

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARK DVORSKY on behalf of himself and
others similarly situated,

Plaintiffs,

v.

George Salama, D.C. d/b/a “Salama
Chiropractic Center”,

Defendants.

Civil Action No.:

Complaint (Class Action)
(Jury Trial Demanded)

NOW COMES Plaintiff, on behalf of himself and others similarly situated, and
alleges and says as follows:

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SUMMARY OF THE ACTION

The Defendant violated the federal Driver's Privacy Protection Act of 1994 which Congress enacted to protect people and their personal information.

State DMVs require people who apply for drivers' licenses and vehicle registrations to disclose personal information, including their name and residential address. *See Maracich v. Spears*, 133 S. Ct. 2191, 2206 (2013). For many years, this personal information was widely available from the DMVs with little restriction. *See id.* at 2198. The unrestricted disclosure of state DMV information led to two big problems:

(1) stalkers and criminals could get the information; and, (2) states commonly sold the personal information to marketers. *Id.* Congress addressed these two concerns by enacting the Driver's Privacy Protection Act of 1994 (DPPA), 18 U.S.C. § 2721 *et seq.*, which bans unwanted disclosure and use of personal information, including names and residential addresses.

Defendant in this case is a chiropractic practice that has systematically violated the DPPA by knowingly obtaining protected personal information from motor vehicle records in North Carolina and then using that protected information for hundreds, or possibly thousands, of people in an effort to sell its chiropractic services. This systematic abuse has continued even after the United States Supreme Court held, in 2013, that solicitation is an improper use of DMV information. *See Maracich, supra* at 2209.

Plaintiff in this case is an individual whose protected personal information was improperly obtained and used by Defendant in violation of the DPPA when Defendant obtained protected DMV information from accident reports and other motor vehicle records and then used that information to send chiropractic marketing materials. Plaintiff files this case for himself, and for others whose privacy was violated, to do two things: (1) ask the Court for an injunction to stop Defendant from further abuse of personal DMV information; and, (2) to ask the Court to award damages as provided by Congress.

PARTIES

1. Plaintiff Mark Dvorsky is a citizen and resident of Rockingham County, North Carolina.

2. Defendant George Salama, D.C. is, upon information and belief, a citizen and resident of Guilford County, North Carolina. Upon further information and belief, Defendant George Salama is a chiropractor licensed by the State of North Carolina and operates chiropractic clinics in the Middle District of North Carolina under the name “Salama Chiropractic Center.”.

JURISDICTION AND VENUE

3. This action arises under and is brought pursuant to the DPPA. Subject matter jurisdiction is conferred upon this Court by 18 U.S.C. § 2724(a) and 28 U.S.C. § 1331 as the actions arise under the laws of the United States.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as Defendant does business in the District and therefore is deemed a resident of this District for purposes of venue. 28 U.S.C. §§ 1391(b) and (c).

FACTS

The DMV-349 Accident Report

5. Law enforcement agencies in North Carolina are obligated to investigate crashes which are reported to them, such as those described below.

6. In conducting crash investigations, law enforcement officers in North

Carolina must use a DMV-349 to record their investigations of reportable crashes, as defined by N.C. Gen. Stat. § 20-4.01(33b). The State of North Carolina considers a DMV-349 to be a motor vehicle record. (Exhibit 1A and 1B)

7. When law enforcement officers complete the DMV-349 in connection with a crash investigation they are obligated to comply with the then-current edition of the Instruction Manual for the DMV-349 (“the Manual”).

8. At the time of the collision described below, the Manual instructed officers to:

- a. record the names of drivers involved in a collision as follows: “Enter the driver’s name exactly as it appears on his/her driver’s license”;
- b. compare the address given by a driver to the address on that driver’s license and indicate on the DMV-349 whether those addresses match; and
- c. record each involved driver’s license number on the DMV-349.

9. At the time of the collision described below, the Manual instructed officers to review the registration information for each vehicle involved in the wreck and to record the name and address of the registered owner of each involved vehicle on the DMV-349.

10. On 5 May 2016, Plaintiff Mark Dvorsky was driving a vehicle owned by his father Francis Mark Dvorsky and was involved in a motor vehicle accident (“the Dvorsky Accident”). The Dvorsky Accident was a reportable crash as defined by N.C. Gen. Stat. § 20-4.01.

11. The North Carolina State Highway Patrol was notified of the accident and sent Trooper T.T. Tucker to investigate the accident.

12. At the scene of the Dvorsky Accident and at Trooper Tucker's request, Plaintiff Mark Dvorsky presented his driver's license to Trooper Tucker. Trooper Tucker transcribed certain information directly from that driver's license, including Plaintiff Mark Dvorsky's name, address, date of birth, telephone number and driver's license number, into a DMV-349. The source of Plaintiff Mark Dvorsky's address, date of birth, telephone number and driver's license number was the NCDMV.

13. At the scene of the Dvorsky Accident, Trooper Tucker asked Plaintiff Mark Dvorsky if the information shown on his driver's license was correct, and Plaintiff Mark Dvorsky informed Trooper Tucker that the information on his driver's license was correct. As a result of this interaction, Trooper Tucker checked a box on the DMV-349 to indicate that Plaintiff Mark Dvorsky's actual address matched the address on his driver's license.

14. At the scene of the Dvorsky Accident, Trooper Tucker transcribed on the DMV-349 certain information regarding the registration of the vehicle that Plaintiff Mark Dvorsky was operating at the time of the Dvorsky Accident. This information related to the registration of said vehicle and included Plaintiff Mark Dvorsky's father's name and address and the license plate year and number of said vehicle. The source of this information was the NCDMV.

15. Trooper Tucker filed the DMV-349 for the Hatch Accident with his department, which filed it with the NCDMV.

16. Within a few days of the Dvorsky Accident, Defendant obtained a copy of the DMV-349 for the Dvorsky Accident from local law enforcement, or personal information from a motor vehicle record procured by an agent from a copy of the DMV-349 or from NCDMV. Said report contained, among other personal information, Plaintiff Mark Dvorsky's name and address, as well as the fact that the address on the DMV-349 matched the address on Plaintiff Mark Dvorsky's driver's license. Said report also contained the name and address of the other drivers involved in the Dvorsky Accident.

17. Defendant obtained the DMV-349 for the Dvorsky Accident, or personal information from a motor vehicle record procured by an agent from a copy of the DMV-349 or from NCDMV for the sole and specific purpose of marketing Defendant's chiropractic services.

18. Defendant knew that the DMV-349 form for the Dvorsky Accident, or personal information from a motor vehicle record procured by an agent from a copy of the DMV-349 or NCDMV, he obtained and used contained personal information from a motor vehicle record because, among other things:

- a. The DMV-349 indicated that Plaintiff Mark Dvorsky's address on the DMV-349 matched the address on his driver's license. That fact could only have come from Plaintiff Mark Dvorsky's driver's license and NCDMV motor vehicle records;
- b. The DMV-349 had a blank for Plaintiff Mark Dvorsky's driver's license number, the contents of which blank were marked "REDACTED."
Plaintiff Mark Dvorsky's driver's license number originated with, and

could only have come from, NCDMV;

- c. Plaintiff Mark Dvorsky's drivers license restrictions were recorded as "1" on the DMV-349. Those driver's licenses restrictions could have only originated as a record of NCDMV and could only have come from NCDMV; and
- d. Defendant knew that officers routinely record the names and addresses of vehicle drivers and owners from drivers' licenses, vehicle registration cards and from the computerized records from NCDMV.

19. Defendant used the protected personal information of Plaintiff Mark Dvorsky, including his name and address, by addressing marketing materials to the address of Plaintiff Mark Dvorsky and mailing said materials.

20. A true and accurate copy of the mailings addressed to Plaintiff Mark Dvorsky's home by Defendant are attached hereto as Exhibit 2.

21. Driver's licenses and vehicle registration cards and records are motor vehicle records as defined by 18 U.S.C. § 2725(1). The State of North Carolina considers its DMV-349 to be a motor vehicle record.

22. Names and addresses on driver's licenses, vehicle registration cards, DMV-349 forms and from NCDMV computerized records constitute personal information that is protected by the DPPA.

23. Defendant regularly obtains DMV-349s on motor vehicle accidents, or personal information from a motor vehicle record procured by an agent from a copy of the DMV-349 or from NCDMV, in bulk for the purpose of marketing his chiropractic

services.

24. The mailings described above sent by Defendant are form mailings. The mailing sent by Defendant to Plaintiff Mark Dvorsky is identical in all material respects to the mailings that Defendant regularly sends to persons whose information has been obtained from DMV-349 forms.

25. Upon information and belief, Defendant sends marketing materials marked only to persons whose names and addresses have been gleaned from DMV-349 forms.

26. Plaintiff did not consent to or allow Defendant to obtain or use his personal information from a motor vehicle record.

27. Defendant regularly and knowingly uses protected personal information from motor vehicle records to market his chiropractic services to accident victims in the same manner that Defendants used the protected personal information of Plaintiff Mark Dvorsky .

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action on behalf of a Class defined as follows: All natural persons residing in North Carolina identified on a DMV-349 as either: a) a driver whose address is designated on the DMV-349 as matching the address on that person's driver's license; or b) a registered owner of a vehicle registered with the North Carolina Division of Motor Vehicle to whom Defendant sent chiropractic marketing and solicitation materials within the 4 years preceding the filing of this action through conclusion of this action.

29. **Numerosity** (Fed. R. Civ. P. 23(a)(1)): The Class members are so

numerous that joinder of all is impractical. Upon information and belief, Defendant has knowingly obtained and used the protected personal information of hundreds, if not thousands, of individuals meeting the above class definition from DMV-349 reports for marketing purposes. Upon information and belief, many of those persons' names and addresses are identifiable through documents maintained by Defendant.

30. **Existence and Predominance of Common Questions of Law and Fact** (Fed.R.Civ.P.23(a)(2)): Common questions of law and fact exist as to all members of the Class and predominate over the questions affecting only individual members. The common legal and factual questions include:

- a. Whether Defendant knowingly obtained protected personal information from motor vehicle records;
- b. Whether Defendant's primary purpose in obtaining protected personal information was the marketing of chiropractic services; and
- c. Whether Defendant violated section 2722(a) of the DPPA by obtaining, using or disclosing personal information from a motor vehicle record without a permissible purpose under section 2721(b) of the DPPA.

31. **Typicality** (Fed. R. Civ. P. 23(a)(3)): Plaintiff's claims are typical of the claims of each Class member. Plaintiff has the same claims for liquidated damages that he seeks for absent Class members.

32. **Adequacy** (Fed. R. Civ. P. 23(a)(4)): Plaintiff is an adequate representative of the Class. His interests are aligned with, and are not antagonistic to, the interests of the members of the Class he seeks to represent, he has retained counsel

competent and experienced in complex litigation and they intend to prosecute this action vigorously. Plaintiff and his Counsel will fairly and adequately protect the interests of members of the Class.

33. **Predominance and Superiority** (Fed. R. Civ. P. 23(b)(3)): Questions of law and fact common to the Class members predominate over questions affecting only individual members and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The liquidated damages sought by each member are the same. However, each Class member's liquidated damages are limited, such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Classes themselves could afford such individual litigation, it would be an unnecessary burden on the courts to require class members to file thousands of individual lawsuits. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by Defendants' conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a unified proceeding.

**FIRST CLAIM FOR RELIEF: VIOLATION OF
THE DRIVER'S PRIVACY PROTECTION ACT (18U.S.C. § 2721 ET SEQ.)**

34. The allegations contained in the paragraphs 1 through 33, supra, are incorporated herein by reference.

35. Defendant knowingly obtained and used Plaintiff's protected personal information from a motor vehicle record as described above.

36. Defendant knowingly obtained and used Plaintiff's protected personal information from a motor vehicle record for the purpose of marketing Defendant's chiropractic services.

37. When Defendant knowingly obtained and Plaintiff's protected personal information Defendant lacked Plaintiff's express consent as required by the DPPA.

38. When Defendant sent its above-described chiropractic marketing mailings to Plaintiff, Defendant knowingly used Plaintiff's personal information from a motor vehicle record.

39. Defendant knowingly both obtained and used Plaintiff's personal information from a motor vehicle record for the purpose of marketing chiropractic services.

40. Advertising for chiropractic services for the solicitations of new potential patients is not a permissible purpose for obtaining motor vehicle records under the DPPA. *See Maracich v. Spears*, 133 S. Ct. 2191 (2013).

41. Defendant knowingly both obtained and used Plaintiff's personal information from a motor vehicle record in violation of the DPPA.

42. Because Defendant regularly and knowingly obtains and uses personal information from motor vehicle records for purposes of marketing his chiropractic services, violations of the DPPA are likely to continue.

43. As a direct and proximate result of the acts and conduct and DPPA

violations by Defendant as alleged herein, the named Plaintiff and the putative Class members have suffered damage to their respective privacy rights and interests protected by the DPPA when personal information from a motor vehicle record, as defined by the DPPA, was obtained, disclosed or used by Defendant without consent or permission. Such acts and conduct constituted an invasion of a legally protected interest that was particular to each respective Plaintiff and caused concrete harm to each Plaintiff as contemplated by the DPPA.

44. Under 18 U.S.C. § 2724(b)(4), the Court should enter a permanent injunction prohibiting Defendant from obtaining or using personal information from motor vehicle records for marketing purposes. Specifically, the Court should enjoin Defendant from:

- a. Obtaining names and addresses sourced from DMV-349s for purposes of marketing chiropractic services;
- b. Sending mailings marketing chiropractic services to drivers whose names and/or addresses are obtained by Defendant by means of DMV- 349s; and
- c. Sending letters containing a copy of a completed DMV-349 for the purpose of marketing chiropractic services.

45. Because Defendant obtained and used Plaintiff's personal information from a motor vehicle record for a purpose not permitted under the DPPA, Plaintiff is entitled to liquidated damages of \$2,500.00 for each chiropractic marketing material in which his or her personal information was contained.

WHEREFORE, Plaintiff prays the Court for the following relief:

1. To enter an Order certifying the proposed Class under Rule 23 and appointing Plaintiff and the undersigned counsel of record to represent the Class;
2. To permanently enjoin Defendant, pursuant to 18 U.S.C. §2724(b)(4),
from:
 - a. Obtaining names and addresses sourced from DMV-349s for purposes of marketing chiropractic services;
 - b. Sending letters marketing chiropractic services to drivers whose names and/or addresses are obtained by Defendant by means of DMV- 349s; and
 - c. Sending letters containing a copy of a completed DMV-349 for the purpose of marketing chiropractic services.
3. To award liquidated damages, pursuant to 18 U.S.C. §2724(b)(1), to each Plaintiff in the amount of \$2,500.00 for each instance in which Defendant knowingly obtained or used that Plaintiff's protected personal information;
4. To award reasonable attorneys' fees and other litigation costs reasonably incurred, pursuant to 18 U.S.C. §2724(b)(3);
5. To award pre- and post-judgment interest as allowed by law;
6. For a trial by jury on all issues so triable; and
7. For such other and further relief as the Court deems just and proper.

This the 27th day of September, 2016.

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