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February 25, 2022

The Honorable Sydney Kamlager, Chair
Senate Budget and Fiscal Review Subcommittee #4
On State Administration and General Government
1021 O Street, Room 6510
Sacramento, CA 95814

Re: California Privacy Protection Agency Budget 1703

Dear Chair Kamlager:

On behalf of the organizations listed above, we support approval of the California Privacy Protection Agency (Agency) budget proposal for 34.0 positions in fiscal year 2022-23 “to allow the Agency to start up and fulfill its immediate statutory responsibilities,” with some amendments to the Agency’s proposal.

Although not included in the Agency’s budget change proposal (BCP), for the compelling reasons discussed below, our collective organizations request that *the subcommittee approve trailer bill language to extend the Agency’s statutory deadline to adopt privacy regulations from July 1, 2022, to January 1, 2023, and to extend the enforcement date from July 1, 2023, to January 1, 2024. This will allow the Agency to meet its statutory mandate and maintain the goals of Proposition 24. We ask that the subcommittee recommend passage of this trailer bill language to the full Senate.*

Background

In November 2020, voters approved Proposition 24, the California Privacy Rights Act of 2020 (CPRA). With its passage, California has become the nation’s leader in consumer privacy rules as the Agency is charged with the monumental task of developing the first comprehensive privacy laws for consumers in the United States. Proposition 24 was drafted so that businesses would have one year after the regulations were finalized before enforcement would begin. It is important that this one-year window is maintained. Indeed, our organizations of small, diverse California businesses support protecting the privacy of the consumers we serve. It is important to note, however, that Proposition 24 sought balance:

- The rights of consumers and the responsibilities of businesses should be implemented with the goal of strengthening consumer privacy while giving attention to the impact on business and innovation. Section 3 (C) 1 (Emphasis added)

Proposition 24 is an extremely complicated body of law with significant impact for small, diverse businesses that serve many consumers. The small businesses we represent are the backbone of our local communities and a major part of California's economic engine. However, small businesses have not been afforded more than a cursory review when it comes to the unintended consequences of rushing a complex privacy framework that affects virtually all small businesses in the state.

Already under the immense burden of the ongoing pandemic, thousands of small businesses have moved more commerce online, dependent on their ability to leverage technology and keep pace with the cost of doing business to stay afloat. In truth, online platforms have been the lifeline for many of these small businesses serving underserved communities.

It is well documented and publicized that many small businesses serving underserved communities were forced to shut down their brick-and-mortar establishments as a result of the public health crisis, and unreasonable and impracticable Proposition 24 regulations could lead to further devastation. *It is, therefore, critical for the Agency to develop regulations that are reasonable and practicable to avoid unintended consequences and irreparable harm for small businesses that serve underserved communities in California.*

Agency and Privacy Rulemaking Status

Proposition 24, Section 25, allows the Legislature to amend the initiative by a majority vote "provided that those amendments are consistent with and further the purpose of and intent of [the] act as set forth in Section 3...." In our view, the trailer bill request to extend the Agency deadline to adopt privacy regulations from July 1, 2022, to January 1, 2023, and a corresponding extension of the enforcement date from July 1, 2023, to January 1, 2024, is consistent with and furthers the purpose and intent of the initiative. Specifically, we point to Section 3 (C) (1) where the initiative sought balance between protecting consumer privacy rights and the impact to businesses, as mentioned above. Here, the extension of the deadline to January 1, 2023, achieves that balance. It is noteworthy that the extension request should help make up for the loss of time when the Agency did not meet in July, August, and December of 2021 and January of 2022 due to resource issues.

Collectively, in describing the status of the Agency in terms of creating its infrastructure, hiring staff, and developing privacy regulations, the Agency's board members have shared a sentiment along the lines of "building a plane while flying it," which is deeply concerning for the small, diverse businesses we represent. From our vantage point, the Agency is not on pace to meet the July 1, 2022, deadline to adopt the privacy regulation statutory mandate. To be fair, the Agency does not have the appropriate resources and expertise at this point to develop the necessary privacy regulations as mandated by Proposition 24. Consider the following key activities that must take place before July 1, 2022:

- 1) Agency must conduct pre-rulemaking activities to ensure that stakeholders have real and significant input to the regulations, which includes informational hearings, review of draft regulations, outreach to diverse communities, and public hearings. Note: To date, the Agency has

asked for general comments from the public from October 18 to November 8, 2021, but these general comments are insufficient.

- 2) Agency must prepare the Standardized Regulatory Impact Assessment (SRIA) when proposing to adopt a “major regulation” pursuant to Government Code Sections 11346.36 and 11346.3 (c)(1), which includes the following critical and necessary data points:

- (A) The creation or elimination of jobs within the state.
- (B) The creation of new businesses or the elimination of existing businesses within the state.
- (C) The competitive advantages or disadvantages for businesses currently doing business within the state.
- (D) The increase or decrease of investment in the state.
- (E) The incentives for innovation in products, materials, or processes.
- (F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state’s environment and quality of life, among any other benefits identified by the Agency.

Note: We are not aware if the Agency has submitted the SRIA to the Department of Finance, which could take up to 60 days to review once submitted.

- 3) Agency must conduct formal rulemaking process. A regular rulemaking process typically requires notice to the public, 45-day comment period, public hearing, and responses to comments, and generally a state agency has a year to submit to the Office of Administrative Law (OAL) for final approval (https://oal.ca.gov/rulemaking_participation/). Note: On June 14, 2021, an Agency legal staff member noted that based on the rulemaking timeline the Agency must submit its regulatory package to the OAL by mid-May 2022 to go into effect by July 1, 2022.
- 4) Agency must assume authority to conduct rulemaking from the California Attorney General (AG). From our understanding, on October 18, 2021, the Agency adopted a motion to notify the AG that it will assume rulemaking activities, which would be effective sometime in mid-April 2022. It is our interpretation that this procedural process confirms that any formal rulemaking cannot commence until April 2022, little more than two months before the July 1, 2022, deadline.

Agency Options

The Agency has considered the following options in meeting its July 1, 2022, deadline based on previous meetings.

- a) Extend the July 1, 2022, deadline with the help of the Legislature.
- b) “Informally miss” the July 1, 2022, deadline and consider some kind of enforcement delay.

We support option (a) as it is fair for the Agency, stakeholders, and all Californians to have a strong privacy protection law without unintended consequences; in plain English, the Agency needs more time to develop reasonable and practicable regulations. The Agency has expressed concerns, alluded to legislative help, and acknowledged it will not meet its July 1, 2022, deadline based on previous Agency comments.

Agency Meeting September 7, 2021

- “If we do the math, we can’t meet the May [submission] deadline to submit [to the Office of Administrative Law].”
- “Once we hire the Executive Director, we need to find a legislative champion to push back the deadline.” (Emphasis Added)
- “Hate to rush them.” “Rather get good set of rules.” “Lots of countries and states [are watching this] ..., get it right”

Agency Meeting February 17, 2022

- When asked about the July 1, 2022, deadline, the Agency Executive Director acknowledged that the rulemaking process is likely to pass the July 1, 2022, deadline.

On October 18, 2021, the Agency discussed option (b) “informally missing” the July 1, 2022, deadline. In our opinion, this is not a tenable Agency position given that Proposition 24’s deadline of July 1, 2022, is clear and the consequences of unclear action following opaque rulemaking processes will be severe for California’s small, diverse businesses. We are not certain what “informally missing” a deadline means, but it could lead to potential legal entanglements, which could further delay adoption of the privacy regulations, and thus we cannot support such an approach.

As outlined in the Agency’s BCP, the Agency faces a significant number of responsibilities to carry out the mandates of Proposition 24. Our organizations want them to succeed in carrying out these responsibilities in a manner that protects consumers without unintended consequences and irreparable harm to the small, diverse businesses we represent.

There is too much at stake with the privacy protection mandates under Proposition 24 to “build a plane while flying it.” Instead, we recommend the approach of building the plane the right way so that it can land safely for all Californians, eliminating the risk and uncertainty associated with innovating, groundbreaking, and first-in-the-nation regulatory actions on the fly. In this case, we want to help the Agency get it right which means giving it more time to develop privacy regulations that are reasonable and practicable.

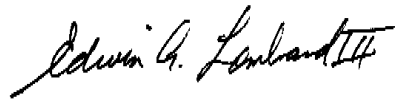
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For all the reasons stated above, we respectfully request that *the subcommittee approve trailer bill language to extend the Agency's statutory deadline to adopt privacy regulations from July 1, 2022, to January 1, 2023, and the enforcement date from July 1, 2023, to January 1, 2024, in order to meet the Agency's statutory mandate, and that the subcommittee recommend passage of this trailer bill language to the full Senate.*

Sincerely,



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Dee Dee Myers, Senior Advisor & Director; Governor's Office of Business & Economic Development
Tara Gray, Director; California Office of Small Business Advocate
Jennifer Urban, Chairperson; California Privacy Protection Agency
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