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IN RE: CCPA PUBLIC HEARING.

REPORTER'S TRANSCRIPT OF HEARING
THURSDAY, DECEMBER 5, 2019
FRESNO, CALIFORNIA

JOB NO. 3621714
REPORTED BY: DARLINDA R. COMPEAN, CSR NO. 13094
PAGES 1 - 20

APPEARANCES

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23
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I N D E X

STATEMENT BY	PAGE
MS. SCHESSER	4
RITA CARPENTER	8
JESSICA LEE	12
BRYAN HARLEY	17

EXHIBITS WERE NOT MARKED

1 FRESNO, CALIFORNIA

2 THURSDAY, DECEMBER 5, 2019; 10:10 A.M.

3
4 P R O C E E D I N G S

5 MS. SCHESSER: Good morning and thank you for
6 being here. On behalf of the California Department of
7 Justice and Attorney General Javier Becerra, I would
8 like to welcome everyone to today's hearing regarding
9 the proposed regulations for the California Consumer
10 Privacy Act. My name is Stacey Schesser with the
11 Privacy Unit of the Department of Consumer Law section
12 and I will be the hearing officer for today's
13 proceedings.

14 Also present here today with me are Eleanor
15 Blume, Special Assistant to the Attorney General, and
16 Lisa Kim, Deputy Attorney General of the Privacy Unit.
17 For the record, today is Thursday, December 5th, 2019.
18 The time is 10:11 a.m. We are at the Fresno Hugh Burns
19 Building, Assembly Room Number 1036, 2550 Mariposa Mall,
20 Fresno, California.

21 Before we begin, there are a few points that I
22 would like to make. The notice of proposal we're making
23 for the CCP regulations was published in the California
24 Regulatory Notice Register on August 11th, 2019, in
25 register number 41-Z starting at Page 1341. The notice

1 and related rulemaking documents were posted on the
2 Attorney General's website on October 10th, 2019, and
3 were mailed to all interested parties who had requested
4 rulemaking notices. Today is the fourth of four public
5 hearings that were announced in the notice.

6 The deadline for submitting written comments is
7 this Friday, December 6th, at 5:00 p.m. Pacific Time.
8 We have recently posted additional resources on our
9 website about the DOJ's CCP rulemaking process,
10 including two documents in PDF format entitled Tips On
11 Submitting Effective Comments and Information About The
12 Rulemaking Process. Please visit www.oag.ca.gov/ccpa
13 for further information.

14 Today's public hearing is quasi legislative in
15 nature and is being held pursuant to the California
16 Administrative Procedure Act. The California
17 Administrative Procedure Act specifies that the purpose
18 of this hearing is to receive public comments pertaining
19 to the proposed regulations. If you are speaking today,
20 we ask that you limit your comments to the proposed
21 regulations or the rulemaking procedure that we are
22 following. We do not intend to answer questions or
23 otherwise engage in dialogue in response to any written
24 or oral comment; however, we may ask that you speak
25 slower or louder or ask a limited follow-up question to

1 clarify a point.

2 Today's hearing is being audio recorded and
3 transcribed by a court reporter. The transcript of the
4 hearing and any written comments presented during the
5 hearing will be part of the rulemaking record. Please
6 try your best to speak slowly and clearly to help the
7 court reporter create the best possible record. If you
8 have brought written comments that you would like to
9 submit during the hearing today, please give them to a
10 staff member.

11 After the public comment period ends, the
12 department will review and consider all relevant
13 comments and recommendations provided at the public
14 hearing and in writing. The department will then
15 compile a summary of each relevant comment or
16 recommendation and prepare a response to it, which will
17 be included in the Final Statement of Reasons.

18 Once the Final Statement of Reasons is
19 complete, the entire rulemaking record will be submitted
20 to the Office of Administrative Law, and a copy of the
21 Final Statement of Reasons, along with notification of
22 any changes made to the proposed regulations will be
23 posted on the Attorney General's website.

24 We are required to notify all persons who
25 provided a comment and all those otherwise interested of

1 any revisions to the proposed regulations and any new
2 material relied upon in proposing these rules.
3 Accordingly, there is a check-in table located outside
4 of this room where speakers and attendees can sign in
5 and provide their contact information. You may sign in
6 to speak without providing your name or contact
7 information; however, please know that we will not then
8 be able to provide you with notice of any revisions to
9 the rules or any other rulemaking activities.

10 If you are intending to speak at today's
11 hearing, you should have received a number when you
12 signed in. When we call your number, please come up to
13 the microphone. And, if you would like to be
14 identified, state and spell your full name and identify
15 the organization you represent, if any. If you have a
16 business card, please provide it to the court reporter
17 before approaching the microphone.

18 Each speaker will have five minutes to speak.
19 To assist the speakers, Lisa will be holding up a card
20 to alert the speaker when they have only 30 seconds left
21 to speak. In the interest of time, if you agree with
22 comments made by a prior speaker, please state the facts
23 and add any new information you feel is pertinent to the
24 issue. Also, there is no need to read aloud any written
25 comments submitted. All comments, whether written or

1 oral, will be responded to by our office. If we have
2 remaining time after all the speakers have had a turn,
3 we will give the speakers an opportunity to take a
4 second turn and add to your remarks. If you would like
5 to make an oral comment today and have not yet received
6 a number, please do so now.

7 Lastly, we will need to take breaks during this
8 proceeding, including at least a 30-minute break at
9 lunch for our court reporter, if the hearing goes that
10 long. If it appears that we have no speakers waiting
11 for their turn to provide comments, we will conclude the
12 hearing.

13 At this time, can we please have the first
14 speaker come to the microphone.

15 Good morning. Good morning, Speaker Number 1.
16 Thank you for coming today.

17 MS. CARPENTER: Good morning and thank you for
18 the opportunity to comment. My name is Rita Carpenter;
19 R-I-T-A, C-A-R-P-E-N-T-E-R. I'm a compliance officer
20 for Educational Employees Credit Union here in Fresno.
21 Just a little background on our credit union, EECU
22 provides financial services to more than 300,000 members
23 in 12 counties across Central California. We serve
24 teachers, students, other persons affiliated with
25 education and their relatives.

1 The credit union agrees that protecting
2 personal information of consumers is of the highest
3 importance. We have very conservative information
4 sharing practices and do not sell our member
5 information. The credit union fully supports that
6 consumers should have the right to choose how their
7 information is shared and used or if it should be shared
8 and used. That said, we have concerns with the recently
9 proposed CCPA regulations. I'd like to speak to these
10 points: Extending the effective and enforcement dates,
11 the need for model notices, and clarification of the
12 exemption for the information covered by other privacy
13 regulations.

14 First, we ask that both the effective and
15 enforcement dates be extended. CCPA was signed into law
16 almost a year and a half ago; however, proposed
17 regulations were not issued until recently on
18 October 11th. Eighty-two days is not enough time to
19 understand the complex requirements and become
20 compliant. The proposed regulations are more detailed
21 than the original statute. For our credit union,
22 implementation will mean inventorying data, website
23 modifications, developing forms and disclosures, new
24 procedures and policies, and of utmost importance,
25 training our staff so that they fully understand the

1 consumers' rights, our responsibilities, and have the
2 tools needed to respond to consumer inquiries and
3 requests for information.

4 As a financial institution, we are already
5 highly regulated and must comply with regulations
6 pertaining to privacy and data retention. It's
7 important that we have time to clearly understand how
8 CCPA and the existing regulations work together. Given
9 the complexities of CCPA, businesses need additional
10 time to fully understand requirements and implement
11 compliance solutions. We ask that the effective date be
12 extended by two years, and that the enforcement be
13 delayed until six months after publication of final
14 regulations.

15 Next, model notices and disclosures would be
16 helpful to us and beneficial to consumers. They provide
17 clarity, consistency, and assured compliance. CCPA
18 states that notices must be easy to read and
19 understandable to the average consumer. How does one
20 decide if this standard is met? It's subjective.
21 Businesses and many industries will be designing their
22 own notices and industries often have a preferred format
23 or lingo which may be understandable to them, but not
24 the average person. Consider how a medical professional
25 or someone in the legal profession might write their

1 notices.

2 Model notices and disclosures are common in
3 other consumer protection regulations. Some of them
4 that work well in the financial services industry are
5 notices that tell you how to dispute fraudulent
6 transactions or unauthorized transactions, fraudulent or
7 unauthorized transactions in your bank account. There
8 are also model notices that tell you how long a check
9 will be held before the funds are made available to you.
10 And, in real estate, nondiscrimination notices. Uniform
11 notices would ensure consumers understand their rights,
12 make it easier for them to exercise their rights, and of
13 lesser importance, make it easier for us to comply.

14 Last I'd like to briefly comment that the
15 exemption for personal information elective pursuant to
16 other existing privacy regulations is somewhat unclear,
17 confusing, and very much subject to interpretation.
18 CCPA uses terms that are inconsistent with the Federal
19 Gramm-Leach-Bliley Act and the California Financial
20 Information Privacy Act. Personal information as
21 defined in CCPA is much broader in similar terms than
22 the existing regulations.

23 In addition, CCPA applies to personal
24 information collected in any manner and for persons that
25 are not currently covered by the other regulations. It

1 covers information even if there is no transaction or
2 it's collected from a person with whom we have no
3 relationship. This is more far reaching than the other
4 privacy regulations. The proposed regulations did not
5 provide the clarity we had hoped for. Clarification and
6 perhaps examples would be helpful.

7 In summary, we want to support and comply fully
8 with the intent and requirements of CCPA, but ask for
9 additional time and guidance that will allow us to do so
10 the way that benefits consumers most. Thank you.

11 MS. SCHESSER: Thank you.

12 Speaker Number 2, we invite you to the
13 microphone. Good morning.

14 MS. LEE: Good morning. Jessica Lee;
15 J-E-S-S-I-C-A, Lee, L-E-E. I'm a partner at the law
16 firm Loeb & Loeb. That's L-O-E-B and L-O-E-B. As I
17 mentioned, I'm a partner at Loeb & Loeb and its privacy,
18 security and data innovations practice group I provide
19 cochair. Our clients include advertisers and agencies,
20 publishers and ad tech companies, as well as companies
21 that are highly regulated in the financial and health
22 care sectors. And I'm not here representing one client
23 in particular, but conveying the concerns of many
24 clients and friends who are impacted by the CCPA.

25 And I want to state at the out front that

1 everyone has been working diligently to prepare for
2 January 1st and they have been for some time. However,
3 the draft regulations were released as companies were in
4 the process of building out their compliance plan, and
5 they've introduced a number of new obligations and
6 requirements, in some cases exceeding the scope of the
7 statute. So companies are now struggling on how to
8 implement some of these new obligations, which are not
9 final and won't become final until after January 1st.
10 And so, while the regulations have offered some really
11 helpful guidance and clarity in some cases, they've
12 raised some questions as well that we've seen companies
13 struggling with.

14 And so, I won't reiterate my first point, which
15 is like the prior speaker, the request to extend the
16 enforcement date. My request was specifically extending
17 the enforcement date of the draft regulations. And the
18 only additional point I would add onto that is that it's
19 not just the 82 days; it's the fact that the regulations
20 won't become final probably until well until the early
21 spring essentially, giving really only a couple of
22 months to implement after other processes have been
23 ruled out for the January 1st date. So we would ask
24 that the date at least for the regulations be extended
25 until January 1st, 2021.

1 My second point is on notice fatigue. We think
2 there might be some potential notice fatigue created by
3 the additional notice obligations in the regulations.
4 The requirement to have notice at the point of
5 collection in addition to a privacy notice and a do not
6 sell link, we think would create confusion for
7 consumers, and then unnecessary implementation burden
8 for companies who are struggling with, you know, where
9 to place all these notices and how to display them in a
10 way that is actually helpful rather than confusing for
11 the consumer.

12 So between the do not sell link, and the
13 privacy policy, the potential ad choices icon that's
14 displayed, and then this additional California privacy
15 notice, there seem to be too many places to go and not
16 kind of one clear, direct lane for consumers to go to
17 find their information. So we would suggest an
18 obligation that would combine these links into one
19 location so that there is kind of a clear, direct place
20 for consumers to go to get information on their privacy
21 obligations. And this speaks to the requirements in
22 article two of the regulations.

23 My third point is on the financial incentive
24 programs. So we're concerned about the requirements for
25 these financial incentive programs, particularly the

1 requirement that includes the obligation to provide a
2 good faith estimate of the value of the consumer's data
3 that form the basis of the incentive, and then the
4 description of the method used to calculate the value of
5 the consumer's data.

6 For us, this raises a number of concerns. It's
7 obviously very difficult for companies to calculate on
8 an individual user basis the value of the consumer's
9 data. In many cases, an individual's data is worth very
10 little. It could be, you know, pennies potentially and
11 that's not going to add value of the financial incentive
12 program, which is designed to encourage large numbers of
13 consumers to opt into their program. A car company, for
14 example, doesn't want to sell one car; they want to sell
15 millions of cars. And so, the financial incentive
16 program is based off of the value of getting access to a
17 lot of information, not just one individual's
18 information. So companies are struggling with what that
19 looks like.

20 And then, of course, the method used to
21 calculate that value is proprietary information and
22 there is a concern about the business risk in that, not
23 to the consumer necessarily, but to the other businesses
24 who can see how they're evaluating their internal data
25 matrix.

1 And so, while we understand the desire to help
2 the consumer make an educated decision about whether the
3 incentive is worthwhile, we think there might be a less
4 prescriptive way to do so.

5 And just two final points here, with respect to
6 requiring a business to treat an unverified request as
7 an opt out, we see that's raising a number of
8 challenges. First, there is some businesses that just
9 aren't selling, so we're not sure it makes sense to
10 require them to treat those individuals as an opt out.
11 And then we have some clients who are concerned that
12 they can't verify; meaning, they can't identify the
13 person and there is actually no way to opt them out.
14 They don't have the identifier to tie that person in a
15 way or identify that person in a way that allows them to
16 facilitate the opt out. So that requirement is raising
17 a number of concerns.

18 And our last point is just on the requirement
19 for companies to respond to browser signals. We suggest
20 delaying that requirement until there is one unified
21 signal or a standard or inform the other organizations
22 that were previously active in this case. We understand
23 that, you know, companies want to honor consumer
24 choices, but with no clear browser opt out signals, that
25 can cause a lot of confusion as to multiple signals

1 going back and forth and no clarity on which one to
2 respond to or what the standard guardrails look like.
3 We understand that this requirement is going to be built
4 into the new ballot initiative that was put up, and that
5 might be a point where we have more information about
6 how to make this request.

7 So I'll just close by noting that businesses
8 are spending a lot of time and money -- which is good
9 for the lawyers, but not great for the businesses -- to
10 prepare and adapt for these new regulations. And, you
11 know, for many businesses there are still more questions
12 than answers, particularly because there is not
13 technology in place necessarily to facilitate some of
14 these obligations. And so, we are looking forward to
15 being able to work with the Attorney General's office,
16 and we hope you will be amenable to helping companies
17 who are trying to work through these challenges rather
18 than punishing them for their good faith efforts to
19 comply. Thank you.

20 MS. SCHESSER: Thank you.

21 We invite speaker number three to the
22 microphone. Good morning.

23 MR. HARLEY: Good morning. My name is Bryan
24 Harley. That's B-R-Y-A-N, H-A-R-L-E-Y. I'm the
25 executive director of CMAC, the Community Media Access

1 Collective. We're a nonprofit organization located here
2 in Fresno. Our mission is to empower people, young and
3 old, especially in underserved communities, to be able
4 to share their stories using media. We teach media arts
5 skills and provide access to production equipment and
6 facilities to create your own video, TV show, short
7 film, podcasts and more. We believe very strongly about
8 freedom of information and expression. And, in order to
9 express ourselves freely, we need to be secure in our
10 personal privacy. The chilling effect of surveillance
11 and loss of privacy on free speech are compelling
12 arguments that need to be on record.

13 Consumers need strong privacy protections to
14 ensure we can control our own data. Consumers should be
15 able to easily opt out of the sale of their personal
16 information to third parties in a single step. There
17 shouldn't be loopholes for targeted advertising.
18 Privacy also shouldn't be a privilege for the wealthy.
19 Companies should not be able to charge me more for
20 expressing my privacy rights. Privacy is a right
21 guaranteed by the California Constitution. The rules
22 can and should be strengthened to protect residents with
23 less financial resources. Thank you.

24 MS. SCHESSER: Thank you. I don't believe
25 we've had a speaker register for the speaker number

1 four, but at this point I would like to open up the
2 microphone for anybody who would like to speak in the
3 audience.

4 Is there anybody else that would like to speak?
5 Seeing that there are no more persons present to make
6 any oral comments or anybody that desires to provide
7 another comment to the record, it is now 10:30 a.m. and
8 I hereby close this hearing on the proposed California
9 Consumer Privacy Act Regulations. The written comment
10 period ends on December 6th, 2019, at 5:00 p.m. Pacific
11 Time. Written comments may also be e-mailed to us at
12 privacyregulations@doj.ca.gov. On behalf of the
13 Department of Justice and Attorney General Javier
14 Becerra, thank you for participating in the rulemaking
15 process.

16 (10:30 a.m.)

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1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF FRESNO)
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5 I, Darlinda R. Compean, a Certified Shorthand
6 Reporter for the State of California, hereby certify
7 that I was present and reported in stenotypy all the
8 proceedings in the foregoing-entitled matter; and I
9 further certify that the foregoing is a full, true, and
10 correct statement of such proceedings and a full, true,
11 and correct transcript of my stenotype notes thereof.

12 Dated at Visalia, California, on
13 Wednesday, December 11, 2019.

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Darlinda R. Compean, CSR No. 13094

[& - california]

&	455 2:6,19	advertisers 12:19	b
& 12:16,17	5	advertising 18:17	b 2:11 12:16,16 17:24
1	5 1:11 4:2	affiliated 8:24	back 17:1
1 1:25 8:15	510-3906 2:21	agencies 12:19	background 8:21
1036 4:19	5:00 5:7 19:10	ago 9:16	ballot 17:4
10:10 4:2	5th 4:17	agree 7:21	bank 11:7
10:11 4:18	6	agrees 9:1	based 15:16
10:30 19:7,16	6th 5:7 19:10	alert 7:20	basis 15:3,8
10th 5:2	7	allow 12:9	becerra 4:7 19:14
11 20:13	703-5500 2:7	allows 16:15	behalf 4:6 19:12
11000 2:6,20	8	aloud 7:24	believe 18:7,24
11397 20:16	8 3:7	amenable 17:16	beneficial 10:16
11th 4:24 9:18	82 13:19	angeles 2:13	benefits 12:10
12 3:9 8:23	9	announced 5:5	best 6:6,7
13094 1:24 20:17	90013 2:13	answer 5:22	bliley 11:19
1341 4:25	94102 2:7,20	answers 17:12	blume 2:18 4:15
17 3:11	a	anybody 19:2,4,6	break 8:8
1702 2:13	a.m. 4:2,18 19:7 19:16	appearances 2:1	breaks 8:7
1st 13:2,9,23,25	able 7:8 17:15 18:3,15,19	appears 8:10	briefly 11:14
2	access 15:16 17:25 18:5	applies 11:23	brought 6:8
2 12:12	account 11:7	approaching 7:17	broader 11:21
20 1:25	act 4:10 5:16,17 11:19,20 19:9	arguments 18:12	browser 16:19,24
2019 1:11 4:2,17 4:24 5:2 19:10 20:13	active 16:22	article 14:22	bryan 3:11 17:23
2021 13:25	activities 7:9	arts 18:4	building 4:19 13:4
213 2:14	ad 12:20 14:13	assembly 4:19	built 17:3
2550 4:19	adapt 17:10	assist 7:19	burden 14:7
269-6369 2:14	add 7:23 8:4 13:18 15:11	assistant 2:18 4:15	burns 4:18
3	addition 11:23 14:5	assured 10:17	business 7:16 15:22 16:6
30 7:20 8:8	additional 5:8 10:9 12:9 13:18 14:3,14	attendeas 7:4	businesses 10:9,21 15:23 16:8 17:7,9 17:11
300 2:12	administrative 5:16,17 6:20	attorney 2:5,12,19 4:7,15,16 5:2 6:23 17:15 19:13	c
300,000 8:22		audience 19:3	c 4:4 8:19 12:15
3621714 1:23		audio 6:2	calculate 15:4,7,21
4		august 4:24	california 1:12 2:3 2:7,10,13,16,20 4:1,6,9,20,23 5:15 5:16 8:23 11:19
4 3:5		available 11:9	
41 4:25		avenue 2:6,19	
415 2:7,21		average 10:19,24	

[california - disclosures]

<p>14:14 18:21 19:8 20:1,6,12 call 7:12 car 15:13,14 card 7:16,19 care 12:22 carpenter 3:7 8:17 8:18 cars 15:15 case 16:22 cases 13:6,11 15:9 cause 16:25 ccp 4:23 5:9 ccpa 1:2 5:12 9:9 9:15 10:8,9,17 11:18,21,23 12:8 12:24 central 8:23 certified 20:5 certify 20:6,9 challenges 16:8 17:17 changes 6:22 charge 18:19 check 7:3 11:8 chilling 18:10 choices 14:13 16:24 choose 9:6 clarification 9:11 12:5 clarify 6:1 clarity 10:17 12:5 13:11 17:1 clear 14:16,19 16:24 clearly 6:6 10:7 client 12:22 clients 12:19,24 16:11</p>	<p>close 17:7 19:8 cmac 17:25 cochair 12:19 collected 11:24 12:2 collection 14:5 collective 18:1 combine 14:18 come 7:12 8:14 coming 8:16 comment 5:24 6:11,15,25 8:5,18 11:14 19:7,9 comments 5:6,11 5:18,20 6:4,8,13 7:22,25,25 8:11 19:6,11 common 11:2 communities 18:3 community 17:25 companies 12:20 12:20 13:3,7,12 14:8 15:7,18 16:19,23 17:16 18:19 company 15:13 compean 1:24 20:5,17 compelling 18:11 compile 6:15 complete 6:19 complex 9:19 complexities 10:9 compliance 8:19 10:11,17 13:4 compliant 9:20 comply 10:5 11:13 12:7 17:19 concern 15:22 concerned 14:24 16:11</p>	<p>concerns 9:8 12:23 15:6 16:17 conclude 8:11 confusing 11:17 14:10 confusion 14:6 16:25 conservative 9:3 consider 6:12 10:24 consistency 10:17 constitution 18:21 consumer 4:9,11 10:2,19 11:3 14:11 15:23 16:2 16:23 19:9 consumer's 15:2,5 15:8 consumers 9:2,6 10:1,16 11:11 12:10 14:7,16,20 15:13 18:13,14 contact 7:5,6 control 18:14 conveying 12:23 copy 6:20 correct 20:10,11 counties 8:23 county 20:2 couple 13:21 course 15:20 court 6:3,7 7:16 8:9 covered 9:12 11:25 covers 12:1 create 6:7 14:6 18:6 created 14:2 credit 8:20,21 9:1 9:5,21</p>	<p>csr 1:24 20:17 currently 11:25</p> <p style="text-align: center;">d</p> <p>d 2:5 3:1 4:4 darlinda 1:24 20:5 20:17 data 9:22 10:6 12:18 15:2,5,9,9 15:24 18:14 date 10:11 13:16 13:17,23,24 dated 20:12 dates 9:10,15 days 9:18 13:19 deadline 5:6 december 1:11 4:2 4:17 5:7 19:10 20:13 decide 10:20 decision 16:2 defined 11:21 delayed 10:13 delaying 16:20 department 2:3,10 2:16 4:6,11 6:12 6:14 19:13 deputy 2:5,12 4:16 description 15:4 designed 15:12 designing 10:21 desire 16:1 desires 19:6 detailed 9:20 developing 9:23 dialogue 5:23 difficult 15:7 diligently 13:1 direct 14:16,19 director 17:25 disclosures 9:23 10:15 11:2</p>
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[display - honor]

<p>display 14:9 displayed 14:14 dispute 11:5 documents 5:1,10 doj 2:4,10,16 doj's 5:9 doj.ca.gov 2:8,14 2:21 doj.ca.gov. 19:12 draft 13:3,17</p>	<p>entire 6:19 entitled 5:10 20:8 equipment 18:5 especially 18:3 essentially 13:21 estate 11:10 estimate 15:2 evaluating 15:24 example 15:14 examples 12:6 exceeding 13:6 executive 17:25 exemption 9:12 11:15 exercise 11:12 exhibits 3:14 existing 10:8 11:16,22 express 18:9 expressing 18:20 expression 18:8 extend 13:15 extended 9:15 10:12 13:24 extending 9:10 13:16</p>	<p>financial 8:22 10:4 11:4,19 12:21 14:23,25 15:11,15 18:23 find 14:17 firm 12:16 first 8:13 9:14 13:14 16:8 five 7:18 follow 5:25 following 5:22 foregoing 20:8,9 form 15:3 format 5:10 10:22 forms 9:23 forth 17:1 forward 17:14 four 5:4 19:1 fourth 5:4 francisco 2:7,20 fraudulent 11:5,6 free 18:11 freedom 18:8 freely 18:9 fresno 1:12 4:1,18 4:20 8:20 18:2 20:2 friday 5:7 friends 12:24 front 12:25 full 7:14 20:9,10 fully 9:5,25 10:10 12:7 funds 11:9 further 5:13 20:9</p>	<p>general's 5:2 6:23 17:15 getting 15:16 give 6:9 8:3 given 10:8 giving 13:21 go 14:15,16,20 goes 8:9 going 15:11 17:1,3 golden 2:6,19 good 4:5 8:15,15 8:17 12:13,14 15:2 17:8,18,22,23 gramm 11:19 great 17:9 group 12:18 guaranteed 18:21 guardrails 17:2 guidance 12:9 13:11</p>
e			h
<p>e 3:1 4:4,4 8:19,19 12:15,15,15,16,16 17:24 19:11 early 13:20 easier 11:12,13 easily 18:15 easy 10:18 educated 16:2 education 8:25 educational 8:20 ecu 8:21 effect 18:10 effective 5:11 9:10 9:14 10:11 efforts 17:18 eighty 9:18 eleanor 2:18 4:14 eleanor.blume 2:21 elective 11:15 employees 8:20 empower 18:2 encourage 15:12 ends 6:11 19:10 enforcement 2:4 2:10,17 9:10,15 10:12 13:16,17 engage 5:23 ensure 11:11 18:14</p>	<p style="text-align: center;">f</p> <p>facilitate 16:16 17:13 facilities 18:6 fact 13:19 facts 7:22 faith 15:2 17:18 far 12:3 fatigue 14:1,2 federal 11:18 feel 7:23 film 18:7 final 6:17,18,21 10:13 13:9,9,20 16:5</p>	<p style="text-align: center;">g</p> <p>g 4:4 gate 2:6,19 general 2:5,12,19 4:7,15,16 19:13</p>	<p>h 17:24 half 9:16 harley 3:11 17:23 17:24 health 12:21 hearing 1:2,10 2:3 4:8,12 5:14,18 6:2 6:4,5,9,14 7:11 8:9,12 19:8 hearings 5:5 held 5:15 11:9 help 6:6 16:1 helpful 10:16 12:6 13:11 14:10 helping 17:16 highest 9:2 highly 10:5 12:21 holding 7:19 honor 16:23</p>

<p>hope 17:16 hoped 12:5 hugh 4:18</p>	<p>innovations 12:18 inquiries 10:2 institution 10:4 intend 5:22 intending 7:10 intent 12:8 interest 7:21 interested 5:3 6:25 internal 15:24 interpretation 11:17 introduced 13:5 inventorying 9:22 invite 12:12 17:21 issue 7:24 issued 9:17</p>	<p>leach 11:19 lee 3:9 12:14,14,15 left 7:20 legal 10:25 legislative 5:14 lesser 11:13 limit 5:20 limited 5:25 lingo 10:23 link 14:6,12 links 14:18 lisa 2:11 4:16 7:19 lisa.kim 2:14 little 8:21 15:10 located 7:3 18:1 location 14:19 loeb 12:16,16,17 12:17 long 8:10 11:8 look 17:2 looking 17:14 looks 15:19 loopholes 18:17 los 2:13 loss 18:11 lot 15:17 16:25 17:8 louder 5:25 lunch 8:9</p>	<p>mean 9:22 meaning 16:12 media 17:25 18:4 18:4 medical 10:24 member 6:10 9:4 members 8:22 mentioned 12:17 met 10:20 method 15:4,20 microphone 7:13 7:17 8:14 12:13 17:22 19:2 millions 15:15 minute 8:8 minutes 7:18 mission 18:2 model 9:11 10:15 11:2,8 modifications 9:23 money 17:8 months 10:13 13:22 morning 4:5 8:15 8:15,17 12:13,14 17:22,23 multiple 16:25</p>
<p>i</p>	<p>j 12:15 january 13:2,9,23 13:25 javier 4:7 19:13 jessica 3:9 12:14 job 1:23 justice 2:3,10,16 4:7 19:13</p>	<p>m</p>	<p>n</p>
<p>icon 14:13 identified 7:14 identifier 16:14 identify 7:14 16:12,15 impacted 12:24 implement 10:10 13:8,22 implementation 9:22 14:7 importance 9:3,24 11:13 important 10:7 incentive 14:23,25 15:3,11,15 16:3 include 12:19 included 6:17 includes 15:1 including 5:10 8:8 inconsistent 11:18 individual 15:8 individual's 15:9 15:17 individuals 16:10 industries 10:21 10:22 industry 11:4 inform 16:21 information 5:11 5:13 7:5,7,23 9:2 9:3,5,7,12 10:3 11:15,20,20,24 12:1 14:17,20 15:17,18,21 17:5 18:8,16 initiative 17:4</p>	<p>k</p> <p>kim 2:11 4:16 kind 14:16,19 know 7:7 14:8 15:10 16:23 17:11</p>	<p>n</p>	<p>n 3:1 4:4 8:19 17:24 name 4:10 7:6,14 8:18 17:23 nature 5:15 necessarily 15:23 17:13 need 7:24 8:7 9:11 10:9 18:9,12,13 needed 10:2 new 7:1,23 9:23 13:5,8 17:4,10</p>
<p>l</p>	<p>l 12:15,16,16 17:24 lane 14:16 large 15:12 lastly 8:7 law 4:11 6:20 9:15 12:15 lawyers 17:9</p>	<p>m 2:18 mailed 5:3 19:11 making 4:22 mall 4:19 manner 11:24 mariposa 4:19 marked 3:14 material 7:2 matrix 15:25 matter 20:8</p>	<p>n</p>

[nondiscrimination - put]

<p>nondiscrimination 11:10 nonprofit 18:1 notes 20:11 notice 4:22,24,25 5:5 7:8 14:1,2,3,4 14:5,15 notices 5:4 9:11 10:15,18,22 11:1,2 11:5,8,10,11 14:9 notification 6:21 notify 6:24 noting 17:7 number 4:19,25 7:11,12 8:6,15 12:12 13:5 15:6 16:7,17 17:21 18:25 numbers 15:12</p>	<p>oral 5:24 8:1,5 19:6 order 18:8 organization 7:15 18:1 organizations 16:21 original 9:21 outside 7:3</p>	<p>please 5:12 6:5,9 7:7,12,16,22 8:6 8:13 podcasts 18:7 point 6:1 13:14,18 14:1,4,23 16:18 17:5 19:1 points 4:21 9:10 16:5</p>	<p>proceedings 4:13 20:8,10 process 5:9,12 13:4 19:15 processes 13:22 production 18:5 profession 10:25 professional 10:24 program 15:12,13 15:16</p>
<p style="text-align: center;">o</p>	<p style="text-align: center;">p</p>	<p>policies 9:24 policy 14:13 possible 6:7 posted 5:1,8 6:23 potential 14:2,13 potentially 15:10 practice 12:18 practices 9:4 preferred 10:22 prepare 6:16 13:1 17:10 prescriptive 16:4 present 4:14 19:5 20:7 presented 6:4 previously 16:22 prior 7:22 13:15 privacy 2:4,10,17 4:10,11,16 9:12 10:6 11:16,20 12:4,17 14:5,13,14 14:20 18:10,11,13 18:18,20,20 19:9</p>	<p>proceedings 4:13 20:8,10 process 5:9,12 13:4 19:15 processes 13:22 production 18:5 profession 10:25 professional 10:24 program 15:12,13 15:16 programs 14:24 14:25 proposal 4:22 proposed 4:9 5:19 5:20 6:22 7:1 9:9 9:16,20 12:4 19:8 proposing 7:2 proprietary 15:21 protect 18:22 protecting 9:1 protection 2:4,11 2:17 11:3 protections 18:13 provide 7:5,8,16 8:11 10:16 12:5 12:18 15:1 18:5 19:6 provided 6:13,25 provides 8:22 providing 7:6 public 1:2 5:4,14 5:18 6:11,13 publication 10:13 published 4:23 publishers 12:20 punishing 17:18 purpose 5:17 pursuant 5:15 11:15 put 17:4</p>
<p>o 4:4 12:16,16 obligation 14:18 15:1 obligations 13:5,8 14:3,21 17:14 obviously 15:7 october 5:2 9:18 offered 13:10 office 6:20 8:1 17:15 officer 2:3 4:12 8:19 old 18:3 once 6:18 ooooo 19:18 open 19:1 opportunity 8:3 8:18 opt 15:13 16:7,10 16:13,16,24 18:15</p>	<p>p 4:4 8:19 p.m. 5:7 19:10 pacific 5:7 19:10 page 3:3 4:25 pages 1:25 part 6:5 participating 19:14 particular 12:23 particularly 14:25 17:12 parties 5:3 18:16 partner 12:15,17 pdf 5:10 pennies 15:10 people 18:2 period 6:11 19:10 person 10:24 12:2 16:13,14,15 personal 9:2 11:15 11:20,23 18:10,15 persons 6:24 8:24 11:24 19:5 pertaining 5:18 10:6 pertinent 7:23 place 14:9,19 17:13 places 14:15 plan 13:4</p>	<p>privacyregulations 19:12 privilege 18:18 probably 13:20 procedure 5:16,17 5:21 procedures 9:24 proceeding 8:8</p>	<p>proceedings 4:13 20:8,10 process 5:9,12 13:4 19:15 processes 13:22 production 18:5 profession 10:25 professional 10:24 program 15:12,13 15:16 programs 14:24 14:25 proposal 4:22 proposed 4:9 5:19 5:20 6:22 7:1 9:9 9:16,20 12:4 19:8 proposing 7:2 proprietary 15:21 protect 18:22 protecting 9:1 protection 2:4,11 2:17 11:3 protections 18:13 provide 7:5,8,16 8:11 10:16 12:5 12:18 15:1 18:5 19:6 provided 6:13,25 provides 8:22 providing 7:6 public 1:2 5:4,14 5:18 6:11,13 publication 10:13 published 4:23 publishers 12:20 punishing 17:18 purpose 5:17 pursuant 5:15 11:15 put 17:4</p>

q	regulatory 4:24	retention 10:6	short 18:6
quasi 5:14	reiterate 13:14	review 6:12	shorthand 20:5
question 5:25	related 5:1	revisions 7:1,8	show 18:6
questions 5:22 13:12 17:11	relationship 12:3	right 9:6 18:20	sign 7:4,5
r	relatives 8:25	rights 10:1 11:11 11:12 18:20	signal 16:21
r 1:24 4:4 8:19,19 8:19 17:24,24 20:5,17	released 13:3	risk 15:22	signals 16:19,24 16:25
raised 13:12	relevant 6:12,15	rita 3:7 8:18	signature 20:16
raises 15:6	relied 7:2	room 4:19 7:4	signed 7:12 9:15
raising 16:7,16	remaining 8:2	ruled 13:23	similar 11:21
reaching 12:3	remarks 8:4	rulemaking 5:1,4 5:9,12,21 6:5,19 7:9 19:14	single 18:16
read 7:24 10:18	reported 1:24 20:7	rules 7:2,9 18:21	six 10:13
real 11:10	reporter 6:3,7 7:16 8:9 20:6	s	skills 18:5
really 13:10,21	reporter's 1:10	s 4:4 12:15,15	slower 5:25
reasons 6:17,18,21	represent 7:15	sale 18:15	slowly 6:6
receive 5:18	representing 12:22	san 2:7,20	solutions 10:11
received 7:11 8:5	request 13:15,16 16:6 17:6	schesser 2:5 3:5 4:5,10 12:11 17:20 18:24	somewhat 11:16
recommendation 6:16	requested 5:3	scope 13:6	south 2:12
recommendations 6:13	requests 10:3	second 8:4 14:1	speak 5:24 6:6 7:6 7:10,18,21 9:9 19:2,4
record 4:17 6:5,7 6:19 18:12 19:7	require 16:10	seconds 7:20	speaker 7:18,20 7:22 8:14,15 12:12 13:15 17:21 18:25,25
recorded 6:2	required 6:24	section 4:11	speakers 7:4,19 8:2,3,10
regarding 4:8	requirement 14:4 15:1 16:16,18,20 17:3	sectors 12:22	speaking 5:19
register 4:24,25 18:25	requirements 9:19 10:10 12:8 13:6 14:21,24	secure 18:9	speaks 14:21
regulated 10:5 12:21	requiring 16:6	security 12:18	special 2:18 4:15
regulations 4:9,23 5:19,21 6:22 7:1 9:9,13,17,20 10:5 10:8,14 11:3,16,22 11:25 12:4,4 13:3 13:10,17,19,24 14:3,22 17:10 19:9	residents 18:22	see 15:24 16:7	specifically 13:16
	resources 5:8 18:23	seeing 19:5	specifies 5:17
	respect 16:5	seen 13:12	speech 18:11
	respond 10:2 16:19 17:2	sell 9:4 14:6,12 15:14,14	spell 7:14
	responded 8:1	selling 16:9	spending 17:8
	response 5:23 6:16	sense 16:9	spring 2:12 13:21
	responsibilities 10:1	serve 8:23	ss 20:1
		services 8:22 11:4	stacey 2:5 4:10
		share 18:4	stacey.schesser 2:8
		shared 9:7,7	
		sharing 9:4	

[staff - z]

staff 6:10 9:25 standard 10:20 16:21 17:2 starting 4:25 state 7:14,22 12:25 20:1,6 statement 3:3 6:17 6:18,21 20:10 states 10:18 statute 9:21 13:7 stereotype 20:11 stenotypy 20:7 step 18:16 stories 18:4 street 2:12 strengthened 18:22 strong 18:13 strongly 18:7 struggling 13:7,13 14:8 15:18 students 8:24 subject 11:17 subjective 10:20 submit 6:9 submitted 6:19 7:25 submitting 5:6,11 suggest 14:17 16:19 suite 2:6,13,20 summary 6:15 12:7 supervising 2:5 support 12:7 supports 9:5 sure 16:9 surveillance 18:10	t	try 6:6 trying 17:17 turn 8:2,4,11 tv 18:6 two 5:10 9:18 10:12 14:22 16:5	way 12:10 14:10 16:4,13,15,15 we've 13:12 18:25 wealthy 18:18 website 5:2,9 6:23 9:22 wednesday 20:13 welcome 4:8 work 10:8 11:4 17:15,17 working 13:1 worth 15:9 worthwhile 16:3 write 10:25 writing 6:14 written 5:6,23 6:4 6:8 7:24,25 19:9 19:11 www.oag.ca.gov 5:12
	t 8:19,19 table 7:3 take 8:3,7 targeted 18:17 teach 18:4 teachers 8:24 tech 12:20 technology 17:13 tell 11:5,8 terms 11:18,21 thank 4:5 8:16,17 12:10,11 17:19,20 18:23,24 19:14 thereof 20:11 think 14:1,6 16:3 third 14:23 18:16 three 17:21 thursday 1:11 4:2 4:17 tie 16:14 time 4:18 5:7 7:21 8:2,13 9:18 10:7 10:10 12:9 13:2 17:8 19:11 tips 5:10 today 4:14,17 5:4 5:19 6:9 8:5,16 today's 4:8,12 5:14 6:2 7:10 tools 10:2 training 9:25 transaction 12:1 transactions 11:6 11:6,7 transcribed 6:3 transcript 1:10 6:3 20:11 treat 16:6,10 true 20:9,10	u	unauthorized 11:6 11:7 unclear 11:16 underserved 18:3 understand 9:19 9:25 10:7,10 11:11 16:1,22 17:3 understandable 10:19,23 unified 16:20 uniform 11:10 union 8:20,21 9:1 9:5,21 unit 2:4,11,17 4:11 4:16 unnecessary 14:7 unverified 16:6 user 15:8 uses 11:18 utmost 9:24
		v	y
		value 15:2,4,8,11 15:16,21 verify 16:12 video 18:6 visalia 20:12 visit 5:12	x 3:1 y y 17:24,24 year 9:16 years 10:12 young 18:2
		w	z
		waiting 8:10 want 12:7,25 15:14,14 16:23	z 4:25