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December 3, 2018

Karen E. Spilka  
President, Massachusetts Senate  
24 Beacon St.  
Room 332  
Boston, MA, 02133

SENT ELECTRONICALLY

Re: **MA HB 4873**, relating to Data Breach Notification – **OPPOSE UNLESS AMENDED**

Dear President Spilka:

The Association of National Advertisers (ANA)<sup>1</sup>, must respectfully **oppose MA HB 4873 unless amended in two ways**: 1) including a “harm trigger” for data breaches that pose a substantial risk of identity theft or fraud; 2) striking the rolling notice requirement, which is not found in any other state data breach notification statute, and which, as drafted, will confuse consumers.

As presently drafted without a “harm trigger,” HB 4873 would require unnecessary and repetitive notifications for non-harmful data incidents that will cause Massachusetts residents to ignore all notifications over time, ultimately putting them at greater risk.

Without a “harm trigger” requirement in the law, any incident suffered by a company requires consumer notification – even if the incident poses no substantial risk of identity theft or fraud, such as the accidental disclosure of information to a good-faith employee. This requirement would lead to “over warning” and soon cause consumers to ignore every data breach notification they receive.

Similarly, the requirement for “rolling” notifications for data breaches require entities suffering a breach to notify consumers immediately after discovery and require continued, repetitive notifications into the future – even if the breach poses no risk of harm. Again, this causes the problem of “over warning” consumers with multiple notices for the same breach, instead of a

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<sup>1</sup> Founded in 1910, the ANA provides leadership that advances marketing excellence and shapes the future of the industry. The ANA’s membership includes nearly 2,000 companies with 15,000 brands that collectively spend or support more than \$400 billion in marketing and advertising annually. The membership is comprised of more than 1,100 client-side marketers and more than 800 marketing service provider members, which include leading agencies, law firms, suppliers, consultants and vendors. Further enriching the ecosystem is the work of the nonprofit ANA Educational Foundation (AEF) which has the mission of enhancing the understanding of advertising and marketing within the academic and marketing communities. ANA recently acquired the Data & Marketing Association (DMA), further adding to our expertise in the area of privacy and data security.

single, comprehensive notice that clearly and comprehensively tells the consumer what happened, how the consumer can protect him or herself, and what the breached entity is doing to remediate the situation.

Requiring consumer notification for breaches that pose no risk imposes an unnecessary and costly burden on companies seeking to identify, investigate and remediate the causes of a breach. Moreover, “rolling” breach notifications – combined with the lack of a “harm trigger” – would severely impact companies with increased class action litigation risk from consumers that will not suffer a negative impact from a non-harmful breach.

ANA believes failing to amend HB 4873 to include a “harm trigger” and eliminate rolling notice will impose an undue and costly burden on companies, while failing to provide any benefit to consumers. Indeed, if enacted as presently drafted, HB 4873 will harm Massachusetts consumers, not help them.

For the foregoing reasons, ANA must respectfully **oppose HB 4873** unless amended to include a “harm trigger” for breaches that pose a substantial risk of identity theft or fraud and the elimination of the rolling notice provision.

We very much appreciate your consideration of these views.

Sincerely,



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cc: Governor Charlie Baker  
Speaker of the House Robert DeLeo