copies of my documentation that I
4 have retained.

5 Q And how do you know it's your documentation?

6 A Some of them are job request forms, others are
7 letters from Fidelity Federal that appear to have been faxed
8 to me, and then also interspersed in there are some invoice
9 request memos that we send to Accounting.

10 Q And do these documents appear to be true and
11 correct copies of the documents that you have in your
12 possession?

13 A Yes, sir.

14 Q Are these documents kept in the ordinary course of
15 business in your department?

16 A Yes, sir.

17 Q Is it the regular practice of your department to
18 create and maintain these documents?

19 A Yes, sir.

20 Q And would I be correct in assuming that you're the
21 person with the most knowledge of these documents as far as
22 the DMV?

23 A More than likely, yes, sir.

24 Q Why don't we just start with the first page real
25 quick. We're not going to go through each one of these, but

1 I want to get a sense for the record as to what we're
2 looking at here. The first page of Plaintiff's 16, what
3 does that appear to be to you?

4 A It is a computer job request form.

5 Q And the next page after that, what does that
6 appear to be, page 2 of Plaintiff's 16?

7 A A letter from Fidelity Federal Bank and Trust.

8 Q What date is that letter?

9 A Dated August 2, 2000.

10 Q This is most likely a letter you received from
11 Fidelity Federal, is that correct?

12 A Yes, sir.

13 Q Is that correct, Mr. Perryman?

14 A That's correct.

15 Q How, if at all, do these first two pages, the
16 computer job request form and the letter, page 2, how do
17 these correspond to each other, if at all?

18 A The date of the letter and the date on my job
19 request form are very closely related, and also the dates
20 that they want to search in their letter, May 1, 2000,
21 through May 31, 2000, match my computer job request form.

22 Q What else matches?

23 A The model year of 1998, 1999, and counties that
24 they want to look in.

25 Q Those match the letter?

1 A Yes, sir.

2 Q And as far as the title transaction code goes,
3 does that match the parameters set forth in the August 2,
4 2000, letter?

5 A They are --

6 Q The August 2, 2000, does not indicate whether
7 Fidelity wants new or used vehicles, is that correct?

8 A Correct.

9 Q And in your computer job request, your title
10 transaction code lists both OR and OU, is that correct?

11 A That's correct.

12 Q That demarcates that your parameters were to look
13 for both new and used vehicles?

14 A Well, the OU stands for original used, which means
15 the owner of the vehicle either bought the vehicle in
16 another state and transferred that title to Florida, or they
17 moved from another state to Florida and thereby Florida law
18 transferred their vehicle title and registration to Florida.

19 Q Would it be your testimony that the job request
20 form, sequence number 82695, demonstrates that you or your
21 department complied with the request from Fidelity Federal
22 from the August 2, 2000, letter?

23 A Correct.

24 Q And the reason you know that is why?

25 A The Mailed Date/Initials stamp.

1 Q And do you know who completed that stamp?

2 A There are no initials on that stamp.

3 Q Do you recognize the handwriting at all?

4 A Possibly.

5 Q Who do you believe that handwriting is?

6 A Possibly me.

7 Q But possibly not?

8 A Possibly not.

9 Q Would there be any reason why that Mailed stamp
10 would be on the computer job request with the date if
11 Fidelity hadn't paid for that information?

12 A It would not be on there.

13 Q Is there any reason why that Mailed stamp would be
14 on there if the DMV didn't transmit that information to
15 Fidelity via the method that Fidelity requested?

16 A It means that we made an attempt to.

17 Q Whether it was received by Fidelity, would -- is
18 beyond your scope of knowledge, is that correct?

19 A That's correct.

20 Q Now, what information was sent -- let me do this.
21 You have scanned through those remaining documents, is that
22 correct, in Plaintiff's 16?

23 A Yes, sir.

24 Q And do they also appear to be copies of letters
25 for requests for information from Fidelity and corresponding

1 computer job request forms?

2 A Yes, sir.

3 Q David?

4 A Yes, that's correct.

5 Q And if the computer job request forms inside
6 Plaintiff's Composite 16 had a Mailed stamp, would your
7 testimony be the same as to that Mailed stamp as your
8 testimony was to page 1?

9 A Yes, sir.

10 Q And that -- your testimony being that the
11 information requested by Fidelity in their request letter
12 would have been transmitted to Fidelity, correct?

13 A We made the attempt to transfer it to them by some
14 means.

15 Q And what information are we talking about here,
16 Mr. Perryman, as far as the transfer of information, what
17 information are we speaking about?

18 A The vehicle title information that they had
19 requested.

20 Q That would include what we spoke about first thing
21 this morning, which was the owner's name, address, VIN
22 number, title number, tag number, make, model and year of
23 vehicle, is that correct?

24 A Not model.

25 Q Not model, just make and year of vehicle?

1 A Yes, sir.

2 Q Do you have any knowledge as to why Fidelity
3 wanted this information?

4 A No, sir.

5 Q Do you have any reason to believe Fidelity did not
6 receive the information that was sent to them at their
7 request?

8 A I have no idea, sir.

9 Q After the information was sent to Fidelity, when
10 this Mailed stamp was put on these job request forms, did
11 you ever receive a phone call from anybody at Fidelity or
12 The Bureau stating that they had not received the
13 information that had been requested?

14 A I have no idea, sir.

15 Q Do you personally have a recollection of receiving
16 a phone call like that?

17 A No, sir. There's always that possibility, but I
18 don't recall any.

19 Q Do you recall receiving any e-mail or regular mail
20 correspondence from either Fidelity or The Bureau stating
21 that they had not received the information requested?

22 A I have no idea.

23 Q You have no recollection of receiving that --

24 A No, sir.

25 Q -- type of correspondence?

1 A No, sir.

2 Q And any situation other than the most recent
3 situation with Fidelity where there was an issue about
4 payment of -- for the request?

5 A I don't think I heard the complete question.

6 Q Do you remember any issue ever arising out of
7 Fidelity other than last year, that last request, where
8 there was an issue regarding payment by Fidelity?

9 A If I understand the question correctly, because
10 you're breaking up some, as far as I can recollect, there
11 was only one job that we never attempted to transfer to them
12 because of nonpayment. All --

13 Q That was the last one we spoke about earlier this
14 morning, correct?

15 A That's correct.

16 Q Do you know approximately how many persons or how
17 many registrant information was ultimately transferred to
18 Fidelity Federal between July, 2000, and July, 2003?

19 A No, sir.

20 Q Would it surprise you if it was in the hundreds of
21 thousands?

22 A It is a possibility.

23 Q Prior to receiving -- prior to transmitting that
24 information to Fidelity, did DMV, as far as you know, ever
25 seek to obtain the consent of the registrant to send their

1 information to Fidelity?

2 MR. FITZGERALD: Form.

3 BY MR. DAVIDSON:

4 Q You can still answer.

5 A I have no idea, sir.

6 Q Mr. Perryman, did you ever personally seek to
7 obtain the consent of any motor vehicle registrant to send
8 their information to Fidelity?

9 A I have never been given that task.

10 Q Do you know of anybody at the DMV who sought to
11 obtain the consent of motor vehicle registrants to send
12 their information to Fidelity?

13 A I have no idea.

14 Q Looking at the records that are in Plaintiff's

15 16 --

16 A Yes, sir.

17 Q -- if you could just take a look at the job
18 request form, and at the bottom where it says Record Count,
19 if you could take a quick look and do a rough calculation as
20 to approximately how many registrant information was
21 transmitted to Fidelity?

22 A Do you want me to try and add up all of these in
23 my head?

24 Q Yes, just in a rough, quick way.

25 A Well, I see a low count of 980 records, and I see

1 another one where there's like 21,676 records, and numbers
2 in between that.

3 Q What is your best guess as to how many?

4 A I have no idea, sir. That's too many for my brain
5 to try and add up.

6 Q Is there any reason to doubt, Mr. Perryman, that
7 it's in the hundreds of thousands, based upon your review?

8 A I have no idea.

9 Q You would let the documents speak for themselves,
10 is that correct?

11 A Yes, sir.

12 Q If the computer job request forms have a record
13 count at the bottom of each one, adding those up for each of
14 these job request forms, would that approximate very closely
15 the total number of registrant information transmitted to
16 Fidelity by the DMV over this period of time?

17 A It would be the number of vehicles.

18 Q Therefore also being the number of items of
19 information, is that correct?

20 A The number of vehicles and the owner and
21 registrant information attached to that vehicle.

22 Q For each one, correct?

23 A Yes, sir.

24 Q So the record counts on each of these job requests
25 adding up would total the number of vehicle registrations

1 and corresponding information that would have been sent to
2 Fidelity by the DMV, is that correct?

3 A Yes, sir.

4 Q To the best of your knowledge, does the DMV ever
5 ask for the consent of a motor vehicle registrant before it
6 forwards their information on to a member of the public who
7 requests that information?

8 A I have no idea, sir.

9 Q You've never been told whether or not they do
10 that?

11 A I have never been given that task.

12 Q My question to you is, even though you don't
13 obtain the consent of individuals to release their
14 information, do you know whether anybody at the DMV does
15 that?

16 A I don't know, sir.

17 Q Have you ever been told that that's something that
18 the DMV does?

19 A I have been told and I have seen it on the Web
20 site that it's available for individuals to place a block on
21 their record.

22 Q So it's your understanding that the policy of the
23 DMV is that motor vehicle registrant information may be
24 released to the public upon request unless that motor
25 vehicle registrant has blocked the release of their

1 information, correct?

2 A That's correct.

3 Q And to the best of your knowledge, the job
4 requests attached to Plaintiff's 16, those were completed by
5 the DMV, is that correct?

6 A Yes, sir.

7 Q And therefore the information was transmitted to
8 Fidelity Federal, is that correct?

9 A Yes, sir.

10 MR. DAVIDSON: Let me just take a two-second
11 break.

12 (Brief pause.)

13 BY MR. DAVIDSON:

14 Q Mr. Perryman, are you still there?

15 A Yes.

16 Q Going back to Mr. Kehoe's information, which is
17 Plaintiff's 12, 13, 14 and 15, can you get those in front of
18 you, sir?

19 A They're in front of me.

20 Q You had earlier testified that it was more likely
21 than not that if Mr. Kehoe hadn't blocked his information at
22 the time the DMV completed its job request, that Mr. Kehoe's
23 information would have been submitted to Fidelity, is that
24 correct?

25 A That's correct.

1 A That's correct.

2 MR. FITZGERALD: I have no further questions.

3 FURTHER EXAMINATION

4 BY MR. DAVIDSON:

5 Q Mr. Perryman, is it your testimony that based on
6 documents that you have reviewed today relating to Mr.
7 Kehoe, his registration of his new 2003 Jeep Grand Cherokee
8 on December 12, 2002, that -- and the completion of job
9 requests with sequence number 88802, that it's very likely
10 that Mr. Kehoe's information, if he had not put a block up,
11 was in fact transmitted to Fidelity?

12 A There is that possibility.

13 MR. DAVIDSON: No further questions.

14 Mr. Perryman, you have an opportunity, sir, to
15 either read the transcript of your deposition or waive
16 the right.

17 Mr. Alderman, does he want to read?

18 MR. ALDERMAN: Do you want to read?

19 THE WITNESS: I do want to read it.

20 (Whereupon, the witness did not waive reading and
21 signing of the deposition, and the deposition was concluded
22 at 12:30 p.m.)

23

24

25

1 C O R R E C T I O N S

2 Corrections to the deposition of DAVID PERRYMAN, taken in
3 the case of James Kehoe vs. Fidelity Federal Bank and Trust,
4 Case No. 03-80593 CIV, taken on April 22, 2004.

4

5 Page-Line Correction

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17 Date

Signature

18

AS TO SIGNATURE ONLY

19

20 IN WITNESS WHEREOF, I have set my hand and affixed
my seal this ____ day of _____, 2004; said

21 instrument was acknowledged before me by DAVID PERRYMAN, who

22 is personally known or identified himself to me.

23

24

25

Notary Public

EXHIBIT “C”

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JAMES KEHOE,

Plaintiff,

vs.

CASE NO.: 03-80593 CIV

FIDELITY FEDERAL BANK
AND TRUST,

Defendant.

_____ /

DEPOSITION OF BECKY SCOTT

Taken in the above-styled cause, pursuant to
Notice, at the Florida Department of Motor Vehicles, Neil
Kirkman Building, 2900 Apalachee Parkway, Tallahassee,
Florida, on April 22, 2004, commencing at 1:35 p.m.

Reported by:

CLARA C. ROTRUCK

Court Reporter

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1 Q Is that the Internet, like DMV's Web site?

2 A That's the Division of Administration's Web site.

3 Q The Division of Administration's Web site?

4 A Yes, I was previously the Web administrator for
5 the Department of Highway Safety.

6 Q Have you ever given your deposition before?

7 A Yes.

8 Q I'm just going to tell you a couple of brief
9 rules. All you need to do is answer my question and speak
10 clearly when you do so. Don't nod your head or shake your
11 head because the lawyer for the Defendants as well as myself
12 can't see you, and the court reporter can't take down a nod
13 or shake of the head. Do you understand that?

14 A Yes.

15 Q Becky?

16 A Yes.

17 Q We got cut off for a second. If you don't
18 understand a question because we get cut off or you just
19 don't understand the way I'm phrasing it, please ask me to
20 repeat it, okay?

21 A Okay.

22 Q If you have any questions, don't hesitate to ask
23 us. This is not like a trial, so if you have questions,
24 don't hesitate to ask, but the reason it is like a trial is
25 that you are under oath. Do you understand what that means?

1 A Yes, I do.

2 Q It means you must tell the truth. Do you
3 understand that?

4 A Yes.

5 Q Are you on any drugs or medication today that
6 would prevent you from testifying truthfully?

7 A No.

8 Q Did you review any documents in your -- the scope
9 of your employment in preparation for the possibility you
10 would have to give a deposition today?

11 A Yes.

12 Q What are those documents that you reviewed?

13 A I pulled up the copy of the file transfer program
14 that we use to transfer --

15 Q Can you repeat the name of that program?

16 A Yes, it's file transfer program.

17 Q Spell that.

18 A It's just f-i-l-e --

19 Q Oh, file transfer program, okay.

20 A Right. And it is commonly known as the FTP file
21 program.

22 Q What was the reason you reviewed that document?

23 A I did that at the request of Legal.

24 Q Did you know what the reason was that you were
25 looking up that information?

1 A No, not the particulars, I did not.

2 Q Did you review any other documents?

3 A Just everything that was on that particular page.

4 Q What is that program?

5 A It's a program whereby we take a Web page that is
6 authored on our machines and transfer it from our machines
7 to the Internet, which the public will see.

8 Q Okay. Did those documents have any connection
9 with the ability of a motor vehicle registrant in Florida to
10 block the release of their registration and title with the
11 Department of Highway Safety and Motor Vehicles?

12 A Yes, it did.

13 Q Did you have any meetings with any of the lawyers
14 at the DMV?

15 A No, I did not.

16 Q And what is your current job title again?

17 A It is Web administrator for Division of
18 Administration.

19 Q How long have you been doing that?

20 A I have been doing this really since about three
21 years ago, but they included the whole department, but now
22 I'm only doing the administrative services again.

23 Q What were you doing prior to 2000?

24 A I was an administrative secretary.

25 Q At the Department of Highway Safety and Motor

1 Vehicles?

2 A Yes, that is correct.

3 Q Do you have any specific knowledge regarding when
4 the Department of Highway Safety and Motor Vehicles'
5 Internet Web site permitted the public to block their
6 registration and title information from release?

7 A Yes, I can give you the date that the particular
8 page that is on the Web now was posted, and --

9 Q You mean was accessible by the public?

10 A Correct.

11 Q And what date was that?

12 A That was on March 10, 2003.

13 Q Am I correct in stating that prior to March 10,
14 2003, no individual could go to the Department of Highway
15 Safety and Motor Vehicles' Web site to put on a block for
16 the release of their registration and title information?

17 A No, I cannot in all honesty say that is correct.

18 Q What would you say?

19 A There is a previous -- it keeps a history of
20 everything that is posted unless the individual who does the
21 posting deletes it, and I have a previous posting of March
22 the 8th.

23 Q Is what you're telling me that someone may have
24 gone onto the Department's Web site as early as March the
25 8th to put a block up, but that information would not have

1 actually been blocked until March the 10th at the earliest?

2 A It would have blocked it on the 8th, also.

3 Q Why is there a difference between the 8th and the
4 10th?

5 A There may have been a slight change in wording or
6 there may have been a color change on --

7 Q So you're saying the current version of that Web
8 site went live to block your information via the Internet on
9 March 10th, but there was likely a prior version with some
10 differences that was available to the public as early as
11 March 8, 2003, is that correct?

12 A Yes, that is correct.

13 Q Okay. Would I be correct in stating that prior to
14 March 8, 2003, a member of the public could not access --
15 could not go on the Department's Web site on the Internet to
16 block the release of their information prior to that date,
17 March 8, 2003?

18 A That is probably most correctly the right answer.

19 Q What gives you any hesitation?

20 A The hesitation I'm having is that the person that
21 actually posted the page --

22 Q Which is the March 8th page?

23 A Right.

24 -- who created it and posted the page, she may
25 have had some previous documents that she downloaded back to

1 her hard drive, and she's not here for me to check with her.

2 Q What is her name?

3 A Her name is Debra Berlinger.

4 Q Can you spell her last name?

5 A B-e-r-l-i-n-g-e-r.

6 Q From the documents that you were able to locate at
7 the Department regarding the posting of the Web page for
8 blocking release of information, of registration and title
9 information, from the documents that you have seen,
10 March 8th was the earliest in which one would have had that
11 ability, is that correct?

12 A That is correct.

13 MR. DAVIDSON: I don't have any further questions.

14 EXAMINATION

15 BY MR. FITZGERALD:

16 Q Do you know if there was anything on the Internet
17 prior to this March 8th page that facilitated blocking a
18 person's information?

19 A I do know that there was a particular -- not --
20 you could not go in and block, but there was an explanation
21 of the Driver Privacy Protection Act, and it did allow you
22 to download the form to block your information.

23 Q Okay. That's the only question I have. Thank
24 you.

25 MR. DAVIDSON: I just want to follow up with that

1 to clarify.

2 FURTHER EXAMINATION

3 BY MR. DAVIDSON:

4 Q Prior to March 8, 2003, as far as you know,
5 someone could go on the Internet to download the form to
6 send to the Department of Highway Safety and Motor Vehicles
7 to put a block on the release of their information, but they
8 could not, prior to March 8, 2003, actually block their
9 information via the Web site, is that correct?

10 A That is correct.

11 Q No further questions. Thank you.

12 MR. ALDERMAN: She will read.

13 MR. DAVIDSON: Thank you.

14 (Whereupon, the witness did not waive reading and
15 signing of the deposition, and the deposition was concluded
16 at 1:40 p.m.)

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C O R R E C T I O N S

Corrections to the deposition of BECKY SCOTT, taken in the case of James Kehoe vs. Fidelity Federal Bank and Trust, Case No. 03-80593 CIV, taken on April 22, 2004.

| Page-Line | Correction |
|-----------|------------|
|-----------|------------|

| | |
|-------|-----------|
| _____ | _____ |
| Date | Signature |

AS TO SIGNATURE ONLY

IN WITNESS WHEREOF, I have set my hand and affixed my seal this ____ day of _____, 2004; said instrument was acknowledged before me by BECKY SCOTT, who is personally known or identified himself to me.

Notary Public

