

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80593-Civ-HURLEY/LYNCH

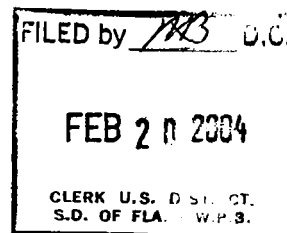
JAMES KEHOE, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

FIDELITY FEDERAL BANK AND  
TRUST,

Defendant.



**DEFENDANT'S, FIDELITY FEDERAL BANK AND TRUST,**  
**ANSWER TO COMPLAINT-CLASS ACTION**

Defendant, Fidelity Federal Bank and Trust ("Fidelity"), responds to the Complaint-Class Action ("Complaint") of Plaintiff, James Kehoe, on behalf of himself and all others similarly situated ("Kehoe") as follows.

1. Fidelity denies the allegations contained in paragraph 1 of Kehoe's Complaint.
2. Fidelity is without knowledge as to the allegations contained in paragraph 2 of Kehoe's Complaint.
3. Fidelity admits that Kehoe purports to be suing under 18 U.S.C. §2724(a). Fidelity denies all other allegations contained in paragraph 3 of Kehoe's Complaint.
4. Fidelity admits the allegations contained in paragraph 4 of Kehoe's Complaint
5. In response to the allegations contained in paragraph 5 of Kehoe's Complaint, Fidelity states that the legislative history is the best source for the provisions of the DPPA, and denies

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anything inconsistent with the legislative history.

6. In response to the allegations contained in paragraph 6 of Kehoe's Complaint, Fidelity states that the legislative history is the best source for the provisions of the DPPA, and denies anything inconsistent with the legislative history.

7. In response to the allegations contained in paragraph 7 of Kehoe's Complaint, Fidelity states that the legislative history is the best source for the provisions of the DPPA, and denies anything inconsistent with the legislative history.

8. In response to the allegations contained in paragraph 8 of Kehoe's Complaint, Fidelity states that the 1993 version of the DPPA is the best source of its contents. Fidelity denies all allegations inconsistent with the 1993 version of the DPPA.

9. In response to the allegations contained in paragraph 9 of Kehoe's Complaint, Fidelity states that the 1999 Amendment to DPPA is the best source of its content. Fidelity denies all allegations inconsistent with the 1999 Amendment to the DPPA.

10. Fidelity admits the allegations contained in paragraph 10 of Kehoe's Complaint.

11. In response to the allegations contained in paragraph 11 of Kehoe's Complaint, Fidelity states that the current version of DPPA is the best source of its content. Fidelity denies all allegations inconsistent with the statute.

12. Fidelity admits the allegations contained in paragraph 12 of Kehoe's Complaint.

13. Fidelity denies the allegations contained in paragraph 13 of Kehoe's Complaint.

14. Fidelity denies the allegations contained in paragraph 14 of Kehoe's Complaint.

15. Fidelity denies the allegations contained in paragraph 15 of Kehoe's Complaint.

16. Fidelity denies the allegations contained in paragraph 16 of Kehoe's Complaint.

17. Fidelity denies the allegations contained in paragraph 17 of Kehoe's Complaint.
18. Fidelity denies the allegations contained in paragraph 18 of Kehoe's Complaint.
19. Fidelity denies the allegations contained in paragraph 19 of Kehoe's Complaint.
20. Fidelity denies the allegations contained in paragraph 20 of Kehoe's Complaint.
21. Fidelity denies the allegations contained in paragraph 21 of Kehoe's Complaint.
22. Fidelity denies the allegations contained in paragraph 22 of Kehoe's Complaint.
23. Fidelity denies the allegations contained in paragraph 23 of Kehoe's Complaint.
24. Fidelity denies the allegations contained in paragraph 24 of Kehoe's Complaint.
25. Fidelity denies all allegations not otherwise admitted, denied or controverted.

### **AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE:** Plaintiff fails to state a claim in the Complaint upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE:** Plaintiff and the putative class lack standing to assert the claims set forth in the Complaint.

**THIRD AFFIRMATIVE DEFENSE:** The claims asserted by Plaintiff and/or the putative class are not suitable for class certification because the certification and maintenance of this action as a class action would violate Fidelity's right to due process, to be confronted by the witnesses against it, and to a jury trial as provided for in the Fifth, Sixth, Seventh and Fourteenth Amendments to the United States Constitution.

**FOURTH AFFIRMATIVE DEFENSE:** The claims asserted by the Plaintiff and/or the putative class are barred, in whole or in part, by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE: The DPPA violates the First Amendment of the United states Constitution and Article I, Section 4 of the Florida Constitution.

SIXTH AFFIRMATIVE DEFENSE: The DPPA violates Article I, Section 24 of the Florida Constitution, which provides access to public records.

SEVENTH AFFIRMATIVE DEFENSE: The DPPA violates the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 9 of the Florida Constitution.

EIGHTH AFFIRMATIVE DEFENSE: The claims of Plaintiff and/or the putative class are barred because Fidelity did not knowingly obtain, disclose or use "personal information" or "highly restricted personal information" for an impermissible purpose under the DPPA.

WHEREFORE, Fidelity, having fully answered the Complaint, demands that the Court enter an order that:

- A. Enters judgment in Fidelity's favor;
- B. Awards Fidelity entitlement to attorneys' fees and costs; and
- C. Awards such other and further relief as the court deems just and proper.

Dated: February 19, 2004.

PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL. 33401  
(561) 655-2250/FAX (561) 655-5537  
e-mail: [rfitzgerald@pm-law.com](mailto:rfitzgerald@pm-law.com)  
e-mail: [lmrachek@pm-law.com](mailto:lmrachek@pm-law.com)  
Counsel for Defendant Fidelity Federal Bank and Trust

By 

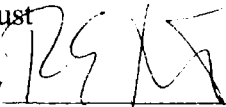
Roy E. Fitzgerald  
Fla. Bar No. 856540  
L. Louis Mrachek  
Fla. Bar No. 182880

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to all parties on the attached service list, by  U.S. Mail, [  Facsimile, [  Hand Delivery, [  overnight delivery, this 14 day of February, 2004.

PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL. 33401  
(561) 655-2250/FAX (561) 655-5537  
e-mail: [rfitzgerald@pm-law.com](mailto:rfitzgerald@pm-law.com)  
e-mail: [lmrachek@pm-law.com](mailto:lmrachek@pm-law.com)  
Counsel for Defendant Fidelity Federal Bank and  
Trust

By



Roy E. Fitzgerald  
Fla. Bar No. 856540  
L. Louis Mrachek  
Fla. Bar No. 182880

**SERVICE LIST**

Roger Slade, Esq.  
PATHMAN LEWIS, LLP  
One South Biscayne Tower  
2 S. Biscayne Blvd.  
Miami, FL. 33131  
(305) 379-2425  
FAX: (305) 379-2420  
Counsel for Plaintiffs