

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:19-cv-81189-RKA

JAMES TRACY,

Plaintiff,

v.

JURY TRIAL DEMANDED

RICKEY LEON BETHEL, JR.,
AMY GRANDE, TRACY CLARK
HAYNIE and GIA SHAW,

Defendants.

SECOND AMENDED COMPLAINT

COMES NOW, Plaintiff, JAMES TRACY, by and through undersigned counsel, and pursuant to the Court's Orders dated August 30, 2019 [D.E. 6], September 18, 2019 [D.E. 13] and September 20, 2019 [D.E. 14], files this Second Amended Complaint against Defendants RICKEY LEON BETHEL, JR.; AMY GRANDE; TRACY CLARK HAYNIE; and GIA SHAW (collectively hereinafter "Defendants"), and states as follows:

INTRODUCTION

1. On August 23, 2019, Plaintiff filed separate actions against Defendants RICKEY LEON BETHEL, JR. [*Tracy v. Bethel*, Case No. 19-cv-81189], AMY GRANDE [*Tracy v. Grande*, Case No. 19-cv-81191], TRACY CLARK HAYNIE [*Tracy v. Haynie*, Case No. 19-cv-81190], and GIA SHAW [*Tracy v. Shaw*, Case No. 19-cv-81193] for Drivers License Privacy Protection Act ("DPPA") violations.

2. On August 28, 2019, the Court *sua sponte* issued an Order to Show Cause why *Tracy v.*

Bethel, No. 19-cv-81189-RKA, and *Tracy v. Shaw*, No. 19-cv-81193-RKA, should not be consolidated. [D.E. 4]. Plaintiff did not object to consolidation for purposes of discovery and case management, however, Plaintiff reserves his right to move for separate trials against each Defendant. [D.E. 5].

3. On August 30, 2019, the Court issued an Order [D.E. 6] directing Plaintiff to file a single combined complaint on or before September 9, 2019. On September 8, 2019, Plaintiff filed the first Amended Complaint. [D.E. 8].

4. Subsequently, the Defendants moved to consolidate *Tracy v. Grande* and *Tracy v. Haynie* with the above-captioned action and the Court entered Orders [D.E. 13 and D.E. 14] granting consolidation without prejudice to Plaintiff's preserved right to move for separate trials against each Defendant, and ordering Plaintiff to file a single combined complaint governing this action.

PARTIES

5. Plaintiff JAMES TRACY is an individual who resides in Palm Beach County, Florida.

6. Defendant RICKY LEON BETHEL, JR. is an individual, who resides in Palm Beach County, Florida and at all times material to the allegations contained herein, was employed by the Florida Atlantic University ("FAU") Police Department. BETHEL is sued in his individual capacity.

7. Defendant AMY GRANDE is an individual, who resides in Palm Beach County, Florida and at all times material to the allegations contained herein, was employed by the FAU Police Department. GRANDE is sued in her individual capacity.

8. Defendant TRACY CLARK HAYNIE is an individual, who resides in Broward County, Florida and at all times material to the allegations contained herein, was employed by the FAU Police Department. HAYNIE is sued in her individual capacity.

9. Defendant GIA SHAW is an individual, who resides in Broward County, Florida and at all times material to the allegations contained herein, was employed by the FAU Police Department. SHAW is sued in her individual capacity.

JURISDICTION & VENUE

10. The Court has jurisdiction over this action under 28 U.S.C § 1331 because Counts I-IV arise under federal law for violations of 18 U.S.C. §§ 2721-2725.

11. Venue is proper in the U.S. District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391 because the events giving rise to the claim(s) occurred in the Southern District of Florida.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

12. Upon information and belief, as law enforcement personnel for FAU's Police Department, Defendants were given access to a statewide electronic information system known as the State of Florida's Driver and Vehicle Information Database, also known as "DAVID".

13. As law enforcement personnel with access to DAVID, the Defendants were trained on the prohibitions of 18 U.S.C. §§ 2721 through 2725, as well as on similar Florida prohibitions against wrongful use of the data systems to access personal information.

14. The Florida Department of Highway Safety and Motor Vehicles data system includes information on all registered vehicles, vehicle identification numbers, tag numbers, insurance information, registered address information, driver's license information, including full names, birth dates, height, weight, driver's license numbers, home addresses, photographs, signatures and other driver information. All of this information falls under protected information for purposes of 18 U.S.C. § 2721 through § 2724, and is defined as "personal information" under 18 U.S.C. § 2725.

15. 18 U.S.C. § 2724 states that a person who knowingly obtains, discloses or uses personal information from a motor 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.

16. Florida Statutes Section 119.0712(2)(b) states, “Personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq.*” Fla. Stat. § 119.0712 further states, “[e]mergency contact information contained in a motor vehicle record is confidential” and “[w]ithout the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.”

17. Suspecting his personal information and records had been illegally accessed, Plaintiff submitted a Public Record Request pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, to the Florida Department of Highway Safety and Motor Vehicles (“FL DHSMV”). Plaintiff received a FL DHSMV report, in response to his Public Record Request (the “Report”). The Report is attached as Exhibit A.

18. The Report indicates that Defendant RICKY LEON BETHEL, JR. made thirteen (13) unwarranted and illegal inquiries on December 18, 2015. See Exhibit A.

19. The Report indicates that on December 18, 2015, Defendant AMY GRANDE made two (2) unwarranted and illegal inquiries. See Exhibit A.

20. The Report indicates that Defendant TRACY CLARK HAYNIE made seven (7) unwarranted and illegal inquiries on December 17, 2015, and two (2) additional unwarranted and

illegal inquires on January 14, 2016, totaling nine (9) unwarranted and illegal inquiries. See Exhibit A.

21. The Report indicates that Defendant GIA SHAW made two (2) unwarranted and illegal inquiries on December 17, 2015. See Exhibit A.

COUNT I
For Violations of Driver's Privacy Protection Act (18 U.S.C. § 2721, *et seq.*)
(Against Defendant Rickey Leon Bethel, Jr.)

22. Plaintiff repeats and re-alleges all of the paragraphs (1) through (18) above, as if fully set forth herein.

23. Plaintiff provided personal information to the Florida Department of Highway Safety and Motor Vehicles, including, but not limited to, his address, photograph, vehicle information, signature, social security number, date of birth, weight, height and eye color for the purpose of acquiring and utilizing a State of Florida driver's license.

24. Florida's Driver and Vehicle Information Database also maintains Plaintiff's driving record, vehicle information, signature, transaction details, and highly restricted personal information, including Plaintiff's photograph and social security number.

25. At no time did Plaintiff provide consent for RICKY LEON BETHEL, JR. to obtain, disclose, or use his private personal information maintained in Florida's Driver and Vehicle Information Database for anything but official law enforcement business.

26. Intentionally obtaining, disclosing, or using driver's license information without an authorized purpose is a violation of the Driver's Privacy Protection Act. The statute provides for criminal fines and civil penalties. 18 U.S.C. § 2721 *et seq.*

27. The DPPA creates an individual right to privacy in a person's driver's license information, thereby prohibiting unauthorized access of Plaintiff's protected personal and highly

confidential personal information.

28. The DPPA provides redress for violations of a person's protected interests in the privacy of their motor vehicle records and identifying information therein.

29. Defendant RICKY LEON BETHEL, JR. has invaded Plaintiff's legally protected interest under the DPPA.

30. Defendant RICKY LEON BETHEL, JR. did unlawfully access Plaintiff's private personal information by entering Plaintiff's identifying information into the DAVID system for no lawful purpose and retrieved and obtained the Plaintiff's private personal information and record. See Exhibit A.

31. Upon information and belief, the information retrieved and accessed by Defendant RICKY LEON BETHEL, JR. as described in the preceding paragraphs was obtained in willful and/or reckless disregard of the law, and/or for the purpose and intent to harm, injure, harass and/or invade the privacy of Plaintiff.

32. Defendant's inquiries did not fall within the DPPA's permitted exceptions for procurement of Plaintiff's private information.

33. Defendant knew or should have known that his actions were unlawful and in violation of the DPPA.

34. Plaintiff has suffered harm because his private information has been obtained unlawfully, including ongoing harm by virtue of the increased risk that his protected information is in the possession of Defendant or other persons, firms, or corporations in active concert or participation with him who obtained it without a legitimate purpose. This is precisely the harm Congress sought to prevent by enacting DPPA.

35. Plaintiff is entitled to attorneys' fees and costs as prescribed by 18 U.S.C. § 2724 and

punitive damages as punishment for Defendant RICKEY LEON BETHEL, JR.’s willful and/or reckless disregard of the law and to deter unlawful conduct of the Defendant and others similarly situated as allowed by 18 U.S.C. § 2724. See *Reno v. Condon*, 528 U.S. 141, 144 (2000) (holding that “any person who knowingly obtains, discloses, or uses information from a state motor vehicle record for a use other than those specifically permitted by the DPPA may be subject to liability in a civil action brought by the driver to whom the information pertains”).

36. This claim is not subject to the pleading or notice requirement of Florida law as set forth in Fla. Sta. § 768.72.

37. In addition, under the DPPA, Plaintiff is entitled to a baseline liquidated damages award of at least \$2,500.00 for each of the Defendant’s violations of the DPPA. 18 U.S.C. § 2724(b)(1).

38. Plaintiff is also entitled to equitable relief pursuant to 18 U.S.C. § 2724(b)(4), in the form of a permanent injunction enjoining Defendant RICKEY LEON BETHEL, JR. from obtaining, using or disclosing Plaintiff’s private and highly confidential personal information in violation of the DPPA and other applicable laws.

PRAYER FOR RELIEF

WHERFORE, Plaintiff JAMES TRACY respectfully request this Honorable Court enter Judgment in his favor against the Defendant RICKEY LEON BETHEL, JR. and award Plaintiff: (1) liquidated damages of at least \$2,500 for each violation of the DPPA under 18 U.S.C. § 2721(b)(1); (2) compensatory and punitive damages in an amount to be determined by a jury; (3) Plaintiff’s costs, including reasonable attorneys’ fees and prejudgment interest; and (4) enter an Order permanently enjoining Defendant, including but not limited to all other persons, firms, or corporations in active concert or participation with Defendant, from obtaining, using or disclosing Plaintiff’s private and highly confidential personal information in violation of the

DPPA and other applicable laws and barring Defendant from invading Plaintiff's privacy; along with such other relief as the Court deems just and proper.

COUNT II
For Violations of Driver's Privacy Protection Act (18 U.S.C. § 2721, *et seq.*)
(Against Defendant Amy Grande)

39. Plaintiff repeats and re-alleges all of the paragraphs (1) through (19) above, as if fully set forth herein.

40. Plaintiff provided personal information to the Florida Department of Highway Safety and Motor Vehicles, including, but not limited to, his address, photograph, vehicle information, signature, social security number, date of birth, weight, height and eye color for the purpose of acquiring and utilizing a State of Florida driver's license.

41. Florida's Driver and Vehicle Information Database also maintains Plaintiff's driving record, vehicle information, signature, transaction details, and highly restricted personal information, including Plaintiff's photograph and social security number.

42. At no time did Plaintiff provide consent for AMY GRANDE to obtain, disclose, or use his private personal information maintained in Florida's Driver and Vehicle Information Database for anything but official law enforcement business.

43. Intentionally obtaining, disclosing, or using driver's license information without an authorized purpose is a violation of the Driver's Privacy Protection Act ("DPPA"). The statute provides for criminal fines and civil penalties. 18 U.S.C. § 2721 *et seq.*

44. The DPPA creates an individual right to privacy in a person's driver's license information, thereby prohibiting unauthorized access of Plaintiff's protected personal and highly confidential personal information.

45. The DPPA provides redress for violations of a person's protected interests in the privacy

of their motor vehicle records and identifying information therein.

46. Defendant AMY GRANDE has invaded Plaintiff's legally protected interest under the DPPA.

47. Defendant AMY GRANDE did unlawfully access Plaintiff's private personal information by entering Plaintiff's identifying information into the DAVID system for no lawful purpose and retrieved and obtained the Plaintiff's private personal information and record. See Exhibit A.

48. Upon information and belief, the information retrieved and accessed by Defendant AMY GRANDE as described in the preceding paragraphs was obtained in willful and/or reckless disregard of the law, and/or for the purpose and intent to harm, injure, harass and/or invade the privacy of Plaintiff.

49. Defendant's inquiries did not fall within the DPPA's permitted exceptions for procurement of Plaintiff's private information.

50. Defendant knew or should have known that her actions were unlawful and in violation of the DPPA.

51. Plaintiff has suffered harm because his private information has been obtained unlawfully, including ongoing harm by virtue of the increased risk that his protected information is in the possession of Defendant or other persons, firms, or corporations in active concert or participation with her who obtained it without a legitimate purpose. This is precisely the harm Congress sought to prevent by enacting DPPA.

52. Plaintiff is entitled to attorneys' fees and costs as prescribed by 18 U.S.C. § 2724 and punitive damages as punishment for Defendant AMY GRANDE's willful and/or reckless disregard of the law and to deter unlawful conduct of the Defendant and others similarly situated as allowed by 18 U.S.C. § 2724. See *Reno v. Condon*, 528 U.S. 141, 144 (2000) (holding that

“any person who knowingly obtains, discloses, or uses information from a state motor vehicle record for a use other than those specifically permitted by the DPPA may be subject to liability in a civil action brought by the driver to whom the information pertains”).

53. This claim is not subject to the pleading or notice requirement of Florida law as set forth in Fla. Sta. § 768.72.

54. In addition, under the DPPA, Plaintiff is entitled to a baseline liquidated damages award of at least \$2,500.00 for each of the Defendant’s violations of the DPPA. 18 U.S.C. § 2724(b)(1).

55. Plaintiff is also entitled to equitable relief pursuant to 18 U.S.C. § 2724(b)(4), in the form of a permanent injunction enjoining Defendant AMY GRANDE from obtaining, using or disclosing Plaintiff’s private and highly confidential personal information in violation of the DPPA and other applicable laws.

PRAYER FOR RELIEF

WHERFORE, Plaintiff JAMES TRACY respectfully request this Honorable Court enter Judgment in his favor against the Defendant AMY GRANDE and award Plaintiff: (1) liquidated damages of at least \$2,500 for each violation of the DPPA under 18 U.S.C. § 2721(b)(1); (2) compensatory and punitive damages in an amount to be determined by a jury; (3) Plaintiff’s costs, including reasonable attorneys’ fees and prejudgment interest; and (4) enter an Order permanently enjoining Defendant, including but not limited to all other persons, firms, or corporations in active concert or participation with Defendant, from obtaining, using or disclosing Plaintiff’s private and highly confidential personal information in violation of the DPPA and other applicable laws and barring Defendant from invading Plaintiff’s privacy; along with such other relief as the Court deems just and proper.

COUNT III
For Violations of Driver's Privacy Protection Act (18 U.S.C. § 2721, *et seq.*)
(Against Defendant Tracy Clark Haynie)

56. Plaintiff repeats and re-alleges all of the paragraphs (1) through (20) above, as if fully set forth herein.

57. Plaintiff provided personal information to the Florida Department of Highway Safety and Motor Vehicles, including, but not limited to, his address, photograph, vehicle information, signature, social security number, date of birth, weight, height and eye color for the purpose of acquiring and utilizing a State of Florida driver's license.

58. Florida's Driver and Vehicle Information Database also maintains Plaintiff's driving record, vehicle information, signature, transaction details, and highly restricted personal information, including Plaintiff's photograph and social security number.

59. At no time did Plaintiff provide consent for TRACY CLARK HAYNIE to obtain, disclose, or use his private personal information maintained in Florida's Driver and Vehicle Information Database for anything but official law enforcement business.

60. Intentionally obtaining, disclosing, or using driver's license information without an authorized purpose is a violation of the Driver's Privacy Protection Act ("DPPA"). The statute provides for criminal fines and civil penalties. 18 U.S.C. § 2721 *et seq.*

61. The DPPA creates an individual right to privacy in a person's driver's license information, thereby prohibiting unauthorized access of Plaintiff's protected personal and highly confidential personal information.

62. The DPPA provides redress for violations of a person's protected interests in the privacy of their motor vehicle records and identifying information therein.

63. Defendant TRACY CLARK HAYNIE has invaded Plaintiff's legally protected interest

under the DPPA.

64. Defendant TRACY CLARK HAYNIE did unlawfully access Plaintiff's private personal information by entering Plaintiff's identifying information into the DAVID system for no lawful purpose and retrieved and obtained the Plaintiff's private personal information and record. See Exhibit A.

65. Upon information and belief, the information retrieved and accessed by Defendant TRACY CLARK HAYNIE as described in the preceding paragraphs was obtained in willful and/or reckless disregard of the law, and/or for the purpose and intent to harm, injure, harass and/or invade the privacy of Plaintiff.

66. Defendant's inquiries did not fall within the DPPA's permitted exceptions for procurement of Plaintiff's private information.

67. Defendant knew or should have known that her actions were unlawful and in violation of the DPPA.

68. Plaintiff has suffered harm because his private information has been obtained unlawfully, including ongoing harm by virtue of the increased risk that his protected information is in the possession of Defendant or other persons, firms, or corporations in active concert or participation with her who obtained it without a legitimate purpose. This is precisely the harm Congress sought to prevent by enacting DPPA.

69. Plaintiff is entitled to attorneys' fees and costs as prescribed by 18 U.S.C. § 2724 and punitive damages as punishment for Defendant TRACY CLARK HAYNIE's willful and/or reckless disregard of the law and to deter unlawful conduct of the Defendant and others similarly situated as allowed by 18 U.S.C. § 2724. See *Reno v. Condon*, 528 U.S. 141, 144 (2000) (holding that "any person who knowingly obtains, discloses, or uses information from a state

motor vehicle record for a use other than those specifically permitted by the DPPA may be subject to liability in a civil action brought by the driver to whom the information pertains").

70. This claim is not subject to the pleading or notice requirement of Florida law as set forth in Fla. Sta. § 768.72.

71. In addition, under the DPPA, Plaintiff is entitled to a baseline liquidated damages award of at least \$2,500.00 for each of the Defendant's violations of the DPPA. 18 U.S.C. § 2724(b)(1).

72. Plaintiff is also entitled to equitable relief pursuant to 18 U.S.C. § 2724(b)(4), in the form of a permanent injunction enjoining Defendant TRACY CLARK HAYNIE from obtaining, using or disclosing Plaintiff's private and highly confidential personal information in violation of the DPPA and other applicable laws.

PRAYER FOR RELIEF

WHERFORE, Plaintiff JAMES TRACY respectfully request this Honorable Court enter Judgment in his favor against the Defendant TRACY CLARK HAYNIE and award Plaintiff: (1) liquidated damages of at least \$2,500 for each violation of the DPPA under 18 U.S.C. § 2721(b)(1); (2) compensatory and punitive damages in an amount to be determined by a jury; (3) Plaintiff's costs, including reasonable attorneys' fees and prejudgment interest; and (4) enter an Order permanently enjoining Defendant, including but not limited to all other persons, firms, or corporations in active concert or participation with Defendant, from obtaining, using or disclosing Plaintiff's private and highly confidential personal information in violation of the DPPA and other applicable laws and barring Defendant from invading Plaintiff's privacy; along with such other relief as the Court deems just and proper.

COUNT IV
For Violations of Driver's Privacy Protection Act (18 U.S.C. § 2721, *et seq.*)
(Against Defendant Gia Shaw)

73. Plaintiff repeats and re-alleges all of the paragraphs (1) through (21) above, as if fully set forth herein.

74. Plaintiff provided personal information to the Florida Department of Highway Safety and Motor Vehicles, including, but not limited to, his address, photograph, vehicle information, signature, social security number, date of birth, weight, height and eye color for the purpose of acquiring and utilizing a State of Florida driver's license.

75. Florida's Driver and Vehicle Information Database also maintains Plaintiff's driving record, vehicle information, signature, transaction details, and highly restricted personal information, including Plaintiff's photograph and social security number.

76. At no time did Plaintiff provide consent for GIA SHAW to obtain, disclose, or use his private personal information maintained in Florida's Driver and Vehicle Information Database for anything but official law enforcement business.

77. Intentionally obtaining, disclosing, or using driver's license information without an authorized purpose is a violation of the Driver's Privacy Protection Act ("DPPA"). The statute provides for criminal fines and civil penalties. 18 U.S.C. § 2721 *et seq.*

78. The DPPA creates an individual right to privacy in a person's driver's license information, thereby prohibiting unauthorized access of Plaintiff's protected personal and highly confidential personal information.

79. The DPPA provides redress for violations of a person's protected interests in the privacy of their motor vehicle records and identifying information therein.

80. Defendant GIA SHAW has invaded Plaintiff's legally protected interest under the DPPA.

81. Defendant GIA SHAW did unlawfully access Plaintiff's private personal information by entering Plaintiff's identifying information into the DAVID system for no lawful purpose and retrieved and obtained the Plaintiff's private personal information and record. See Exhibit A.

82. Upon information and belief, the information retrieved and accessed by Defendant GIA SHAW as described in the preceding paragraphs was obtained in willful and/or reckless disregard of the law, and/or for the purpose and intent to harm, injure, harass and/or invade the privacy of Plaintiff.

83. Defendant's inquiries did not fall within the DPPA's permitted exceptions for procurement of Plaintiff's private information.

84. Defendant knew or should have known that her actions were unlawful and in violation of the DPPA.

85. Plaintiff has suffered harm because his private information has been obtained unlawfully, including ongoing harm by virtue of the increased risk that his protected information is in the possession of Defendant or other persons, firms, or corporations in active concert or participation with her who obtained it without a legitimate purpose. This is precisely the harm Congress sought to prevent by enacting DPPA.

86. Plaintiff is entitled to attorneys' fees and costs as prescribed by 18 U.S.C. § 2724 and punitive damages as punishment for Defendant GIA SHAW's willful and/or reckless disregard of the law and to deter unlawful conduct of the Defendant and others similarly situated as allowed by 18 U.S.C. § 2724. See *Reno v. Condon*, 528 U.S. 141, 144 (2000) (holding that "any person who knowingly obtains, discloses, or uses information from a state motor vehicle record for a use other than those specifically permitted by the DPPA may be subject to liability in a civil action brought by the driver to whom the information pertains").

87. This claim is not subject to the pleading or notice requirement of Florida law as set forth in Fla. Sta. § 768.72.

88. In addition, under the DPPA, Plaintiff is entitled to a baseline liquated damages award of at least \$2,500.00 for each of the Defendant's violations of the DPPA. 18 U.S.C. § 2724(b)(1).

89. Plaintiff is also entitled to equitable relief pursuant to 18 U.S.C. § 2724(b)(4), in the form of a permanent injunction enjoining Defendant GIA SHAW from obtaining, using or disclosing Plaintiff's private and highly confidential personal information in violation of the DPPA and other applicable laws.

PRAYER FOR RELIEF

WHERFORE, Plaintiff JAMES TRACY respectfully request this Honorable Court enter Judgment in his favor against the Defendant GIA SHAW and award Plaintiff: (1) liquidated damages of at least \$2,500 for each violation of the DPPA under 18 U.S.C. § 2721(b)(1); (2) compensatory and punitive damages in an amount to be determined by a jury; (3) Plaintiff's costs, including reasonable attorneys' fees and prejudgment interest; and (4) enter an Order permanently enjoining Defendant, including but not limited to all other persons, firms, or corporations in active concert or participation with Defendant, from obtaining, using or disclosing Plaintiff's private and highly confidential personal information in violation of the DPPA and other applicable laws and barring Defendant from invading Plaintiff's privacy; along with such other relief as the Court deems just and proper.

DATED: 09/23/2019

FLORIDA CIVIL RIGHTS COALITION, P.L.L.C.

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DEMAND FOR JURY TRIAL

The Plaintiff hereby demands a jury trial in accordance with Fed. R. Civ. P. 38 and the 7th Amendment to the Constitution on any issue triable of right by jury.

DATED: 09/23/2019

Respectfully submitted,

/s/ Louis Leo IV
Louis Leo IV, Esq.