ADDENDUM TO FINAL STATEMENT OF REASONS

March 29, 2023

BACKGROUND

The Agency hereby incorporates this addendum as part of the final rulemaking package. This addendum contains additional information regarding the necessity of certain regulations. The addendum also contains clarifications of specific portions of the Initial Statement of Reasons and the Final Statement of Reasons. In addition, the Agency has made non-substantive changes for accuracy, consistency, and clarity. Changes to the original text of a regulation are non-substantive if they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. Cal. Code Regs., tit. 2, § 40. Changes without regulatory effect include renumbering or relocating a provision, revising structure, syntax, grammar, or punctuation, and, subject to certain conditions, making a provision consistent with statute. Cal. Code Regs., tit. 2, § 100.

Global Modifications or Clarifications

- Terms such as "business purpose," "collect," "information practices," "nonbusiness," and "homepage(s)" are no longer capitalized to maintain consistency with the majority of the other defined terms in the regulations, which are not capitalized. These terms retain the definitions set forth in Civil Code section 1798.140 and section 7001 of these regulations.

- The term "homepage(s)" includes the "(s)" to make clear that a business may have more than one homepage that is subject to CCPA requirements. Pursuant to Civil Code section 1798.140, subdivision (p), "homepage" means the introductory page of an internet website *and* any internet web page where personal information is collected. The addition of "(s)" is necessary to address confusion in the marketplace, because businesses have misunderstood the term "homepage" to only refer to the introductory page of an internet website.

- The terms "cross-contextual behavioral advertising" and "cross-contextual advertising" have been changed to "cross-context behavioral advertising" to be consistent with the terminology in the statute.

- The phrase "per Civil Code" has been changed to "pursuant to Civil Code" for grammatical reasons and consistency within the regulations.

§ 7001. Definitions.

- In the third sentence of subsection (i), the term "In contrast" has been changed to "By contrast" for grammatical reasons.

§ 7002. Restrictions on the Collection and Use of Personal Information.

- In subsections (b) and (c), the word "consumer" includes the "(s)," and the word "consumer's" in subsection (b) is now followed by a parenthetical "(or consumers')" to make clear that the collection or processing may involve the personal information of more than one consumer. The use of an "(s)" and "(or consumers')" is necessary to avoid confusion that the reasonable expectations analysis pertains to only a single consumer whose personal information is collected or processed, if the collection or processing involves more than one consumer whose personal information is collected or processed. The text of the examples consistently uses the singular term "consumer" for brevity.

- In the second sentence of subsection (b)(4), the term "consumer that receives" has been changed to "consumer who receives." In the third sentence of the regulation, the phrase "cheap gas close to the consumer" has been changed to "gas prices near the consumer's location." These changes were made for grammatical reasons and clarity.

- In subsections (d) and (d)(1), the term "compliance with" has been added to precede "subsection (a)(1) or (a)(2)." These changes were made for clarity.

§ 7004. Requirements for Methods for Submitting CCPA Requests and Obtaining Consent.

- In the first sentence of subsection (a)(2)(B), "choices" has been changed to "options" for consistency within the latter part of the sentence. In the last sentence of the regulation, the word "between" has been added to precede "'Yes' and 'No'" for grammatical reasons.

- In the first sentence of subsection (a)(2)(C), the phrase "two choices when seeking the consumer's consent to use their personal information, 'Accept All' and 'More Information,' or, 'Accept All' and 'Preferences,'" has been changed to "two options, 'Accept All' and 'More Information,' or, 'Accept All' and 'Preferences,' when seeking the consumer's consent to use their personal information." In the last sentence of the regulation, the word "between" has been added to precede "'Accept All' and 'Deny All.'" These changes were made for grammatical reasons.

- Regarding subsection (a)(3), the Final Statement of Reasons misstates that the subsection "explicitly prohibits the use of double negatives." Subsection (a)(3) states that methods "should not use double negatives." The use of "should" in this regulation is necessary to provide guidance to businesses that it is a best practice to not use double negatives, because such language is confusing to the consumer. This guidance will help businesses to avoid language or interactive elements that are confusing to the consumer, which is a principle they are required to incorporate when designing and implementing methods for submitting CCPA requests and obtaining consumer consent pursuant to subsection 7004(a). Subsection (a)(3)(A) provides an example of a double negative that is a confusing choice for a consumer.

- In the second sentence of subsection (a)(3)(C), quotation marks have been added to the words "Yes" and "No" for consistency with the other examples in subsection (a)(3).

- In the second sentence of subsection (a)(4)(B), the phrase "posts gas prices within" has been changed to "finds gas prices near" for clarity.

- In subsection (a)(5)(B), the word "and" has been changed to "or" for clarity.

§ 7010. Overview of Required Disclosures.

- In subsection (b), the phrase "from a consumer" is necessary to clarify when businesses are required to provide a notice at collection. Businesses that control the collection of a consumer's personal information from a source other than directly from the consumer are not required to provide a notice at collection.

§ 7011. Privacy Policy.

- In subsection (e)(5), the phrase "such information" has been changed to "that information" for grammatical reasons.

§ 7012. Notice at Collection of Personal Information.

- In the first sentence of subsection (g)(3)(C), the phrase "sale, *i.e.*, at the rental counter," has been changed to "sale (*i.e.*, at the rental counter)" for grammatical reasons. In the second sentence of the regulation, the word "computer" has been deleted because it is unnecessary.

- In the first sentence of subsection (i), the commas that followed "*et seq.*" and "from the consumer" have been deleted. In addition, the phrase "where it" that followed "*et seq.*" has been deleted and replaced with "that." These changes were made for grammatical reasons.

§ 7014. Notice of Right to Limit and the "Limit the Use of My Sensitive Personal Information" Link.

- In the first sentence of subsection (f)(2), the word "Instruction" has been changed to "Instructions" for grammatical reasons.

§ 7015. Alternative Opt-out Link.

- In the second sentence of subsection (a), the phrase "would inform" has been changed to "informs," and the word "provide" has been changed to "provides." These changes have been made for grammatical reasons.

- In the first sentence of subsection (b), commas have been added after the term "Your Privacy Choices" and after the word "or" for grammatical reasons.

§ 7020. Methods for Submitting Requests to Delete, Requests to Correct, and Requests to Know.

- In the first sentence of subsection (b), the word "within" has been changed to "the description in." This change clarifies that subsection (b) pertains to a business that does not fit "the description in subsection (a)."

§ 7021. Timelines for Responding to Requests to Delete, Requests to Correct, and Requests to Know.

- In the first sentence of subsection (b), the phrase "it receives" has been changed to "receipt of" for grammatical reasons.

§ 7022. Requests to Delete.

- In subsections (b)(2), (b)(3), (c)(3), and (c)(4), the words "of the need" have been added for grammatical reasons and to clarify that the business, service provider, or contractor that is complying with the consumer's request to delete is notifying service providers, contractors, or third parties "of the need" to delete consumers' personal information in compliance with the statute and these regulations.

- In subsections (b)(1) and (c)(1), the word "back-up" has been changed to "backup" for consistency within the regulations.

- In the first sentence of subsection (h), "in other contexts" has been moved up in the second sentence for grammatical reasons.

§ 7023. Requests to Correct.

- Regarding subsection (d)(1), the Final Statement of Reasons misstates that "consumers are to make a good-faith effort to provide businesses with all necessary information available at the time of request." Subsection (d)(1) states that consumers "should make a good-faith effort." The use of "should" in the second sentence is necessary to provide guidance to consumers that it is a best practice to make a good-faith effort to provide businesses with all necessary information available at the time of the request to correct.

- In the Note, Civil Code section 1798.81.5 has been moved to the beginning of the list of references to align with the order of authorities pursuant to the California Style Manual.

§ 7024. Requests to Know

- Subsection (h) has been revised to be consistent with the language in Civil Code section 1798.130, subdivision (a)(2)(B). As stated in the ISOR, this regulation is necessary to operationalize Civil Code section 1798.130, subdivision (a)(2)(B), which requires a business to respond to a request to know with specific pieces of personal information that the business has collected about the consumer during the 12-month period preceding the business's receipt of the request and beyond pursuant to a regulation. The regulation aligns with the language in Civil Code section 1798.130, subdivision (a)(2)(B), which states that a consumer's right to request disclosure of information beyond the 12-month period preceding the business's receipt of the consumer's request, as well as the business's obligation to provide that information, shall only apply to personal information collected on or after January 1, 2022.

§ 7025. Opt-out Preference Signals.

- In the first sentence of subsection (c)(7)(D), the word "to" has been changed to "with" for grammatical reasons and consistency within the regulations.

- In the first sentence of subsection (e), the word "provides" has been changed to "provide" for grammatical reasons. In the second sentence of subsection (e), the words "it does" have been changed to "they do" for grammatical reasons. In the last sentence of subsection (e), the words "of this regulation" have been deleted as unnecessary.

- Subsection (f)(3) has been revised to clarify that a business's display of whether the consumer visiting their website has opted out of the sale or sharing their personal information shall not be considered a violation of this regulation. This clarification is necessary to ensure that businesses processing an opt-out preference signal in a frictionless manner may display the status of a consumer's opt-out.

- In subsections (g)(3)(A) and (B), commas have been added after "Civil Code section 1798.135, subdivision (b)(1)" for grammatical reasons.

§ 7026. Requests to Opt-out of Sale/Sharing.

- In subsection (a)(1), an em dash has been changed to a colon for grammatical reasons.

- In subsection (k), the word "of" has been added to the phrase "from the date of the consumer's request" to correct a typographical error.

§ 7027. Requests to Limit the Use and Disclosure of Sensitive Personal Information.

- In subsection (g)(3), the word "complied" has been changed to "complies" for grammatical reasons. The last instance of the word "person" has been changed to "third party" for consistency with the first part of the subsection.

- In the second sentence of subsection (m)(1), the word "a" has been added to the phrase "to get to a specific location" to correct a typographical error.

- In the first sentence of subsection (m)(8), the word "such" has been changed to "the" for grammatical reasons.

§ 7050. Service Providers and Contractors.

- In the second sentence of subsection (e), the example uses "may" instead of "shall," because whether the business has sold or shared personal information is ultimately a fact-specific determination. For example, a "sale" requires "valuable consideration," and there are exceptions to the definition of sale, including when a consumer directs the business to intentionally disclose personal information. *See* Civ. Code § 1798.140(ad). That said, this subsection makes clear that the business may not rely on the service provider or contractor exception to a "sale" when the person to whom the business has disclosed the personal information does not have a contract that complies with subsection 7051(a). In addition, a comma has been added after "section 7051, subsection (a)" for grammatical reasons.

§ 7051. Contract Requirements for Service Providers and Contractors.

- In the second sentence of (a)(2), an "(s)" has been added to "business purpose" for consistency within this subsection.

- In subsection (a)(4), parentheses have been around the "s" in "business purposes" for consistency within the regulations.

§ 7053. Contract Requirements for Third Parties.

- In the second sentence of subsection (a)(1), the word "purpose" in the second sentence has been changed to "purpose(s)" for consistency with the first sentence of this subsection.

- In subsection (a)(2), the word "purposes" has been changed to "purpose(s)" for consistency with subsection (a)(1). In addition, the word "those" has been changed to "that" for grammatical reasons.

- In the second sentence of subsection (a)(3), the term "first party" has been changed to "first-party" for grammatical reasons.

§ 7060. General Rules Regarding Verification.

- Regarding subsection (h), the Final Statement of Reasons misstates that this subsection "requires businesses to verify consumers making requests to correct based on personal information that is not the subject of the request to correct." Subsection (h) states that the

business "shall make an effort" to verify the consumer based on personal information that is not the subject of the request to correct. This regulation is necessary to ensure that businesses initiate some demonstrable level of effort to verify the consumer based on personal information that is not the subject of the request to correct so that the alleged incorrect information is not a barrier to making the request to correct.

§ 7301. Investigations.

- In the first sentence of subsection (a), the phrase "open investigations upon the sworn complaint of any person or on its own initiative" has been added. The second sentence has been changed to clarify that the Agency may initiate investigations based upon referrals from government agencies or private organizations, and nonsworn or anonymous complaints. These changes have been made for clarity.

§ 7302. Probable Cause Proceedings.

- Subsection (a) is necessary to define the term "probable cause," as it is used in Civil Code section 1798.199.50, and to clarify for businesses, service providers, contractors, and persons alleged to have violated the CCPA that the Agency will determine probable cause based on the evidence presented and a reasonable belief standard. Such a standard is consistent with other state definitions of "probable cause," (*see, e.g.*, Cal. Code Regs., tit. 2, § 18361.4(a); Cal. Code Regs, tit. 5, § 80300(o)) and makes clear that the Agency cannot find probable cause that a violation occurred without evidence or based on an unreasonable belief.

§ 7303. Stipulated Orders.

- Subsection (a) provides that the Head of Enforcement and the person who is the subject of the investigation may stipulate to the entry of an order before or during an administrative hearing. This subsection further provides that if a stipulation has been agreed upon and the scheduled date of the hearing is set to occur before the next Board meeting, the Enforcement Division will apply for a continuance of the hearing. This subsection is necessary to clarify for parties the ability and timing for settling matters, in compliance with the Administrative Procedures Act ("APA"), and thus preserve the resources of the parties and Administrative Law Judge.

  The Agency has authority to promulgate this regulation because Government Code Chapter 4 (commencing at section 11400) and Chapter 5 (commencing at Section 11500) constitute the administrative adjudication provisions of the APA. Gov. Code § 11400(a). The provisions of Government Code Chapter 4 apply to adjudicative proceedings required to be conducted under Chapter 5, unless the statute relating to the proceeding provides otherwise. Gov. Code § 11410.50. Government Code section 11410.10 provides that the provisions of Chapter 4 apply to decisions by an agency if, under state statute, an evidentiary hearing for determination of facts is required for formation or issuance of a decision; moreover, section 11410.20, subdivision (a) states, "except as otherwise provided by statute, Chapter 4 applies to all state agencies." Chapter 4

includes Government Code section 11415.60, subdivision (a), which explicitly states that an agency "may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding."

Subsection (a) is consistent with Civil Code section 1798.199.55, subdivision (a), which states, "When the agency determines there is probable cause for believing this title has been violated, it shall hold a hearing to determine if a violation has or violations have occurred." Civil Code section 1798.199.55 further states that "the hearing [shall be] conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Agency shall have all the powers granted by that chapter." Nothing in Civil Code section 1798.199.55 expressly provides that the provisions of Government Code Chapter 4 do not apply to the hearings conducted pursuant to that section. Rather, it states that the Agency shall hold a hearing in accordance with Chapter 5, which implicitly includes Chapter 4 and the authority set forth in Government Code section 11415.60, subdivision (a), that an agency may settle matters without a proceeding.

In addition, in *Rich Vision Centers v. Board of Medical Examiners* (1983) 144 Cal. App. 3d 110, 116, the court held that in administrative proceedings where the governing statute requires the holding of a hearing, attorneys for a state agency have the same options to settle administrative proceedings on any legitimate terms as are available to private litigants and attorneys. Business and Professions Code section 108, at issue in *Rich Vision Centers*, specifies that the functions of boards within the Department of Consumer Affairs include "issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following such hearings." Civil Code section 1798.199.55, like Business and Professions Code section 108, requires the holding of a hearing, but as specified by the Court in *Rich Vision Centers*, that requirement does not limit an agency's power to settle administrative proceedings without holding a hearing.

Moreover, interpreting Civil Code section 1798.199.55 as precluding the Agency from settling matters pursuant to an agreement with the parties merely because the statute states that the Agency "shall hold a hearing to determine if a violation has or violations have occurred" would nonsensically result in the Agency being required to hold administrative hearings on the merits, despite both the Agency and the person who is the subject of the investigation being willing to stipulate to the entry of an order to settle the matter. As explained on page 60 of the Initial Statement of Reasons, clarifying that the Head of Enforcement and the person who is the subject of the investigation may stipulate to the entry of an order before or during an administrative hearing "is necessary to allow the parties to settle matters, and thus preserve the resources of the parties and Administrative Law Judge."