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March 20, 2020

California Attorney General Xavier Becerra
California Department of Justice
Office of the Attorney General
ATTN: Privacy Regulations Coordinator
300 South Spring Street, First Floor
Los Angeles, CA 90013

RE: Request for Temporary Forbearance from CCPA Enforcement

Dear Attorney General Becerra:

The undersigned trade associations, companies, and organizations collectively represent a broad cross-section of the United States business community spanning various industries including advertising and marketing, magazine publishing, Internet and online services, financial services, package delivery, cable and telecommunications, transportation, retail, utilities, real estate, insurance, entertainment, auto, technology, and others. Together, we include thousands of companies that do business in California, employ millions of residents in the state, and deliver goods and services that benefit and provide substantial value to the economy and consumers across California and the country.

We strongly support the underlying purpose and goals of the California Consumer Privacy Act (“CCPA”). We believe consumer privacy is an important value that deserves meaningful protections in the marketplace. However, we are concerned that given current events and the presently unfinished status of the regulations implementing the CCPA, businesses will not have the operational capacity or time to bring their systems into compliance with the final regulatory requirements by July 1, 2020.¹ We therefore respectfully request that you forebear from enforcing the CCPA until January 2, 2021 so businesses are able to build processes that are in line with the final regulations before they may be subject to enforcement actions for allegedly violating the law’s terms.

I. The Current Health Crisis Hinders Businesses’ Attempts to Develop Processes for CCPA Compliance

Recent events have encumbered businesses in their earnest efforts to operationalize the draft rules prior to July 1, 2020. The World Health Organization recently announced that the spread of the novel coronavirus known as COVID-19 has risen to the level of a global pandemic, and President Trump has declared that the United States is under a state of national emergency due to the outbreak.² The undersigned organizations employ millions of individuals who are

¹ “The Attorney General shall not bring an enforcement action under this title until six months after the publication of the final regulations issued pursuant to this section or July 1, 2020, whichever is sooner.” Cal. Civ. Code § 1798.185(c).

² World Health Organization, *WHO characterizes COVID-19 as a pandemic* (Mar. 11, 2020), located at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>; White House, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19)*

faced with this crisis and are doing their best to manage their personal and professional lives in the face of uncertain times. Many companies have instituted mandatory work-from-home measures to limit community spread of the virus, meaning that the individuals who are responsible for creating processes to comply with CCPA are not present in the office to undertake such tasks. Developing 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.

The public health crisis brought on by COVID-19 juxtaposed with the quickly approaching enforcement date for the CCPA places business leaders in a difficult position. They are forced to consider tradeoffs between decisions that are best for their employees and the world-at-large and decisions that may help the organizations they lead avoid costly and resource intensive enforcement actions. 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 deferral in enforcement of the CCPA 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.

II. Businesses Need Time to Implement Final CCPA Regulatory Requirements

The draft regulations interpreting the CCPA are still not settled and likely will not be for some time. Equally importantly, they contain a number of requirements and implementation obligations that are not present in the text of the law itself. These new mandates will materially impact how the CCPA is operationalized and will place extensive strain on companies attempting to achieve full compliance before enforcement may begin. Creating procedures and processes to comply with a law like the CCPA takes time, testing, and significant planning and foresight. Even in the most favorable of circumstances, presuming that companies will be able to achieve full compliance with brand-new substantive obligations within mere months of those obligations becoming final is an unrealistic and daunting expectation.

Because the CCPA became effective on January 1, 2020, the draft rules' new requirements beg the question of how the regulations' mandates will impact the baseline obligations that became operative when the CCPA went into effect. It is unclear whether businesses will be held accountable for their failure to abide by entirely new regulatory requirements before they became final or were even proposed. In addition, the lack of time for companies to implement the CCPA prior to enforcement may engender incongruous compliance mechanisms that will look and feel different to consumers on the receiving end of CCPA rights requests. The CCPA's incomplete legal regime risks confusing and frustrating consumers with multiple inconsistent processes for submitting rights requests, thereby potentially discouraging them from submitting such requests altogether. While we understand that your office is working to finalize the draft rules as quickly as reasonably possible, precious time is slipping away from businesses in their efforts to develop consistent and workable compliance processes for consumers before enforcement may begin.

Outbreak (Mar. 13, 2020) located at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

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Moreover, the content of the draft rules continues to evolve, and with each update made by the Office of the Attorney General, businesses' compliance responsibilities materially and substantially change. With less than four months before enforcement is scheduled to start, your office has revealed a second set of modifications to the proposed rules and has initiated a third comment period for interested parties to submit input on the content of the latest changes.³ This third comment period will further delay the ultimate finalization of the rules until at least the end of April 2020, leaving very little time for entities to understand what is required of them under the final regulatory scheme and to build those requirements into their business processes.

The limited and rapidly dwindling time before CCPA enforcement may begin will place business in a compromising position. Without final regulatory requirements, businesses will be unable to make operational changes to their systems with any certainty that such changes will be compliant with the final form of the law. This reality will significantly delay businesses in crafting their ultimate CCPA compliance programs. Businesses should have a reasonable period of time to understand and implement the final regulations before being subject to enforcement.

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The undersigned companies, organizations, and trade associations fully support California's efforts to provide consumers enhanced privacy protections, but the ever-evolving nature of the CCPA's proposed rules, especially in light of the current global crisis, makes the current enforcement date of July 1, 2020 a problematic deadline for both businesses and consumers. Though the CCPA commands the Office of the Attorney General to refrain from bringing an enforcement action before July 1, 2020, 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 ask that you delay enforcement of the CCPA until January 2, 2021. This short forbearance will allow businesses to absorb the shock to the system presented by the current health crisis and will give businesses the time they need to understand and effectively operationalize the rules helping ensure consumers have consistent access to the rights afforded under the new law.

Thank you for your consideration of this request.

Sincerely,

Association of National Advertisers (ANA)
CalChamber
Acclamation Insurance Management Services
Advanced Medical Technology Association (AdvaMed)
Alliance for Automotive Innovation
Allied Managed Care Incorporated
American Advertising Federation (AAF)
American Association of Advertising Agencies (4As)

³ *California Department of Justice*, Notice of Second Set of Modifications to Text of Proposed Regulations (Mar. 11, 2020), located at <https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-notice-of-second-mod-031120.pdf>.

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The American Council of Life Insurers (ACLI)
American Property Casualty Insurance Association (APCIA)
Association of California Life & Health Insurance Companies (ACLHIC)
Association of Claims Professionals (ACP)
The Association of Magazine Media (MPA)
BizFed – Los Angeles County Business Federation
California Asian Pacific Chamber of Commerce
California Attractions and Parks Association (CAPA)
California Association of Boutique and Breakfast Inns
California Association of Licensed Investigators
California Business Properties Association (CBPA)
California Cable & Telecommunications Association (CCTA)
California Credit Union League (CCUL)
California Financial Services Association
California Grocers Association (CGA)
California Hotel & Lodging Association
California Land Title Association (CLTA)
California New Car Dealers Association (CNCDA)
California News Publishers Association (CNPA)
California Restaurant Association
California Retailers Association (CRA)
California Trucking Association (CTA)
Card Coalition
Cemetery and Mortuary Association of California
Civil Justice Association of California (CJAC)
Coalition of Small & Disabled Veteran Businesses
CompTIA
Consumer Data Industry Association (CDIA)
Electronic Transaction Association (ETA)
Email Sender & Provider Coalition (ESPC)
Feld Entertainment
Flasher Barricade Association
Hotel Association of Los Angeles
Innovative Lending Platform Association (ILPA)
Insights Association
Insured Retirement Institute (IRI)
Internet Coalition (IC)
Interactive Advertising Bureau (IAB)
Investment Company Institute (ICI)
Long Beach Hospitality Alliance
Motion Picture Association – America
National Association of Mutual Insurance Companies (NAMIC)
National Business Coalition on E-Commerce and Privacy
National Marine Manufacturers Association (NMMA)
National Payroll Reporting Consortium
News Media Alliance

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NFIB California
Out of Home Advertising Association of America (OAAA)
Personal Insurance Federation of California (PIFC)
Plumbing Manufacturers International
Satellite Broadcast Communications Association (SBCA)
Securities Industry and Financial Markets Association (SIFMA)
Southern California Edison
The Silicon Valley Leadership Group
TechNet
The Toy Association
United Parcel Service (UPS)
Valley Industry & Commerce Association