

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ALLIANCE FOR AUTOMOTIVE
INNOVATION

Plaintiff,

v.

MAURA HEALEY, ATTORNEY GENERAL
OF THE COMMONWEALTH OF
MASSACHUSETTS in her official capacity,

Defendant.

C.A. No. 1:20-cv-12090-DPW

Declaration of Jared Rinehimer

1. I, Jared Rinehimer, am currently employed in the Massachusetts Office of the Attorney General. I currently serve in the role of Assistant Attorney General, and am Chief of the Data Privacy and Security Division. The Data Privacy and Security Division investigates the unfair or deceptive collection, use, and disclosure of consumers' personal data through digital technologies. The Division aims to empower consumers in the digital economy, ensure that companies are protecting consumers' personal data from breach, protect equal and open access to the internet, and protect consumers from data-driven technologies that unlawfully deny them fair access to socioeconomic opportunities. The Division accomplishes this through enforcement of, among other laws, the Consumer Protection Act, G.L. c. 93A, the Data Breach Notification Law, G.L. c. 93H, and the Data Security Regulations, 201 CMR 17.00 *et seq.*
2. Except as otherwise indicated, the statements herein are based upon my personal knowledge or documents that I have reviewed.

3. I understand that this lawsuit concerns the statutory amendments that were approved by the voters on November, 3, 2020, in the form of Question 1 on the state election ballot, “An Initiative Law to Enhance, Update and Protect the 2013 Motor Vehicle Right to Repair Law,” which is sometimes referred to as the “Data Access Law.”
4. I am submitting this declaration in response to the Court’s September 14, 2022, September 21, 2022, and October 11, 2022 Orders in this case directing each party to file a declaration by a designated representative “setting forth the efforts each has made to implement the requirements of the Data Access Law.” ECF Nos. 283, 286, 291.
5. The Data Access Law mentions the Attorney General only once. Specifically, Section 4 of the law directs the Attorney General to establish a “motor vehicle telematics system notice” for prospective vehicle owners.
6. Section 4 of the Data Access Law provides that the motor vehicle telematics system notice should include, “but is not limited to, the following features: (i) an explanation of motor vehicle telematics and its purposes, (ii) a description summarizing the mechanical data collected, stored and transmitted by a telematics system, (iii) the prospective owner’s ability to access the vehicle’s mechanical data through a mobile device, and (iv) an owner’s right to authorize an independent repair facility to access the vehicle’s mechanical data for vehicle diagnostics, repair and maintenance purposes.” Section 4 also directs that “[t]he notice form shall provide for the prospective owner’s signature certifying that the prospective owner has read the telematics system notice.”
7. In connection with the ongoing federal litigation, the Office of the Attorney General has entered a Further Modified Stipulation stating “that it does not intend to, and will not, issue the notice discussed in Section 4 of the Data Access Law until after the Court rules on

counts 1 and 2 of the plaintiff's complaint." *See* ECF No. 273. The Further Modified Stipulation further states that the "Office of the Attorney General reserves the right to revise this stipulation in the event that adjudication of those claims is delayed beyond July 1, 2022, but further stipulates that it will do so only after first providing 14 days' advance notice to the plaintiff and the Court of its intent to do so."

8. As of today, the Office of the Attorney General has not revised the Further Modified Stipulation. Accordingly, it is my understanding that the Attorney General will not issue the notice discussed in Section 4 of the Data Access Law until after (i) the Court rules on counts 1 and 2 of the plaintiff's complaint, or (ii) 14 days after the Office of the Attorney General provides notice to the Court of its intent to terminate or otherwise modify the Further Modified Stipulation.
9. The Data Privacy and Security Division has prepared a preliminary draft of the notice discussed in Section 4 of the Data Access Law. That draft has not been disclosed to anyone outside the Office of the Attorney General. The draft is predecisional, non-final, and subject to internal deliberation and revision, and it will remain so until after the Court rules on counts 1 and 2 of the plaintiff's complaint or the Office of the Attorney General has terminated or otherwise modified the Further Modified Stipulation.
10. Section 4 of the Data Access Law further provides that, once the Office of the Attorney General issues the notice, "[w]hen selling or leasing motor vehicles containing a telematics system, a dealer holding a class 1 or class 2 license as defined in section 58 of chapter 140 shall provide the motor vehicle telematics system notice to the prospective owner, obtain the prospective owner's signed certification that he or she has read the notice, and provide a copy of the signed notice to the prospective owner."

11. The Data Access Law is codified in Chapter 93K of the Massachusetts General Laws. Any violation of Chapter 93K is “deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of section 2 of chapter 93A.” G.L. c. 93K, § 6(a). Section 2(a) of Chapter 93A makes unlawful any “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”
12. In addition, Section 5 of the Data Access Law establishes a cause of action for vehicle owners and independent repair facilities to enforce the provisions in Sections 2 and 3 of the law. Specifically, Section 5 states that “any owner or independent repair facility authorized by an owner who has been denied access to mechanical data in violation of subsections (d)(1) or (f) of section 2 [*i.e.*, Sections 2 and 3 of the Data Access Law] may initiate a civil action seeking any remedies under law, including any remedy authorized by chapter 93A. Each denial of access in violation of said subsections shall be compensable by an award of treble damages or \$10,000, whichever amount is greater.”
13. The Further Modified Stipulation entered by the Office of Attorney General states “that it does not intend to, and will not, exercise its enforcement authority under Chapter 93A, Chapter 93K, or otherwise, to enforce any provision of the Data Access Law” until after the Court rules on counts 1 and 2 of the plaintiff’s complaint or the Office of the Attorney General has terminated or otherwise modified the Further Modified Stipulation. *See* ECF No. 273. Consistent with that Further Modified Stipulation, the Office of Attorney General has not exercised its authority to enforce the Data Access Law. Any exercise of enforcement authority in the future will necessarily depend on factors that are unknown and unascertainable at this time, including the Court’s ruling on the claims in this case,

actions taken by vehicle owners or independent repair facilities to enforce the Data Access Law through litigation or otherwise, and the existence, based on specific facts, of any unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. After the notice provided for by Section 4 is issued, any enforcement activity by the Office of the Attorney General under the Data Access Law may initially involve investigation into whether licensed motor vehicle dealers are providing prospective owners with the notice, obtaining their signed certifications, and providing them with copies of the signed notice, as required by Section 4.

14. In exercising its enforcement authority under G.L. c. 93A, the Office of the Attorney General generally focuses on specific unfair and deceptive practices that have occurred or are presently occurring and that have been brought to its attention. When determining whether to expend its limited resources on enforcement on behalf of the public, the Office of the Attorney General also considers whether there are private parties that have incentives to pursue enforcement actions.
15. Finally, the Attorney General is authorized to “make rules and regulations interpreting the provisions of” Section 2(a) of Chapter 93A. G.L. c. 93A, § 2(C). The Office of the Attorney General has informed the Court that it does not intend to promulgate regulations on the Data Access Law before final judgment is entered in this litigation. *See* Attorney General’s Supplemental Memorandum on Rulemaking, ECF No. 227; Trial Transcript Day 5, pp. 54:12-18. For the reasons stated in the Attorney General’s Supplemental Memorandum of Rulemaking, ECF No. 227, the Office of the Attorney General has neither drafted nor issued regulations on the Data Access Law.

I state under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.



Jared Rinehimer
Assistant Attorney General

Dated: October 21, 2022

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on October 21, 2022.

Christine Fimognari
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