No. SJC-13863
Appeals Court No. 2025-P-1336

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Appellee/Cross-Appellant,

v.

THE MEGA LIFE AND HEALTH INSURANCE COMPANY,
MID-WEST NATIONAL LIFE INSURANCE COMPANY OF TENNESSEE,
AND HEALTHMARKETS, INC.,
Defendants,

HEALTHMARKETS, INC., THE CHESAPEAKE LIFE INSURANCE COMPANY, AND HEALTHMARKETS INSURANCE AGENCY, INC. F/K/A INSPHERE INSURANCE SOLUTIONS, INC.,
Defendants-Appellants/Cross-Appellees.

On Direct Appellate Review of a Judgment of the
Superior Court for Suffolk County, No. 0684cv04411-BLS1

BRIEF OF AMICI CURIAE NATIONAL CONSUMER LAW CENTER, PROTECT BORROWERS, THE MASSACHUSETTS CHAPTER OF THE NATIONAL ACADEMY OF ELDER LAW ATTORNEYS, AND HEALTH LAW ADVOCATES

Shennan Kavanagh, BBO #655174
Richard M.W. Bauer, BBO #544035
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
(617) 542-8010
skavanagh@nclc.org
dbauer@nclc.org
Counsel for NCLC and Protect Borrowers

Gina M. Barry, Esq., CELA, BBO #643604
Bacon Wilson PC
33 State Street
Springfield, MA 01103
(413) 781-0560
gbarry@baconwilson.com
Counsel for MassNAELA

Andrew Kirtley, BBO #691588
Health Law Advocates
70 Franklin Street, Suite 500
Boston, MA 02110
(617) 275-2846
akirtley@hla-inc.org
Counsel for Health Law Advocates

September 17, 2026

CORPORATE DISCLOSURE STATEMENT

The National Consumer Law Center ("NCLC") is a Massachusetts non-profit corporation established in 1969 and incorporated in 1971. It is a national research and advocacy organization focusing specifically on the legal needs of low-income, financially distressed, and elderly consumers. NCLC operates as a tax-exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code. It has no parent corporations and no publicly held company owns 10% or more of its stock.

Protect Borrowers is a fiscally sponsored project of the Shared Ascent Fund, which is a tax-exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code. It has no parent corporations and no publicly held company owns 10% or more of its stock.

The Massachusetts Chapter of the National Academy of Elder Law Attorneys ("MassNAELA") is a Massachusetts non-profit corporation incorporated in 1992. MassNAELA is a voluntary membership association with the mission of leading the elder and disability law community through education, outreach, and advocacy. MassNAELA operates as a tax-exempt organization under the provisions of Section 501(c)(6) of the Internal Revenue Code. MassNAELA is a chapter of the National Academy of Elder Law Attorneys, but is its own corporate entity. MassNAELA has no parent corporations and no publicly held company owns 10% or more of its stock.

Health Law Advocates ("HLA") is a Massachusetts non-profit corporation founded in 1995. Its mission is to provide pro bono legal representation to residents in low-income situations who are having difficulty accessing or paying for needed medical services. HLA operates as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. It has no parent corporations and no publicly held company owns 10% or more of its stock.

In accordance with Mass. R. App. P. 17(c)(5), NCLC and the other amici state that this brief was not authored in whole or in part by any party or its counsel, and that no person other than amici, their members, or their counsel contributed any money that was intended to fund the preparation and submission of this brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

RULES:

OTHER AUTHORITIES:

STATEMENT OF INTEREST OF AMICI

Since 1969, the **National Consumer Law Center ("NCLC")** has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's activities include policy analysis and advocacy, consumer law and energy publications, litigation, expert witness services, and training and advice for advocates.

NCLC has long been recognized nationally as the "leading non profit low-income consumer advocacy organization in the country." *Mazola v. May Dep't Stores Co.*, 1999 WL 1261312 at *4 (D. Mass. Jan. 27, 1999). For half a century, it has drawn on this expertise to provide information, legal research, policy analyses, and market insights to federal and state legislatures, administrative agencies, and the courts. NCLC also publishes a 21-volume *Consumer Legal Practice Series*. Many of these volumes address the impact of unfair practices on consumers, including, e.g., *Unfair and Deceptive Acts and Practices*. A major focus of NCLC's work is to increase public awareness of unfair and deceptive practices perpetrated against low-income and elderly consumers, and to promote protections against such practices.

NCLC frequently appears as amicus curiae in consumer law cases before trial and appellate courts throughout the country, including *Crown Communities,* *LLC v. Austin*, 497 Mass. 632 (2026); *Greene v. Philip Morris USA Inc.*, 491 Mass. 866 (2023); *Robinhood Financial LLC v. Secretary of the Commonwealth*, 492 Mass. 696 (2023); *Ferman v. Sturgis Cleaners, Inc*., 481 Mass. 488 (2019); *Ryan v. Mary Ann Morse Healthcare Corp.*, 483 Mass. 612 (2019); *Rental Prop. Mgmt. Services v. Hatcher*, 479 Mass. 542 (2018); *Easthampton Savings Bank v. City of Springfield*, 470 Mass. 284 (2014); and *U.S. Bank Nat'l Ass'n v. Schumacher*, 467 Mass. 421 (2014). NCLC has an interest in seeking strong and effective enforcement of consumer protection laws, such as G.L. c. 93A. NCLC is a 501(c)(3) non-profit organization.

Protect Borrowers (a fiscally sponsored project of Shared Ascent Fund) was founded in 2018 by former officials of the Consumer Financial Protection Bureau. Protect Borrowers is a team of experts, lawyers, and advocates fighting to build an economy where debt doesn't limit opportunity. It investigates financial abuses, takes predatory companies to court, and pushes for policies to protect working people from debt traps. Through litigation and policy advocacy, Protect Borrowers has taken action to strengthen state consumer protections and state law enforcement agencies' ability to protect consumers, including by obtaining restitution.

The **Massachusetts Chapter of the National Academy of Elder Law Attorneys ("MassNAELA")** is a non-profit organization that was incorporated in 1992 to serve the legal profession and the public with the following purpose:

To provide information, education, networking, and assistance to Massachusetts attorneys, bar organizations, and other individuals or groups advising elderly clients, clients with special needs and their families;

To promote high standards of technical expertise and ethical awareness among attorneys, bar organizations and other individuals or groups engaged in the practice of advising elderly clients, clients with special needs and their families;

To develop public awareness and advocate for the benefit of the elderly, those with special needs and their families, by promoting public policies that support our mission; and

To encourage involvement and enhance membership in, and to promote networking among members of the National Academy of Elder Law Attorneys.

MassNAELA is a voluntary 501(c)(6) association with over 400 members consisting of a dedicated group of elder law and special needs attorneys across the Commonwealth of Massachusetts. MassNAELA has previously appeared as an amicus curiae in cases related to G.L. c. 93A, as well as several cases involving Medicaid consumer issues.

Health Law Advocates ("HLA") is a 501(c)(3) public interest law firm. Its mission is to provide pro bono legal representation to Massachusetts residents in low-income situations experiencing difficulty accessing or paying for needed medical services. HLA is committed to ensuring universal access to quality health care in Massachusetts, particularly for those who are most at risk due to such factors as race, gender, disability, age, and geographic location. Founded in 1995, HLA has helped thousands of Massachusetts health care consumers. It routinely assists consumers with legal issues similar to those at issue in this appeal, including issues related to private health insurance and to unfair and deceptive acts and practices.

ARGUMENT

INTRODUCTION

This is a case of great public importance. It involves a classic deceptive scheme through which an insurance company and its subsidiaries attracted consumers by representing that their agents were impartial and would find health insurance that best met consumers' needs. The companies' agents then quietly slipped low-value products into consumers' purchase agreements. The Defendants intentionally targeted vulnerable consumers: for selling supplemental health insurance, "the sweet spot" was "the poor" and individuals eligible for Medicaid. Trial Court Op. at 19, RA23/27. Using these tactics, the Defendants collected

$55.4 million in premiums for supplemental health insurance policies during the relevant period—on which they paid out only $5.5 million in claims. Trial Court Op. at 28, 45, RA23/36, 23/53.

Massachusetts' 2006 health care reform was designed to address the enormous problem of uninsured individuals, by creating a health insurance marketplace and mandating that individuals purchase health insurance. Keeping the health insurance marketplace free from deception is essential to accomplish this purpose. It would be unconscionable to allow insurers to use the mandate that Massachusetts residents obtain major medical insurance as an opening to cram non-required low-value insurance products onto consumers. These practices not only harm consumers—especially the low-income consumers the Defendants characterized as their "sweet spot"—but also undermine consumers' confidence in the health insurance marketplace.

This brief addresses the first of the four issues on which this Court solicited amicus briefs: Whether the Superior Court erred in calculating restitution, including whether the court erred in applying a framework of "assumed reliance" in calculating restitution pursuant to G.L. c. 93A, § 4. It is critically important that the Attorney General have the tools—including restitution—that are necessary to police the health insurance marketplace and rid it of deception. This is especially true today, given the systematic erosion of consumer protection at the federal level.

Only two of the five seats on the Federal Trade Commission are currently filled. *See* Federal Trade Commission, About the FTC, Commissioners and Staff, *https://www.ftc.gov/about-ftc/commissioners-staff/commissioners* (accessed Sept. 9, 2026). The current leadership of the Consumer Financial Protection Bureau has persistently attempted to dismantle the agency. *See* Center for Consumer Law & Economic Justice, The Federal Court of Appeals Agrees: The Administration Must be Stopped From Illegally Dismantling the CFPB (June 24, 2026), https://consumerlaw.berkeley.edu/news/federal-court-appeals-agrees-administration-must-be-stopped-illegally-dismantling-cfpb.

In this environment, states are the last line of defense against consumer fraud. Attorneys General here in Massachusetts and elsewhere need strong, effective tools to stop and rectify consumer fraud. The ability to direct restitution to consumers harmed by deceptive tactics is especially important, since it not only provides redress to those harmed, but also creates a powerful incentive for businesses to avoid deceptive tactics.

The Defendants' position would gut restitution as a remedy under Chapter 93A. We urge the Court to reject their appeal and affirm the decision below.

I. To be Eligible for Restitution, Chapter 93A Requires Only that a Consumer's Loss be Capable of Being Ascertained.

The key issue in this case is the interpretation of the grant of authority to the Attorney General in section 4 of Chapter 93A to seek restitution for consumers.

That section allows a court to "make such other orders or judgments as may be necessary to *restore to any person who has suffered any ascertainable loss* by reason of the use or employment of such unlawful method, act or practice any moneys or property, real or personal, which may have been acquired by means of such method, act, or practice." The phrase "who has suffered any ascertainable loss" describes the persons for whom the Attorney General can seek restitution.

The Defendants' brief opines at some length on the meaning of the word *ascertain* in the late 1960's when Chapter 93A was enacted. It argues that then, as well as now, it means "to make certain, exact, or precise" or the equivalent. Defs.' brief at 34-35. However, "ascertain" is not the word used in Chapter 93A. Instead, Ch. 93A, § 4 uses the term *ascertainable*—a term with a far different meaning.

A current definition of *ascertainable* is "capable of being ascertained." "Ascertainable," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/ascertainable, accessed Sept. 9 2026. A dictionary from roughly the same time as the enactment of Ch. 93A provides an identical definition. "Ascertainable," *Webster's New Twentieth Century Dictionary* (2d ed. 1975).

The legislature's use of the term "ascertainable" is significant. The legislature could easily have used a term that would have required certain, exact, or precise determination of the amounts to be restored to consumers. It could, for example, have used the word "ascertain" or "ascertained" instead of "ascertainable." Its choice of a term that does not require exactitude must be respected. *Dartt v. Browning-Ferris Industries, Inc.*, 427 Mass. 1, 9 (1998) ("we will not add to a statute a word that the Legislature had the option to, but chose not to, include"). Just as "breakable" is different from "broken," G.L. c. 93A § 4 does not require the consumer's loss to be ascertained in order for the consumer to be eligible for restitution, but only that it be capable of being ascertained. A requirement that a loss be "ascertainable" sets a very low bar.

To treat the statute as if it used the word "ascertain[ed]" instead of "ascertainable" would not only be contrary to its plain language, but would put Massachusetts out of alignment with other state supreme courts that have interpreted the term in their counterparts to Chapter 93A (collectively referred to as UDAP (Unfair and Deceptive Acts and Practices) statutes in this brief). *Hinchliffe v. Am. Motors Corp.,* 440 A.2d 810, 814 (Conn. 1993) ("Where drafters meant "actual damages," they employed those exact words. The use of different terms within the same sentence of a statute plainly implies that differing meanings were intended. … Moreover, the inclusion of the word "ascertainable" to modify the word "loss" indicates that plaintiffs are not required to prove actual damages of a specific dollar amount. "Ascertainable" means "capable of being discovered, observed or established."); *Scott v. Western Int'l Surplus Sales, Inc.*, 517 P.2d 661, 663 (Or. 1973) (rejecting argument that "ascertainable loss" requirement meant that private plaintiff had to prove amount of loss as condition of suit; "'Ascertainable' can reasonably be interpreted to mean, capable of being discovered, observed or established."); *In re West Virginia Rezulin Litigation*, 585 S.E.2d 52, 74 (W. Va. 2003) (rejecting argument that "ascertainable loss" requirement meant that "each putative class member would have to prove that a violation of the Consumer Protection Act caused him or her to purchase Rezulin, and to prove specific damages resulting from that purchase").

Defendants' argument that the restitution award was erroneous because section 4 requires exactitude thus has no merit. The statutory standard is whether the amounts lost due to Defendants' deceptive marketing of insurance were capable of being ascertained. As Defendants make no argument that they were not, this Court should uphold the trial court's award.

II. Chapter 93A Allows Restitution to be Awarded as Long as the Defendant Acquired Consumers' Money or Property "by Means of" a Deceptive Practice.

As noted above, section 4 uses the term "ascertainable loss" to describe the persons for whom the Attorney General can seek restitution. The amount to be awarded is addressed later in the sentence: "any moneys or property, real or personal, which may have been acquired by means of such method, act, or practice." Thus, a second question is whether the amounts awarded here "may have been acquired by means of" the Defendants' deceptive practices.

There is no dispute that the Defendants "acquired" money from the Massachusetts consumers to whom they sold insurance. As to "by means of," a dictionary from the time period when Chapter 93A was enacted defines the phrase as "by using; with the aid of; through." "Means," *Webster's New Twentieth Century Dictionary* (2d ed. 1975). This standard focuses more on the methods used by the first party than on the effect on the second party. At most it requires evidence that the Defendants' deception aided their acquisition of consumers' premium payments. The definition of "means" that Defendants proffer, "that which is used to attain an end," Defs.' brief at 35, similarly focuses on the methods used.

The language used in section 4 is clearly intended not to require strict proof of causation for all consumers to whom a court orders restitution. When the legislature wanted to use a stricter standard, it used a different term. For example, when it created a private cause of action for businesses in G.L. c. 93A § 11, it required that the business's loss be "as a result of" the defendant's use of an unfair or deceptive practice. The legislature's choice of a less demanding term in G.L. c. 93A § 4 must be given effect. *Stearns v. Metropolitan Life Ins. Co.,* 481 Mass. 529, 536 (2019) (interpreting statute of repose to conform to its plain terms: "had the Legislature wanted to exempt claims arising from negligence involving asbestos from § 2B specifically, it has demonstrated that it knows how to do so"). "By means of" is also significantly less demanding than the language of the FTC Act, which allows courts to award relief to redress injury to consumers "resulting from" unfair or deceptive practices. 15 U.S.C. § 57b(b). Section 4's use of the term "may"—"*may* have acquired"—is another strong indication that the legislature did not intend to require the Attorney General to present precise proof of causation.

California's Unfair Competition Law uses exactly the same phrasing as G.L. c. 93A § 4 in authorizing restitution to consumers: "The court may make such orders or judgments, ... as may be necessary to restore to any person in interest *any money or property, real or personal, which may have been acquired by means of* such unfair competition." Cal. Bus. & Prof. Code § 17203 (emphasis added). This language means that "[r]estitution under [the statute] may be ordered without individualized proof of harm." *People ex rel. Harris v. Sarpas*, 172 Cal. Rptr. 3d 25, 36-37 (Ct. App. 2014) ("The Attorney General presented evidence sufficient to support a reasonable inference of deception and harm as to all USHA customers, and, therefore, the restitution and civil penalties as to all USHA customers were lawful."). *See also People v. Toomey*, 203 Cal. Rptr. 642, 659 (Ct. App. 1984) ("The evidence shows that misrepresentations and nondisclosures were standard practice in appellant's business. All purchasers were misled, and the public as a whole was deceived. The trial court was fully justified in ordering restitution to all purchasers.")

New Jersey's UDAP statute also uses nearly identical language, allowing the court to make orders "which may be necessary to restore to any person in interest any moneys or property, real or personal *which may have been acquired by means of any practice* herein declared to be unlawful." N.J. Stat. Ann. § 56:8-8 (emphasis added). The New Jersey Supreme Court held that this language was "intended to confer on the Attorney General the broadest kind of power to act in the interest of the consumer public." *Kugler v. Romain*, 279 A.2d 640, 648 (N.J. 1971). Thus, the Attorney General could seek relief not only for 24 specific cases covered by proof at trial, "but also in behalf of all others similarly situated, i.e., those consumers who had executed the same contract for the same so-called educational package at the same price." *Id.* at 647.

Idaho is another example. Its UDAP statute similarly allows a court to "restore to any person in interest *any moneys or property, real or personal, which may have been acquired by means of* any practice in this act declared to be unlawful." Idaho Code § 48-607 (emphasis added). The Idaho Supreme Court rejected a defendant's claim that this language meant "that the state must prove in a consumer protection action that consumers in fact relied upon deceptions or misrepresentations made by the defendant and that the defendant's acts were a proximate cause of the defendant's acquisition of moneys from consumers in order that the state obtain restitutionary relief for Idaho consumers." *State ex rel. Kidwell v. Master Distributors, Inc.*, 615 P.2d 116, 123 (Idaho 1980). The Court held that restitution could be awarded to "all consumers affected by the same trade practices found by the court to be unfair or deceptive under the act," not just the fifteen consumers who appeared at trial. *Id.* at 125. The Court's characterization of the standard as "affected by" the defendant's deceptive trade practices is a particularly noteworthy indication of the flexibility of the standard.

Chapter 93A is a "broad remedial statute," and this Court should interpret it in a way that "comports with the policy rationale [behind it], and the Legislature's intent in enacting it." *Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.*, 469 Mass. 813, 824-825 (2014). The decisions from other states confirm the trial court's reading of Massachusetts' statute. This Court should reject the Defendants' argument that the trial court's acceptance of the Attorney General's proof was inconsistent with the statute.

III. The Trial Court's Presumption of Reliance When Material Misrepresentations Have Been Widely Distributed and Consumers Have Purchased the Defendant's Product Was Not Error.

The Defendants object to the trial court's decision that it could presume reliance if the state proved "that the defendant made material misrepresentations, that they were widely disseminated, and that consumers purchased the Defendant's product." Memorandum and Order on Motions in Limine at 5. This standard has been widely accepted, and this Court should affirm the trial court's decision.

As the Fifth Circuit pointed out just last year, this standard has been accepted by every U.S. Court of Appeals that has considered the question in FTC cases. *Fed. Trade Comm'n v. ZAAPPAAZ, Inc.*, 140 F.4th 675, 679 (5th Cir. 2025). These courts include the Second Circuit, *Fed. Trade Comm'n v. BlueHippo Funding, L.L.C.*, 762 F.3d 2d 238, 244 (2d Cir. 2014); the Fifth Circuit, *Fed. Trade Comm'n v. ZAAPPAAZ, Inc.*, 140 F.4th 675, 679-680 (5th Cir. 2025); the Sixth Circuit: *Fed. Trade Comm'n v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 631 n.2 (6th Cir. 2014); the Eighth Circuit, *Fed. Trade Comm'n v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312 (8th Cir. 1991); the Ninth Circuit, *Fed. Trade Comm'n v. Figgie Int'l, Inc.*, 994 F.2d 595 (9th Cir. 1993); the Tenth Circuit, *Fed. Trade Comm'n v. Freecom Communications, Inc.*, 401 F.3d 1192, 1203 (10th Cir. 2005); and the Eleventh Circuit, *McGregor v. Chierico*, 206 F.3d 1378 (11th Cir. 2000). As the Second Circuit held:

> To require proof of each individual consumer's reliance on a defendant's misrepresentations would be an onerous task with the potential to frustrate the purpose of the FTC's statutory mandate. … [T]he FTC is entitled to a presumption of consumer reliance upon showing that (1) the defendant made material misrepresentations or omissions that "were of a kind usually relied upon by reasonable prudent persons;" (2) the misrepresentations or omissions were widely disseminated; and (3) consumers actually purchased the defendants' products.

Fed. Trade Comm'n v. BlueHippo Funding, L.L.C., 762 F.3d 238, 244 (2d Cir. 2014) (quoting from *FTC v. Kuykendall*, 371 F.3d 745, 765 (10th Cir.2004) (en banc).

The Minnesota Supreme Court addressed exactly this question in 2019 in *State v. Minnesota School of Business, Inc.*, 935 N.W.2d 124 (Minn. 2019). There, the trial court had ordered restitution for all students who had paid tuition to attend a deceptively-advertised for-profit school. As in this case, the defendants targeted vulnerable consumers: they "took advantage of the 'unwary'"—in the Minnesota case, "nontraditional, first-generation college students who usually attend for-profit schools." *Id.* at 138. The Minnesota Supreme Court rejected the claim that restitution should be limited to fifteen students who testified at trial. The court held that the state need not prove individual reliance or direct causation, but only a "causal nexus." *Id.* at 134.

Citing the same line of FTC decisions on which the trial court here relied, the court held: "[I]n a case brought by the Attorney General, all the facts surrounding the consumer fraud should be taken into account: Was the fraud longstanding, pervasive, and widespread in communications directed to consumers of the product? Did the seller intend and understand that consumers would rely on the misrepresentations? Was the information of a kind on which consumers would typically rely?" *Id.* at 137. The court concluded that the Attorney General had met this standard and established a causal nexus by showing that the school's misrepresentations were "widespread and pervasive," that the school intended students to rely on its misleading statements, that the information was the type that a reasonable prospective student would rely on, and that individual students who testified had relied on the information. *Id.* at 138. This evidence was sufficient to uphold the restitution order.

The Minnesota Supreme Court's decision, and those of the federal Courts of Appeals, deal with claims and evidence that are closely analogous to those in this case. This Court should follow those decisions and approve the standard the trial court adopted.

The Defendants object to the trial court's adoption of the FTC's standard on the ground that G.L. c. 93A § 2 requires courts to be guided by FTC interpretations only when construing the substantive prohibitions of G.L. c. 93A § 2(a). Defs.' brief at 37. However, in *Lowell Gas Co. v. Attorney General*, 377 Mass. 37, 47 (1979), this Court cited section 2 as support for its decision to look to FTC decisions for guidance regarding the interpretation of the remedies in section 4, the statutory section at issue here. Similarly, in *Commonwealth v. Fall River Motor Sales, Inc.*, 409 Mass. 302, 311 (1991), this Court, again citing section 2, looked to FTC cases for guidance in identifying standards for determining the size of a penalty to assess against a party that violated a consent decree, another question entirely divorced from the substantive prohibitions.

Even in states whose UDAP statutes are silent about any guidance courts should seek from FTC rulings and interpretations, courts have found FTC decisions instructive. For example, in *State v. Minnesota School of Business, Inc.*, 935 N.W.2d 124 (Minn. 2019), discussed above, the Minnesota Supreme Court adopted the FTC's standard even though the Minnesota statute it construed, Minn. Stat. § 8.31, says nothing about any weight to be given to FTC interpretations. Other states have also found analogies to FTC standards and interpretations persuasive even though their state UDAP statute is silent about any weight to be given to them. *See, e.g.*, *People ex rel. Dunbar v. Gym of America, Inc.*, 493 P.2d 660, 668-669 (Colo. 1972) (finding FTC interpretations persuasive as to Attorney General's right to choose among various authorized enforcement tools); *Marshall v. Miller*, 276 S.E.2d 397, 399 (N.C. 1981) (FTC decisions can be used as guidance in determining scope and meaning of UDAP statute). Where, as here, the goals of the FTC Act are identical to those of Chapter 93A, and the remedies available to the FTC are analogous to those available to the Attorney General, it is entirely appropriate for a court to turn to FTC decisions for guidance.

Requiring the Attorney General to prove causation on an individual basis would gut the restitution remedy. Chapter 93A is written to give the Attorney

General robust tools to protect Massachusetts consumers, to remedy wrongs done to them, and to deter unfair and deceptive practices. Given the pervasive deceptive marketing proven here, requiring more exact or individualized proof of causation would render the ability to secure redress for defrauded consumers illusory.

CONCLUSION

For the foregoing reasons, this Court should affirm the restitution award in this case.

Respectfully submitted,

/s/ *Shennan Kavanagh*
Shennan Kavanagh, BBO #655174
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
(617) 542-8010
skavanagh@nclc.org
Counsel for NCLC and Protect Borrowers

/s/ *Gina M. Barry*
Gina M. Barry, Esq., CELA, BBO #643604
Bacon Wilson PC
33 State Street
Springfield, MA 01103
(413) 781-0560
gbarry@baconwilson.com
Counsel for MassNAELA

/s/ *Andrew Kirtley*
Andrew Kirtley, BBO #691588
Health Law Advocates
70 Franklin Street, Suite 500
Boston, MA 02110
(617) 275-2846

akirtley@hla-inc.org
Counsel for Health Law Advocates

Dated: September 17, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. App. P. 16(k), I certify that this brief complies with the requirements of Mass. R. App. P. 17 and 20. I also certify that I ascertained compliance with the length limit of Mass. R. App. P. 20(a)(2)(C), by composing this brief on Microsoft Word in 14-point Times New Roman. Pursuant to Mass. R. App. P. 20(a)(2)(D), I further certify that the number of words to be counted in this brief is 3,968.

/s/ *Shennan Kavanagh*
Shennan Kavanagh, BBO #655174
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
(617) 542-8010
skavanagh@nclc.org

Dated: September 17, 2026

CERTIFICATE OF SERVICE

I, hereby certify that on this 17th day of September, 2026, I served the within Brief of Amicus Curiae AARP, AARP Foundation, and NCLC In Support of Defendants-Appellants for Reversal by causing it to be delivered by eFileMA.com to all counsel of record.

Emiliano Mazlen, Esq.
James Sweeney, Esq.
Ethan Marks, Esq.
Michael Wong, Esq.
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Emiliano.Mazlen@state.ma.us
Jim.Sweeney@state.ma.us
Ethan.Marks@state.ma.us
Michael.W.Wong@state.ma.us

Mark C. Fleming, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Mark.Fleming@wilmerhale.com

/s/ *Shennan Kavanagh*
Shennan Kavanagh, BBO #655174
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
(617) 542-8010
skavanagh@nclc.org