

BakerHostetler

March 16, 2020

VIA E-MAIL (PrivacyRegulations@doj.ca.gov)

Privacy Regulations Coordinator
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013

Re: March 11 Revisions to the Proposed Regulations Implementing the California Consumer Privacy Act (“Regulations”)

Dear Privacy Regulations Coordinator:

BakerHostetler, one of the nation’s largest law firms, represents clients around the globe. With offices coast to coast, three of which are in California, our nearly 1,000 attorneys counsel businesses of all sizes and in all industries. For the last year our highly ranked and awarded, 70+ member, Privacy and Data Protection practice has been counseling clients on how to interpret, and prepare for the effectiveness of, the California Consumer Privacy Protection Act (“CCPA” or “Title”). These comments are an aggregation of comments that some of our clients have asked us to submit to you. They do not reflect the position of all of our clients, or of the firm itself. However, we believe that the issues raised are of high importance to many of our clients and the suggestions made are within the authority of the Attorney General (“AG”) to adopt. Accordingly, we respectively submit the following for your consideration:

Delay in the Enforcement of the Title

We hereby request that the AG exercise the AG’s authority under Civil Code Section 1798.185(b) and the inherent prosecutorial discretion of the AG to extend the date upon which the Attorney General may commence an enforcement action under the Title until the date that is six (6) months from the date the Regulations are final in order to provide the business community sufficient time to recover from the ongoing Covid-19 pandemic, as well as time to update procedures and processes to align with the final Regulations. The AG has authority under CA Civil Code Section 1798.185(b) to issue Regulations that further the purposes of the CCPA. The AG also has inherent authority to delay or defer prosecution when doing so would serve the interests of justice. Allowing businesses sufficient time to implement the final Regulations, and to do so after they have addressed the initial impact of COVID-19, serve the purposes of the Title, the interests of justice and the public interest. Further, the legislature did not preclude the AG’s authority when it mandate the first enforcement delay by adding subsection (c) to CA Civil Code Section 1798.185. That subsection does not provide that the AG must start enforcing the Title on the later of six months after publication of the final Regulations or July 1, 2020. Rather it says that the AG must not do so until such dates. Accordingly, legislative amendment to the Title is not required to extend the enforcement delay.

- **Ongoing Revisions to Regulations have Created Uncertainty and Confusion**

The various changes to the Regulations over the last few months have created an undue burden on businesses. Businesses have had to revise protocols to implement details that have changed from the first version of the draft regulations in October 2019, to the second version in February, and now the third version on March 11, 2020. It is unclear when the Regulations will be final and what further changes may be made. Some clients are understandably waiting for final Regulations before fully developing a compliance program.

For certain new obligations, businesses will not be able to adequately prepare and effectuate the requirements as most recently set forth, or that may be later promulgated. For example, mobile apps cannot be revised without submitting a new update to Google or Android for approval and the just-in-time requirements for mobile apps were just put forth in the second version of the revised regulations and third version did not provide any further clarity as requested in the over 100 comments submitted to the AG.

Further, the third version of the regulations removed the “Do Not Sell” button and businesses are unclear whether this will come back in the final version and require additional technical implementation close to the current July 1 enforcement date. However, since Section 1798.185(4)(C) of the CCPA requires the AG to establish rules and procedures “[f]or the development and use of a recognizable and uniform opt-out logo or button by all businesses,” it is likely the guidance on the opt out button will come back in, it just won’t be provided until the next set of draft Regulations.

Lastly, many vexing questions remain unanswered by the third draft of the regulations, and provide, for many unexpected and difficult to implement compliance obligations. It will take considerable time for companies to prepare to do what will be ultimately necessary to launch a fully compliant program.

As such, additional time is needed to effectuate the proposed regulations due to the numerous changes released in the past three versions that impact businesses compliance obligations.

- **COVID-19 State of Emergency**

The need for more time to respond to the final Regulations will be exacerbated by understandable diversion of businesses’ resources due to the national state of emergency resulting from the COVID-19 pandemic. Businesses need concentrate their focus and resources on addressing business continuity challenges and consumer and employee safety during the national health crisis that is ongoing throughout California and the U.S. Further, many business will suffer economic hardship and staff shortages that will make a rush to meet the current July 1, 2020 deadline impractical or even impossible. Finally, it is reasonable to expect that the AG’s CCPA rulemaking process may be delayed as a result of the shelter at home approach to combating community spread of the virus.

Governor Gavin Newsom issued Executive Order N-25-20 on March 12 to protect public health and the California economy, which will have a significant impact on companies doing business in California. As a result, the Attorney General should issue the six month extension in order to alleviate the impact on CCPA covered businesses and allow all efforts to be focused on combatting COVID-19 impacts and addressing the needs of their consumers and employees.

With the unparalleled public health crisis of coronavirus mounting, California should allow businesses to focus on keeping operations running, and protecting the health of their consumers and staffs, without fear of CCPA compliance enforcement actions.

Thank you for your consideration of these comments.

Respectfully submitted,

BAKER & HOSTETLER, LLP