



# All-in Compliance

## Mastering New Regs and Legal Challenges in 2024

Summer of 2024



## Legal Disclaimer

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With recent high-profile security incidents like the CDK breach, we are facing a pivotal moment for auto dealers. ComplyAuto is hosting a webinar on **June 27th, 2024** to help guide its members through the complex aftermath of security incidents.

Brad Miller and Chris Cleveland will provide invaluable insights on how to help your members navigate the operational and legal ramifications of such events.

Given the far-reaching implications for dealers, your attendance at this webinar is encouraged. Equip yourself with the knowledge to support your members effectively and ensure their compliance and security.

We look forward to seeing you there.  
Scan the QR Code to Register ->



# I. Current Compliance Landscape and Challenges

# State of the Union



- Dealers are being targeted in legal claims alleging wiretapping in connection with common website tracking technologies like cookies, Google Analytics and Meta Pixel, and website chat modules.
- 3rd-Party Marketing companies leading dealers astray regarding privacy rights of consumers – dealers should negotiate indemnification
- Still waiting on Judicial Review from U.S. 5th Circuit Court of Appeals
- FTC brought a formal complaint against a Connecticut-based dealership claiming under UDAP that it deceived customers for years by charging them for junk fees for vehicle certification, add-on products, and government charges without their consent.
- Starting May 13, 2024 the data breach reporting requirement from the FTC Safeguards Rule Amendment goes into effect. Make Data encryption tools a priority to avoid reporting requirement.
- OSHA Authority is increasing, don't let your Service Drive be a blindspot.

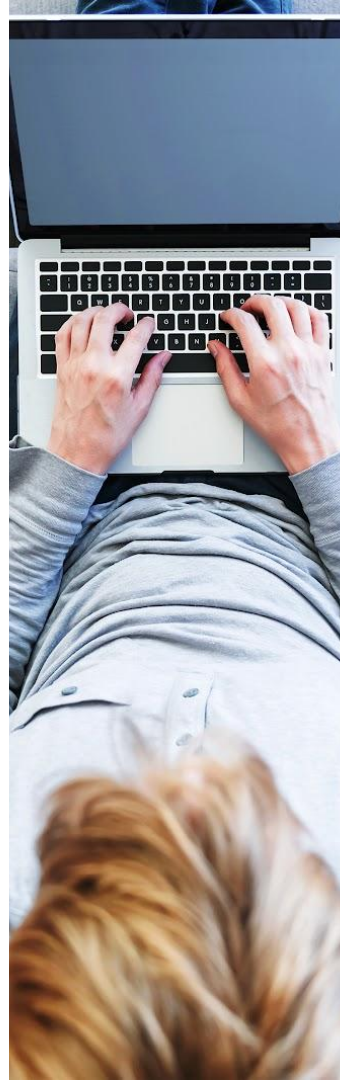
# Nationwide Concern

Since 2022, there have been hundreds of similar lawsuits filed against retailers and other businesses (including third-party service providers). It's increasing in 2024.

- RODRIGUEZ v. FORD MOTOR CO.
- JESSE CANTU v. DEALER DOT COM, INC.
- BROOKSHIER v. WW INTERNATIONAL
- D'ANGELO v. FCA US, LLC d/b/a DODGE
- POPA v. HARRIET CARTER GIFTS
- JONATHAN GABRIELLI v. INSIDER
- KIRKHAM v. TAXACT
- L'OCCITANE v. ZIMMERMAN REED
- B.W. v. SAN DIEGO FERTILITY CENTER
- ADAMS v. GOOGLE
- HASSON v. PARTS ID
- HUFF v. INTERNET TRUCKSTOP GROUP

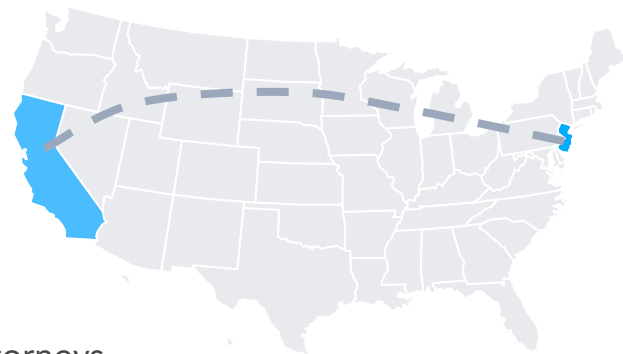
## Claims generally focus on the following

- ➔ Violation of state wiretapping laws (eavesdropping on website activity & communications without consent).
- ➔ Recording of confidential communication without consent.
- ➔ Use of illegal "trap and trace" and pen register devices.



# Overview of Recent Class Action Complaint

A dealership based in **New Jersey** received a notice of class action from **California residents** for recording, using, and sharing their communications via an online **chat module** without their *prior express consent*.



## Online Tracking Tech Targeted

1. This is an example of the recent and growing trend among plaintiffs' attorneys and the federal government (FTC) to claim that certain online technologies constitute various privacy violations.
2. This is one of the first cases crossing state borders, where a CA resident is suing an out-of-state dealer based on CA law.
3. Similar to ADA website accessibility lawsuits.

# Solutions to These Various Issues

## Cookie Consent Banner and Comprehensive Privacy Policy



- **Cookie Banners** - A compliant cookie consent banner prevents marketing cookies and tracking pixels from loading until a consumer consents to it by clicking "accept".
- **Privacy Policy** - These should disclose website tools that collect and share information, detailing exactly what categories of information are collected and who they are shared with.
- **Disclosure in chat module** - Work with chat module providers to include a conspicuous disclosure that notifies consumers that sensitive information sent in the module may be shared with third parties.



# "Low Risk" (Recommended)

## Your Privacy & Cookies

This site deploys cookies and similar tracking technologies, including **essential cookies** for necessary website features, accessibility, and cookie preferences (which may interact directly with, or be shared with, third-party service providers), **functional cookies** for error reporting and to remember settings and delivery optional functionality (including live-chat and other tools, enabling data collection and sharing with third parties), and **marketing cookies** for targeted advertising and analytics. You can reject **marketing cookies** by pressing 'Deny marketing cookies', but we still use essential and functional cookies. By pressing 'Allow All Cookies', you consent to the use of all cookies and the sharing of information they collect with third parties. By continuing to use this site, you agree to our [Privacy Policy](#), which includes an [Arbitration Provision](#), and details the categories of personal information we collect, the purposes for which it is used, and how to exercise your California privacy rights. To stop the sale or sharing of your personal information offline or limit the use of your sensitive personal information, click the pill icon or Your California Privacy Choices link at any time.



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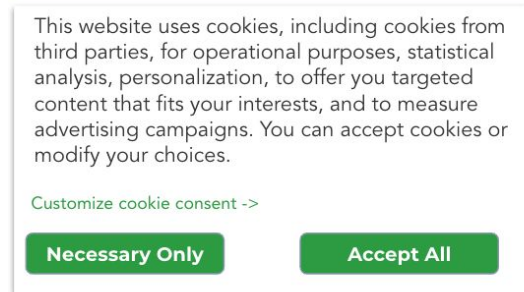
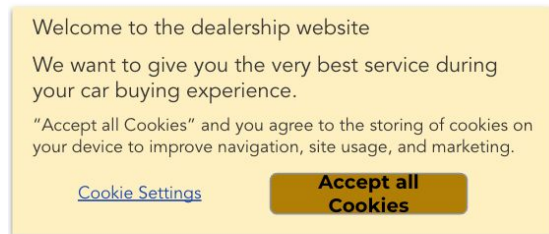
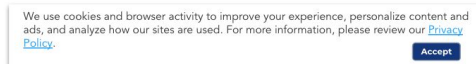
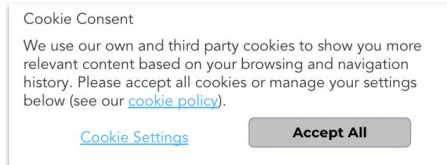
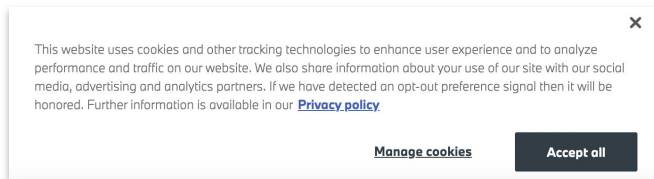
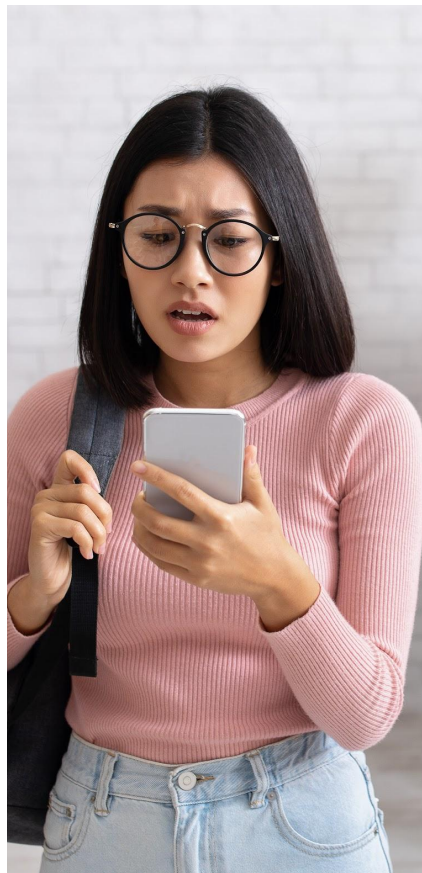
Deny marketing cookies

Allow all cookies

- Auto blocks all marketing cookies until user accepts banner (targeting and analytics)
- Provides notice of sharing with third parties
- Has translation options upon deployment
- User consents to hyperlinked Privacy Policy and receives notice of arbitration provision
- Allows user ability to customize settings

# Beware of Dark Patterns

- Not all cookie banners are created equal; both state Attorneys General and the FTC have warned against the use of “dark patterns” in cookie consent banners (CA has outright banned certain dark patterns)
- Dark Patterns are considered a UDAP violation and will not satisfy “express and informed consent”



# The Numbers

There is still plenty of data to make good marketing decisions.

63% ACCEPT ALL COOKIES

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19% ACCEPT SOME

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18% REJECT



Baby Boomers have  
highest rejection

GenZ & Millenials  
have the highest  
acceptance

# Will the CARS Rule go away?

- Expect a Ruling this Fall
- Exercise enforcement action under the FTC Act - Unfair, Deceptive Acts and Practices (UDAP)
- The Junk Fee (Hotel Rule) could be carried over to dealers if the FTC CARS Rule doesn't go into full effect
- FTC Commissioner terms are seven years (some terms expire 2028)
- Representation/FTC Commissioner appointments are supposed to come from both political parties



# Potential Consequences of FTC Data Breach Reporting Enforcement began May 13, 2024

- Reports will be used to “aid” the FTC in Safeguards Rule enforcement
- Reporting organization will have their information published on a public facing site:
  - ◆ potential liability
  - ◆ reputational harm
  - ◆ negative media attention
  - ◆ customer concerns







# What to Expect in 2024

Increased autonomy of OSHA  
regulators

**\$16,131**  
per violation

**\$161,323**  
willful or repeated

## Enforcement

- Equipment Inspections
- LOTO
- Scrutiny of policies
- Failure to report/record injuries timely and accurately

Can cease  
offending area of  
operations.

Develop a program  
tailored to your  
dealership.

## Employer & Employee Rights



During an OSHA inspection, a Dealer has the right to:

1. Deny the inspection if there is no warrant.
2. Delay an inspection for 60 minutes to contact a company representative or attorney.
3. Inquire as to the cause for inspection.
4. Demand to see a copy of a complaint if one was filed.
5. Negotiate a narrow scope of inspection.
6. Ensure OSHA inspector is accompanied by management or other personnel.
7. Deny consent to be recorded, but on the record.



# Workplace Violence Prevention and Response

Companies are obligated to keep the workplace safe from any act or threat of physical violence, harassment, intimidation or other threatening, disruptive behavior.

## Tips

Identify risk factors.

Adequately screen applicants.

Do not hire individuals with a history of violence.

Establish zero-tolerance policy.

Develop a program tailored to your dealership.

Incorporate related training and policies into safety plan.

Incorporate key elements of successful incident management into planning efforts.





# Heat Illness Prevention Program

OSHA emphasized concerns and intensified its focus  
on heat stress prevention.

## Tips

Initial exposure  
is the most  
dangerous.

- Hydration
- Rest and Shade
- Workload and Scheduling

Train/certify  
employees and  
managers annually.

Develop a program  
tailored to your  
dealership.



## On-site Inspections

It is a best practice to have a safety professional conduct mock inspections or walkthroughs prior to an OSHA audit.

### Tips

3rd party note

Conduct periodic safety or hazard assessments.

Inspect every area of the dealership.

Ask new managers to do a walkthrough.

Implement a consistent, systematic inspection process.

Keep detailed records including images and/or video as well as issues found and plans to mitigate/fix.

Know state-specific safety or OSHA rules.

# Who We Are

ComplyAuto is *transforming* regulatory compliance

- 10,000+ active dealers across all 50 states
- 40+ dealer association endorsements

## **FOR DEALERS. BY DEALERS.**

We were founded by compliance experts, lawyers, and principals with decades of experience running dealerships. We are your strategic partners in all things regulatory and all things compliance.



**1/4** of our entire staff are former dealership employees and **even more** have worked in the automotive industry

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### Privacy

FTC Safeguards  
and Privacy Rights Management



### Safety

Environmental Health & Safety



### Guardian

F&I, Sales,  
and Advertising Compliance



### Workforce

HR Policies & Training



### Crypt

Secure end-to-end encrypted  
messaging



### EduTech

BAR-approved certification training  
with industry experts

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Q & A



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