

# **EXHIBIT A**

**From:** Schmelzer, Jody J. <SchmelzerJJ@DOJ.STATE.WI.US>  
**Sent:** Monday, July 10, 2017 9:45 AM  
**To:** Wolf, Ryan  
**Cc:** Liu, Angela; Van Strander, James; Karyn Rotker; athomas@aclu.org; Larry Dupuis; Dale Ho; Keenan, Brian P.; Johnson-Karp, Gabe  
**Subject:** RE: Frank v. Walker, 2:11-cv-01128 (LA)

Yes, that sounds good. We will be at my phone number, 608-266-3094. Thanks,  
Jody

**Jody J. Schmelzer**

Assistant Attorney General  
17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
phone: (608) 266-3094  
fax: (608)267-8906

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**From:** Wolf, Ryan [mailto:Ryan.Wolf@dechert.com]  
**Sent:** Friday, July 07, 2017 6:58 PM  
**To:** Schmelzer, Jody J. <SchmelzerJJ@DOJ.STATE.WI.US>  
**Cc:** Liu, Angela <Angela.Liu@dechert.com>; Van Strander, James <James.VanStrander@dechert.com>; Karyn Rotker <krotker@aclu-wi.org>; athomas@aclu.org; Larry Dupuis <ldupuis@aclu-wi.org>; Dale Ho <dho@aclu.org>; Keenan, Brian P. <keenanbp@doj.state.wi.us>; Johnson-Karp, Gabe <johnsonkarp@doj.state.wi.us>  
**Subject:** Re: Frank v. Walker, 2:11-cv-01128 (LA)

Next Thursday, July 13th works for us. Does 1pm CT/2pm ET work for you?

Ryan Wolf  
Associate  
Dechert LLP  
+ 1 215 994 2282  
[ryan.wolf@dechert.com](mailto:ryan.wolf@dechert.com)  
[dechert.com](http://dechert.com)

On Jul 7, 2017, at 4:05 PM, Schmelzer, Jody J. <[SchmelzerJJ@DOJ.STATE.WI.US](mailto:SchmelzerJJ@DOJ.STATE.WI.US)> wrote:

Hello Ryan,

Could we discuss this further next week Thursday, July 13? Some of the DOJ team has been out all of this week, so I'd like some time to bring them up to date before meeting. Thanks,

Jody

**Jody J. Schmelzer**

Assistant Attorney General  
17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
phone: (608) 266-3094  
fax: (608)267-8906

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**From:** Wolf, Ryan [<mailto:Ryan.Wolf@dechert.com>]  
**Sent:** Thursday, July 06, 2017 1:56 PM  
**To:** Schmelzer, Jody J. <[SchmelzerJJ@DOJ.STATE.WI.US](mailto:SchmelzerJJ@DOJ.STATE.WI.US)>  
**Cc:** Liu, Angela <[Angela.Liu@dechert.com](mailto:Angela.Liu@dechert.com)>; Van Strander, James <[James.VanStrander@dechert.com](mailto:James.VanStrander@dechert.com)>; Karyn Rotker <[krotker@aclu-wi.org](mailto:krotker@aclu-wi.org)>; [athomas@aclu.org](mailto:athomas@aclu.org); Larry Dupuis <[ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org)>; Dale Ho <[dho@aclu.org](mailto:dho@aclu.org)>; Keenan, Brian P. <[keenanbp@doj.state.wi.us](mailto:keenanbp@doj.state.wi.us)>; Johnson-Karp, Gabe <[johnsonkarp@doj.state.wi.us](mailto:johnsonkarp@doj.state.wi.us)>; Murphy, S. Michael <[murphysm@doj.state.wi.us](mailto:murphysm@doj.state.wi.us)>  
**Subject:** RE: Frank v. Walker, 2:11-cv-01128 (LA)

Ms. Schmelzer,

Thank you for your reply to my email.

We believe that our proposed use would not violate any provisions of the protective order or violate the statutes you cited in your email.

As an initial matter, Wis. Stat. §§ 85.103, 343.235, and 343.50(8) place no restrictions on our use of the information produced by DOT. Indeed, the protective order recognizes that these statutes are inapplicable here. See Dkt. 268 (“the statutes are silent as to the circumstances under which that data may be disclosed to parties in litigation other than the circumstances described in those statutes . . . .”)

Paragraph 2 of the protective order similarly does not prohibit our intended use of the information produced by DOT. We do not intend to disclose any information to individuals contacted; rather, we intend only to try and obtain information from persons identified using information found in the DOT production.

As for Paragraph 3, your reading takes the relevant language out of context. The language regarding “contacting or soliciting people whose contact information is contained in the Confidential Information” follows immediately an introductory phrase stating that information “shall not be used for any business or competitive purpose.” The paragraph concludes by stating that the information should not be “used for or other purpose unrelated to this litigation.” Read in context, the “contacting or soliciting” language is more properly read to prohibit contacting or soliciting individuals for pecuniary gain, rather than to prevent the development of facts relevant to this litigation. Our reading would not “eviscerate the plain intent of the protective order,” as you suggest.

Further, it is entirely unclear whether the cited restrictions in Paragraph 3 even apply to the information at issue. By its terms, Paragraph 3 only limits the use of information “designated Confidential.” In its production, DOT did not designate any of the documents produced with a “CONFIDENTIAL” label or any other marker indicating which documents were “designated Confidential.” The provisions of Paragraph 3 (and Paragraph 2) therefore may not even apply to restrict our use of this information.

Finally, *Balschmiter v. TD Auto Finance LLC*, No. 13-CV-1186-JPS, 2015 WL 2451853 (E.D. Wis. May 21, 2015), is distinguishable in several respects from this case. In *Balschmiter*, plaintiff’s counsel intended to contact almost 200,000 individuals; in this case, we intend to contact only a small subset of the individuals whose information was found in the DOT materials. Additionally, in *Balschmiter*, the proposed use of confidential information plainly fell within the scope of the protective order and was plainly prohibited. In this case, as discussed above, it is entirely unclear that the protective order prohibits our intended use of the information produced by DOT. Finally, plaintiff’s counsel in *Balschmiter* sought to use the confidential information to solicit potential clients for counsel’s pecuniary gain. We do not intend to use the information for such purposes; indeed, our non-profit use of this information may be protected by the First Amendment. See *Kaufman v. Am. Family Mut. Ins. Co.*, 601 F.3d 1088, 1093-94 (10th Cir. 2010) (recognizing that a protective order restricting a party’s ability to contact potential class members using confidential information raises First Amendment issues and rejecting a First Amendment argument because the attorney’s use of the information was for pecuniary gain, rather than political expression).

Although our positions on this issue differ, we may be able to resolve our differences without the involvement of the Court. Are you available sometime in the next week or so for a meet and confer?

Thank you.

**Ryan Wolf**  
Associate

**Dechert LLP**  
+ 1 215 994 2282  
[ryan.wolf@dechert.com](mailto:ryan.wolf@dechert.com)  
[dechert.com](http://dechert.com)

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**From:** Schmelzer, Jody J. [<mailto:SchmelzerJJ@DOJ.STATE.WI.US>]  
**Sent:** Friday, June 30, 2017 12:19 PM  
**To:** Wolf, Ryan <[Ryan.Wolf@dechert.com](mailto:Ryan.Wolf@dechert.com)>  
**Cc:** Liu, Angela <[Angela.Liu@dechert.com](mailto:Angela.Liu@dechert.com)>; Van Strander, James <[James.VanStrander@dechert.com](mailto:James.VanStrander@dechert.com)>; Karyn Rotker <[krotker@aclu-wi.org](mailto:krotker@aclu-wi.org)>; [athomas@aclu.org](mailto:athomas@aclu.org); Keenan, Brian P. <[keenanbp@doj.state.wi.us](mailto:keenanbp@doj.state.wi.us)>; Johnson-Karp, Gabe <[johnsonkarp@doj.state.wi.us](mailto:johnsonkarp@doj.state.wi.us)>; Murphy, S. Michael <[murphysm@doj.state.wi.us](mailto:murphysm@doj.state.wi.us)>  
**Subject:** RE: Frank v. Walker, 2:11-cv-01128 (LA)

Ryan,

I am emailing in response to your inquiry below. As I understand it, you intend to contact individuals by utilizing personal identifying information contained in documents produced to you by DOT under the governing protective order (Dkt. 268, 269.) It is our position that this would be a direct violation of the protective order.

The DOT documents produced under the protective order contain confidential information that is protected from disclosure by both state and federal law. See, Wis. Stat. §§ 85.103, 343.235, and 343.50(8). For that reason, it was an express purpose of the protective order “to prevent unnecessary dissemination or

disclosure of confidential information during the course of discovery or otherwise.” (Dkt. 268:2.)

You have noted that you believe Paragraph 3 of the protective order allows you to utilize these confidential records to contact class members and potential witnesses “for purposes of this litigation.” However, the language of the protective order does not support this reading for two reasons. First, Paragraph 2, states that this information may *only* be disclosed to undersigned counsel, their employees, independent consultants or experts, any defendant, the court, court personnel, and professional court reporters. (See Dkt. 268:3.) There is no provision allowing for disclosure of information provided under the protective order to any potential witness or class member. As such, Paragraph 3 is inapplicable.

Second, Paragraph 3 expressly states that these DOT records “shall not be used . . . for contacting or soliciting people whose contact information is contained in the Confidential Information ..” (Dkt. 268:3.) This limitation is specific; any contrary interpretation allowing for this type of contact for purposes of litigation would eviscerate the plain intent of the protective order.

You cite *Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748, 759 (7th Cir.2000), in support of your position. But as the court in *Balschmitter v. TD Auto Fin. LLC*, 13-CV-1186-JPS, 2015 WL 2451853 (E.D. Wis. May 21, 2015) acknowledged:

There is a difference in kind, however, between the right to contact putative class members, which any court should be reticent to curtail, *see id.*, and the ability of a plaintiff to *use confidential discovery obtained during the litigation process* to facilitate those contacts.

*Id.* at \*4 (emphasis in original). Given the express provision in the protective order prohibiting the contact you seek to make, this case is more analogous to *Balschmitter*. As the court noted in *Balschmitter*, you are free to contact class members using your own investigative techniques and information. But it is our position that you cannot do so using confidential documents obtained through discovery that fall explicitly within the language of the protective order.

Please feel free to contact me if you would like to further discuss this issue. Thank you.

**Jody J. Schmelzer**

Assistant Attorney General  
17 W. Main Street

P.O. Box 7857  
Madison, WI 53707-7857  
phone: (608) 266-3094  
fax: (608)267-8906

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**From:** Wolf, Ryan [<mailto:Ryan.Wolf@dechert.com>]  
**Sent:** Wednesday, June 21, 2017 10:45 AM  
**To:** Schmelzer, Jody J. <[SchmelzerJJ@DOJ.STATE.WI.US](mailto:SchmelzerJJ@DOJ.STATE.WI.US)>  
**Cc:** Liu, Angela <[Angela.Liu@dechert.com](mailto:Angela.Liu@dechert.com)>; Van Strander, James <[James.VanStrander@dechert.com](mailto:James.VanStrander@dechert.com)>; Karyn Rotker <[krotker@aclu-wi.org](mailto:krotker@aclu-wi.org)>; [athomas@aclu.org](mailto:athomas@aclu.org)  
**Subject:** Frank v. Walker, 2:11-cv-01128 (LA)

Ms. Schmelzer,

We have reviewed many of the documents produced by DOT in the above-captioned matter. During our review of those documents, we have identified individuals who may have personal knowledge of facts relevant to material issues in this case. We intend to reach out to those individuals to further develop the facts needed to litigate this matter.

We believe that reaching out to these individuals would be permitted under Paragraph 3 of the Stipulated Protective Order dated May 25, 2016 (the "Protective Order," attached). Reaching out to these individuals would be using this information "for the purposes of this litigation," as is permissible under the Protective Order. However, the Protective Order also provides that

Information designated Confidential shall not be used for any business or competitive purpose, for contacting or soliciting people whose contact information is contained in the Confidential Information, to prepare mailing lists or phone-contact lists, or shared with any person or entity except as expressly describe [sic] herein, or used for or other purpose unrelated to this litigation.

We understand this provision to only prohibit solicitation using confidential information for business purposes or other purposes unrelated to the litigation; solicitation for litigation purposes is a use "for purposes of this litigation," which is permissible under Paragraph 3. We write to confirm that this is your understanding as well.

If this is not your understanding, and if you would object to this use of the information produced by DOT, we are prepared to seek relief from Judge Adelman. See, e.g., *Williams v. Chartwell Fin. Serv., Ltd.*, 204 F.3d 748, 759 (7th Cir. 2000) ("The plaintiffs have a right to contact members of the putative class . . .").

Please let us know your position by June 30, 2017, so that we may move forward in this matter.

Thank you.

**Ryan Wolf**  
Associate

**Dechert LLP**  
+ 1 215 994 2282  
[ryan.wolf@dechert.com](mailto:ryan.wolf@dechert.com)  
[dechert.com](http://dechert.com)

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## General Information

<b>Court</b>	United States District Court for the Eastern District of Wisconsin; United States District Court for the Eastern District of Wisconsin
<b>Federal Nature of Suit</b>	Civil Rights - Voting[441]
<b>Docket Number</b>	2:11-cv-01128