



January 14, 2021

The Honorable Gavin Newsom  
California State Capitol, Suite 1173  
Sacramento, California 95814

Dear Governor Newsom,

The undersigned groups urge you to appoint members of the new California Privacy Protection Agency who will work on behalf of consumers. This new Agency has significant regulatory and enforcement authority and has the opportunity to dramatically strengthen consumer rights, individual privacy, and civil rights. With strong leadership, the Agency can set a global model. Given the long eight-year terms for members of the Agency, we urge you to select a candidate who will tirelessly represent the consumers of California. Such a candidate should have:

- A demonstrated history of working to improve the marketplace for consumers; and
- Demonstrated commitment to and background in civil rights and ending discrimination.

The Agency will face well-funded opposition to taking a strong regulatory and enforcement approach. For example, in California, though covering cross-context targeted advertising was a primary motivation of the law,<sup>1</sup> a number of companies have already sought to avoid honoring the CCPA's opt out with respect to these

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<sup>1</sup> California SB 753 bill analysis at 10 (Apr. 22, 2019), [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200SB753](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB753).

practices.<sup>2</sup> CPRA doubles down to clarify that these transfers are covered, but a strong cop on the beat will be critical to providing appropriate oversight to make sure that these rules are honored. Strong enforcement can also help avoid problems experienced in Europe, where lack of effective enforcement of the General Data Protection Regulation (GDPR) has compromised its efficacy. Even though UK's privacy regulator, the Information Commissioner's Office has declared that "real-time bidding"—which involves sharing information about consumers to dozens of third parties so they can bid on targeted ad placement—is a violation of the consent requirement of the GDPR, there have to date been no enforcement actions for these common business practices.<sup>3</sup>

An appointee who will work first and foremost for consumers is critical to creating an effective agency that will help ensure that consumers are able to exercise their rights under the California Consumer Privacy Act. The CCPA's opt-out structure stacks the deck against consumers, who have to submit access, deletion, and opt-out requests at hundreds, if not thousands of different companies in order to fully protect their privacy. And Consumer Reports' research has found that some data brokers developed opt-out processes that have significantly impaired consumers' ability to stop the sale of their information.<sup>4</sup> The Agency has the opportunity to make it much easier for consumers to exercise their opt-out rights under the new law by fleshing out the legal framework for the new global opt-out provision.<sup>5</sup> This is particularly important in light of the fact that advocacy groups, academics, and publishers are already working to establish a universal opt-out standard, the Global Privacy Control.<sup>6</sup> The Agency's decisions will also have important implications for civil rights, particularly as the new agency will issue rules with respect to access to information about and restriction of algorithmic processing.<sup>7</sup> Pro-consumer rules will help address pervasive problems such as discriminatory algorithms that exacerbate historic inequalities along racial and ethnic lines.

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<sup>2</sup> See, e.g. Spotify, Additional California Privacy Disclosures (last visited Jan. 11, 2020), <https://www.spotify.com/us/legal/california-privacy-disclosure/?language=en&country=us>. "We do not sell personal information. We have taken substantial steps to identify and remediate any data sharing arrangements that could constitute a "sale" under the CCPA. While we do not sell any personal information, we do provide Usage Data to advertising partners to enable us to provide you with interest-based advertising."

<sup>3</sup> Simon McDougall, *Blog: Adtech - the reform of real time bidding has started and will continue*, ICO (Jan. 17, 2020), <https://ico.org.uk/about-the-ico/news-and-events/blog-adtech-the-reform-of-real-time-bidding-has-started/>.

<sup>4</sup> Maureen Mahoney, *California Consumer Privacy Act: Are Consumers' Digital Rights Protected?* Consumer Reports Digital Lab (Oct. 1, 2020), [cacy.consumerreports.org/wp-content/uploads/2020/09/CR\\_CCPA-Are-Consumers-Digital-Rights-Protected\\_092020\\_vf.pdf](https://www.consumerreports.org/wp-content/uploads/2020/09/CR_CCPA-Are-Consumers-Digital-Rights-Protected_092020_vf.pdf).

<sup>5</sup> Cal. Civ. Code § 1798.185(19)(a).

<sup>6</sup> Global Privacy Control, <https://globalprivacycontrol.org/>.

<sup>7</sup> Cal. Civ. Code § 1798.185(16).

Thank you for your consideration, and please do not hesitate to reach out with any questions.

Sincerely,

Common Sense  
Consumer Action  
Consumer Federation of America  
Consumer Reports  
Electronic Frontier Foundation  
The Greenlining Institute  
Privacy Rights Clearinghouse

cc: Morgan Carvajal, Chief Deputy Appointments Secretary  
Jay Jefferson, Deputy Appointment Secretary