UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
MADISON DIVISION

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1789 FOUNDATION, INC. d/b/a CITIZEN AG, *et al.*,

Plaintiff,

Case No.: 24-cv-755

v.

ELECTRONIC REGISTRATION INFORMATION CENTER, *et al.*,

Defendants.

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**OPPOSITION TO DAVID J. BECKER'S MOTION TO DISMISS**

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Plaintiffs 1789 Foundation, Inc. d/b/a Citizen AG ("Citizen AG") and Jennifer McKinney ("Ms. McKinney") (collectively, "Plaintiffs") submit this brief in opposition to Defendant David J. Becker's ("Defendant" or "Becker") Motion to Dismiss. (ECF No. 35).

Dated: February 13, 2025.

Respectfully submitted,

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## INTRODUCTION

This case involves Defendant David J. Becker's ("Becker") deliberate scheme to use his organization, the Electronic Registration Information Center ("ERIC") to obtain sensitive personal information from driving records[1] Under the pretense of improving voter roll accuracy—Becker obtains and uses personal information from Wisconsin's driving records for impermissible purposes, including, among other things, partisan voter outreach. Plaintiff Jennifer McKinney is a Wisconsin resident and eligible, registered voter and one of millions of Wisconsin residents who has been directly harmed by Becker's use of her personal information, including her phone number and address, which she provided to the DMV under the expectation that it would remain confidential and private. But her personal information did not remain private—it ended up in the hands of Becker and his two organizations who then knowingly disclosed and/or used her data for impermissible purposes in violation of the DPPA.



In doing so, Becker invaded Ms. McKinney's privacy, which as explained in greater detail below, is a concrete and particularized injury that indisputably satisfies the injury-in-fact component of Article III standing.

[1] Plaintiffs use the terms "personal information from driving records", "personal information", "DMV data" and "data" synonymously and interchangeably in this memorandum of law.

Perhaps most egregious of all, Wisconsin terminated its relationship with ERIC in 2016, yet for the last eight (8) years, Becker, ERIC, and his other organization, the CEIR, have operated as if Wisconsin remained a member of ERIC at all times relevant. While the existence of a membership agreement between Wisconsin and ERIC bears no weight as to the ultimate outcome of this case, there is no such agreement[2], contrary to Becker's repeated claims.

At its core, Plaintiffs have alleged that Becker knowingly used and disclosed the personal information of Plaintiff Jennifer McKinney and millions of other Wisconsin residents after obtaining *inter alia* her phone number, and address from driving records held by the Wisconsin Department of Motor Vehicles ("WisDOT" or "DMV"). Becker then used this information for impermissible purposes outside of the fourteen purposes for which this data is permitted to be used, in violation of the Driver's Privacy and Protection Act ("DPPA").



Unless Wisconsin has adopted a function by which it maintains inaccurate voter rolls or otherwise decreases the accuracy of voter rolls throughout this state, it cannot be said that Becker is assisting the State or any of its agencies carry out its functions—yet this is precisely what Becker argues in seeking the dismissal of this action. At best, this raises a genuine

[2] *See* Exhibit 1 – Response to Requests for Admission No. 49, at 16-17, Case 2024CV001544 Doc. 11, (dated Sept. 17, 2024) ("**WEC has not entered into contracts with any third-party to maintain the database**.") (emphasis added).

issue of material fact; it does not, however, provide a legitimate basis for the dismissal of this action under Rule 12. This lawsuit seeks to hold Becker accountable for his repeated violations of federal law and to redress the harms he caused to Ms. McKinney and the millions of other Wisconsin residents whose fundamental right to privacy has also been infringed upon because of the acts complained of and addressed herein.

## FACTUAL BACKGROUND

Plaintiffs brought this action against Defendant David J. Becker ("Becker") for violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721 *et seq*.

Plaintiffs allege that Becker, in his individual and official capacities, orchestrated and engaged in an unlawful scheme to obtain, use, and disclose personal information from Wisconsin Department of Motor Vehicles (DMV) records for unauthorized and impermissible purposes. (Compl. ¶¶ 45, 46).

Becker, the founder of both the Electronic Registration Information Center (ERIC) and the Center for Election Innovation and Research (CEIR), used his influence and control over these organizations to improperly acquire and manipulate sensitive personal data, including information on Wisconsin residents such as Plaintiff Jennifer McKinney, in furtherance of partisan political activities. (*Id*. ¶¶ 49, 54-56, 67-69, 165-66).

Plaintiffs' claims arise from Becker's longstanding role in leveraging ERIC and CEIR to infiltrate state voter registration systems under the guise of improving election integrity. (*Id.* ¶¶ 45, 46). ERIC, which purports to assist states in maintaining accurate voter rolls, in fact operates as a conduit for obtaining DMV records that contain personal information otherwise protected under federal law. (*Id.* at 1; ¶¶ 121, 124-25, 127-28, 130, 155-56, 161, 168). Plaintiffs allege that Wisconsin, despite formally terminating its membership with ERIC in 2016, continued to have its residents' personal information accessed and utilized by ERIC and CEIR. (*Id.* ¶¶ 151-57). Becker, as the architect of this system, directed the continued collection and use of this data even after Wisconsin's contractual relationship with ERIC had ended, and he did so without a permissible purpose in violation of the DPPA. (*Id.* ¶¶ 143, 156, 161, 166-67).



In his motion to dismiss, Becker raises several arguments in an attempt to evade liability. First, he asserts that Plaintiffs lack standing under Article III because they have not sufficiently alleged an injury-in-fact. (Def.'s Mot. at 7, 11). However, Ms. McKinney, as a Wisconsin resident and registered voter, has alleged she suffered a concrete and particularized harm directly and proximately because of Becker's unauthorized access, disclosure, and use of her personal information. (Compl. ¶¶ 13, 165, 174-75, 177). The improper use of

her data for partisan political purposes constitutes an invasion of privacy. (*Id.* ¶¶ 165, 174-76).

Second, Becker argues that the court lacks personal jurisdiction over him, claiming that he has insufficient contacts with the state of Wisconsin. (Def.'s Mot. at 17). This argument is meritless. Becker, through his control of ERIC and CEIR, has knowingly and intentionally engaged in conduct that directly affects Wisconsin residents. Compl. ¶¶ 19-20, 59-61, 88-91, 166-171). He has orchestrated the acquisition and use of Wisconsin DMV data, targeting Wisconsin voters through the unlawful disclosure of their personal information. (*Id.* ¶¶ 166-72). His actions were purposefully directed at Wisconsin, making him subject to the jurisdiction of this court. (*Id.* ¶ 24). Furthermore, Plaintiffs have alleged that Becker actively engaged in efforts to influence Wisconsin's voter rolls, demonstrating a clear and direct connection between his conduct and the claims in this case. (*Id.* ¶¶ 32-33, 88, 90, 161-62).



Becker also contends that Plaintiffs have failed to state a claim under the DPPA because they rely on conclusory allegations rather than specific factual assertions. (Def.'s Mot. at 22). This argument mischaracterizes the complaint, which sets forth detailed allegations regarding Becker's role in obtaining, using, and disclosing protected personal information without authorization. (Compl. ¶¶ 54, 56-57, 161, 166-67, 175-76). The DPPA provides that personal information from DMV records may only be accessed and used

for specific, enumerated purposes. (*Id.* ¶¶ 159-159-72, 176, 178) (citing 18 U.S.C. § 2121(b)). None of those exceptions include the partisan political activities in which Becker engaged. (*Id.* ¶¶ 162). The complaint identifies the specific mechanisms through which Becker facilitated the acquisition and misuse of this data, including his continued involvement with ERIC despite purportedly stepping away from the organization. (*Id.* ¶¶ 45-49, 54-66, 121-28). Plaintiffs further allege that Becker leveraged CEIR to use the unlawfully obtained data for voter outreach and political targeting, exceeding any permissible use under the DPPA. (*Id.* ¶¶ 121-22, 124, 161, 167, 171).

Boiled down to its essence, Becker's motion to dismiss is based on a series of flawed legal arguments that fail to rebut the well-pleaded allegations in Plaintiffs' complaint. His claim that he has no connection to Wisconsin is contradicted by his own long-standing efforts to influence the state's voter registration process through ERIC and CEIR, (*id.* ¶¶ 20, 22-30, 54, 90, 121-28, 143-151), and Plaintiffs have sufficiently alleged that Becker played a central role in accessing, obtaining, and misusing personal information from Wisconsin DMV records in violation of the DPPA. (*Id.* ¶¶ 8, 124, 161, 166-67). As explained below, Becker's motion should be denied in its entirety.



## STANDARD OF REVIEW

In reviewing a motion to dismiss "[u]nder Rule 12(b)(1), 'the district court must accept as true all material allegations of the complaint, drawing all

reasonable inferences therefrom in the plaintiff's favor," *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688, 691 (7th Cir.2015) (quoting *Reid L. v. Ill. State Bd. of Educ.*, 358 F.3d 511, 515 (7th Cir.2004)), unless there is a factual dispute that impacts the analysis, *see Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir.2003) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L.Ed.2d 351 (1992)).

In the case of a factual dispute, the plaintiff need only demonstrate by a preponderance of the evidence that subject matter jurisdiction exists. *See, e.g., Lee*, 330 F.3d at 468 (citing *Lujan*, 504 U.S. at 561); *Kathrein v. City of Evanston, Ill.*, 752 F.3d 680, 690 (7th Cir.2014) (citing *Lee*, 330 F.3d at 468, and *Lujan*, 504 U.S. at 561). In deciding a Rule 12(b)(1) motion to dismiss, the Court may look to evidence outside the pleadings. *See, e.g., Capitol Leasing*, 999 F.2d at 191 (quoting *Grafon*, 602 F.2d at 783); *United Phosphorus*, 322 F.3d at 946.



A motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) challenges the court's authority to exercise jurisdiction over the defendant. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003). When a defendant moves to dismiss under Rule 12(b)(2), the plaintiff bears the burden of establishing that personal jurisdiction exists. *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010). However, at the pleading stage, the plaintiff need only make a *prima facie* showing that

jurisdiction is proper. *Felland v. Clifton*, 682 F.3d 665, 672 (7th Cir. 2012). In determining whether the plaintiff has met this burden, the court must accept all well-pleaded factual allegations as true and resolve factual disputes in favor of the plaintiff. *Matlin v. Spin Master Corp*., 921 F.3d 701, 705 (7th Cir. 2019).

The exercise of personal jurisdiction must be consistent with both the forum state's long-arm statute and constitutional due process requirements. *Brook v. McCormley*, 873 F.3d 549, 552 (7th Cir. 2017). Because Wisconsin's long-arm statute, Wis. Stat. § 801.05, extends jurisdiction to the full limits of constitutional due process, the inquiry collapses into a single constitutional analysis. *See Felland*, 682 F.3d at 672. Under this analysis, due process concerns are satisfied whereas the defendant has minimum contacts with the forum state such that maintaining the suit does not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Personal jurisdiction may be either general[3] or specific. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).



If the plaintiff makes a *prima facie* showing of personal jurisdiction, the burden shifts to the defendant to present a "compelling case" that jurisdiction would be unreasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985). Dismissal under Rule 12(b)(2) is inappropriate where the plaintiff has

[3] Plaintiffs agree with Becker's argument that he is not subject to general jurisdiction in Wisconsin, and therefore only argue that Becker is subject to specific jurisdiction in this state.

demonstrated jurisdictional facts supporting a reasonable inference that the court may exercise jurisdiction over the defendant. *John Crane, Inc. v. Shein Law Ctr., Ltd*., 891 F.3d 692, 695 (7th Cir. 2018).

Last, when ruling on a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the Court must accept as true all well-pleaded factual allegations contained in the plaintiff's complaint and view all reasonable inferences in the light most favorable to the plaintiff. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Gillman v. Burlington N. R.R. Co*., 878 F.2d 1020, 1022 (7th Cir.1989); *Republic Steel Corp. v. Pennsylvania Eng'g Corp*., 785 F.2d 174, 177 n. 2 (7th Cir.1986). A complaint that sets forth factual allegations adequate to establish the essential elements of his is not subject to dismissal. *See Benson v. Cady*, 761 F.2d 335, 338 (7th Cir.1985); *Sutliff, Inc. v. Donovan Co., Inc.*, 727 F.2d 648, 654 (7th Cir.1984).

The Court's inquiry is generally limited to the factual allegations contained within the four corners of the complaint, *see, e.g., Hill v. Trustees of Indiana Univ*., 537 F.2d 248, 251 (7th Cir.1976); however, "[i]f . . . matters outside the pleading are presented to and not excluded by the court," a Rule 12(b)(6) motion must be treated as a Rule 56 Motion for Summary Judgment. *See Capitol Leasing*, 999 F.2d at 191; *R.J.R. Services, Inc. v. Aetna Casualty and Sur. Co*., 895 F.2d 279, 281 (7th Cir. 1989); *Winslow v. Walters*, 815 F.2d 1114, 1116 (7th Cir. 1987).

Summary judgment is governed by Fed. R. Civ. P. 56(c), which in turn, deems judgment appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A genuine issue of fact exists where a reasonable jury could make a finding in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Santiago v. Lane*, 894 F.2d 218, 221 (7th Cir. 1990). An issue of fact is material when the dispute is "over facts that might affect the outcome of the suit under the governing law . . .". *Anderson*, 477 U.S. at 248; *see also Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992); *Local 1545, United Mine Workers of Am. v. Inland Steel Coal Co.*, 876 F.2d 1288, 1293 (7th Cir. 1989). When present, the sole existence of a genuine issue of material fact "preclude[s] the entry of summary judgment." *Anderson*, 477 U.S. at 248.



## ARGUMENT

### I. MS. MCKINNEY HAS ARTICLE III STANDING.

To establish Article III standing, "a plaintiff must show (1) [she] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to

merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180–81 (2000) (2000) (citing *Lujan*, 504 U.S. at 560–61). Becker contends that Ms. McKinney has not alleged an injury-in-fact and therefore, this court lacks subject matter jurisdiction over Ms. McKinney's claim. (Def.'s Mot. at 12).

The Seventh Circuit has made clear that "concrete" does *not* mean "tangible." *See, e.g., Persinger v. Southwest Credit Systems, L.P.*, 20 F.4th 1184 (2021). Of course, "[t]angible harms, like physical or monetary harms, 'readily qualify as concrete injuries", *id.* at 1190 (citing *TransUnion LLC v. Ramirez*, 594 U.S. 413, 414 (2021), but "[i]ntangible harms may also be concrete", for example, "reputational harms, **disclosure of private information** . . . intrusion upon seclusion, and those **traditional harms specified by the Constitution itself**." *Id.* (internal citations omitted) (emphasis added). In determining whether a harm is concrete, "history and tradition offer a meaningful guide." *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 274 (2008).



Here, Ms. McKinney has alleged her private personal information was obtained, used, and disclosed by ERIC and Becker and their actions directly and proximately gave rise to the invasion of her privacy. Certainly, there can be no reasonable dispute that our individual privacy interests rank at the top

of interests our nation has a longstanding history and tradition of vigorously protecting.

### A. Ms. McKinney has Sufficiently Alleged an Injury-in-Fact.

Ms. McKinney alleges that, "as a Wisconsin voter, [she] has suffered concrete injuries . . ., in that she experienced an invasion of privacy due to the unauthorized access, use, and disclosure of her DMV data . . . ." (Compl. ¶ 174) (emphasis added). When applying the Supreme Court's guidance instructing courts to consider whether an intangible harm such as an invasion of privacy is rooted in our nation's history, there is no question this inquiry is answered in the affirmative. Few interests have a more robust history and tradition of being protected than the privacy interests of the American people.

Nearly half a century ago the United States Supreme Court made clear that one's right to privacy "has its roots in the Constitution." *Whalen*, 429 U.S. 589 at 605. It is this intangible harm that Congress contemplated and intended to protect when it enacted the DPPA. *See Kehoe v. Fidelity Fed. Bank & Trust*, 421 F.3d 1209, 1210 (11th Cir. 2005) (holding Congress enacted the DPPA to (1) remedy "concerns about an increase in threats" that were made by persons "who could acquire personal information from state [departments of motor vehicles]" and "reduce or eliminate the common practice of selling personal information to businesses who engaged in direct marketing and solicitation."); *see also* Exhibit 2, Declaration of Jennifer McKinney (explaining she received

numerous unwanted mailings, e-mails, and text messages as a result of the use and disclosure of her personal information from driving records obtained and used by Becker and his organizations).

In support of his assertion that this action be dismissed for lack of standing, Becker relies on *Baysal v. Midvale Indemnity Company*—a DPPA case with vastly different allegations of facts and injury with no similarity to the facts alleged and injuries sustained in this case. (Def.'s Mot. at 9-10) (citing *Baysal,* No. 21-cv-394-wmc, 2022 WL 1155295, at *1 (W.D. Wis. Apr. 19, 2022)).



**1. *Baysal* is uninstructive because the *Baysal* plaintiffs only alleged hypothetical injuries and future harms.**

In *Baysal*, the "plaintiffs allege[d] the data breach resulted in an increased risk of fraud and identity theft." *Id.* (citing order granting motion to dismiss at 2). But an "increased risk" is a hypothetical injury that may *possibly* arise in the future; it is not a concrete injury, and the "increased risk" is no different than the risk posed to every other person who was unfortunately subjected to that data breach. In contrast, Ms. McKinney has alleged a real and concrete harm that she has already suffered—namely, the invasion of her privacy. This harm is not hypothetical nor is it a general harm; it is an individualized, concrete, and particular harm that she suffered as a direct and proximate result of Becker obtaining, using, and disclosing her personal information. For this reason, *Baysal* is uninstructive.

In 2021, the United States Supreme Court grappled with the question of which intangible harms constitute injuries-in-fact sufficient to satisfy the Article III case or controversy standing requirement. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021). In *TransUnion*, plaintiffs brought suit after their credit reports erroneously labeled them as individuals on the nation's terrorist watch list. *Id.* at 440. Some of the plaintiffs had their incorrectly-labeled credit reports disclosed to third-parties, while other plaintiffs simply alleged that because the incorrect labeling of their credit reports constitutes a violation of the FCRA, the mislabeling alone (e.g., no external disclosure of the mislabeled report) was sufficient to constitute an injury-in-fact based on the statutory violation, exclusively. *Id.* at 426. The Supreme Court ruled that the injuries alleged were two separate and distinct injuries and the plaintiffs whose reports were incorrectly mislabeled did not have standing, while those whose mislabeled reports were disclosed to third parties *did* suffer injury-in-fact sufficient to confer standing and satisfy the Article III standing requirement. *Id.* This is expressly what has happened here.



Becker argues that "[a] DPPA claim must allege concrete injury *beyond* the mere disclosure of data," (Def.'s Mot. at 9 (citing *Baysal*, 78 F.4th at 979) (emphasis in original)). Even assuming *arguendo* Becker's argument were true, it bears no weight or relevance on the outcome because Ms. McKinney *has* alleged she suffered a concrete injury beyond the mere disclosure of her

data— namely, that she "**experienced an invasion of privacy**[4] due to the unauthorized access, use, and disclosure of her DMV data, which was used and continues to be used to infringe upon and violate her fundamental right to privacy . . . which is an irreparable harm." (Compl. ¶¶ 165, 174) (emphasis added). Notwithstanding the conveniently and conspicuously omissions of Ms. McKinney's aforesaid allegations of her injury-in-fact, Becker also fails to specify *which* data disclosure he is referencing. The Complaint alleges four different disclosures of personal information from driving records, including disclosures (1) from WisDOT to ERIC; (2) from WisDOT to Becker; (3) from ERIC to the CEIR; and (4) from ERIC to Becker. (Compl. at 2-3; ¶¶ 13, 160, 165, 172, 176). Most importantly, Becker also fails to acknowledge that the disclosure of personal information from driving records, itself, can directly and proximately cause and constitute an invasion of privacy—and this is precisely what the United Supreme Court held in *TransUnion* gave rise to the very Article III standing Becker asserts Plaintiff does not have. (Def. Mot. at 7, 11).



But this argument is meritless, as evidenced by the fact that Ms. McKinney received unwanted mailing solicitations, e-mails, and text messages as recent as November 2, 2024. *See* Exhibit 2, McKinney Declaration; *see also Bazile v. Finance System of Green Bay, Inc.*, 983 F.3d 274 (2020) ("The court

[4] Becker notably fails to mention this harm—and only this harm—when citing the harms pled, and he does so without proper citations that would otherwise indicate the conspicuous redaction of this injury-in-fact.

may consider evidence outside the pleadings, including affidavits submitted by the parties to determine whether it has subject matter jurisdiction."). As such, there can be no question that Ms. McKinney has sufficiently alleged an injury-in-fact in satisfaction of the Article III standing requirement.

## II. BECKER IS SUBJECT TO PERSONAL JURISDICTION IN THE STATE OF WISCONSIN.

A federal court may exercise personal jurisdiction over a non-resident defendant like Becker when (1) jurisdiction is proper under the state's long-arm statute, and (2) the exercise of jurisdiction comports with due process under the Fourteenth Amendment. *Felland v. Clifton*, 682 F.3d 665, 672 (7th Cir. 2012). Wisconsin's legislature enacted Wis. Stat. § 801.05 as its long-arm statute, which provides for jurisdiction that extends "to the limits of constitutional due process." *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010). To determine the limits of constitutional due process, courts employ the minimum contacts doctrine established by the United States Supreme Court in 1945. *See International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (establishing the "minimum contacts" doctrine as the controlling means of determining the limits of constitutional due process).

A defendant establishes minimum contacts with a state when they "purposefully avail" themselves of the privilege of conducting activities within the forum, thereby invoking the benefits and protections of its laws. *Burger*

*King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). The minimum contacts inquiry ensures that a defendant is only subject to jurisdiction where their actions are sufficiently connected to the state, such that it is foreseeable they could be sued there. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). There are two types of personal jurisdiction: general and specific, and Becker is subject to the specific jurisdiction in this state.

### A. Becker Has Sufficient Minimum Contacts with Wisconsin

Specific jurisdiction exists where (1) the defendant purposefully directed activities toward the forum, (2) the litigation arises from or relates to the defendant's forum contacts, and (3) jurisdiction is reasonable. *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 262 (2017). In cases involving intentional conduct, the court considers whether the defendant's actions were purposefully directed at the state. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). If these elements are met, jurisdiction is proper.



#### 1. Becker is subject to specific jurisdiction in Wisconsin.

Becker's argument that he lacks minimum contacts with Wisconsin ignores his role in activities that directly targeted and continue to target this state. Plaintiffs allege that Becker, as Executive Director of the Center for Election Innovation and Research (CEIR), facilitated the use and dissemination of personal information from driving records for impermissible purposes in violation of the DPPA. (Compl. at 3; ¶¶ 159-61, 167). Courts

routinely find personal jurisdiction appropriate where a defendant knowingly directs activities toward the forum state, especially when those activities give rise to the plaintiff's claims. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984).

Here, Plaintiffs' claims arise directly from Becker's actions related to Wisconsin. Becker's involvement with CEIR and ERIC necessarily included engagement with Wisconsin election officials and voter data. Plaintiffs allege that CEIR and ERIC improperly used DMV records from Wisconsin, and Becker played a key role in those activities. His argument that he never personally received Wisconsin DMV data is a factual dispute that cannot be resolved on a motion to dismiss. At this stage, the Court must accept Plaintiffs' allegations as true and draw all reasonable inferences in their favor. *Tamburo*, 601 F.3d at 700.



Moreover, jurisdiction is proper because Becker's conduct had foreseeable effects in Wisconsin. Under the "effects test" articulated in *Calder v. Jones*, 465 U.S. 783, 789 (1984), a defendant's intentional actions aimed at a forum can establish minimum contacts if the harm is felt in that state. Ms. McKinney, who is a Wisconsin resident and eligible registered voter, alleges that her private information was improperly accessed and used as a direct and proximate result of Becker's willful conduct. The injuries at issue—unauthorized use and dissemination of Wisconsin residents' DMV data—

occurred within Wisconsin, making the state the appropriate forum for this dispute.

### B. Exercising Jurisdiction Over Becker Comports with Fair Play and Substantial Justice.

Even if minimum contacts exist, jurisdiction must also be fair and reasonable. Courts assess factors such as (1) the burden on the defendant, (2) the state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining relief, and (4) judicial efficiency. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

Here, Wisconsin has a significant interest in enforcing the DPPA and protecting its residents from the misuse of DMV data. Plaintiffs have a strong interest in litigating in Wisconsin, where the harm occurred. Further, requiring Becker to litigate in Wisconsin is not unduly burdensome, given that he engaged in conduct affecting the state. *See Burger King*, 471 U.S. at 477 (litigation in a forum is not unfair where a defendant "purposefully derives benefit" from activities in that forum). The efficiency of the judicial system also favors Wisconsin as the forum because the other defendants, including ERIC, are also subject to jurisdiction in this case.

Becker's argument that his role as an executive shields him from jurisdiction is meritless. The fiduciary shield doctrine does not apply when an individual's actions, even when taken in a corporate capacity, are directed at

the forum state and give rise to the claims at issue. *Calder*, 465 U.S. at 790. Becker's individual involvement in CEIR's activities related to Wisconsin voter data establishes the requisite minimum contacts for personal jurisdiction.

For the foregoing reasons, Becker's motion to dismiss for lack of personal jurisdiction should be denied. Plaintiffs have sufficiently alleged that Becker purposefully directed activities toward Wisconsin that directly give rise to the claims in this case. Exercising jurisdiction over him is consistent with due process and fundamental fairness.

## III. PLAINTIFFS' DPPA CLAIM IS WELL-PLED.

"To satisfy the burden of pleading *prima facie* DPPA claim, a plaintiff must allege that [Becker] (1) knowingly (2) obtained, disclosed, or used personal information, (3) from a motor vehicle record, (4) for a purpose not permitted." *McDonough v. Anoka Cnty.*, 799 F.3d 931, 945 (8th Cir. 2015) (citing 18 U.S.C. § 2724(a)).



Becker argues that Ms. McKinney has failed to state a claim under the DPPA because (1) she "failed to allege sufficient facts for a court to reasonably infer that the purported disclosed data is the type of data protected by the DPPA[;] . . . (2) she "fails to sufficiently allege facts that the disclosure was for an impermissible use under the DPPA; . . . and because (3) "the pleadings are so unintelligible that they fail to provide Becker with sufficient notice to

determine the facts that constitute the alleged wrongful conduct." (Def.'s Mot. at 21). Each of these arguments are addressed in turn below.

### A. Ms. McKinney Alleges the Personal Information Becker Disclosed, Used, and Obtained is Covered by the DPPA.

Ms. McKinney alleges that Becker "knowingly used, obtained, and/or disclosed personal information that was sourced from motor vehicle records (i.e., the WisDOT DMV records) for a purpose other than the 14 enumerated permissible uses under the DPPA . . .". (Compl. pgs. 2, 5; ¶¶ 121-29, 143-57; 161, 165-68). Ms. McKinney further explains that the aforesaid "personal information[5] sourced from motor vehicle records", *id.*, is the "personal information of millions of Wisconsin residents and eligible American voters, including . . . Ms. McKinney" and Becker's use, disclosure, and obtaining of this information "is not [ ] permitted . . . under the Driver's Privacy and Protection Act." (Compl. at 2-3).



Even more, Ms. McKinney explicitly alleges that the DPPA "prohibits any person or entity from knowingly obtaining, disclosing, or using ***personal information derived from motor vehicle records*** for any purpose not explicitly authorized under 18 U.S.C. § 2721(b)" and "[t]he DPPA further protects 'Highly Restricted Information (HRI), which includes **names**, **addresses**, social security numbers, driver's license numbers**, phone**

[5] The term "personal information" is referred to as "data" in Becker's motion; however, the two terms are interchangeable and synonymous.

**numbers**, photographs, dates of birth, and vehicle registration information." (*Id.* ¶¶ 162, 164). Accordingly, there is no question that when drawing all reasonable inferences in Ms. McKinney's favor, the Complaint contains "sufficient facts for [this] court to reasonably infer that the [ ] disclosed data is the type of data protected by the DPPA." (Def.'s Mot. at 21).

### B. Ms. McKinney Alleges Becker Disclosed, Used, and Obtained DMV Data for Impermissible Purposes.

A plain reading of the Complaint irrefutably renders Becker's argument that Ms. McKinney's complaint "fails to sufficiently allege facts that the disclosure was for an impermissible use under the DPPA" meritless, *id.*, and the Court should treat it as such.



For example, the Complaint alleges that Becker knowingly obtained and disclosed Ms. McKinney's personal information or HRI without authorization, in direct violation of 18 U.S.C. § 2721(a) and 18 U.S.C. § 2725(4). (Compl. ¶ 165). Plaintiffs allege Becker knowingly obtained personal information that was sourced from motor vehicle records; (*Id.* ¶ 165), and then he used the personal information for one or more purpose(s) not permitted by the statute, including, without limitation, providing the information to CEIR, targeting citizens unregistered to vote, targeting non-citizens who are not registered nor eligible to register to vote. (*Id.* ¶ 166) The Complaint alleges that these actions

bloated voter rolls in Wisconsin and caused ineligible persons as well as non-citizens to be registered to vote despite their ineligibility. (*Id*).

Despite these allegations, Becker lodges the misguided assertion that this case should be dismissed because Ms. McKinney relies "exclusively on conclusory statements—i.e., not facts—in support of her DPPA claim." (Def.'s Mot. at 26).

Plaintiffs have failed to state a claim pertains to the fourth and final element—that is, whether Plaintiffs allege that ERIC knowingly obtained, disclosed, and/or used Ms. McKinney's personal information contained in driving records for an impermissible purpose. (Def.'s Mot. at 17-18) ("ERIC *does* receive data for permissible uses.") (emphasis in original).



### C. Plaintiffs' Complaint is Well-Pled and Their DPPA Claim is Supported by Specific Facts.

The DPPA creates a private right of action for any individual whose personal information is unlawfully disclosed. *See New Richmond News v. City of New Richmond*, 370 Wis.2d 75 (2016) (citing 18 U.S.C. § 2724(a)). Plaintiffs have adequately pled their DPPA claim for the reasons mentioned above. The Complaint alleges specific and detailed facts that demonstrate Becker, through ERIC and CEIR, unlawfully obtained, used, and disclosed Ms. McKinney's personal information, including her phone number and address, which Becker obtained from Wisconsin driving records, and through ERIC and CEIR. (Compl.

¶ 165). Ms. McKinney alleges that Becker did so knowingly, (*id.* at ¶¶ 161, 165-66), and that as a direct and proximate result of Becker's conduct, Ms. McKinney suffered an invasion of her privacy. (*Id.* ¶¶ 174). These facts are detailed, specific, and well-pled allegations that are anything but merely conclusory.

### D. Plaintiffs' Complaint Is Not Impermissibly Verbose, and Becker Can Clearly Discern the Facts Underlying Plaintiffs' DPPA Claim

Following 21-pages of argument comprised of 3 headings, 7 subheadings, 4 sub-subheadings, and 5 sub- sub-subheadings, Becker speciously contends that the Complaint should be dismissed because it is "too confusing to determine the facts that constitute the alleged wrongful conduct." (Def.'s Mot. at 26) (citing *Stanard v. Nygren*, 658 F.3d 792, 797-98 (7th Cir. 2011). This argument is meritless and warrants no consideration from the Court.



Boiled down to its essence, the Complaint contains factual allegations that satisfy each element of Plaintiffs' DPPA claim and provide the Court with the complex history that underlies the basis upon which Plaintiffs assert that Becker acted knowingly in obtaining, disclosing, and using the information contained in driving records for impermissible purposes.

The conscious-shocking nature of the intentionality behind this scheme understandably elicits resistance—but the egregiousness of the conduct complained of herein is neither unfounded nor unsupported by voluminous studies, reports, and documents; all of which will be readily provided during

the discovery process. For example, Becker testifies in his sworn affidavit that he has "never received, viewed, or accessed any Wisconsin DMV data from ERIC, or any other source." (Def.'s Mot. Ex. 1, ¶ 7). But as made clear in paragraph 128 of the Complaint, CEIR—an organization for which Becker serves as its Executive Director—obtains and receives data that is disclosed to it by ERIC. (Compl. ¶ 128). According to the "EBU General Timeline" certain steps in the data process, including: (1) the state uploads the cleaned EBU list to the ERIC SFTP site, and ERIC securely transfers it to CEIR; (2) CEIR completes a randomization process; and (3) CEIR shares the lists with the state (via ERIC). (*Id*).



At face value, it is inconceivable that the founder and Executive Director of an organization that exists "to support state election officials in enhancing the accuracy of voter registration lists" has never received data from Wisconsin—a state that despite not being an ERIC member, has been mistakenly treated as an ERIC member-state by ERIC's own admissions. And if that is not enough, Becker is cc'ed on email correspondences detailing this precise EBU General Timeline process. *See* Exhibit 3.[6]

Becker argues that this Complaint should be dismissed not because its unintelligible, but because it consists of "155 [*sic*] paragraphs spread over 33

[6] *See* Fed. R. Evid. 201.

pages in support of a single DPPA claim [and] [t]his is indicative of the fact that [Plaintiffs'] complaint is nothing more than hyperbole and conspiracy theories . . .". (Def.'s Mot. at 26). But undue length alone does not justify the dismissal of an otherwise valid complaint." *Stanard v. Nygren*, 658 F.3d 792, 797 (7th Cir. 2011). Even assuming *arguendo* the Complaint contains too many facts and therefore does not constitute "a short and plain statement of the claim" under Rule 8, there is no doubt that the Complaint has put Becker on notice of the claims, and notice alone renders dismissal is inappropriate. *See id.*

Indeed, it is an abuse of discretion to dismiss a Complaint "merely because of the presence of superfluous matter." *Davis v. Ruby Foods, Inc.*, 269 F.3d 818, 820 (2001). "If the trial court [understands] the allegations sufficiently to determine that they could state a claim for relief, the complaint has satisfied Rule 8." *Id.* at 820–21; *see also Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir.1998) ("Prolixity is a bane of the legal profession but a poor ground for rejecting potentially meritorious claims. Fat in a complaint can be ignored, confusion or ambiguity dealt with by means other than dismissal."); *cf. Hrubec v. Nat'l R.R. Passenger Corp.*, 981 F.2d 962, 963 (7th Cir.1992) (complaints construed in favor of drafters in order to do substantial justice).

Logic dictates that the number of paragraphs and pages of a complaint bear no relevance as to what constitutes "hyperbole and conspiracy theory"

(Def.'s Mot. at 26), and well-established Seventh Circuit precedent dictates that the number of paragraphs and pages bears no relevance as a ground for dismissal. *Davis*, 269 F.3d at 820. And whereas a "complaint [that] was 195 pages long and contained 402 numbered paragraphs, many with sub-paragraphs and block quotes" did not suffice as a basis for dismissal under Rule 8, *Gumm v. Molinaroli*, 569 F.Supp.3d 806, 833 (2021) there certainly cannot be grounds for a Rule 8 dismissal in this case.

## CONCLUSION

Based on the reasons set forth above, this Court should Deny Defendant David J. Becker's ("Defendant" or "Becker") Motion to Dismiss in its entirety.

Dated: February 13, 2025

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2025, a true copy of the foregoing was filed and served via the Court's CM/ECF electronic system upon all parties of record.

/s/ *Rachel Dreher*
Rachel Dreher