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MEMORANDUM

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To Our Clients and Friends

Re: California Proposes Privacy Regulations

The California Attorney General has proposed regulations to implement the California Consumer Privacy Act (the “Act”). The proposal provides that a violation of the regulations constitutes a violation of the Act. The deadline for submitting comments is December 6, 2019. The following presents a summary of several important provisions.

The proposed rules provide that notices provided to consumers at or before the time of collection of personal information from consumers are required to use “plain, straightforward language” and be in a format that draws attention to the notice. The notice must be visible or accessible to the consumer before any personal information is collected, and must also be readable on smaller screens, if applicable. The visibility requirement can be achieved by posting a link to the notice on a website homepage or on all pages where personal information is collected. If a consumer’s personal information is sold, the notice must contain a link titled “Do Not Sell My Personal Information” or “Do Not Sell My Info.” The notice may also be given by providing a link to the section in the company’s privacy policy that contains the required information. The notice (as well as notice of right to opt out from the sale of information) must be accessible to consumers with disabilities.

The proposed rules also prescribe details on information that must be included in connection with the notice of a right to opt out from the sale of personal information. Details are provided regarding requirements in the event personal information is collected offline. A notice of the right to opt out is not required if the company does not, and will not, sell personal information. Additionally, the rule specifies what information is to be provided in the event a financial incentive is provided to obtain a consumer’s consent for the retention or sale of personal information. Among the information to be provided in such instances is a good-faith estimate of the value of the information and a description of the method used to calculate the value of the information.

The proposed rules detail what information must be contained in a company’s privacy policy, including the consumer’s right to request disclosure of what personal information it collects, uses, discloses and sells, and the right to request the deletion of personal information the company maintains. A link to an online request form or portal

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for consumers to use is also required. The company must also disclose the process it will use to verify the consumer's request. Guidance on verification procedures to be followed is also specified. The proposed rules specify the process for notifying a consumer in the event the consumer's identity cannot be verified. A company must provide a toll-free telephone number and interactive webforms to consumers who request what information is collected or disclosed. These methods and others (*e.g.*, email address and U.S. mail) may be specified for consumers to request deletion of their personal information. In order to delete personal information, a consumer must first submit a request to delete and then separately confirm that the consumer wants the personal information deleted.

A company has 10 days to confirm receipt of a request to know or to delete, provide information about how information on the verification process and when the consumer can expect a response. A request is to be responded to within 45 days after receipt. However, an additional 45 days may be used if the company notifies the consumer as to why it will take more than 45 days to respond. A request to opt out from the sale of personal information must be acted upon within 15 days. A request to opt out need not be verified. Within 90 days, the company must notify anyone to whom it has sold the consumer's information within the previous 90 days that the consumer has opted out and to not sell the information.

Specific pieces of personal information are not to be disclosed to the consumer if the disclosure creates a "substantial, articulable, and unreasonable risk" to the security of the personal information, the consumer's account, or the security of the company's systems or networks. The consumer's Social Security number, driver's license number or other government-issued identification number, financial account number, health insurance or medical identification number, account password, or security questions and answers are also not to be disclosed.

In the event a consumer's request to delete cannot be verified, the company is to treat the request as a request to opt out of sale of information. If the request is verified, the company must "permanently and completely" erase the personal information on its existing systems, with the exception of archived and back-up systems; de-identify the information; or aggregate the information. If personal information is stored on archived or backup systems, the company may delay compliance with the consumer's request to delete with respect to data stored on the archived or backup system until the archived or backup system is next accessed or used. A company need not comply with a consumer's request to delete information if the reason comes within one of the enumerated exceptions in the Act. In such instances, the company must inform the consumer as to the basis for the denial.

All persons responsible for handling consumer inquiries about the company's privacy practices are to be trained in all the requirements in the Act and the regulations and how to direct consumers to exercise their rights. Records of consumer requests and how the company responded are to be maintained for at least 24 months. The proposed rules specify the information that must be maintained. A company that buys, receives, sells or shares the personal information of 4 million or more consumers is required to

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compile certain information about requests received and post the information on its website.

The proposed rule also specify provisions applicable to service providers. Special rules are proposed for information collected on those under the age of 13 and 16.

A copy of the Attorney General's proposed rule is available on our website at <http://schwartzandballen.com/news.html>.

For more information, please call Gilbert Schwartz, Robert Ballen, Heidi Wicker, or Victor Razon at (202) 776-0700.