

1 DEEPAK GUPTA
2 PUBLIC CITIZEN LITIGATION GROUP
3 1600 20th Street, NW
4 Washington, DC 20009
5 Tel.: (202) 588-1000
6 Fax: (202) 588-7795
7 Email: dgupta@citizen.org

8 ERICA L. CRAVEN
9 LEVY, RAM & OLSON LLP
10 639 Front Street, 4th Floor
11 San Francisco, CA 94111
12 Tel.: (415) 433-4949
13 Fax: (415) 433-7311
14 Email: elc@lrolaw.com
15 *Attorneys for Plaintiffs*

JOSEPH P. RUSSONIELLO
United States Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102
(415) 436-6730
(415) 436-6748 (fax)

GREGORY G. KATSAS
Assistant Attorney General
SANDRA M. SCHRAIBMAN
Assistant Branch Director
DIANE KELLEHER
Senior Counsel
PETER LEARY
UNITED STATES DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW, Room 7318
Washington, DC 20044
(202) 514-4775
(202) 616-8470 (fax)
Email: diane.kelleher@usdoj.gov
Attorneys for Defendant

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

15 PUBLIC CITIZEN, INC., *et al.*)
16 *Plaintiffs,*)
17 v.)
18 MICHAEL MUKASEY,)
19 *Defendant.*)

No. CV 08-0833 (MHP)

**NOTICE OF JOINT FILING OF
PROPOSED ORDER**

20 Pursuant to the Court's directions at the September 22 hearing, the parties hereby jointly
21 submit the attached proposed order

22 */s/ Peter Leary*

/s/ Deepak Gupta

23 _____
24 PETER LEARY
25 Counsel for Defendant

DEEPAK GUPTA
Counsel for Plaintiffs

25 I, Deepak Gupta, as the electronic filer, attest that Peter Leary, whose name appears above,
26 has concurred in this filing.

27 */s/ Deepak Gupta*
28 _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

No. CV 08-0833 (MHP)

PUBLIC CITIZEN, INC.,
CONSUMERS FOR AUTO
RELIABILITY AND SAFETY,
and CONSUMER ACTION,

Plaintiffs,

v.

MICHAEL MUKASEY,
Attorney General of the United States,

Defendant.

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

After considering the Plaintiffs' motion for summary judgment, the Defendant's opposition, and all papers and pleadings filed in this action, the Court hereby **GRANTS** the Plaintiffs' motion and **ORDERS** as follows:

1. **Declaratory Relief.** The Court hereby declares that the Attorney General of the United States has violated the Administrative Procedure Act (APA), 5 U.S.C. §§ 706(1) and 706(2), and the Anti-Car Theft Act and Anti-Car Theft Improvements Act, 49 U.S.C. §§ 30502 and 30504, by failing to (1) establish by regulation procedures and practices to facilitate reporting of vehicle information to the National Motor Vehicle Title Information System (NMVTIS) by insurance carriers and junk and salvage yards, (2) establish a commencement date for the monthly reporting of such information to NMVTIS by insurance carriers and junk and salvage yards, and (3) provide prospective automobile purchasers with instant and reliable access to information in NMVTIS. This inaction constitutes agency action unlawfully withheld under the APA.

2. **Deadline for Issuance of Final Rule.** No later than January 30, 2009, the Attorney General shall publish in the Federal Register a final rule establishing procedures and practices to facilitate the reporting of information to NMVTIS by insurance carriers and individuals or entities engaged in the business of operating junk yards or salvage yards, as required by 49 U.S.C. § 30504(c).

3. **Deadline for Consumer Access.** No later than January 30, 2009, the Attorney
1 General shall provide prospective purchasers of automobiles with instant and reliable access to all
2 information present in NMVTIS that relates to a particular automobile and that is reasonably
3 necessary to satisfy the requirements of 49 U.S.C. § 30502(e)(1). To the extent that it is available
4 in NMVTIS, this information shall include: (a) the validity and status of a document purporting to
5 be a certificate of title; (b) whether an automobile bearing a known vehicle identification number is
6 titled in a particular State; (c) whether an automobile known to be titled in a particular State is or has
7 been a junk automobile or a salvage automobile; (d) for an automobile known to be titled in a
8 particular State, the odometer mileage disclosure required under 49 U.S.C. § 32705 for that
9 automobile on the date the certificate of title for that automobile was issued and any later mileage
10 information, if noted by the State; and (e) whether an automobile bearing a known vehicle
11 identification number has been reported as a junk automobile or a salvage automobile under 49
12 U.S.C. § 30504. The Attorney General contemplates that this information will be accessed via the
13 Vehicle Identification Number (VIN) of the particular automobile.

4. **Grace Period for Information from States that Currently Restrict Access.** The
14 Anti-Car Theft Act requires each state to “make titling information maintained by that State available
15 for use in operating the National Motor Vehicle Title Information System[.]” 49 U.S.C. § 30503(a).
16 The Attorney General shall endeavor to convince any state that currently has in place any restriction
17 on the authority of the Attorney General or his system operator to provide consumer access to vehicle
18 information, as required by 49 U.S.C. §§ 30502(e) and 30503(a), to lift any such restriction. If, for
19 any reason, the Attorney General is unable to do so by January 30, 2009, he or she shall have until
20 February 27, 2009, to pursue this goal. If, for any reason, it should appear to the Attorney General
21 that his or her efforts in this regard will not be successful by February 17, 2009, counsel will confer
22 for 10 days and try to resolve the issue via stipulation, without the need for the Court’s involvement.
23 If, at the conclusion of that 10-day period, the parties cannot reach an agreement, the Attorney
24 General may apply to the Court for a modification of this order, upon good cause shown and upon
25 consideration of any response by the Plaintiffs.
26
27

5. **Commencement Date for Information Reporting.** The Attorney General shall establish a date for the commencement of monthly reporting of information to NMVTIS by insurance carriers and individuals or entities engaged in the business of operating junk yards or salvage yards, as required by 49 U.S.C. §§ 30504(a) and (b). This date shall be no later than March 31, 2009.

6. **Progress Reports and Notice of Potential Delay.** The Attorney General shall file with the Court, and serve on the Plaintiffs, reports concerning the progress that he or she has made in taking the actions described in paragraphs 2, 3 and 5 above. These progress reports shall be issued no later than 15 days before each of the deadlines described in paragraphs 2, 3 and 5. Accordingly, no later than January 15, 2009, the Attorney General shall file a status report regarding the publication in the Federal Register of the final rule described in paragraph 2 and the consumer access described in paragraph 3. Similarly, no later than March 16, 2009, the Attorney General shall file a status report regarding the commencement date of information reporting described in paragraph 5. In addition, the Attorney General shall promptly file with the Court, and serve on the Plaintiffs, notice of any matter that may significantly affect the Attorney General’s compliance with the deadlines set forth in paragraphs 2–5, above.

7. **Retention of Jurisdiction.** The Court shall retain jurisdiction of this action to enforce the terms of this order.

IT IS SO ORDERED.

DATED: 9/29/2008

