

March 27, 2020

BY EMAIL

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**RE: Proposed California Consumer Privacy Act Regulations**

Ladies and Gentlemen:

The Association of Claims Professionals (ACP) is pleased to respond to requests for comment on the second set of modifications to the proposed California Consumer Privacy Act (CCPA) regulations. We write to recommend adjustments to the regulations to provide greater consistency and clarity to the Act's application and to avoid consumer confusion over potential conflict with other California laws. While ACP members are strong proponents of individual privacy rights, as underscored in our previous submissions, we remain concerned that the unintended application of the CCPA and the proposed regulations, as currently drafted, will sow confusion and discord among California consumers and result in conflicting regulatory standards for our members and the larger California business community writ large. To avoid those consequences, we therefore renew our request that the CCPA be amended to exempt information collected, received, or shared for the purpose of administering or managing employee benefits or workplace injury, property and casualty damage, or liability claims or benefits. In addition, as a member of the broader business community, we join the reasoned request from the coalition of trade associations, companies, and other organizations on March 17, 2020 that you temporarily forebear from enforcing the CCPA until January 2, 2021, given the current health crisis and to allow businesses sufficient time to build processes that are in line with the yet-to-be finalized regulations.

This letter supplements and incorporates our submissions from March 8, 2019, December 6, 2019, and February 25, 2020 (attached for ease of reference).

**ACP's Interest in Revising the CCPA Regulations**

ACP (formerly known as the American Association of Independent Claims Professionals or AAICP) was formed in 2002 as the only national association representing the interests of the nation's independent claims professionals. ACP members employ thousands of claims specialists and other professionals across the country and handle millions of property and casualty, workers' compensation, disability, and other liability claims annually. Membership is comprised of independent claims adjusters and third-party administrator organizations, many of whom handle

claims administration responsibilities for California insureds and their carriers. ACP member companies employ thousands of adjusters in the State of California and manage billions of dollars of claims for California insurers and policyholders.

ACP companies respond every day to individuals and businesses who receive employee benefits or suffer a loss such as workplace injury, property or casualty damage, or liability. Insurance carriers and self-insured companies retain our member companies for expert advice and knowledge throughout the management of claims entrusted to their care. ACP companies provide a full range of claims services from claims adjusting to comprehensive claims management. ACP focuses on the importance of claims specialists as front line responders when an individual or business suffers a loss such as a workplace injury, property or casualty damage, or liability. For claimants, ACP companies help individuals and companies begin to recover from such a loss. For carriers and self-insured customers, ACP companies are a strategic business partner and trusted advisor providing professional claims services integral to risk management. At each step of this process, important information is shared to facilitate effective and efficient claims management.

### **Proposed Revisions to the CCPA Regulations**

Given these important roles and responsibilities, and to ensure the most expedient claims management and administration, while avoiding consumer confusion and consternation, there must be greater clarity on what is and is not covered by the CCPA. Based on the current language of the Act and proposed regulations, information collected as part of administering and managing employee benefits, workplace injury, property and casualty damage, and liability claims and benefits largely are exempted from the CCPA's provisions. See, e.g., Cal. Civ. Code §§1798.105(d), i 1798.140(t)(2)(A), ii 1798.140(t)(2)(C), iii 1798.145(a), iv 1798.145(b), v 1798.145(c)(1)(A), vi 1798.145(h)(1)(A), vii 1798.145(h)(1)(C), viii and 1798.145(n)(1); ix see also Modified Proposed CCPA Reg. §§ 999.301(h), x 999.301(i), xi 999.305(d), xii 999.313(c)(3), xiii 999.314(c)(1).xiv

To provide greater clarity and consistency with other laws, the proposed regulations should be revised to make it clear that the following information is exempted:

This title shall not apply to any information collected, received, or shared for the purpose of administering or managing employee benefits or workplace injury, property and casualty damage, or liability claims or benefits.

This clarification, of course, makes good sense given that California has already specifically and comprehensively addressed transparency and privacy in the claims adjusting industry under the California Insurance Code, Labor Code, and health laws; the CCPA's preamble acknowledgement of existing law's providing protection in various other contexts; and the already existing exemptions in the CCPA itself, as noted above.

## Temporary Forbearance from CCPA Enforcement

We also join the March 17, 2020 request from trade associations, companies, and other organizations that you temporarily forebear from enforcing the CCPA until January 2, 2021. Recent, truly singular events stemming from the COVID-19 pandemic have encumbered businesses in their earnest efforts to operationalize the draft rules prior to July 1, 2020. As of March 22, 2020, at 9:00 p.m. EST, ten states, including California, have initiated orders or directives requiring the public to “shelter in place” or “stay at home.”<sup>xv</sup> California has ordered “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of [16] federal critical infrastructure areas.”<sup>xvi</sup> Violations are a criminal offense.<sup>xvii</sup> As emphasized in the March 17 request, “[d]eveloping innovative business procedures to comply with brand-new legal requirements is a formidable undertaking on its own, but it is an especially tall order when there are no dedicated, on-site staff available to build and test necessary new systems and processes... Now is not the time to threaten business leaders with premature CCPA enforcement lawsuits, particularly when the legal regime is not yet in its final form.” A temporary enforcement deferral is appropriate and warranted and “would relieve many pressures and stressors placed on organizations due to COVID-19 and would better enable business leaders to make responsible decisions that prioritize the needs and health of their workforce over other matters.” Though the CCPA directs the Office of the Attorney General not to bring an enforcement action before July 1, 2020,<sup>xviii</sup> the statute does not restrict the Office from providing an appropriate period of additional time for businesses to implement the final regulations before enforcement begins. As a result, we join the request that you temporarily forbear on enforcement of the CCPA until January 2, 2021.

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ACP appreciates the opportunity to provide comments on the proposed regulations. If you have any questions concerning our comments, or if we can be of further assistance, please contact Susan Murdock at [susan@murdockinc.com](mailto:susan@murdockinc.com). We thank you for consideration of these comments and welcome any further questions you may have.

Sincerely,

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<sup>i</sup> “A business or a service provider shall not be required to comply with a consumer’s request to delete the consumer’s personal information if it is necessary for the business or service provider to maintain the consumer’s personal information in order to: (1) Complete the transaction for which the personal information was collected, ... provide a good or service requested by the

consumer, or reasonably anticipated within the context of a business' ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer. (2) Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity. (3) Debug to identify and repair errors that impair existing intended functionality. (4) Exercise free speech, ensure the right of another consumer to exercise that consumer's right of free speech, or exercise another right provided for by law... (7) To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business. (8) Comply with a legal obligation. (9) Otherwise use the consumer's personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information."

ii "For purposes of this title, a business does not sell personal information when ...: A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a third party, provided the third party does not also sell the personal information, unless that disclosure would be consistent with the provisions of this title."

iii "For purposes of this title, a business does not sell personal information when ...: The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business purpose if both of the following conditions are met: (i) The business has provided notice of that information being used or shared in its terms and conditions consistent with Section 1798.135. (ii) The service provider does not further collect, sell, or use the personal information of the consumer except as necessary to perform the business purpose."

iv "The obligations imposed on businesses by this title shall not restrict a business' ability to: (1) Comply with federal, state, or local laws. (2) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities. (3) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law. (4) Exercise or defend legal claims. (5) Collect, use, retain, sell, or disclose consumer information that is deidentified or in the aggregate consumer information. (6) Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly outside of California."

v "The obligations imposed on businesses by Sections 1798.110 to 1798.135, inclusive, shall not apply where compliance by the business with the title would violate an evidentiary privilege under California law and shall not prevent a business from providing the personal information of a consumer to a person covered by an evidentiary privilege under California law as part of a privileged communication."

vi "This title shall not apply to ... Medical information governed by the Confidentiality of Medical Information Act (Part 2.6 commencing with Section 56) of Division 1) or protected health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5)."

vii "This title shall not apply to ... Personal information that is collected by a business about a natural person in the course of the natural person acting as ... an employee of ... that business to the extent that the natural person's personal information is collected and used by the business solely within the context of the natural person's role or former role as a ... an employee ... of that business."

viii "This title shall not apply to ... Personal information that is necessary for the business to retain to administer benefits for another natural person relating to the natural person acting as ... an employee of ... that business to the extent that the personal information is collected and used solely within the context of administering those benefits."

ix "The obligations imposed on businesses by Sections 1798.100, 1798.105, 1798.110, 1798.115, 1798.130, and 1798.135 shall not apply to personal information reflecting a written or verbal communication or a transaction between the business and the consumer, where the consumer is a natural person who is acting as an employee ... of a company ... and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from such company...."

x "Employment benefits' means retirement, health, and other benefit programs, services, or products to which consumers and their dependents or their beneficiaries receive access through the consumer's employer."

xi "Employment-related information" means personal information that is collected by the business about a natural person for the reasons identified in Civil Code section 1798.145, subdivision (h)(1). The collection of employment-related information, including for the purpose of administering employment benefits, shall be considered a business purpose."

xii "A business that does not collect personal information directly from a consumer does not need to provide a notice at collection to the consumer if it does not sell the consumer's personal information."

xiii "In responding to a request to know, a business is not required to search for personal information if all the following conditions are met: a. The business does not maintain the personal information in a searchable or reasonably accessible format; b. The business maintains the personal information solely for legal or compliance purposes; c. The business does not sell the personal information and does not use it for any commercial purpose; and d. The business describes to the consumer the categories of records that may

contain personal information that it did not search because it meets the conditions stated above.”

<sup>xiv</sup> “A service provider shall not retain, use, or disclose personal information obtained in the course of providing services except: (1) To process or maintain personal information on behalf of the business that provided the personal information, or that directed the service provider to collect the personal information, and in compliance with the written contract for services required by the CCPA; (2) To retain and employ another service provider as a subcontractor, where the subcontractor meets the requirements for a service provider under the CCPA and these regulations; (3) For internal use by the service provider to build or improve the quality of its services, provided that the use does not include building or modifying household or consumer profiles to use in providing services to another business, or correcting or augmenting data acquired from another source; (4) To detect data security incidents, or protect against fraudulent or illegal activity; or (5) For the purposes enumerated in Civil Code section 1798.145, subsections subdivision (a)(1) through (4).”

<sup>xv</sup> Executive Order N-33-20.

<sup>xvi</sup> *Id.*

<sup>xvii</sup> Cal. Gov. Code § 8665.

<sup>xviii</sup> Cal. Civ. Code §§1798.105(c).