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March 28, 2020

Kalamazoo X-Ray Sales, Inc.
Data Guardian
Kent White
9136 Portage Industrial Drive
Portage, MI 49024

Dear Mr. White:

You have requested our opinion as to the impact of the Executive Order 2020-021 issued by Governor Whitmer. In short, as discussed below, Kalamazoo X-Ray Sales, Inc. and Data Guardian have the right to continue all of some of their Michigan operations because they fit within the critical infrastructure industry as defined in the Executive Order, and its operations are part of the critical infrastructure identified by the United States Department of Homeland Security.

The Executive Order exempts from its general restrictions businesses and operations that are necessary to sustain or protect life. Employees who are necessary to sustain or protect life are defined as “critical infrastructure workers.” The Executive Order incorporates the March 19, 2019 Department of Homeland Security, Cybersecurity and Infrastructure Security Agency Memorandum on Identification of Essential Critical Infrastructure Workers During COVID 19 Response. The Memorandum expressly references maintaining critical infrastructure. The Executive Order also expressly includes healthcare, critical manufacturing, transportation systems and the defense industrial base. The United States Department of Homeland Security has issued guidance determining that functioning critical infrastructure is imperative during the response to the COVID-19 emergency. That guidance directs that certain critical infrastructure industries have a special responsibility in these times to continue operations. There is also a Presidential Policy Directive (PPD-21) that identifies 16 critical infrastructure sectors.

Kalamazoo X-Ray distributes and services x-ray imaging equipment, which has been designated as an essential part of the healthcare sector of our country’s critical infrastructure. In addition, Data Security provides critical shredding and records services for customers that that are part of the critical manufacturing, transportations systems and defense industrial base sectors of the critical infrastructure. Based on our review, Kalamazoo X-Ray’s employees are critical infrastructure workers under Section 8 of Executive Order 2020-21. Moreover, Data Guardian employees who support Data Guardian’s customers who within the sectors listed above are also part of the critical infrastructure. We have attached letters to those employees informing them that they have been designated as critical infrastructure workers. That designation can be made orally for now, but it must be made in writing no later than March 31, 2020.

Kalamazoo X-Ray and Data Guardian should also assess whether it has any essential suppliers that it needs to designate as part of the critical infrastructure. We are happy to discuss that option in more detail.

Sincerely,

MILLER JOHNSON

By

Sarah K. Willey

