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VIA EMAIL (regulations@coppa.ca.gov)

Attn: Brian Soublet
California Privacy Protection Agency
2101 Arena Blvd.
Sacramento, California 95834

Re: Washington Legal Foundation's Supplemental Comment on CPPA Rulemaking/
CPPA Public Comment

On August 17, 2022, the law firm of Greenberg Traurig LLP submitted a comment on behalf of Washington Legal Foundation. The Comment explained that the CPPA had failed to comply with administrative processes when it proposed regulations to implement the California Privacy Rights Act. Specifically, the Comment identified 46 new compliance obligations that would have been imposed by the July 8, 2022, version of the California Privacy Protection Agency's proposed regulations. The Comment itemized those new compliance obligations, explained the burden that those compliance obligations would impose on businesses, and highlighted that the CPPA had failed to account for that burden and failed to complete a Standard Regulatory Impact Analysis ("SRIA") as is required by the California Administrative Procedures Act.

On November 3, 2022, the CPPA published a Notice of Modifications to Text of Proposed Regulations. The Modified Text of Proposed Regulations deviate significantly from the Original Proposed Regulations. Indeed, a preliminary word count shows that the modifications added and/or deleted 7,400 words – about 30 double-spaced pages. Although the CPPA characterizes these changes as sufficiently related to the Original Proposed Regulations in order to justify the shorter 15-day notice and comment period, the sheer quantity of the modifications makes it difficult for the public to fully understand – let alone consider – the changes; WLF believes that the public interest would have been better served if the CPPA had provided a longer period than 15 days (particularly as the 15-day time period included a federal holiday).

WLF has attempted to review the Modified Proposed Regulations in the short amount of time provided. Based upon that initial review it appears that the CPPA has removed 19 of the 46 compliance burdens flagged in the Comment. WLF commends the CPPA for removing these

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provisions. For example, one of the compliance burdens discussed in the Comment was a Proposed Regulation that would have required a business to provide consumers with the name of the source of any allegedly inaccurate information.¹ Presumably in recognition of the significant compliance burden described in the Comment, the CPPA modified the provision to read that a business “may” provide, instead of “shall” provide, such information.

With regard to the 27 remaining compliance burdens identified in the Comment:

- **14 have not been modified, removed, or deleted.**² For the reasons stated within the Comment, these proposals should **not** be adopted as an SRIA has not been completed regarding the impact that these requirements would impose.
- **13 have been modified, but the modifications do not eliminate the compliance burdens imposed by the Original Proposed Regulations.**³ Indeed, in many cases the CPPA has added **additional** compliance burdens. For example, Proposed Regulation 7025(c)(1) would require businesses to create persistent mechanisms for known consumers. The Modified Proposed Regulation would require persistence for both “consumer profile[s] associated with [a] browser” (known consumers) as well as “pseudonymous profiles.” It is not clear what is intended by the addition of “pseudonymous profiles,” but to the extent that the new language requires businesses to attempt to associate an opt-out signal to individuals whose identities are not known by the business, the modified proposal raises a host of additional compliance burdens and costs including (a) businesses would need to determine what constitutes a “pseudonymous profile,” (b) businesses would need to create a system to update pseudonymous profiles if an opt-out signal is detected, and (c) businesses would need to create a system to reconcile updates to pseudonymous profiles with actual profiles for instances in which a pseudonymous profile is later associated with a known consumer (i.e., a consumer logs-into a known account). The CPPA considered none of these burdens or costs, let alone considered them as part of an SRIA as mandated by the APA.

While WLF is heartened by the fact that the CPPA has eliminated 19 of the compliance burdens identified in the Comment, the administrative and procedural issues identified in the Comment

¹ See Comment at Item 19 (in re Proposed Regulation § 7023(i)).

² This includes the following items in the Comment (all references are to the section numbers in the Original Proposed Regulations): Comment Item 1 (§ 7001(c)); Comment Item 9 (§ 7013(c)); Comment Item 16 (§ 7022(b)(3)); Comment Item 23 (§ 7025(c)(5)); Comment Item 26 (§ 7026(a)(4)); Comment Item 29 (§ 7027(g)(3)); Comment Item 33 § 7050(c)(1); Comment Item 34 (§ 7051(a)(2)); Comment Item 26 (§ 7051(e)); Comment Item 42 (§ 7053(e)); Comment Item 43 (§ 7102(a)(1)(B)); Comment Item 44 § 7102(a)(1)(E); Comment Item 45 § 7102(a)(1)(F); Comment Item 46 (§ 7304(c)).

³ This includes the following items in the Comment (all references are to the section numbers in the Original Proposed Regulations): Comment Item 2 (§ 7003(c)); Comment Item 4 (§ 7004(a)(2)); Comment Item 7 (§ 7004(a)(4)(c)); Comment Item 10 (§ 7013(e)(3)(c)); Comment Item 15 (§ 7021(a)); Comment Item 17 (§ 7023(c)); Comment Item 18 (§ 7023(f)(4)); Comment Item 21 (§§ 7025(b), (c), (e), 7026(a)(1)); Comment Item 22 (§ 7025(c)(1), (7)(B), (7)(C)); Comment Item 27 (§ 7026(f)(3)); Comment Item 28 (§ 7026(i)), Comment Item 31 (§ 7027(g)(5)).

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remain in connection with 27 Modified Proposed Regulations. As expressed in the Comment, the CPPA should eliminate these 27 compliance obligations, or remedy the procedural deficiencies by completing an SRIA, submitting it to the DOF for analysis and publication, and considering alternatives that would decrease the compliance impact. Only once that process has been completed should the proposals be resubmitted for 45-day notice and comment.

Without adhering to the APA's processes, which are designed to give consumers, stakeholders, and government agencies alike proper notice of the impact a proposed regulation might have, the Modified Proposed Regulations (if adopted) will continue to be susceptible to collateral attack as invalid and unenforceable.

Best Regards

A handwritten signature in black ink, appearing to read "D. Zetony". The signature is fluid and cursive, with a large, stylized initial "D" and "Z".

David A. Zetony, Shareholder & Co-Chair US Privacy and Security Practice
Andrea Maciejewski, Associate
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