

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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NEIL MATHIAS, on behalf of  
himself and all others similarly  
situated,

Plaintiff,

v.

IMAGITAS, INC.,

Defendant.

Case No. CA 1206

U.S. DISTRICT COURT  
DISTRICT OF MASS.

CLASS ACTION COMPLAINT

Jury Trial Requested

For his individual complaint and as Class Representative, Plaintiff Neil Mathias (“Plaintiff”) on behalf of himself and all others similarly situated, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff, like millions of other motor vehicle owners, received his vehicle registration renewal papers in the mail. Plaintiff received his renewal papers on or about August 14, 2006.

2. In the envelope containing his registration renewal papers, Plaintiff was surprised to find several advertisements from various businesses. Those ads were for Sirius Satellite Radio, DISH Network, and ADT Security.

3. On information and belief, Defendant Imagitas, Inc. (“Defendant” or “Imagitas”) has contracts with various states, including Ohio, Florida, Minnesota, Missouri and New York, whereby the state departments of motor vehicles (the “DMVs”) give the names and addresses of vehicle owners to Imagitas. In return, Imagitas mails out vehicle registration notices that the DMVs would otherwise mail themselves. However, the central feature of the contracts – and the only reason Imagitas agrees to the arrangement – is that Imagitas is allowed to place advertising

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materials in the envelopes containing the registration renewal materials. Advertisers pay Imagitas for their ads to be included with Imagitas's mailings, which is how Imagitas makes money.

4. On information and belief, Imagitas has had such a contract with the Ohio Bureau of Motor Vehicles ("BMV") since October, 2005. From then until now, Imagitas has used the personal information obtained from the BMV to mail its advertisements, along with registration renewal notices, to *more than five million* Ohio vehicle owners. Imagitas has also used the personal information obtained pursuant to its contracts with DMVs in other states to mail its advertisements, along with registration renewal notices, to millions of drivers in those states.

5. Although this arrangement may be profitable for Imagitas, and may be cost-effective for the state DMVs, it is flatly impermissible under federal law. Congress has decided that drivers' privacy should come before these corporate profits and before even cost savings for states. The Drivers Privacy Protection Act, 18 U.S.C. §2721, *et seq.* (the "DPPA" or the "Act"), prohibits a state DMV from disclosing personal information, defined as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information," except in certain circumstances not present here. *See* 18 U.S.C. §§ 2721 and 2725. Furthermore, the Act authorizes a private cause of action to enforce its provisions against companies such as Imagitas. 18 U.S.C. § 2724. Finally, it requires that for each violation, each victim of a privacy breach under the Act is entitled to statutory damages of \$2,500, punitive damages, attorneys' fees, and appropriate equitable relief. 18 U.S.C. § 2724.

6. On behalf of himself and all others similarly situated, Plaintiff seeks injunctive and monetary relief, including: (a) an order enjoining Imagitas from continuing to acquire and use

personal information obtained from the state DMVs; (b) an award of statutory damages of \$2,500 to each and every vehicle owner whose personal information has been used by Imagitas to mail its advertisements; (c) punitive damages; and (d) attorneys' fees, all pursuant to 18 U.S.C. 2721, *et seq.*

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to both diversity and subject matter jurisdiction. The cause of action asserted here is based on a federal statute. Defendant's corporate headquarters is in Massachusetts, while Plaintiff and the putative Class Members reside in Ohio, Florida, Minnesota, Missouri and New York, as well as any other state in which Imagitas may have a similar arrangement with a state DMV.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b). Defendant has its principal place of business in this District.

### **THE PARTIES**

9. Plaintiff Neil Mathias is a resident of Franklin County, Ohio. He, like millions of other putative Class Members, received his vehicle registration renewal notice – along with several advertisements - in the mail. He never knowingly gave the Ohio BMV his consent to release his personal information to any third parties, including Imagitas.

10. The Defendant Imagitas is a corporation with a principal place of business at 48 Woerd Avenue, Waltham, Massachusetts. Imagitas is engaged in the marketing business. Among other things, Imagitas makes deals with states, including Ohio, Florida, Minnesota, Missouri and New York, to mail vehicle registration renewal notices, in exchange for being allowed to include advertisements along with those notices. Despite federal law, Imagitas

obtains and uses "personal information," as defined in the DPPA, without first securing each individual's consent, to mail its advertisements.

### **CLASS ACTION ALLEGATIONS**

11. Plaintiff maintains this action on behalf of himself and a Class defined as:

**All persons who were mailed vehicle registration notices and advertisement(s) by Defendant using personal information Defendant obtained from any state DMV (including, without limitation, those in Ohio, Florida, Minnesota, Missouri and New York), excluding employees, officers, directors, legal representatives, heirs, successors and assignees of the Defendant.**

12. The Class, as defined in paragraph eleven (11) is easily identifiable. The definition of the Class is unambiguous. Plaintiff is a Member of the Class he seeks to represent. Class Members can be identified using the Defendant's improperly obtained mailing lists and other information that is kept by the Defendant in the usual course of its business. Records kept by the Defendant identify Class Members who have been mailed advertisements by Defendant. Class Members can be notified of the class action through publication and/or mailings to address lists maintained in the usual course of business by the Defendant and/or through other means.

13. Class Members are so numerous that their individual joinder is impracticable. Millions of Class Members exist. On information and belief, the Class is made up of millions of vehicle owners who have been mailed a vehicle registration renewal notice by Defendant containing advertisements. On information and belief, very few, if any, vehicle owners gave prior consent for their personal information to be released to Imagitas. Therefore, in every instance in which Imagitas used the personal name and address information it improperly acquired to mail its ads, along with the renewal notices, Imagitas violated the DPPA.

14. Common questions of law and fact predominate over the questions affecting only individual Class Members. Some of the common legal and factual questions include:

- a. Whether the Defendant violated the DPPA; and
- b. The nature and extent of damages and other remedies to which the conduct of the Defendant entitles Class Members;

15. The Defendant engaged in a common course of illegal conduct giving rise to the rights sought to be enforced by Class Members. Similar or identical actions and violations of a federal statute are involved. Individual questions, if any, pale by comparison to the common questions that dominate.

16. The injuries sustained by Class Members flow, in each instance, from a common nucleus of operative facts; the Defendant's misconduct. In each case the Defendant improperly obtained and used personal information as defined by the DPPA.

17. The Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making it appropriate to grant final injunctive relief with respect to the Class as a whole. An injunction prohibiting the Defendant from continuing to obtain and use personal information under the DPPA is an appropriate form of relief.

18. Plaintiff's claims are typical of the claims of the other Class Members. Just like other Class Members, Plaintiff received his vehicle registration renewal materials, along with Imagitas's ads, in the mail at his home. Just like other Class Members, Plaintiff never gave anyone his consent to release his personal information to anyone. The Defendant's improper and illegal acts and/or omissions apply to Plaintiff and all Class Members alike.

19. The DPPA does not require that a plaintiff suffer actual damages in order to be entitled to liquidated damages of \$2,500 per violation. *See, e.g., Kehoe v. Fid. Fed. Bank &*

*Trust*, 421 F.3d 1209 (11<sup>th</sup> Cir. 2005) *cert. denied* 2006 U.S. LEXIS 2702 (Mar. 27, 2006); *Parus v. Kroeplin*, 2006 U.S. Dist. LEXIS 4157 (W.D. Wisc. 2006); *Pichler v. UNITE*, 228 F.R.D. 230 (E.D. Pa. 2005).

20. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is familiar with the basic facts that form the bases of the Class Members' claims. Plaintiff's interests do not conflict with the interests of the other Class Members that Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in class action litigation, and intends to prosecute this action vigorously. Plaintiff and the Plaintiff's counsel will fairly and adequately protect the interests of Class Members.

21. The class action device is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and Class Members. The damages suffered by individual Class Members are small given the burden and expense of individual prosecution of the potentially extensive litigation necessitated by the conduct of the Defendant. Furthermore, it would be virtually impossible for Class Members to seek redress on an individual basis. Even if the Class Members themselves could afford such individual litigation, the court system could not.

22. Individualized litigation of the present case presents a likelihood of inconsistent and contradictory judgments. Individual litigation of the legal and factual issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale and comprehensive supervision by a single court.

**FIRST CAUSE OF ACTION**  
**(Violation of 18 U.S.C. § 2721, et seq.)**

23. Plaintiff re-alleges each and every allegation contained in each of the preceding paragraphs as if fully set forth herein.

24. 18 U.S.C. § 2721 states, in relevant part:

In general. A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): *Provided*, That subsection (a)(2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) Permissible uses. Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49 [49 USCS §§ 30101 et seq., 30501 et seq., 32101 et seq.-33101 et seq.], and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only--

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49 [49 USCS §§ 31301 et seq.].

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

25. 18 U.S.C. § 2725 states:

In this chapter [18 USCS §§ 2721 et seq.]--

(1) "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;



(2) "person" means an individual, organization or entity, but does not include a State or agency thereof;

(3) "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.[;]

(4) "highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information; and

(5) "express consent" means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106-229 [15 USCS § 7006(5)].

26. 18 U.S.C. § 2724 states that "A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court." The remedies listed in that statute are: "(1) actual damages, but not less than liquidated damages in the amount of \$ 2,500; (2) punitive damages upon proof of willful or reckless disregard of the law; (3) reasonable attorneys' fees and other litigation costs reasonably incurred; and (4) such other preliminary and equitable relief as the court determines to be appropriate."

27. Defendant has knowingly obtained, from the motor vehicle records of the state DMVs (including the Ohio BMV), the personal information, as defined by the DPPA, of Plaintiff and millions of Class Members. It has used that information for a purpose not permitted by the DPPA – namely, for the purpose of mailing advertisements.

28. Punitive damages are available, because Defendant violated the DPPA willfully or with reckless disregard for the law.

29. There are good reasons Congress enacted the DPPA. Prior to its enactment, it was easy for virtually anyone to obtain personal information from state DMVs. The 1989 death of

actress Rebecca Schaeffer was a prominent example of the problem. In that case, a private investigator, hired by an obsessed fan, was able to obtain Ms. Schaeffer's address through her California motor vehicle record. The fan used her address information to stalk and to kill her. Other incidents were cited by Congress, including a ring of Iowa home robbers who targeted victims by writing down the license plates of expensive cars and obtaining home address information from that State's DMV's. In speaking in favor of the DPPA prior to its passage, one Senator said the following:

The right to privacy, without which Americans are not secure in their own homes, is seriously threatened. It is easy for anyone anywhere to access information as personal as your address and phone number, even if they are not listed in the telephone directory. Even your Social Security number is available, and the chief agent giving out this kind of information is the very government that is supposed to protect its citizens.

Many Americans are infuriated and, more importantly, they are vulnerable to these violations of privacy which happen ... in this country every day....

It is for those and similar reasons that Congress enacted the DPPA, with its private right of action and its meaningful liquidated and punitive damages remedies, to discourage such violations of privacy, to compensate those whose privacy is violated, and to punish persons or entities who recklessly ignore the Act's proscriptions.

#### **PRAYER FOR RELIEF**

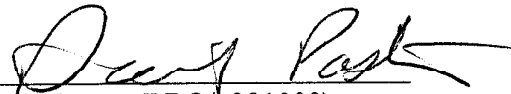
WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, request the following relief:

- a. An order certifying the action to be maintained as a class action under the Federal Rules of Civil Procedure and appointing Plaintiff and Plaintiffs' undersigned counsel to represent the Class;

- b. An award of statutory damages to Class Members in the amount of \$2,500 per Class Member;
- c. A temporary, preliminary and/or permanent order providing for equitable and injunctive relief enjoining the Defendant from continuing to obtain and use personal information as defined by the DPPA;
- d. Punitive damages;
- e. Attorneys' fees;
- f. Costs of this suit;
- g. Pre- and post-judgment interest; and
- h. Such other and further relief as this Court may deem necessary or proper.

**JURY DEMAND ENDORSEMENT**

Plaintiff hereby demands a trial by jury as to all causes of action and issues so triable.



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