

1 CALIFORNIA PRIVACY PROTECTION AGENCY

2

3 AMENDED TRANSCRIPTION OF RECORDED PUBLIC MEETING

4

5 October 28, 2022

6 Held Remotely

7

8 Present: JENNIFER M. URBAN, CHAIRPERSON

9 LYDIA DE LA TORRE, BOARD MEMBER

10 VINHCENT LE, BOARD MEMBER

11 ALASTAIR MACTAGGART, BOARD MEMBER

12 CHRIS THOMPSON, BOARD MEMBER

13 ASHKAN SOLTANI, EXECUTIVE DIRECTOR

14 PHILIP LAIRD, GENERAL COUNSEL

15 KEVIN SABO, MODERATOR

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17 Transcribed by: Anne Manscill

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19 Phoenix, Arizona

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1 **AMENDED TRANSCRIBED RECORDED PUBLIC MEETING**

2 **October 28, 2022**

3 MS. URBAN: Good morning, everyone. I'm
4 pleased to welcome you to this meeting of the
5 California Privacy Protection Agency Board. It is
6 October 28th, 2022 at 9:05 a.m.

7 My name is Jennifer Urban. I am the
8 Chairperson of the Board for the Agency.

9 This meeting will run today and, if
10 necessary, continue tomorrow, October 29th, 2022 after
11 a recess.

12 Before we get started with the substance
13 of the meeting, as usual, I have some logistical
14 announcements. First, I'd like to ask everyone to
15 please check that your microphone is muted when you're
16 not speaking. Second, this meeting is being recorded.

17 Today's meeting will be run according to
18 the Bagley-Keene Open Meeting Act, as required by law.

19 After each agenda item, there will be an
20 opportunity for questions and discussion by board
21 members. I will also ask for public comments on each
22 agenda item. Each speaker will be limited to three
23 minutes per agenda item. If you wish to speak on an
24 item, and you're using the Zoom webinar, please use the
25 raise your hand function, which is in the reaction

1 feature at the bottom of your Zoom screen.

2 If you wish to speak on an item and you
3 are joining by phone, please press *9 on your phone to
4 show the moderator that you're raising your hand. Our
5 moderator will call your name when it is your turn, and
6 request that you unmute yourself for comment at that
7 time.

8 Those using the webinar can use the
9 unmute feature. Those dialing by phone can press *6 to
10 unmute. When your comment is completed, the moderator
11 will mute you.

12 It is helpful if you identify yourself,
13 but this is entirely voluntarily, and you can input a
14 pseudonym when you log in to the meeting.

15 The board welcomes public comment on any
16 item on the agenda, and it is the board's intent to ask
17 for public comment prior to the board voting on any
18 agenda item. If for some reason I forget to ask for
19 public comments on an agenda item, and you wish to
20 speak on the item, please let us know by using the
21 raise the hand functions, and the moderator will
22 recognize you.

23 We have a full agenda for this meeting,
24 even though there aren't that many items because it's
25 focused on the Agency's current rulemaking package.

1 I'd like to remind all speakers to please stay on
2 topic, and keep your comments to three minutes or less
3 so everyone has an opportunity to speak who wishes to
4 do so.

5 Relatedly, I'd like to remind everyone
6 of the rules of the road under Bagley-Keene. Both
7 board members and members of the public may only
8 discuss items that are on the agenda for today when
9 those items are up for discussion.

10 We will take breaks as needed. And just
11 so everyone knows, it's likely to include a break
12 around 1:30 or 1:45 for lunch, depending on where we
13 are in the agenda. We're planning to take a later
14 lunch today.

15 I note that the meeting is noticed for
16 today and tomorrow. We will use tomorrow, if we need
17 it, and I'll say a little bit more about that when we
18 get to the relevant agenda item.

19 We'll aim to finish by around five p.m.
20 each day; however, we're going to need to be flexible.
21 For example, if we're getting close to finishing our
22 agenda later this afternoon, we might continue somewhat
23 longer to finish today rather than end at five and have
24 to reconvene tomorrow for a short conversation. I'll
25 do periodic time checks with staff and provide a timing

1 update during the afternoon.

2 My many thanks to the board members for
3 their service, and to all the people working to make
4 the meeting possible. As ever, there's a lot of work
5 that happens behind scenes. So I want to especially
6 thank the team supporting us today; Mr. Philip Laird,
7 the Agency's general counsel, who's acting as meeting
8 counsel today; Mr. Ashkan Soltani, who's here in his
9 capacity as our executive director. I'd also like to
10 thank Ms. Von Chitambira, our deputy director of
11 administration, and all the CPPA staff who have been
12 working on this behind the scenes.

13 And as ever, I'd like to express my
14 gratitude to the team at the Office of the Attorney
15 General for its continuing to support, support, and
16 other agencies who continue to help us.

17 I would also like to thank, and welcome,
18 our new moderator, Mr. Kevin Sabo, and ask him now to
19 please conduct the roll call.

20 MR. SABO: Thank you, Madam Chair.

21 Board member de la Torre?

22 MS. DE LA TORRE: Present.

23 MR. SABO: Board member Le?

24 MR. LE: Present.

25 MR. SABO: Board member Mactaggart?

1 MR. MACTAGGART: Here.

2 MR. SABO: Board member Thompson?

3 MR. THOMPSON: Present.

4 MR. SABO: And Chairperson Urban?

5 MS. URBAN: Present.

6 MR. SABO: Madam Chair, you have
7 established a quorum with all members present.

8 MS. URBAN: Thank you very much, Mr.
9 Sabo. We have established a quorum, and I'd like to
10 let the board know we'll take a roll call vote on any
11 action items.

12 With that, we will move to agenda item
13 number 2, which is an update from the chairperson. I
14 have a few quick updates. Since we're focusing on
15 rulemaking in this meeting, I wanted to be sure that
16 the board was aware of a few things.

17 First is update on upcoming, expected
18 upcoming, board meetings through December. We have
19 tentatively meetings planned in October and November.
20 I'll return to this in a second.

21 As we discussed in our last board
22 meeting, we do plan tentatively to have a board meeting
23 in December. And in December, we plan to cover some
24 administrative items since we're focusing on rulemaking
25 now. That meeting may also include rulemaking items,

1 if necessary.

2 But there are some things that are on
3 our list that I wanted to be sure to highlight so
4 everyone is aware that we're tentatively hoping to talk
5 about those in December. One is continuing with an
6 update, and depending on where we are on the strategic
7 planning process. One is to discuss budget process and
8 board oversight.

9 As came up in the last meeting, I have
10 been researching and getting advice and expect to have
11 a recommended plan for board oversight process in the
12 December meeting that we can discuss. And that will
13 include, just so I make sure that's she's aware, that
14 will include the per diem item requested by Ms. de la
15 Torre.

16 We will probably in December, if not in
17 January, do the executive director's annual review, and
18 potentially have a discussion about some of the
19 developments that came out of this year's legislative
20 session, the California legislature.

21 Now, I'd like to return back to
22 rulemaking meetings, and provide a little bit of
23 information about the process for this just so the
24 public is aware of why we have several board meetings,
25 and sort of how that -- how that process happens in

1 practice.

2 So in our September 23rd, 2022 board
3 meeting, which was our last board meeting, the
4 rulemaking process subcommittee, which is Ms. de la
5 Torre and Mr. Thompson, proposed a plan that involved
6 two-day board meetings to discuss the proposed
7 modifications, the proposed rules. They also proposed
8 that we might need to take undertake multiple two-days
9 meetings. So staff and I need to then balance board
10 availability, staff availability, public accessibility,
11 and sufficient discussion that is still as efficient as
12 possible for the board's, staff's, and public's time.

13 So why do we have multiple meeting
14 notices? We've had three recent meeting notices;
15 October 21st and 22nd, this meeting, October 28th and
16 29th, and November 4th. October 21st and 22nd was
17 cancelled. So there's some intra-locking requirements
18 and considerations that relate to why we have multiple
19 notices and won't always hold the meetings.

20 So there's the ten-day requirement under
21 the Bagley-Keene Open Meeting Act that any meeting we
22 have must be noticed ten days in advance, and that's
23 combined with a little bit of inherent uncertainty as
24 to how much time is going to be required for board
25 discussion and public comment on these substantive

1 topics. I currently don't think we're going to need
2 multiple two-day board meetings, but I could be proven
3 wrong, of course.

4 Accordingly, we had three meetings
5 scheduled, and now, we have two meetings still
6 scheduled in case we need the time. If we don't need
7 the time, we won't meet tomorrow, and if we don't need
8 the time, we won't meet on November 4th.

9 So we cancelled the placeholder meeting
10 last week because it didn't seem like we would need two
11 two-day meetings and a one-day meeting, and the better
12 balance was to make sure the board and the public had
13 sufficient time to prepare. And also I had the flu.

14 And also, and this is very happy news,
15 we have a new board member, whom I'll introduce in a
16 second, and it's important that we felt that he had a
17 comfortable time to prepare.

18 So there are practical reasons why this
19 happens, and I just want to be sure that everybody who
20 is participating and watching and participating today
21 understands that we make the time so that we are sure
22 we have enough time for a robust discussion, the
23 discussion that we need, but we don't always need to
24 use all that meeting time.

25 So with that, I would like to move to

1 the update that we have a new board member. Those of
2 you attending on Zoom probably see a new face.
3 Alastair Mactaggart, his appointing authority is the
4 Attorney General, and he was appointed, I believe, on
5 October 11th, anyway recently this month, and Mr.
6 Mactaggart can correct me, if he'd like.

7 I'd like to thank the previous Attorney
8 General appointee, Ms. Angela Sierra. She was a
9 tremendous asset to the board, with deep knowledge of
10 consumer law, enforcement practices, and government
11 service, and contributed just tremendously to making
12 this agency an agency. She was part of the start-up
13 and administration subcommittee with me, and provided
14 extremely thoughtful comments and advice on policy
15 decisions. She did a lot of work on hiring when we
16 didn't have our own HR department, and I think she
17 should be especially proud, and we should be especially
18 grateful, for all the work she did to support the
19 hiring of our executive director, our acting general
20 counsel, Brian Soublet, and our general counsel, among
21 other positions.

22 And I know I, and I think all of us,
23 really valued her wisdom, her measured approach, and
24 her warm and gracious presence. We'll miss her
25 terribly. I will miss her terribly for sure. And so

1 more formal recognition for Ms. Sierra and a thank you
2 will follow at a later date.

3 But for now, we have other happy news,
4 which is to introduce our new board member, Mr.
5 Alastair Mactaggart. Alistair Mactaggart is the chair
6 of the board and the founder of Californians for
7 Consumer Privacy, which is a nationally-recognized
8 consumer privacy advocacy group, and he's responsible
9 for authoring and sponsoring the California Privacy
10 Rights Act, which was passed by Californians in 2020
11 through ballot initiative Proposition 24, and you've --
12 we've discussed in meetings many times since it is our
13 implementing statute.

14 He has over 30 years of experience in
15 management, real estate development, and nonprofit
16 leadership, and he has a BA and an MBA, both from
17 Harvard University. So Mr. Mactaggart, I'd really like
18 to thank you for serving, and officially welcome you.

19 Finally, I have some great news. I'm
20 thrilled to announce that yesterday, the Global Privacy
21 Assembly admitted the California Privacy Protection
22 Agency as a full member during its 44th Annual Global
23 Privacy Assembly, which is being held this week. The
24 Global Privacy Assembly is a global forum of more than
25 130 data protection and privacy authorities. It was

1 previously known as the International Conference of
2 Data Protection and Privacy Commissioners, and was
3 established in 1979 to help advance privacy by
4 fostering cooperation and information sharing among
5 privacy authorities across the globe. The CPPA is only
6 the second voting member from the United States. The
7 other is the Federal Trade Commission. There are some
8 agencies that are observing members.

9 So I am delighted and excited the CPPA
10 has joined this important body, and I consider it an
11 important milestone. Being a member of the assembly
12 aligns with and will support the Agency's function
13 provided for in 1798.199.40(i), I think it is, which
14 directs the Agency to cooperate with other agencies
15 with jurisdiction over privacy laws and with data
16 processing authorities in California, other states,
17 territories, and countries to ensure the consistent
18 application of privacy protections.

19 I'd really like to thank Mr. Brian
20 Soublet for his help with the preparation of the
21 application to the general -- to the Global Assembly
22 and Ms. de la Torre for offering her expert eye, and of
23 course, the membership of the Global Privacy Assembly.

24 So on that happy news, two pieces of
25 happy news, new board member and membership in the

1 Global Assembly, those are my updates.

2 Are there any comments or questions from
3 board members?

4 Mr. Le?

5 MR. LE: Yeah. I also wanted to thank
6 Alastair, Mr. Mactaggart, for serving, and also, you
7 know, extend my thanks to Ms. Sierra for her great work
8 at the Agency as well. So I just wanted to second all
9 of that, those congratulations.

10 MS. URBAN: Thank you, Mr. Le.

11 Anyone else, please? Just raise your
12 hand.

13 Yes, Ms. de la Torre?

14 MS. DE LA TORRE: Since Mr. Le mentioned
15 that he was really thankful to Ms. Sierra, and also
16 that he welcomed, that he echoes your words in
17 welcoming Mr. Mactaggart, I want to do the same thing.

18 Ms. Sierra, I thought, was a tremendous,
19 tremendous, tremendous help to the board, deep, deep
20 expertise on just how agencies function when we were
21 starting this process. And quite honestly, you know,
22 all of the rest of us didn't have that. So it was an
23 enormous contribution, and really, all of the
24 contributions that she had, doing internal
25 conversations and board meetings.

1 And of course, I have known Mr.
2 Mactaggart for a long time. His organization is the
3 reason why basically we are here. We wouldn't have
4 CCPA without Californians for Consumer Privacy. So I
5 think he's a great addition to the board, and I want to
6 welcome him into the board.

7 MS. URBAN: Thank you very much, Ms. de
8 la Torre.

9 Further comments or questions from board
10 members?

11 All right, Mr. Thompson.

12 MR. THOMPSON: I'll make it unanimous.
13 Really big thank you to Ms. Sierra for everything she
14 did. I'm thinking back to the times when we were
15 basically just the board, and --

16 MS. URBAN: Um-hum.

17 MR. THOMPSON: -- some temporary folks,
18 and the amount of work that was done just to get this
19 Agency up and running and her expertise and experience
20 in Sacramento and the ways of Sacramento were
21 invaluable in getting us a running start out of the
22 gate.

23 And welcome to Mr. Mactaggart, our
24 newest colleague. Thank you for joining us, and I
25 guess we can call it a unanimous welcome.

1 MS. URBAN: A unanimous welcome, Mr.
2 Mactaggart.

3 Yes, please, go ahead.

4 MR. MACTAGGART: Well, I just want to
5 say, first of all, I know I have big shoes to fill with
6 Ms. Sierra's excellent and fabulous service. The good
7 news is her talents are not lost to the state. She's
8 moved on to a different method of serving.

9 MS. URBAN: Right.

10 MR. MACTAGGART: I'm sure they will be
11 as grateful for her expertise there as you were here.

12 And I just want to say it's an honor to
13 be on the board. I'm grateful and look forward to
14 serving with you all. Thank you.

15 MS. URBAN: Thank you very much, Mr.
16 Mactaggart.

17 Is there any public comment? Please
18 raise your hand on Zoom or use *9 on your phone.

19 MR. SABO: I'm not seeing any hands
20 raised.

21 MS. URBAN: All right. Thank you very
22 much, Mr. Sabo.

23 One last time, welcome, Mr. Mactaggart.
24 And let's move to agenda item number 3, which is the
25 main item of discussion for this meeting. Agenda item

1 number 3 is titled, "Discussion and possible action
2 regarding proposed regulations, Sections 7000 to 7304,
3 to implement, interpret, and make specific the
4 California Consumer Privacy Act of 2018, as amended by
5 the California Privacy Rights Act of 2020, including
6 possible adoption or modification of the text".

7 To locate this discussion in the board's
8 work and previous meetings, I'll remind everyone of the
9 steps taken in the rulemaking process up to this point,
10 explain where we are in the rulemaking process, and the
11 goals of the meeting today, and then give an overview
12 of the structure of the discussion today so that
13 everyone can follow where we are in case you haven't
14 been in every meeting or followed as closely so far.

15 So the process so far, as was alluded to
16 under our last agenda item, we are a new board, and we
17 started out mostly with the board members and with the
18 responsibility to engage in rulemaking.

19 Ms. de la Torre and I served as the
20 regulations subcommittee last summer and fall, and we
21 prepared a preliminary initial invitation for comments
22 to get guidance from the public on what might go into
23 the rulemaking package and thoughts about that, and
24 develop some rulemaking subcommittees to advise the
25 board.

1 The update of CCPA rules subcommittee
2 was Ms. Sierra and myself, and the new CPRA rules
3 subcommittee for things that were introduced by the
4 CPRA and didn't modify -- things that were already in
5 the CCPA or could be closely connected to those, that
6 is Ms. de la Torre and Mr. Le.

7 And the rulemaking process subcommittee
8 to advise on the rulemaking process, which is Ms. de la
9 Torre and Mr. Thompson.

10 We did an initial allocation of topics
11 to the subcommittees so that we could be sure that we
12 were complying with Bagley-Keene, and keeping our
13 different information streams separate between the
14 subcommittees. And then, staff and counsel have
15 developed the rulemaking package we're working with
16 today with input from the relevant subcommittees from
17 the preliminary comments that came in via the initial
18 invitation for comments from informational sessions we
19 had with experts in the spring, stakeholder sessions we
20 held with experts in the spring as well.

21 Staff and counsel prepared a draft, a
22 packet of draft proposed regulations. That was
23 released for public review and board discussion in late
24 May of this year. The board approved the package of
25 proposed rules to go into the formal rulemaking process

1 on June, sorry, June 8th, I think it was, of 2022. And
2 then the formal rulemaking process commenced when the
3 formal notice of rulemaking was published on July 8th,
4 2022. That opened the initial public comment period,
5 during which the public submitted comments. This
6 closed on August 23rd, and the Agency held a public
7 hearing on August 24th and 25th to get more feedback
8 and input from the public.

9 Since that time, staff have been
10 reviewing comments, developing proposed modifications
11 to the text and response to the comments, presumably my
12 fellow board members have also been reviewing comments
13 in preparation for discussing the proposed
14 modifications. I know I have my binders right here,
15 and we got a very robust and helpful public response.

16 I also would like to provide a reminder
17 of how Bagley-Keene and the California Administrative
18 Procedures Act interacts with our process. I'd like to
19 thank everyone who is familiar with all of this so far
20 and this interaction for their patience. I know I've
21 explained it in a few public events, and in our June
22 8th meeting, but of course, it isn't something that
23 everyone is familiar with, and it can be complicated
24 and not exactly what people expect.

25 I'd also like to direct everyone to the

1 FAQ that staff prepared on this, which is on our
2 website on our regulations page.

3 I'll start with the California
4 Administrative Procedures Act. When an agency in
5 California writes regulations to implement a statute,
6 it must follow the APA, which required a formal process
7 to ensure that the public has input. So the comment
8 period that has already happened, the hearing that
9 we've held, those are part of that required process.

10 The Agency then considers all the
11 comments, and decides whether to make modifications and
12 response. If there are substantial changes, and
13 substantial I'll put in quotes because that's the term
14 in the law, then it is another time period for written
15 comments of at least 15 days.

16 That is where we are today, looking at
17 proposed modifications from staff to consider whether
18 to approve those for going out for public comment in
19 the 15-day period. Then the Agency will summarize and
20 respond to all the comments received in what's called a
21 final statement of reasons, and that's submitted with
22 the final rulemaking package to the Office of
23 Administrative law, which reviews the proposed
24 regulations. That's a very high level overview, but
25 hopefully it helps back -- sort of provide a foundation

1 for where we are today.

2 People are often really familiar with
3 federal practice or other agencies in California where
4 the staff proposed -- release proposed rules and any
5 modifications and so forth, and there's not a public
6 meeting to discuss amongst staff or amongst a
7 commission or a board to discuss that before it's
8 released for public comment. That is where the Bagley-
9 Keene Open Meeting Act comes in. California has
10 additional process in many situations.

11 This California agency is governed by a
12 board, and under our implementing statute, the board
13 holds the Agency's rulemaking authority. So we must
14 approve commencing the formal rulemaking process,
15 suggested modifications, and of course, the final
16 rules.

17 We're governed by the Bagley-Keene Open
18 Meeting Act, which requires that all of our discussions
19 are considered in public meetings. Those meetings are
20 noticed at least ten calendar days in advance, and that
21 all materials we consider are distributed to the
22 public. So in practice, that means the public got to
23 see the draft regulations well before they went out for
24 formal comment, and the public sees the modifications
25 that staff is suggesting and will hear the board

1 discuss our thoughts about those modifications. This
2 is quite different from what many regulatory advocates
3 are familiar with, and it takes longer, but it provides
4 additional transparency and opportunity for public
5 input.

6 So today, we're discussing Agency,
7 staff, and counsel's recommendations to the board for
8 modifications to the proposed rules in light of public
9 comments, and their further analysis and review. The
10 board will be listening to presentations by staff,
11 explaining the proposed modifications, discussing the
12 staff recommendations, taking public comment, and
13 making the following decision about whether -- how and
14 whether to direct staff to take all the steps necessary
15 to prepare and notice modifications to the text of the
16 proposed regulatory amendments for an official 15-day
17 comment period. The modifications will reflect the
18 changes proposed by staff, if the board agrees, except
19 staff will be directed to further modify the text if
20 that is what the board decides in this meeting. So
21 that's currently where we are in the rulemaking
22 process.

23 Please note there's further process
24 after this discussion. The modifications we're
25 discussing today other than, like, typo fixes and

1 things like that will be made formally available for
2 public comment during that 15-day comment period.
3 Public comment will be considered carefully, and staff
4 and counsel will then prepare a proposed final text for
5 the board to consider.

6 The board will not, in this meeting, and
7 cannot, decide whether or not to finally adopt these
8 regulations. That will only happen after another round
9 of public comment.

10 So I'd very much like to thank everybody
11 for their work on everything today.

12 Now, I'll give a quick overview of how
13 the discussion will be organized. In our last meeting,
14 we extensively discussed the plan for board
15 consideration of modifications for the proposed rules.

16 The rulemaking process subcommittee, Ms.
17 de la Torre and Mr. Thompson, suggested what they
18 termed a consent calendar, which refers to potential
19 modifications that do not require individual discussion
20 by the board. These items will be in one batch for
21 purposes of board consideration. Items that would
22 benefit from individual discussion by the board,
23 however, will be identified and individually discussed.

24 In our last meeting, we discussed this
25 at length and how it might best be organized, and

1 counsel and staff have developed a plan based on that
2 discussion, and that is what we're following today.

3 I'll ask you now to please turn your
4 attention to the materials for today for agenda items
5 3. These include a copy of the proposed regulations
6 with the proposed modifications in redline, in markup,
7 and a chart with entries for each modification and a
8 short explanation by staff. These are references for
9 today's discussion, and will be referred to throughout
10 the meeting.

11 Then on the chart, which captures the
12 proposed modifications, there are items backgrounded in
13 gray, and these have been identified by staff as items
14 that would best be discussed individually. Items
15 backgrounded in white can, in staff and counsel's view,
16 be batched for the consent calendar and do not require
17 individual discussion.

18 Deputy Attorney General Kim, who is
19 presenting the proposed modifications, will first go
20 over the gray items one by one so the board can discuss
21 them, if it wishes. As we discussed in our last board
22 meeting, board members have had the opportunity to
23 request additional items be placed on that list for
24 individual discussion.

25 Accordingly, after we discuss the gray

1 items, counsel will introduce, and the board will
2 discuss, any additional items identified for individual
3 discussion by staff or board members in the interim.

4 And at that point, I will also provide
5 an opportunity for board members to identify any
6 additional items that have come up in the meeting.

7 After the board has disposed of the
8 individual items, the staff will bring to the board's
9 attention the batched items in case things have arisen
10 in the discussion up to that point that might cause a
11 batched item, item in the batched list, to be brought
12 forward for further discussion.

13 I know that the rulemaking process
14 subcommittee originally proposed discussing and
15 disposing of the batched items first, and there is a
16 measure of efficiency in that. But because the
17 individual discussions potentially could affect
18 something in the batch, we're going to proceed with the
19 gray items that are identified for individual
20 discussion first. I will then provide an opportunity
21 for additional board comments just to be sure we don't
22 leave anything out. And then, once the board has heard
23 and discussed all the staff and counsel's recommended
24 modifications, we will take public comment.

25 So that's today. And if you'll bear

1 with us for one more minute, Mr. Laird is going to give
2 us a little bit about how today fits into the rest of
3 the timeline for rulemaking.

4 Thank you, very much, Mr. Laird, and
5 I'll turn it over to you for a minute.

6 MR. LAIRD: Thank you, Chair Urban, and
7 it's a pleasure to be back with this group. We've come
8 a long way since the first meeting, so that's -- this
9 is a really tremendous effort so far on behalf of the
10 board and Agency.

11 In terms of where we're sitting today, I
12 think it's been sort of alluded to with the Chair's
13 overview of the APA process, but the decision basically
14 the board has before it will be sort of to consider
15 what modifications it wants to propose and put out for
16 additional public comment.

17 In doing so, you know, there's a number
18 of options in how the board can approach this. But if
19 the direction is for staff to execute those
20 modifications, and proceed with the notice, staff, you
21 know, has every intent to try to turn that around as
22 quickly as possible, probably within about a week or
23 two, I think, is our estimated timeline if the
24 direction is given today.

25 That will then trigger a 15-day modified

1 text period, during which time, as the Chair as alluded
2 to, we would be receiving public comment formally
3 through the APA process. And at the conclusion of
4 that, the period would close, and staff will once again
5 then evaluate all public comments received regarding
6 the modifications to the text.

7 In doing so, then staff will work to
8 prepare a proposed final set of regulations that will
9 then need to come back before this board. So the next
10 time then, after the 15 days, the board will meet and
11 have the opportunity again to consider whether or not
12 to finally adopt those proposed modifications.

13 If the decision is made to adopt the
14 modifications at that time, then they are -- if the
15 modifications are made at that time, and are adopted
16 permanently, then staff will work to prepare -- will
17 have prepared the final statement of reasons, and at
18 that point will submit to Office of Administrative Law.

19 The Office of Administrative Law has 30
20 business days to complete its review of the rulemaking
21 package. So understanding with some holidays
22 approaching, this can even out to be more like 45 to 50
23 calendar days for their -- for their review. And at
24 that point, we will have a determination from the
25 Office of Administrative Law whether or not they

1 approve or, for some reason, deny the regulation
2 packages as proposed and as submitted.

3 I kind of lay out this timeline to
4 suggest essentially that when we kind of do the
5 anticipated timelines for staff to complete sort of its
6 work and brings these back to the board at regular
7 meetings for final consideration, I think if we are
8 able to move forward today, that means we are hopefully
9 submitting a final package to the Office of
10 Administrative Law close to the end of the year, with
11 final approval pending their review, by the end of
12 January.

13 If, however, at today's meeting, we make
14 decisions to further delay any sort of notice of a 15-
15 day public comment period, that will push back that
16 timeline sort of in tandem with our delay. So if we do
17 take the extra week, and meet again on November 4th,
18 for instance, to further consider, we'll be looking at
19 least a week delay in sort of the final adoption.

20 So happy to take any sort of -- if there
21 are any questions about that process. But our goal is
22 to get this before the Office of Administrative Law so
23 that we can have an approved package under the APA by
24 early 2023.

25 MS. URBAN: Thank you, very much, Mr.

1 Laird. Are there any questions? Okay.

2 Thank you, Mr. Laird, and I'm sure we
3 will all endeavor to be efficient and prioritize our
4 discussion in order to help staff efficiently prepare
5 the package and get it to the Office of Administrative
6 Law.

7 And I appreciate the rulemaking process
8 subcommittee's thoughts about, you know, batching items
9 and so forth so that we could do that as efficiently as
10 possible. Thank you very much, Mr. Laird.

11 And I will next turn things over to
12 Deputy Attorney General Lisa Kim from the team at the
13 Office of the Attorney General who has been assisting
14 the Agency in putting together the draft regulations,
15 acting as counsel for the Agency.

16 This team and our growing internal legal
17 team has been tireless in considering all of the
18 information we've gathered, working with the board
19 subcommittees and the Agency staff to carefully draft
20 regulatory text, to carefully consider public comments
21 on that text, their (indiscernible), and their
22 expertise, especially if they have experience with
23 consumer law generally, privacy law, and specifically
24 the California Consumer Privacy Act and existing
25 regulations as well as California administrative law.

1 I'd like to especially thank Deputy
2 Attorney General Lisa Kim, Supervising Deputy Attorney
3 General Stacey Schesser, the rest of the team at the
4 Office of the Attorney General, acting as counsel for
5 the Agency, the Agency's Executive Director Soltani,
6 Agency counsel, including General Counsel Philip Laird,
7 from whom we just heard, Acting General Counsel Brian
8 Soublet, staff counsel Neelofer Shaikh, Nelson
9 Richards, and others. I want to thank them
10 specifically for taking such care to consider comments
11 and proposed modifications in preparing these materials
12 for the board and the public. They support our --
13 those materials support our discussion, of course,
14 excuse me, but also provide an extra measure of
15 transparency and notice for the public as we consider
16 the modifications. So we really appreciate it.

17 I also really appreciate the robust
18 participation we had from the public at every level,
19 including at the formal comment level, which resulted
20 in, I think, very helpful and concrete comments for
21 staff and the board to consider.

22 With that, Deputy Attorney General Kim,
23 thank you very much again for all your work on this,
24 and for walking us through it today. Please go ahead.

25 MS. KIM: Thank you, Chairperson Urban.

1 As we discussed previously, the board
2 has received materials that were circulated, and they
3 include basically two items or two documents. The
4 first is the modified text of the proposed regulations,
5 and it's the very colorful document that is reflected
6 in multi colors depending on when modifications were
7 made. And I just want to note that the proposed
8 modifications that staff makes with regard to the
9 proposed regulations are reflected in green, underlined
10 for new items included or new language included, and
11 then orange double-striped through with regard to
12 anything that we recommended being removed.

13 The second document that you received
14 was also a chart explaining all the modifications that
15 were made to the proposed regulations. Everything that
16 has been made includes an explanation. There're some
17 exceptions, like we didn't include non-substantive
18 changes or typos or numbering and lettering changes.
19 We thought that might be very clear and set forth. But
20 for anything that was substantive, anything that
21 reflects actual language, we made sure to include that
22 in that chart.

23 Within the chart, as Chairperson Urban
24 mentioned, there are gray rows that are highlighted or
25 identified with an asterisk before the section number.

1 Those are the items that we have identified for
2 discussion today.

3 Now, I wanted to note that not all items
4 may actually require discussion. Some of the items we
5 highlighted primarily to make sure that the board was
6 aware of them, as they are significant. With that
7 being said, those are all highlighted in gray.

8 The rows that are not highlighted, and
9 reflected in white, are consent items. And we won't
10 discuss these unless a board member specifically
11 requests to do so at the end.

12 I also wanted to note there are a few
13 additional modifications that staff recommend since
14 providing these materials to the board, and I will make
15 sure to identify them for the board, and will note
16 those today, whether it be during the discussion of
17 gray items if they pertain to those sections, or if it
18 pertains to, like, something in the white consent
19 items.

20 So we will be proceeding as follows: As
21 mentioned before, we'll go through the gray items
22 first. We'll tee these up for discussion for the
23 board. I'm going to take the gray items in a bit of a
24 different order, not chronologically just because we
25 anticipate some will require more discussion than

1 others. And so I wanted to start with the items that
2 are first highlighted more for the board's awareness,
3 and then turn to the items that will require, or we
4 anticipate will require more discussion by the board.

5 If you wanted to make a note with regard
6 to the order of things, I'm happy to provide that. At
7 least, right now, our anticipated order will be to
8 first cover Section 7004, after that, 7012, 7027, 7050
9 through 53, and then after that, we will discuss 7002,
10 and then 7025. These may be subject to change
11 depending on how breaks work themselves out, but I
12 wanted to give you a general high level order so that,
13 you know, people are aware.

14 And again, as I mentioned before, any
15 new recommendations that the staff has identified
16 during the past two weeks we will fit within the
17 relevant sections, and identify them for the board.

18 And then, finally after we cover those
19 items, we will discuss any rows on the consent agenda
20 to the extent that the board member -- any board member
21 would like to raise those.

22 All right. So any questions about the
23 process? If not, I will just go ahead and move on and
24 start with our first item, which is Section 7004. This
25 is the requirements for methods for submitting CCPA

1 requests, and obtaining consumer consent. This is
2 often referred to as our section regarding dark
3 pattern.

4 So we received many comments on this
5 section, both in support of them, and then raising some
6 concerns. From a high level, generally speaking, some
7 of the things that we saw with regard to those comments
8 were that first that we should apply FTC standards of
9 deception and an intent standard. Some raised concerns
10 that we were being extra statutory, meaning prescribing
11 requirements that were above and beyond what the
12 statute says. And then, there are others who raised
13 specific issues with examples that we provided, raising
14 concerns that they were somehow burdensome to
15 businesses or there was the need for more flexibility
16 in how businesses choose to communicate with consumers.

17 On the support side, I would say that
18 there are -- there are several comments in support of
19 the various principles that we introduced in this
20 section, especially with regard to requiring symmetry
21 and choice for a consumer when it comes to giving their
22 consent. We saw a lot of support for avoiding choice
23 architecture that impairs consumers' choice, and others
24 who raised support for making and ensuring that methods
25 were easily understandable for consumers and provided

1 more detail on the prohibition on dark patterns.

2 The modifications that we made to the
3 regulations are, generally speaking, mapping the
4 language of the regulations very closely to the
5 statute, specifically the definitions of consent and
6 dark pattern that are in the CPRA.

7 We also made some changes from the
8 language from input received during the comment period.
9 For example, we did make the modification to the
10 description of asymmetry and choice. We noticed that
11 it wasn't just a length of the path of the choice, but
12 also choices that, I'm sorry, methods that were more
13 difficult or time consuming. We want to broaden that
14 description a bit so that there is a bit more
15 flexibility and understanding what that means. We
16 changed a couple of the words, would into could in the
17 example section. This was so that we would not
18 foreclose other ways in which the paths or the examples
19 about symmetry would demonstrate that the paths were
20 still symmetrical.

21 Another change that we made was that we
22 deleted a couple of the examples that were provided,
23 and this was to simplify implementation at this time.

24 After -- we may introduce some of these
25 regulations again depending on how we see this play out

1 in the marketplace.

2 Finally, we added language to A(5)(B)
3 regarding the circular links to address concerns that,
4 you know, this is somehow a gotcha statute. We note
5 that if a business knows of circular links and problems
6 with their methods that that doesn't change those
7 issues that may be a dark pattern in those instances.

8 And finally, I wanted to address one new
9 item that staff would like to note, and this is in
10 7004, Subsection (C), and let me provide you the page
11 number in case you wanted to look at the document
12 itself. It is on page 13, at the bottom of page 13.
13 This is the section that notes -- this is the
14 subsection that talks about a business's intent. We
15 recommend in the new green language provided that we
16 delete the sentence, the second sentence, that starts
17 with "for example". We recommend deleting this
18 sentence because it appears to be unnecessary in light
19 of the first sentence that it is a factor to be
20 considered, but not determinative. And we're a bit
21 concerned that it may be overemphasized in
22 interpretation, and so we do recommend striking out
23 that second sentence that starts with, "for example".

24 Now, I'll pause for a second to see if
25 there's any questions or discussion that the board

1 wants to have with regard to this section.

2 MS. URBAN: Great. Thank you very much,
3 Ms. Kim, for that clear explanation. I really
4 appreciate staff's attentiveness to the comments, and
5 on this, we got some very helpful specific comments.
6 For example, the comment about ensuring that the idea
7 of making things symmetrical worked through, and I
8 really appreciate staff's work to implement those.

9 Ms. de la Torre has a comment or a
10 question.

11 MS. DE LA TORRE: Thank you. Ms. Kim,
12 thank you so much for the explanation and for all the
13 great work that you have done for us.

14 I have a question on this section, and
15 it's in 7004, (A) (2). There's two examples right at
16 the end of the section, (D) and (E), they're now, like
17 you mentioned, orange, and they have been basically
18 eliminated, and I just wanted to understand what was
19 the background on removing those examples. One of them
20 was the choice where there's a yes button more
21 prominent and a no button is not -- it will not be
22 symmetrical. And the other one, I think, is the
23 modified proposed regulation also removed references to
24 a business not using money (indiscernible) language,
25 warning that it also shames the consumer into making a

1 particular choice. I was inclined to, you know, find
2 those helpful and I think they shouldn't be colored at
3 all. So if you can give us a little bit of background
4 as to why they were eliminated at this time. Thank
5 you.

6 MS. KIM: Sure. These two examples were
7 deleted at this time just primarily to simplify
8 implementation of the regulations. We received a
9 number of comments that talked about perhaps the burden
10 on businesses with regard to reviewing and looking over
11 all of their processes. And so at least at this time,
12 we removed them as explicit examples so that we could
13 proceed further or quickly through the implementation
14 of the regulations. It is something that we would be
15 aware of. Perhaps if we see it continuing to be a
16 problem in the marketplace, it's certainly something
17 that we may be -- we may consider or the board may
18 consider reintroducing at a later time.

19 MS. DE LA TORRE: Thank you so much.
20 And may I repeat back to make sure I understand. We
21 have eliminated them right now just to simplify
22 implementation, but we want to make sure the way the
23 statute is implemented and if we identify that this is
24 an issue, we might, you know, there's the possibility
25 that we might bring those back, right? Thank you.

1 Thank you. That's very helpful.

2 MS. KIM: Certainly. Thank you.

3 MS. URBAN: Thank you, Ms. de la Torre.

4 Mr. Mactaggart.

5 MR. MACTAGGART: Thanks. Just thank
6 you, Madam Chair.

7 Just following up on Ms. de la Torre's
8 comment, I wonder if it would be possible to kind of
9 keep a list. I know we can always go back and look at
10 the redline, but keep a list of items. I think she
11 raises a good point, and it would be nice to, you know,
12 you forget these things, but it would nice, like a, you
13 know, six months or a year from now to kind of revisit
14 and say, hey, we took this out, and is it useful, do we
15 want to revisit it. So I just think it's a good
16 regulation. I can understand why we're taking it out
17 now, but it's a -- I also noticed it. So just a
18 thought.

19 MS. URBAN: Thank you, Mr. Mactaggart.

20 MS. KIM: Certainly.

21 MS. URBAN: Other comments from the
22 board?

23 All right. As is our usual practice, we
24 will be having a transcript service produce a
25 transcript, and I'm hoping that this will help collect

1 items and make sure that the board has -- it's very
2 clear the board has had a chance to weigh in on each
3 item without us having to read the entire set of
4 proposed modifications at the end of the meeting. So I
5 am going to summarize. And if anyone -- if I have
6 anything wrong, then someone raise your hand, and
7 otherwise, we will consider the proposals from staff on
8 7004 to be something that the board supports and that
9 we'll put into our approval and direction at the end.
10 And that, as I understand it, are the modifications
11 that are shown on the marked up text that was provided
12 today as part of the materials as well as the item that
13 Ms. Kim mentioned staff noticing after the marked-up
14 text was produced, which is to remove the line from
15 near of the end of the regulation in order to simplify
16 the language. And I can be more specific, if needed,
17 but I think that is in place.

18 And Mr. Mactaggart and Ms. de la Torre
19 have expressed understanding that while some of the
20 examples are coming out, they could possibly be used in
21 the future once we know more about the marketplace.

22 Mr. Thompson?

23 MR. THOMPSON: Thank you. I just wanted
24 to doublecheck my understanding of the modification
25 that Ms. Kim mentioned.

1 MS. URBAN: Of course.

2 MR. THOMPSON: At the middle of page 13
3 in subsection (C), it was just that one sentence,
4 right? It wasn't everything after that. It was
5 beginning at "for example", and ending with the words,
6 "dark pattern", and then it continues after? Thank
7 you. Okay.

8 MS. KIM: Yes, that is the case.

9 MS. URBAN: Let me just --

10 MS. KIM: I would like --

11 MS. URBAN: -- again just to be 100
12 percent clear, the sentence that Ms. Kim suggests that
13 we remove is "For example, a business's intent to
14 design the user interface to subvert or impair user
15 choice weighs heavily in favor of establishing a dark
16 pattern". And the other additions will remain. Great.

17 Thank you, Mr. Thompson.

18 MS. KIM: If I could just add one more
19 thing I noticed. This is an example of a typo that we
20 caught in 7004.

21 MS. URBAN: Okay.

22 MS. KIM: And since we're discussing
23 7004, I just wanted to make a note. It's rather
24 simple. It's at the top of page 11, subsection (A) (2),
25 we noticed that we had written in green because "it

1 would impair or interfere with the consumer's ability
2 to make a choice", but we noticed that it should be
3 "that would impair or interfere with the consumer's
4 ability to make a choice", and I just wanted to make
5 that note since it's a typo and something that's new
6 that we caught in the past two weeks.

7 MS. URBAN: Wonderful. Thank you very
8 much, Ms. Kim.

9 All right. With that, Ms. Kim, please
10 continue with the next item on your list.

11 MS. KIM: Sure. Next we'll be
12 discussing Section 7012, more specifically 7012,
13 subsection (E)(6), (G)(2) and (G)(3). This is the
14 section regarding, you know, identifying the names of
15 third parties controlling the collection of personal
16 information.

17 We received many comments on this
18 section, both in support, and raising some concerns
19 that basic high level themes here were concerns that we
20 were being extra statutory because the statute really
21 only discusses disclosing categories of third parties.
22 Other points that were raised were that this provision
23 or this subsection would either be burdensome or
24 costly, potentially anti-competitive, and also there
25 was the concern that there would be minimal benefit for

1 the consumer because notice would then become too long
2 or not many people would pay attention to that.

3 There were those who did support it, and
4 they, you know, allowing the consumer to know all the
5 different third parties that are involved with the
6 collection of personal information.

7 But upon further review, we did review
8 this section and we considered the cost and benefit of
9 the regulation, and at this time, we recommend deleting
10 this provision and the reference to it in the examples
11 provided in this section to -- again, to simplify
12 implementation at this time, and to watch how things
13 play out in the marketplace. Especially in light of
14 the new data minimization and contract requirements
15 that are introduced by the CPRA, we think it may be
16 counterbalanced or the benefit that is provided maybe
17 something that is mitigated by the other provisions.

18 And so at this time, we do recommend
19 deleting it just to see how things progress moving
20 forward and to simplify implementation at this time.

21 MS. URBAN: Thank you very much, Ms.
22 Kim.

23 Questions or comments from the board?

24 All right, wonderful. We have Mr. Le, and then we have
25 Ms. de la Torre.

1 Mr. Le, please go ahead.

2 MR. LE: Yeah. Thank you, Ms. Kim. I
3 had a question. So I understand as how the comments
4 say, you know, telling all the names of third parties
5 could create issues. But what about the number of
6 third parties it's shared to; do you think that would
7 still require too much effort for the benefit? I know
8 categories is useful, but perhaps the amount of third
9 parties that it's shared may strike a balance between
10 providing consumers information and while not requiring
11 businesses to keep updating each name and worrying
12 about these sensitive business relationships being
13 disclosed. Was there any thought about that?

14 MS. KIM: We did consider that. It is
15 something that we are looking into. I believe that
16 there may be some fluidity with regard to that number.
17 It may be changing, and so requiring that specific
18 number is something that we are still analyzing as to
19 whether or not the benefit of that would be useful in
20 light of the costs that it might impose on the
21 businesses. But that's certainly something that we may
22 consider, especially if we notice that moving forward
23 that there seems to be a need to identify these things
24 for consumers or to bring greater awareness to
25 consumers.

1 MR. LE: Okay. Thank you.

2 MS. URBAN: Thank you, Mr. Le.

3 Ms. de la Torre?

4 MS. DE LA TORRE: Thank you, Ms. Urban.

5 So I have a related question, and I am
6 going to try to make sure that I understand this
7 provision correctly first. The way I read the
8 provision is this situation that we usually, I guess,
9 identify as co-contributors collecting for your
10 website, for example. So you're a business, and you're
11 allowing another business to collect. It's not about
12 allowing service providers to collect on your behalf.
13 That's why they need to be identified, right, because
14 they are using the data for purposes different from the
15 purpose that the business and the consumer expect. Is
16 that approximately correct? I know that there's no
17 absolute correlation between CCPA and other
18 jurisdictions, but is that the kind of context we're
19 talking about, a co-contributor context, Ms. Kim?

20 MS. KIM: I believe that those ideas are
21 relatively similar. Again, CCPA uses different
22 language than other jurisdictions, but certainly I
23 think that that's a similar kind of understanding.

24 MS. DE LA TORRE: Okay, okay. So what
25 we're eliminating then is the need for the controller

1 to identify the co-controllers in that (indiscernible)
2 is not this. But those are the entities, that they
3 will have the obligation to identify in their privacy
4 matters the fact that they're collecting. The notice
5 doesn't disappear, it's that it's not basically
6 duplicated in the notice of the business that's
7 collecting the data. I'm sorry, I might be confusing
8 you. I hope that you get --

9 MS. KIM: No. I understand what you're
10 saying.

11 MS. DE LA TORRE: -- what I'm trying to
12 say?

13 MS. KIM: Yes. This does not nullify
14 the fact that the third party, who is also controlling
15 the collection of personal information, must provide a
16 notice at collection in accordance with 1798.100 as
17 well as I believe it's Section 7012, the notice of
18 collection provisions in the regulations themselves.
19 It doesn't nullify that.

20 MS. DE LA TORRE: Okay. So I'm sorry to
21 bother you. I'm just trying to make sure that I
22 understand it correctly, this all makes sense to me.
23 So a business doesn't have to let the consumer know
24 that it's allowing other businesses to collect, and
25 because of the consideration that you mentioned, it

1 might be that in the future, we change our position on
2 that. But at this point, you're not recommending that
3 we do that. But in reality, there's notice to the
4 consumer in the sense that that third party, that other
5 business, is subject to the obligations under CPPA to
6 notify independently, is that --

7 MS. KIM: Yes, that is correct
8 because --

9 MS. DE LA TORRE: Thank you.

10 MS. KIM: Yes. That is correct with one
11 slight change. Again, this doesn't notify -- this
12 doesn't nullify the first party who is -- the first
13 party who is interacting with the consumer. They are
14 still under obligation to say that there are others,
15 other third parties who are controlling the collection
16 of personal information, they just don't have to
17 identify them by name. I think that's the distinction.

18 MS. DE LA TORRE: Name then.

19 MS. KIM: By naming them specifically.

20 MS. DE LA TORRE: Thank you. Thank you
21 so much.

22 MS. URBAN: That is what I was going to
23 mention. The consumer would still hear from the
24 business with which they are interacting that there are
25 other third parties collecting information. The

1 business with whom they're interacting simply, at this
2 time, staff is recommending wouldn't have to name all
3 of those individual third parties in order to see.
4 Again, I think if I'm say -- if I have this right, Ms.
5 Kim, how the marketplace develops and how it looks like
6 implementation will develop.

7 And Mr. Le also queried about another
8 approach which would provide another layer of
9 information, but not every name, which would be the
10 number of third parties, which in my understanding is
11 that would also potentially be somewhat dynamic, but it
12 would be another layer of information in addition to
13 the categories of third parties that the consumer would
14 already have disclosed to the consumer by the business
15 with which they are interacting.

16 I appreciate staff's thoughtfulness
17 about this change. My view is that I would like to
18 accept staff's recommendations based on their expertise
19 and knowledge in most cases, and this seemed like a
20 case in which staff's expertise is counseling that this
21 is something that we might revisit in the future, but
22 it's simpler at this time to simplify the proposed
23 regulation a little bit.

24 So I support it, and I thank Ms. Kim and
25 her team for the thought that goes into it and the

1 comments that were helpful in identifying that. Are
2 there any further comments or questions on this?

3 MR. LE: Yeah.

4 MS. URBAN: Mr. Le?

5 MR. LE: Yeah. Should we only be giving
6 our comments to the gray section. I have other
7 issues -- well, questions around 7012. Should we just
8 wait for that to be -- when we talk about the white --

9 MS. URBAN: Things that were in the
10 white -- yeah. So the plan has been to talk about the
11 gray things and then circle back and pull things out of
12 the white sections if you'd like to.

13 MR. LE: Okay. That will --

14 MS. URBAN: Will that make sense, or is
15 it so connected that you think that --

16 MR. LE: No, no, it's not.

17 MS. URBAN: Okay.

18 MR. LE: I get it.

19 MS. URBAN: All right. All right. I'll
20 make a note. You make a note, Mr. Le, and we'll be
21 sure to circle back to that.

22 All right. Thank you, Ms. Kim, and
23 without -- and if there aren't further comments, we
24 will move on to the next one with the understanding
25 that the Board supports the change for simplification

1 to 7012 that we just went over, and I would like to
2 note Mr. Le's suggestion about potentially in the
3 future disclosing the number of third parties in
4 question.

5 Ms. Kim?

6 MS. KIM: Great. So moving on to
7 Section 7027(m)(2), and I'm going to be addressing both
8 7027(m)(2) and 7050(a)(4) together because they're
9 essentially a very similar topic. This is the section
10 that in which we inserted -- well, sorry. Let me start
11 back again. This is the section that pertains to an
12 exception for which a purpose that can be used. This
13 is -- sorry. Let me say that again.

14 7027(m)(2), this is the section that
15 deals with the different kinds of purposes, businesses
16 can use sensitive, personal information for in which
17 that would not trigger providing the consumer right to
18 limit. And then also with regard to 7050(a)(4), this
19 is an exception -- or a specification given with regard
20 to service providers and contractors, how they can use
21 personal information and combine it that would not
22 somehow be in violation of the law or the regulations,
23 itself.

24 More specifically, the exception that
25 was given was with regard to it originally stated that

1 the business or the service provider contractor can use
2 personal information to detect security incidents, and
3 the modification that staff has proposed is to also
4 include language that says, prevent, detect, and
5 investigate security incidents.

6 The reason -- well, you know, with
7 regard to this provision, we did receive a number of
8 comments on these two sections. We wanted to clarify
9 the language because there were some that were
10 concerned that "detect" would be interpreted to
11 narrowly.

12 There were separately other requests
13 that were made to broaden 7027 exceptions generally,
14 but this is one that we wanted to make a modification
15 to. Part of our analysis and thought process was that
16 detecting security incidents would require activities
17 that could also be framed as preventing and
18 investigating, but we did also want to note that we
19 didn't accept other comments to expand other sections.

20 For example, we did receive some
21 comments that wanted to expand the exception set forth
22 in 7027(m)(3) that talks about resisting malicious,
23 deceptive, fraudulent, or illegal actions directed at
24 the business and to prosecute those responsible for
25 those actions. Some of the comments made in that vein

1 was that we should delete directed at the business, and
2 therefore broaden it that businesses can use it even if
3 it's information that is directed at a different
4 business.

5 We didn't think that was necessary or --
6 because you know, this could be done through other
7 exceptions available in 1798.145. So but we did think
8 it would be relevant and helpful or clarifying to
9 include that prevent, detect, and investigate the
10 security incidents because prevention and investigating
11 security incidents usually is included within this
12 understanding of detecting.

13 I also wanted to note that we did add a
14 new item in this section, specifically for 7027(m).
15 This is something that, a modification that we
16 recommend to make, and essentially, what we do
17 recommend is that we start 7027(m), and note in the
18 very first line where we say, "the purposes for which a
19 business may collect", we want to stay instead, "the
20 purposes is identified in Civil Code Section
21 1798.121(a), for which a businesses may collect using
22 disclosed sensitive information are as follows."

23 The reason why we wanted to just include
24 that kind of framing language at the beginning is to
25 just make sure to clarify that the reason we put

1 together this list to begin with was to help the both
2 businesses and consumers and those digesting this
3 information to have in one place all the different
4 exceptions that were given or provided for by the
5 statute in one place.

6 It doesn't necessarily preclude other
7 situations especially as exceptions in 1798.145 may
8 apply, but we wanted to at least just frame that so
9 it's very clear that that is the purpose of the section
10 to put those specific exceptions identified by the
11 statute or within our authority as a rulemaking body to
12 put it into one section so that it's easier for people
13 to understand.

14 MS. URBAN: Okay. Thank you, Ms. Kim.
15 Comments or questions from other Board members? Ms. de
16 la Torre? You're on mute, Ms. de la Torre.

17 MS. DE LA TORRE: Thank you. Apologies.
18 I'm not sure if my comment is appropriate for right
19 now, or it would be best to wait and have a
20 conversation about 7027 later? I did have the
21 opportunity -- and Mrs. Kim was generous enough to give
22 me some of her time and she kind of has an idea of my
23 thoughts. And so I was just going to ask her, is it
24 appropriate for us to talk about right now to talk
25 about 7027(m) in general, or do we just want to address

1 the example, and then maybe I pull it out of the
2 consent calendar?

3 MS. KIM: I believe it might be helpful
4 to talk about it now just because it is about the same
5 subsection.

6 MS. DE LA TORRE: Okay. Perfect. Thank
7 you so much. So I'm going to summarize my
8 understanding of how this section works, and I'll go
9 point by point just to make sure that I'm correct, and
10 you can --

11 MS. URBAN: I'm sorry. I just -- just
12 point of order, Ms. De la Torre, do you mean you want
13 to talk about things that are not in the -- that are
14 white backgrounded in this section? I see. So the
15 process that we were anticipating would be to talk
16 about -- to bring those things forward after we talk
17 about the gray areas, which is what the exchange I just
18 had with Mr. Le. If it's so integrated as I asked him
19 about his comments -- if it's so integrated with what
20 we were just discussing that you makes sense to bring
21 it forward now, I'm fine with that.

22 And if we need to modify how we operate
23 because in process it turn out we need to do that,
24 that's fine. I want to be sure that Mr. Le understands
25 that if in listening to Ms. de la Torre it sounds like

1 this was very similar to what you wanted to do, then we
2 can circle back to you sooner, if you would like, or we
3 can wait. So thank you, Mr. Le.

4 Ms. de la Torre, please go ahead.

5 MS. DE LA TORRE: Okay. Thank you. And
6 I'm fine whether we have that conversation now or
7 later. It seems to me that Mrs. Kim is right because M
8 is a section that has a lot of examples, and we're
9 talking about one of the examples. So going back to
10 what I was trying to say, so this section is about the
11 requests to limit the use and disclosure of sensitive,
12 personal data, and as I understand Section M, basically
13 what we're listing there are the situations where
14 organizations do not need to provide this notice of the
15 right to limit the use and disclosure of sensitive,
16 personal data, and usually you don't need to provide a
17 mechanism for it either. Is that correct, Mr. Kim?

18 MS. KIM: Yes. I would say in short
19 form, that is true. To be clear, what we're trying to
20 do is explain the provision in 1798.121(a), which sets
21 forth when a consumer shall have a right to limit the
22 use of their sensitive, personal information or the
23 disclosure of sensitive, personal information, and that
24 subsection also includes specific references to
25 different sections of the statute that would

1 essentially create exceptions to that request to
2 limit -- or that right to limit.

3 MS. DE LA TORRE: And so I was going to
4 ask that. That was my next question. So I think that
5 what I hear from you is that this section is not really
6 creating new limitations on the use or disclosure of
7 sensitive, personal data or allowing things that were
8 not allowed by the statute. It's just trying to
9 provide a helpful list so that it's easier for business
10 to find out what are the situations that do not trigger
11 their request to limit the use and disclosure because
12 if you go to the statute, you basically have to be
13 jumping from section to section to understand that; is
14 that correct? So we're --

15 MS. KIM: I --

16 MS. DE LA TORRE: -- not changing --
17 yeah, go ahead.

18 MS. KIM: Yes. I don't believe we're
19 changing what the statute provides for. We're simply
20 including kind of in one place an easy-to-access list
21 of exceptions that are provided for within the statute.

22 MS. URBAN: I would just --

23 MS. DE LA TORRE: So --

24 MS. URBAN: To just for everyone who is
25 watching and is a reminder for any of us, the

1 regulations basically do three things. One is where
2 staff have deemed it useful. It repeats sometimes in
3 sort of plain English the statute to make it easy to
4 understand where any regulations are nested in there
5 and also so someone can read the regulations and not
6 have to constantly go back to the statute. Let's see.
7 It orders things so that you can understand hopefully
8 how the rights we have with the consumer and the
9 responsibilities that you have as a business, and it
10 implements and interprets the statute in places where
11 staff is recommending that that's appropriate.

12 So I think, Ms. de la Torre, if this is
13 mostly in that sort of first category to help people
14 understand the statute, and I think Ms. Kim is saying,
15 yes. It mostly is, but I want to be sure that
16 everybody is on the same page.

17 MS. KIM: Yes. I believe that that is
18 my understanding.

19 MS. DE LA TORRE: Thank you. So another
20 kind of general idea here is I understand that this
21 situation is set to the limitations on the use and
22 disclosure of sensitive, personal data under the
23 statute are specific. So if you use -- and I'm
24 paraphrasing here so it's not going to be perfect, but
25 just the general idea, if you use basically sensitive,

1 personal information or disclose sensitive, personal
2 information for -- I think there's three.

3 There's all the things related to art
4 impressions, the bagging to identify and repair errors,
5 and your providing some form of advertising and
6 marketing services. So the whole thing is in the
7 category of you're using sensitive data in the context
8 of advertising in one way or another or for the bagging
9 that might not be needed.

10 In those cases, the new right to limit
11 the use and disclosure of sensitive, personal data
12 allows the consumers to say, no, thank you. Do not use
13 my personal data for this marketing advertising
14 purposes that I do not agree with. Is that the gist of
15 what we are -- of what the statute is limiting there?

16 MS. KIM: Without going into like a
17 legal interpretation of the law, which I --

18 MS. DE LA TORRE: Do not --

19 MS. KIM: -- am a little bit weary of.
20 But I do want to just note that in Civil Code Section
21 1798.121(a), it very specifically says -- it
22 specifically identifies certain provisions of 1798.140
23 and that -- I'm sorry. Subdivision E of 1798.140,
24 which is the definition of business purpose, and within
25 that reference to the definition of business purpose,

1 it only identifies paragraphs 2, 4, 5, and 8.

2 And from what I understand that you're
3 saying, Ms. de la Torre, is that some of those sections
4 that are not included here explicitly by the statute
5 are those references that you're making about ad
6 impressions and cross-contextual advertising, and I
7 would just, yes. I would agree that in the reference
8 included in 1798.121(a), those particular paragraphs
9 are not included within exceptions to the right to
10 limit.

11 MS. DE LA TORRE: Okay. Just give me a
12 second. I'm just double checking the citation. Thank
13 you so much.

14 MS. URBAN: Thank you, Ms. de la Torre.
15 I was looking at the statute while Ms. Kim was reading
16 it.

17 MS. DE LA TORRE: Yeah. She sees
18 very well-versed --

19 MS. URBAN: Yeah.

20 MS. DE LA TORRE: -- and understanding
21 to go to the through the papers.

22 MS. URBAN: Mr. Mactaggart, while we
23 wait, do you have a comment?

24 MR. MACTAGGART: Thank you. I'll lower
25 my hand here. Yeah. One thing, I think Ms. de la

1 Torre is raising a reasonable point here. If you think
2 about the way the statute in 121 refers to business
3 purposes in 140, the one thing I'm -- now that we've
4 enumerated the actual, allowable purposes per 121,
5 which we're supposed to do in this section, and which I
6 think is right. That's what we're supposed to do.

7 The one thing I'm wondering, Ms. Kim, is
8 whether the preamble in 140 for business purpose
9 includes the language provided that the use of personal
10 information shall be reasonably necessary and
11 proportionate to achieve the purpose for which it was
12 collected, yeah, it was collected or processed.

13 And I'm kind of wondering whether that
14 governing phrase is now missing because now we've said,
15 okay. Here, in M, are the actual enumerated purposes
16 because we've now taken it out of 121 referring to 140
17 in the statute, you're missing that actual language.
18 So I think if we could add that language in, it would
19 be -- it's what the statute says, and then there would
20 be that kind of overlay in M now saying, by the way,
21 you can't use this.

22 So you don't want to have situation
23 where someone says, I'm always going to keep all your
24 information, and I'm never going to delete because I
25 want to potentially prepare against a lawsuit, and so

1 you want to have some kind of caveat here. So I think
2 that would be my recommendation would be including that
3 preamble because it was there for a reason.

4 MS. URBAN: Thank you, Mr. Mactaggart.

5 I just need -- I want to be clear --

6 MS. DE LA TORRE: I --

7 MS. URBAN: Just a minute, Ms. de la
8 Torre.

9 I just want to be clear. Are you
10 proposing adding that to M?

11 MS. DE LA TORRE: We're still having a
12 conversation, I think.

13 MS. URBAN: I'd just like to hear what
14 Mr. Mactaggart --

15 MR. MACTAGGART: Yeah. And again, Madam
16 Chair, my main goal is to not delay the implementation
17 of regulations. So --

18 MS. URBAN: Okay.

19 MR. MACTAGGART: -- whether it's now or
20 in a subsequent round, I think that it would be wise to
21 include that language, that governing -- that limiting
22 language --

23 MS. URBAN: Um-hum.

24 MR. MACTAGGART: -- that concept in M
25 here somewhere.

1 MS. URBAN: In M. Okay. That's all I
2 needed to know.

3 MR. MACTAGGART: Yep.

4 MS. URBAN: I was trying to jot it down
5 while we were talking.

6 Okay. Ms. de la Torre, apologies for
7 interrupting. Please go ahead.

8 MS. DE LA TORRE: Sure. So I think
9 that's a (indiscernible) right. When I was going
10 thorough this section, basically what I was thinking
11 about is use cases, right, and I was thinking about
12 situations that to me are allowed under the statute,
13 and it's not necessarily helpful for anybody to provide
14 a notice of the right to of the use of sensitive,
15 personal data for kind of (indiscernible) of
16 advertising because the use purposes do not correlate
17 to that. So and that's how I started to kind of
18 reconstruct this, and I think that the answer is
19 basically with Mr. Mactaggart just mentioned in terms
20 of the solution.

21 But let me give you the examples that I
22 was thinking about. So let's say for example, now we
23 have HR covered by CCPA. If a business is collecting
24 employees' sensitive information. Like, for example,
25 the stability information, racial, or ethnic

1 information, religious or philosophical beliefs, and
2 they're doing that to help monitor compliance with
3 their own internal diversity objectives, that is a use
4 to me that has nothing to do with the things that are
5 prohibited, but I can't find that it in that list. And
6 the way I read M, if it's not in the list, then
7 identification is triggered. So is it in the list?
8 Where is it in the list?

9 MS. KIM: You know, I'm a bit weary of
10 like how -- I'm a bit weary with regard to, like, the
11 answer I think to that question may involve, like,
12 legal interpretation and fact-specific scenarios. And
13 so I'm a little weary of answering that question that
14 directly in this public setting.

15 That being said, I would want to note
16 that 1798.145 is with regard to exceptions to the
17 entire statute, and there are provisions in there that
18 may address those kinds of situations or may not. I
19 guess what I'm trying to say is Subsection M is a place
20 in the regulations where we identify what 1798.121(a)
21 is referring to.

22 There may be other situations that would
23 render different circumstances, but that is not what
24 the intention of this Subsection M is intended to do.
25 It's simply to identify with regard to the exceptions

1 that were statutorily included in 1798.121(a) to
2 identify those to be helpful to the businesses and
3 consumers because they are kind of all spread out
4 through the statute. So that is the primary purpose of
5 this regulation.

6 MS. DE LA TORRE: And I don't want to --

7 MS. URBAN: Thank you very much, Ms.
8 Kim.

9 MS. DE LA TORRE: Thank you. I don't
10 want to put you in a position where you're providing
11 legal advice. I'm just explaining my own process of
12 how I have certain questions about this section because
13 I was looking at situations that to me have nothing to
14 do with the intent of the (indiscernible) uses that
15 could actually trigger and not because it would be
16 really confusing, I think for an employee.

17 They are volunteering information about
18 the racial or ethnic origin because they want to help
19 business identify they're in compliance with diversity
20 and inclusion to receive a notice, and I don't see
21 here. Like, this --

22 MS. URBAN: Ms. de la Torre, can I just
23 ask -- I mean, this may not work and happy to have this
24 discussion, but do you have a suggestion that Ms. Kim
25 could consider.

1 MS. DE LA TORRE: I would like to have a
2 conversation about it because --

3 MS. URBAN: Okay.

4 MS. DE LA TORRE: -- I think that we
5 should integrate also the thinking about the Board
6 members that might be reading the section before I make
7 a suggestion. What Mr. Mactaggart said makes a lot of
8 sense to me --

9 MS. URBAN: Um-hum.

10 MS. DE LA TORRE: -- to make a reference
11 to that test that is in the definition of business
12 purposes. That's a very strict test. It requires that
13 it be reasonably necessary in regards it be
14 proportionate and that it -- anything that's done for
15 the purpose for which the personal information was
16 collected basically or for a compatible purpose and is
17 reasonably necessary and proportionate might not need
18 to trigger a notice that is just in my view going to
19 confuse the individuals who receive it because they
20 would basically be told, you can opt out of something
21 that we're really not even doing.

22 So I have other examples that I can
23 offer in terms of helping other Board members think
24 through it. I really --

25 MS. URBAN: Thank you, Ms. --

1 MS. DE LA TORRE: -- appreciate the --

2 MS. URBAN: -- de la Torre. So I just
3 want to pause here because --

4 MS. DE LA TORRE: I --

5 MS. URBAN: -- I'm trying to keep track
6 of the conversation.

7 MS. DE LA TORRE: Right.

8 MS. URBAN: So Mr. Mactaggart made a
9 suggestion. I understand that at this point, you
10 support Mr. Mactaggart's suggestion, or you think it's
11 a good idea, at lease. You've been giving background.
12 Do you have a suggestion that Board members can
13 consider in the discussion?

14 MS. DE LA TORRE: I don't really
15 understand your question right now.

16 MS. URBAN: Is there a suggestion that
17 you would like Ms. Kim to implement changing the
18 language in some way?

19 MS. DE LA TORRE: Okay. I would
20 appreciate if we could have a conversation and not stop
21 every moment to think about suggestions because it
22 might be that my suggestion evolves when I hear the
23 thoughts of other Board members. I see your desire to
24 collect suggestions, but I just don't want to preclude
25 myself from supporting a suggestion that might come

1 from another Board member.

2 MS. URBAN: Well, I won't hold you to
3 it, Ms. de la Torre, but I'm not sure how to have a
4 conversation that is not around some kind of suggestion
5 to which we can react.

6 Ms. Kim?

7 MS. KIM: So I just wanted to note if
8 the recommendation that I had previously discussed
9 about including in the preamble of M a notation that
10 this is with regard to identifying the exceptions in
11 Civil Code Section 1798.121(a), if that at least would
12 immediately address that concern that -- there may be
13 other kinds of situations or examples that Ms. de la
14 Torre is raising --if that would at least address that
15 for the purposes of these regulations and this
16 rulemaking package in the immediate kind of moving
17 forward at that time.

18 I also would like to kind of -- would
19 like to note that some of the examples that it sounds
20 like you're raising Ms. de la Torre pertain to
21 employees' specific information --

22 MS. DE LA TORRE: Um-hum.

23 MS. KIM: -- and as we all know, that
24 exception has expired, and starting in 2023, and that
25 it is relatively an unknown area, and that may warrant

1 conversation at a different juncture or maybe with
2 regard to different section. It's not necessarily this
3 section immediately. And perhaps, we could address
4 those examples with some other discussion at a later
5 time as to how we could strategically consider or how
6 the Board can consider those issues.

7 MS. DE LA TORRE: All right. So my
8 question --

9 MS. URBAN: So I think we have a few
10 things. So there's the modified text that we have in
11 front of us. Ms. de la Torre has asked good questions
12 about the modified text. Mr. Mactaggart had made a
13 suggestion that I think was following from some of Ms.
14 de la Torre's observations and his own observations.

15 Ms. Kim has also made a suggestion and
16 has also -- I want to pause and just say there are
17 things that we can do with the modified text that we
18 might modify further. We might say, this text is what
19 we're going to go with now, or we might want to change
20 it here, and this is probably why I'm collecting
21 suggestions, and then there are things that we can have
22 recorded as something that a Board member wants to be
23 sure that staff understands that we continue to
24 consider.

25 Ms. de la Torre, I find all of your

1 observations valuable and your expertise valuable. I'm
2 just trying to understand what bucket to put it in in
3 order for the Board to decide what it is that we're
4 going to do here.

5 MS. DE LA TORRE: Okay. So it's
6 difficult for me to keep track of what Mrs. Kim is
7 saying when there's an interruption, but I'm doing my
8 best.

9 So that's exactly the point, Mrs. Kim.
10 The HR function of organizations routinely uses
11 employee contractor sensitive data for very good
12 purposes. They use Social Security numbers, they use
13 driver's license, they use new membership, they use
14 health data, they use even sexual orientation.

15 And without giving examples, I mean, I
16 think that anybody who is familiar with HR functions
17 can read that list, and it's difficult to identify to
18 me an item where those use cases fit, and it doesn't
19 make sense to me that any of that would trigger the
20 right to limit the use of sensitive information because
21 they're sensitive, normal, reasonable uses.

22 And I understand what Mrs. Kim mentioned
23 in terms of there should be another conversation about
24 how we provide data or guidelines on employment data,
25 but the reality is that if we do not adjust the

1 rules -- and I think the suggestion that Mr. Mactaggart
2 had is a really good suggestion, potential readjustment
3 to provide that to Mrs. Urban for her functioning
4 organizing the conversation.

5 If we do not adjust it, this is going to
6 go into effect next year. So we're not going to have
7 those guidelines next year. So what do you do as an
8 organization where you're looking at a list of purposes
9 that do not fit into the things that you're doing and
10 that require you to trigger a notification that will be
11 confusing, from my point of view, to employees because
12 you never intending -- now, you're seeing the -- if
13 you, for example, are in the midst of an internal
14 investigation of an employee that involves the use the
15 content of communications, that's sensitive
16 information. Are you going to provide them a right to
17 opt out of that use?

18 And so to sum it up, I think that some
19 adjustment is needed now, and it might be a high-level
20 adjustment, like Mr. Mactaggart suggested to
21 incorporate that language that provides the flexibility
22 in the statute because if not, this very good list that
23 was created with the purpose of being helpful is not
24 going to be helpful. It's going to be potentially too
25 limiting and a little confusing, particularly in the

1 context of the use of HR data.

2 MS. KIM: I believe --

3 MS. URBAN: Thank you, Ms. de la Torre.

4 Ms. Kim, did you understand we have a
5 couple more --

6 MS. KIM: Yeah -- no. Actually, I would
7 like to hear what Board members Mactaggart and Thompson
8 say, and I do have some thoughts as to how to proceed
9 forward, but after.

10 MS. URBAN: Okay. That makes perfect
11 sense.

12 Mr. Mactaggart and then Mr. Thompson.

13 MR. MACTAGGART: Thank you. As I
14 understand, Ms. de la Torre is raising I think a good
15 question about not wanting to be overwhelmed with
16 notices when businesses are using information for
17 purposes that sort of not meant to trigger that.

18 What I noticed about the language that
19 is in the preamble of 140, business purposes, Ms. Kim,
20 you've inserted it in Subsection 6 and 7. It's new
21 there at (m) (6) and (7), and I think if you just move
22 it to M, it would then kind of govern the entire list
23 as opposed to just those two lists of those two items
24 in 6 and 7. And --

25 MS. KIM: Just to clarify, it is also

1 listed in 2 and 3 and 4.

2 MR. MACTAGGART: Oh, it already was?

3 MS. KIM: Yeah. But then I take your
4 notation under -- I'll jot down a note and go back and
5 look at it and reevaluate whether it would be more
6 appropriate to (indiscernible).

7 MR. MACTAGGART: And I think it's a
8 start. It doesn't wholly address Ms. de la Torre's
9 point, but I think it's a start. It gets you some
10 flexibility there, and maybe it's something we can
11 continue to examine in light of the employer-employee
12 stuff expiring.

13 MS. URBAN: Thank you, Mr. Mactaggart.
14 Are you suggesting that one thing we might do would be
15 to direct Ms. Kim and her team to consider introducing
16 that into the other subsections and to do that if they
17 decide that that's the right thing to do in order to go
18 to the fifteen day, or are you suggesting that that
19 might be something to consider in a future rulemaking
20 package?

21 MR. MACTAGGART: Yeah. I think my --
22 again, my approach to the whole thing is let's get
23 something done now, and then --

24 MS. URBAN: Um-hum.

25 MR. MACTAGGART: -- fix it and improve

1 it later. So I would say that I would like to in a
2 future rulemaking package --

3 MS. URBAN: Okay.

4 MR. MACTAGGART: -- move that language
5 to the preamble to actual M.

6 MS. URBAN: Um-hum.

7 MR. MACTAGGART: You can either put it
8 in every single subsection or put it in M.

9 MS. URBAN: Right.

10 MR. MACTAGGART: Also have Ms. Kim think
11 about what Ms. de la Torre is saying about, okay. What
12 about, is there any other flexibility need necessary in
13 order to effectuate this clause.

14 MS. URBAN: Thank you, Mr. Mactaggart.
15 That's very helpful. Mr. Thompson?

16 MR. THOMPSON: Thank you, Chairperson
17 Urban. So just because in tracking the various
18 proposals -- and this may be -- Chairperson Urban, you
19 may be able to answer this or Mr. Mactaggart could
20 answer it directly, is the suggestion that Mr.
21 Mactaggart just -- does the suggestion that Mr.
22 Mactaggart just made supersede the previous suggestion
23 for the -- to include that preamble language, the one
24 that he made ten minutes or so ago because if that's
25 the case, then my question is moot?

1 If it's not the case, then I needed
2 to -- I didn't catch the statutory reference that he
3 made for proposed insertion of that preamble language.

4 And then I have a second observation
5 after that question is answered.

6 MS. URBAN: Okay. Mr. Mactaggart -- or
7 Ms. Kim, yeah?

8 MS. KIM: And my understanding -- and
9 please do correct me if I'm wrong, Mr. Mactaggart -- is
10 that in addition to the language referencing Civil Code
11 Section 1798.121(a) in the preamble, we would also
12 consider including that language of reasonable,
13 necessary, and proportionate in addition to the
14 reference to the statute.

15 But my understanding is that that may be
16 something that can be done now, or it could also be
17 done in a future rulemaking package.

18 MR. THOMPSON: Okay. So they were two
19 complementary suggestions is the answer. Thank you.

20 MS. KIM: Yes. Yeah.

21 MR. THOMPSON: Then a suggestion for
22 potential path forward -- and sorry, this may
23 complement or contradict the path forward that Ms. Kim
24 is proposing -- is one of the things I took from what
25 Ms. de la Torre was observing is that there are

1 categories of sensitive, personal information that
2 perhaps should not be included in the exception in M.

3 And I don't know if during a break or
4 some other period, there could be a consultation on
5 what her specific intent is that she could work with
6 Ms. Kim to the purpose that the Chair made of
7 developing a suggestion for perhaps a limitation on M
8 if that was the intent?

9 MS. URBAN: Thank you, Mr. Thompson.
10 That, I think is a distinct possibility. Do you agree,
11 Ms. Kim?

12 MS. KIM: My question -- and I do want
13 Ms. de la Torre to speak as well, and my recommendation
14 is to a manner in which we can move forward --

15 MS. URBAN: Um-hum.

16 MS. KIM: -- is really to tee up the
17 question for the Board. Tee up the question for the
18 Board to this regard, is there a desire by the Board to
19 hold off on implementing this regulation so that we can
20 consider situations that Ms. de la Torre raises related
21 to employee-employment information or to move forward
22 with the regulation with the suggestions that have been
23 made as to referencing the statutory language as well
24 as the reasonable, necessary, and proportionate
25 language, and then moving forward in discussing these

1 issues about HR data within a different context because
2 that is something that can be pulled out of the consent
3 agenda to discuss this new development in the law.

4 So I guess my two questions or how I
5 would frame up this discussion would be, would the
6 Board like to move forward with the recommendations
7 made and then discuss this HR issue separately and then
8 make modifications, as necessary, depending on where
9 the Board comes out on the employee-HR kind of
10 considerations, or would you like to hold off on having
11 M as a whole to have that conversation?

12 MS. URBAN: Thank you, Ms. Kim. From my
13 part -- and I think I understood Mactaggart correctly,
14 and I appreciate his framing of his remarks with his
15 overall goal -- would be for us to move forward and
16 consider his recommendations at a future rule making if
17 we had to, although if staff wanted to implement them,
18 I think they are good.

19 And yes. I agree that when we get to
20 the conversation about additional items, that would
21 probably be the time to talk about the changes that
22 might affect employee data at that time. And so Ms. de
23 la Torre has been very patient. And then we have Mr.
24 Mactaggart and then we have Mr. Le.

25 MS. DE LA TORRE: Thank you. I concur

1 with Mrs. Urban, Mr. Mactaggart, and I think Mr.
2 Thompson is also expressing his thoughts that we
3 shouldn't delay, and I think that there will be
4 opportunities in the future to provide later guidelines
5 on HR.

6 To me, the modification that Mr.
7 Mactaggart suggested, which is just simply -- the
8 easier way to do it would be to tweak M so you don't
9 have to take all of the examples. Just include the
10 reference to the fact that there's the definition of
11 business purposes that kind of allow for uses that are
12 not listed, but do not trigger. That's a good sol
13 because in reality from how I read it, that's not a
14 change in the statute, and that's not really a change
15 in the rules. It's just a clarification.

16 So I would think that it will delay
17 somewhat the release of the rules for comments, but
18 only for so long as Mrs. Kim might need to do that as
19 more modification to M, and I know that Mrs. Kim is
20 very, very good at drafting statute and rules. So it
21 shouldn't be more than a few days, and I will be
22 comfortable with that kind of delay, like a short delay
23 to allow Mrs. Kim to tweak that.

24 And on my side -- and I don't know if
25 this is more of a question for Mrs. Urban, but on my

1 side, I would be very willing to approve it with the
2 understanding that Mrs. Kim would do that modification,
3 and it can be published without necessarily having to
4 come back to the Board. If there is some logistic way
5 to do that so that she can work on those Monday,
6 Tuesday, Wednesday, and we can just trust that once she
7 understands the concern that I'm raising and Mr.
8 Mactaggart has raised, she will find a way to address
9 it in a streamlined, simplified way that doesn't cause
10 long delays.

11 MS. URBAN: Thank you, Ms. de la Torre.
12 So just to be -- because I do think it's important, I
13 just want to be sure what you're saying, which I
14 believe to be that you would support going forward with
15 the modifications with Ms. Kim taking into account the
16 feedback and the additional sort of questions that you
17 brought up here and for us to direct staff to make a
18 decision to implement the concept in the proposed
19 modifications and then send it out for fifteen-day, but
20 the Board would all have to agree that we will be
21 directing that that concept be implemented by the staff
22 and that we are giving them the discretion to do that.
23 That's what you're proposing?

24 (No audible response)

25 MS. URBAN: Okay. Thank you, Mr. de la

1 Torre. Mr. Laird, are we able to do a process like
2 that?

3 MR. THOMPSON: Absolutely. I wanted
4 to --

5 MS. URBAN: Okay.

6 MR. THOMPSON: -- jump in to acknowledge
7 that it's perfectly fine for the Board to direct staff
8 to make sort of the general conceptual modification --

9 MS. URBAN: Um-hum.

10 MR. THOMPSON: -- or to even give staff
11 the direct discretion to make that determination or how
12 they carry it out and then staff can proceed with
13 publishing the modified text if that's the direction.

14 MS. URBAN: Wonderful. Thank you for
15 verifying that, Mr. Laird. I thought so. And then you
16 came on the screen, and I thought, uh-oh, maybe I'm
17 wrong about something, but okay. So that makes a lot
18 of sense to me, Ms. de la Torre, personally. Mr. Le
19 and then Mr. Mactaggart?

20 MR. LE: Yeah. I have a couple
21 questions. When I heard about the preamble addition,
22 it didn't really bother me, but I caught something Ms.
23 de la Torre -- and if I'm wrong, then that's fine --
24 but I guess adding the preamble would that turn this
25 from an exclusive list of the ways businesses use this

1 to allowing any necessary proportionate use in the mind
2 of the business to be allowed in an allowed business
3 purpose? And if that's the case, then I wouldn't
4 support that addition.

5 MS. URBAN: Thank you. Thank you, Mr.
6 Le. Yes. I have a similar question. I don't think
7 that we can try to interpret the statute exactly in
8 this meeting, but it does raise the same question for
9 me, and that might militate in favor of keeping the
10 modifications the way they are and again noting Ms. de
11 la Torre's and Mr. Mactaggart's very good observations
12 and asking staff to put those on the list to consider
13 when we go into another rule making package. That's
14 another way to deal with it. That would be a little
15 bit later, but it is becoming apparent I think that
16 there are potential complications that -- and questions
17 we may have not considered. So that may be the better
18 approach.

19 MR. LE: Yeah. So I had that concern as
20 well. And to Ms. de la Torre's points, I have the
21 thought that, without going into the legal
22 interpretation of whether the language as is would
23 allow a business to use employee data in these certain
24 ways in Ms. de la Torre raised up, I believe there is
25 already sections in there that allows just to restate

1 the language as businesses can use sensitive, personal
2 information to perform services on behalf of business
3 if it's necessary and proportionate.

4 I don't know if that applies employee
5 data, but I think that would allow the use to use --
6 allow a business to use as personal information for
7 their own services. So perhaps, this whole
8 conversation is moot. So that was just one additional
9 thought that I had. I thought these business purposes
10 were pretty broad or as is, and I don't necessarily
11 support broadening it even anymore.

12 MS. URBAN: Thank you, Mr. Le. I
13 appreciate that. Mr. Mactaggart?

14 MR. MACTAGGART: Thank you. So I'm
15 going to confuse things more, but I think I'm agreeing
16 with both Mr. Le and Ms. de la Torre. I agree with Mr.
17 Le. I don't think we should be trying to broaden the
18 exception here. And so that's why what I would have
19 proposed is right after the end of the first sentence
20 in the preamble of M, "the purposes for which they may
21 select are as follows", and then I would stick the
22 modifying there, "provided that the use of the
23 consumer's PIs reasonably necessary and proportionate
24 to the purpose." So that way, it's actually a
25 limitation, Mr. Le, I think the way I read it anyway.

1 And I agree with you, we don't need to increase it.

2 And then separately, I think Ms. de la
3 Torre has raised a separate question, which is, okay.
4 Are the exceptions in there enough in certain
5 situations, and as Mr. Le just said, maybe the language
6 already is there.

7 But I think what I would suggest in the
8 interest of moving forward is we already have the first
9 addition about the 121(a)(3). I would support putting
10 the preamble, moving it up from the different sections
11 so it governs -- it covers the entire M.

12 And then, to Ms. de la Torre's point,
13 what I would suggest is we ask staff to come up with a
14 recommendation, and at for a future rule -- given that
15 were not going to start enforcing in July, for a future
16 rule to deal with -- because this is actually a pretty
17 thorny issue -- is this list extensive enough, and are
18 there sort of use cases where, oops, it's a problem,
19 and that can allow Ms. de la Torre maybe to kind of put
20 together a list things in her mind she can communicate.

21 And so I think, that's kind of where I
22 would go is let's get most of it right here, and then
23 also not forget that she's raising a good point, and we
24 can revisit that later is my two cents.

25 MS. URBAN: Thank you, Mr. Mactaggart.

1 I'm actually going to ask Mr. Soltani to speak just in
2 case because as staff, I'm sure he has insight and may
3 have turned on his camera to say something specific.

4 MR. SOLTANI: Yeah. Thank you, Ms.
5 Chair Urban. I actually -- Al kind of made this
6 suggestion that I was going to flag, which is that we
7 are likely to be doing additional rule makings for a
8 number of other reasons. And so on these thorny
9 issues, I would say to provide staff some ability to
10 try to satisfy the intent of the full Board with some
11 of these changes, but give us the ability to kind of
12 navigate the kind of implications and rather than make
13 commitments in real time without having reviewed the
14 implications.

15 It's a pretty complicated machine, this
16 statue and the rules, and so we want to just make sure
17 we have adequate time to satisfy the needs, and if not,
18 I think there's additional time if not. So that was
19 just going to be -- just a flag that we have multiple
20 trains likely moving out of the station at some point.

21 MS. URBAN: Thank you, Mr. Soltani.
22 From my part, I think that that is a prudent approach
23 that there has been a lot of analysis and work that has
24 gone into the text that we have in front of us, that is
25 important to flag issues, and that we should be

1 judicious in terms of what we ask staff to do now and
2 what we ask staff to consider in the future. And I
3 think that this is something that -- the second part of
4 what Mr. Mactaggart was describing is better for the
5 future.

6 Ms. de la Torre?

7 MS. DE LA TORRE: Thank you. I just
8 want to go back I think three comments ago when Mr. Le
9 was asking the question of whether we will be opening
10 avenues that are not meant to be opened, and that is
11 not my intent, and I don't think that the suggestion
12 that was made for modification M will do that, and
13 that's because -- and I understand we cannot ask staff
14 for opinions because there's a whole process for the
15 agency to come to an opinion on any specific case, but
16 I feel as a Board member, I can speak to my own
17 understanding of the law freely.

18 So that definition of business purposes
19 that is --doesn't say that you can do whatever you
20 want. It says that you can only do certain things.
21 First of all, you have to use the data for an objective
22 that is valid, and there are only two ways of doing
23 that under that definition, either the objective is an
24 operational requirement for the business, or two, it's
25 identical to the operation of the objective for which

1 information was collected and is compatible with the
2 context of collection.

3 So in the example that I volunteered
4 before -- I'm not going to volunteer more examples.
5 But in the example I mentioned before, you're
6 collecting sensitive, personal information to monitor
7 diversity program, to me that's a valid objective in
8 that the employee knows what you're collecting, they
9 understand what you're collecting it for.

10 If it was some different situation where
11 that information is collected without the awareness of
12 the employee or without the employee volunteering it,
13 the objective, itself, will not be valid. It will not
14 fit within the definition of this mispurpose from my
15 perspective.

16 And even if the objective is valid, that
17 definition requires two things. It requires that it be
18 reasonably necessary and that it be proportionate. So
19 reasonably necessary means that you cannot achieve the
20 same role without using the data. Data is necessary
21 for that objective. Again, in the one example that I
22 provided, if you want to monitor your diversity
23 program, you need some form of diversity information to
24 do that. It is necessary.

25 And the last one, the proportionality

1 test, it requires a balancing. I mean, in my mind,
2 there's a balancing between the privacy rights of the
3 individuals and the valid objective that the business
4 might have. So even if the valid objective is
5 justified, even if the data is necessary, if it's not
6 proportional -- if you're using it in a way where you
7 are infringing on the privacy rights of an individual
8 to achieve a goal that is perhaps not as important --
9 you would be outside of the definition.

10 So for me, for example, in the same
11 example that I was giving that means that if you, as an
12 employer, collecting diversity data, it should be
13 voluntary. It shouldn't be mandatory because if it's
14 mandatory, it's not proportional. You are infringing
15 on the right of privacy of the individual by requiring
16 that they provide that information.

17 So thank you for allowing me the time to
18 explain my mind. I completely understand that it will
19 not be appropriate for the staff to provide their
20 opinion, but that's -- I've been looking at this stuff
21 for a long time, and that's how I have read it, and I
22 think that's how it read.

23 So the intent of -- certainly, my
24 intent -- and I'm sure that Mr. Mactaggart's intent
25 when he made the suggestion, was not to open the door

1 up to any user. I mean, what would be the purpose of
2 that? We're supporting a statute that provides
3 limitations on the use and disclosure of sensitive,
4 personal information. This is one of the innovations
5 of CPRA that was not in CCPA. So hopefully that this
6 partially answers the comment that Mr. Le shared with
7 us.

8 MS. URBAN: Thank you, Ms. de la Torre.
9 Mr. Le?

10 MR. LE: Yeah. That partially answers
11 it, but I guess in that case, you could just replace
12 all of M with that test, right?

13 MS. DE LA TORRE: Actually, you know
14 what would be easier is to list what you prohibit. The
15 challenge with this list is that it tries to list
16 everything that is allowed, and that's very difficult
17 to do. I think that one of the innovations of CCPA was
18 to create a definition of what's a sale, like what are
19 you prohibiting. Creating a full list of everything
20 that is allowed, it's I think, very challenging.

21 MS. URBAN: Thank you, Ms. de la Torre.
22 All right. I think this has been a helpful
23 conversation. It's helpful to hear the expertise of
24 Ms. de la Torre, Mr. Le, and Mr. Mactaggart. In
25 listening further, what I would like to propose -- and

1 I'm asking Ms. de la Torre if this is acceptable to
2 you -- is that we, staff, take all of this information
3 and all of the analysis that you have provided, and for
4 much of what you were just talking about, they consider
5 whether it makes sense to consider further
6 modifications after we finish this rule making package
7 for the next rule making package because I will be
8 clear that I think this is complicated, and I think
9 that it would mean that there needs to be a fair amount
10 of work in order to implement it correctly. So that is
11 one thing.

12 The second thing is that Mr. Mactaggart
13 has suggested a change that doesn't necessarily cover
14 everything we've been talking about here, but that
15 covers your first point, I think, which would be to add
16 that language about reasonably necessary and
17 proportionate where appropriate.

18 So I think that I would be happy moving
19 forward with the modifications staff have already made
20 and the understanding that Mr. Mactaggart's suggestion
21 is something that they will consider, and then Ms. de
22 la Torre's background and analysis and thoughts about
23 what might need to change will be considered in a
24 future rule making package.

25 I would also be comfortable directing

1 staff to make the change that Mr. Mactaggart suggested
2 and asking staff to consider the broader questions, the
3 ones that relate to employee data and other things that
4 Ms. de la Torre has been explaining to us in the future
5 rule making package.

6 I would not be comfortable trying to do
7 all of that at once. I don't think that this is the
8 right time to do it. I think that staff need more
9 time, and I think the Board would need more time to
10 consider this, and for that, I would also circle back
11 to Mr. Thompson's comment, which I think was very
12 astute, a suggestion that we carve off the things that
13 would be better suited to consultation between Ms. de
14 la Torre and staff so that everyone has a full
15 understanding of all the different pieces.

16 Ms. de la Torre, is one of those
17 acceptable to you?

18 MS. DE LA TORRE: So I actually would
19 like to ask Mrs. Kim -- because she will be the person
20 basically --

21 MS. URBAN: Um-hum.

22 MS. DE LA TORRE: -- redrafting, from
23 her perspective whether that is something that might be
24 too complicated because it doesn't strike me as
25 something that is complicated for somebody with her

1 skills in drafting, but let's get that.

2 The idea is we want to integrate
3 basically the definition of business purposes without
4 opening doors that shouldn't be opened. Mrs. Kim, do
5 you think that's something that can be reasonably done
6 in basically a few sentences or one sentence to be
7 added to M?

8 MS. KIM: I don't think it's something
9 that is feasible to do at this point. I think we need
10 a little bit more time to analyze things because it
11 really kind of -- yes. Like, I'll have to give that
12 some -- I believe we should give this some more
13 thought, and we certainly can consult with Ms. de la
14 Torre with regards to future amendments, but at this
15 time, I don't think that that's something that can be
16 done in the immediate term.

17 I would support -- I do think it's
18 doable for us to move forward with the changes that we
19 have identified about tying the exceptions listed in
20 Subsection M to this statute as well as also giving
21 some thought with regard to whether or not we can
22 incorporate the language Mr. Mactaggart has suggested.

23 But basically, couching reasonably
24 necessary and proportionate as additional language to
25 address the exceptions listed in Subsection M. I do

1 think that's doable to do in the time frame that we
2 have, but I believe we need a little bit more time to
3 consider what Ms. de la Torre is suggesting.

4 MS. URBAN: Thank you, Ms. Kim.

5 And thank you. I apologize. I didn't
6 mean to elide that first bucket. Thank you for
7 bringing it up. And I would like to defer to staff
8 here because they have the most background knowledge
9 and they have been thinking about it the most
10 carefully. And so Ms. Kim's judgment as to what is
11 most appropriate and feasible to do now is I believe
12 not just important, but also a very practical way to
13 proceed.

14 And so I would like to check with the
15 rest of the board as to whether there is agreement and
16 we can move on or whether there is not. Ms. de la
17 Torre?

18 MS. DE LA TORRE: Okay. Thank you. So
19 going back to what Ms. Kim was just saying. So if it
20 is not feasible to include that small modification and
21 as we agree at the beginning, this section doesn't add
22 anything, it doesn't limit anything, and it doesn't
23 restrict anything, then my position is that we should
24 just strike it because it's going to cause more
25 confusion than it is going to solve, so it's not

1 necessary. So if we cannot fix it, then just don't
2 included it because it's already in the statute. To
3 me, the statute's clear. The list is not.

4 MS. URBAN: Ms. de la Torre, are you
5 willing, though, to go with what staff's recommendation
6 is or are you saying you are not?

7 MS. DE LA TORRE: Oh, okay. So let's go
8 back to Ms. Kim. I understood what Ms. Kim said to
9 mean that a streamlined modification that would be in
10 addition to (m) is too complex and is not workable.

11 Is that correct, Ms. Kim?

12 MS. KIM: No. I wouldn't --

13 MS. DE LA TORRE: In a short period of
14 time.

15 MS. KIM: No. It's difficult for me to
16 respond because I do think this involves interpretation
17 of law and also other considerations that may not be
18 appropriate to discuss during this public meeting. And
19 that is also why it is my recommendation that we not
20 incorporate the changes that you are suggesting at this
21 time because it requires us to further discuss and
22 analyze this issue and what is being proposed.

23 MS. DE LA TORRE: Right. Okay. So we
24 cannot modify it. The recommendation of the staff is
25 that it's not a good idea to modify this subsection.

1 And we know that this is just a list of examples. It's
2 not adding anything. She's trying to make things
3 simple. And it seems to me that's not going to make
4 things simple because I can think of a number of use
5 cases that really don't fit. Why don't we just take it
6 out and rely on the statute? The statute imposes
7 appropriate limitations. We are not trying to modify
8 that.

9 MS. URBAN: Mr. Laird, I'm going to ask
10 you to please --

11 MR. LAIRD: Yeah.

12 MS. URBAN: My apologies. They've given
13 the -- yeah, please comment.

14 MR. LAIRD: Yeah, I just wanted to jump
15 in. I mean, I really support -- I want to say
16 obviously I'm pretty new to the board as general
17 counsel, but Lisa's been here for a while doing
18 tremendous work kind of putting together very careful
19 legal analysis on these positions. And so I'm just
20 wary of sort of the legal division offering legal
21 advice or an opinion on sort of some of these concepts
22 as they're brought up in real time. I think
23 responsibly we'll need to evaluate them a bit more
24 thoroughly.

25 So to that extent, I certainly support

1 Ms. Kim's point that I think staff will just need to
2 evaluate to make sure we comply with all aspects of the
3 Administrative Procedures Act, which not just are
4 procedural, but require us to make some substantive
5 considerations of things like authority, clarify,
6 reference. These are the standards we need to make
7 sure we're meeting. So with sort of deferring to Ms.
8 Kim's initial assessment that we'll need to further
9 analyze that, we can definitely do so.

10 In terms, though, of other suggestions,
11 like the one Ms. de la Torre is just providing, I mean,
12 I'll defer to the board if there's further interest in
13 pursuing that or what the direction is. But in
14 general, I would say sort of any kind of major changes
15 to these modifications in certain instances may require
16 more evaluation by staff, unless the board feels
17 prepared to move forward without those analysis or
18 recommendations.

19 MS. URBAN: Thank you. Thank you, Mr.
20 Laird.

21 I teach my students never to do legal
22 analysis on the fly. I am uncomfortable with legal
23 analysis on the fly. I don't think it's a good idea,
24 regardless of other considerations. And I am also not
25 comfortable trying to make a decision on the fly on

1 something that I agree probably requires some legal
2 analysis and background research.

3 So what I would like to do is take Ms.
4 de la Torre's good observations and go with the
5 modified text as it is or with suggestions that Ms. Kim
6 is comfortable with at this time. I'm happy to support
7 any of those.

8 My only concern is that we are working
9 with a text on the fly and we don't understand all of
10 the potential ramifications and staff isn't comfortable
11 that staff understands all of the potential
12 ramifications. Because that is appropriate work for
13 staff to do and have the time to do the analysis and
14 then bring it to the board with that analysis.

15 So that is what I would like to do at
16 this point. I'm going to ask Mr. Le and Mr. Mactaggart
17 to weigh in. and if we are unable to come to a
18 consensus on this point, then I am going to suggest
19 that we move on and return to it later.

20 Mr. Le?

21 MR. LE: Yeah, I support that
22 recommendation. And I'll just note, I don't think we
23 can -- I mean, to the extent Ms. Kim can explain why we
24 have those lists, I believe that's, like, in the
25 statute, so I don't think we can get rid of it. You

1 know, 1798.140 and then 121. But I would suggest that
2 we follow that recommendation. I have no issue with
3 restating in the preamble that it must be necessary and
4 proportionate. Yeah, and I would caution against just
5 getting rid of those Section (m) entirely as I believe,
6 and maybe Ms. Kim can clarify, that that has to be
7 there in some shape or form because of the statute.

8 MS. URBAN: Thank you, Mr. Le.

9 Mr. Mactaggart?

10 MR. MACTAGGART: Thank you. Yeah, I
11 think I would like to just see if I can just summarize
12 and maybe we make -- I don't know if it's a motion, but
13 a sort of thing to move on. First of all, I do think
14 121 requires a list per 185.19(a) and (c), I think it
15 is, that says you have to have the list.

16 By the way, I just actually noticed one
17 thing. Ms. Kim, that list actually does have one
18 further thing, so for future, it says you got to make
19 sure that these things can't be used for health-related
20 research, so we should note that and have a note about
21 that, about these exceptions

22 Two, I do think, Ms. de la Torre, that
23 actually this is a limitation. It's not a bunch of
24 examples because it says a right to limit are as
25 follows. It doesn't say as follows including but not

1 limited to, so I think this is a good start.

2 I would suggest we keep the reference to
3 121(a) that staff is suggesting we insert. I would
4 suggest at the end of the first sentence, we include
5 that, provide that. I would suggest that's the second
6 thing.

7 Third thing is we ask staff to go away
8 and study the issue of do we need more in this. And
9 then I would suggest we just move on.

10 MS. URBAN: Thank you, Mr. Mactaggart.
11 I agree, if Ms. Kim is comfortable with that approach.

12 MS. KIM: Yes, I do think that that's
13 something that we can move forward with. Thank you.

14 MS. URBAN: Thank you, Ms. Kim.

15 Do other board members agree with this
16 approach? Mr. Thompson? This is not -- I'm just
17 trying to make sure that I've heard from everybody
18 before we move on, if we can.

19 MR. THOMPSON: Do you mind restating
20 what the resolution is? That would be helpful.

21 MS. URBAN: Okay.

22 MR. THOMPSON: There's a substance in
23 the process thing here for me. One is I think we're
24 driving towards resolution on the substance, with the
25 presumption that that is to Ms. de la Torre's

1 satisfaction. But as a process matter if it's not, how
2 we drive to resolution, where her concerns are
3 addressed. Understand the aversion to legal analysis
4 on the fly, we had previously talked about the
5 potential for staff or board members and staff to work
6 on modifications on breaks to come back with something.

7 I don't know if this sounds sufficiently
8 complicated that a fifteen or twenty-minute break is
9 not going to resolve it, so I do have an interest in us
10 figuring out, as we work through this stuff as a group,
11 how we will drive to resolution when a board member
12 raises a concern that is complicated. I don't want us
13 only to drive to a conclusion on the simple ones, we've
14 got to drive to a conclusion on the complex ones, too.

15 MS. URBAN: Thank you, Mr. Thompson.

16 I think that if it's all right with you,
17 Ms. Kim, I could restate for Mr. Thompson that I would
18 like you to -- if that's all right because I would like
19 to locate this with you, since staff is going to be
20 implementing what the board decides; is that all right?

21 MS. KIM: Yes, I would appreciate that.

22 So my understanding of how to move
23 forward with regard to this provision, subsection (m)
24 of 7027, would be to include in the preamble the tying
25 of the language or the purposes to the identified

1 sections of Civil Code Section 1798.121(a) to also
2 include language that references that those exceptions
3 also need to comply with the reasonably necessary and
4 proportionate; that the use collection be reasonably
5 necessary and proportionate to address those purposes
6 for which it's being collected. And that would be the
7 sole modifications to be made in this rulemaking
8 package presently.

9 With regard to future considerations, we
10 will note what Mr. Mactaggart said regarding the
11 health-related issue or research. We will also take
12 some time to consider perhaps employment-related
13 situations or HR-related data. And then also, we will
14 take some time to discuss with Board Member de la Torre
15 her other suggestions regarding her interpretation of
16 business purpose as it relates to this section; that
17 will be something separately done, but we don't think
18 it's -- yeah, separately done and if necessary
19 addressed in a future rulemaking package.

20 MS. URBAN: Thank you, Ms. Kim.

21 Ms. de la Torre, does that sound
22 acceptable?

23 MS. DE LA TORRE: I just wanted to
24 circle back to what Mr. Thompson mentioned, in terms of
25 the process because we -- this is our first

1 conversation on rulemaking substance as a board. And
2 it seems to me that suggestion is really valid. One
3 possibility could be for -- since we have a two-day
4 meeting, right. Like, from today to tomorrow maybe
5 there is an opportunity for Ms. Kim and I to get on a
6 call and see if we can come up with a simple edit to
7 propose to the board tomorrow. I will very much make
8 myself available if that's in compliance with
9 Bagley-Keene et cetera. And I think it could be a good
10 process not only for me, but for other board members
11 that might have specific suggestions.

12 Because it could be that in my
13 conversation with Ms. Kim she can disclose things to me
14 that we cannot disclose in a public meeting that affect
15 my understanding of the possibility of the edit. So
16 before we go into something else, can we go back to
17 that process and get an understanding maybe from our
18 general counsel as to whether that is a possibility or
19 not? Or maybe somebody might know. Because we I think
20 in the subcommittee thought it was possible.

21 MR. LAIRD: I'm happy to jump in and
22 just say -- I mean, under Bagley-Keene, it's certainly
23 allowable, what you just described, although I would
24 defer largely to Ms. Kim on sort of the depth of legal
25 analysis she feels like might need to go into some of

1 these considerations; that's the only thing. I will
2 defer to her if she would, for instance, need further
3 time and for staff to kind of come together and
4 investigate any of these things. That's my only
5 concern is, as you know, sometimes twenty-four hours is
6 still even a tight timeline for sort of a robust legal
7 analysis. But if it's something we think we can
8 handle, it is allowable.

9 MS. URBAN: Thank you, Mr. Laird.

10 MS. DE LA TORRE: Thank you. Thank you
11 so much.

12 MS. URBAN: I don't know that it is
13 recommend -- it is not a recommendation I would make
14 for most questions that are actually going to require
15 research and legal analysis outside of the board
16 meeting. If we have a process by which there are
17 multiple items through which there has to be a bunch of
18 legal research and analysis, we are going to have a lot
19 of trouble moving forward on the rules.

20 And that is not in any way a comment on
21 the value of the substance, it is a comment on the
22 practical balance that we have to strike between
23 getting the work done for the public, taking account of
24 the things that are still open that we will -- we think
25 we have a responsibility or it's desirable or both to

1 consider in the future, and modification that we either
2 think are very necessary now or are straightforward
3 enough that we can go ahead and make them and continue
4 with the process.

5 I also appreciate Mr. Thompson's
6 question about the process for continuing to go through
7 the proposed modifications as has been mentioned.
8 Obviously, this is the first time that the board has
9 worked through this particular process, in looking at
10 modifications for a proposed rulemaking package. The
11 rulemaking process subcommittee did a lot of valuable
12 and helpful thinking in trying to predict what might be
13 a good process and how to move forward with that.

14 Every process then encounters reality.
15 The modification or the sort of implementation of the
16 process that I am hoping for was that we would be able
17 to talk through all of the proposed modifications
18 following the rulemaking process subcommittee's in my
19 view good suggestion for batching a number of things
20 and also having things that are discussed individually;
21 that we talk through all of them and then we have a
22 decision that is clear on the record at the end of any
23 potential additional modifications or disagreements
24 that we had with what staff proposed, otherwise
25 agreement with staff, and to direct staff to move into

1 the fifteen-day rulemaking period.

2 If it is the case that we are unable to
3 find consensus on this topic, then I am certainly
4 prepared to put it to a motion. But I think that is
5 much more unwieldy, given the amount of things that we
6 are hoping to get through.

7 So for me, the process question is a
8 balance of our responsibilities to have substantive
9 oversight, of course, of the rules, to be sure that we
10 are transparent with the public, and to be sure that we
11 are also making progress on the guidance that the
12 public needs in order to implement the lot.

13 The balance for me at this point is that
14 we take Ms. Kim's recommendation and that we do not try
15 to do the things that on an initial reaction -- which
16 is a lot to ask of staff in a public meeting. Staff
17 thinks it's complicated that we not try to do that in
18 this meeting, whether today or tomorrow.

19 So that's my recommendation. And it has
20 nothing to do with the value or the substance of the
21 underlying observations, it is simply the fact that we
22 can only do so much. We are now on record -- Ms. de la
23 Torre is on record with observations that I think are
24 valuable to the public. She is on record with the
25 board that this is important and it is something that

1 she would like staff to consider. And I think that we
2 should take all of that into account and not try to put
3 it into this rulemaking package.

4 Mr. Mactaggart?

5 MR. MACTAGGART: Thank you. I just
6 wanted to kind of reiterate some of what you just said
7 to Ms. de la Torre. I actually think you're raising an
8 excellent point. I mean, I really do. And I think
9 it's a thorny one.

10 And I think whether it's
11 employer-employee or B2B, I mean, you're going to hear
12 me at some point during this meeting come up with a
13 long list of things that I think still need to be
14 addressed or that I didn't love. And they're going to
15 be my suggestions to staff. But you have my support in
16 addressing this issue, just not -- I don't think it's
17 necessarily do it right now.

18 I think in the interest of time, my own
19 recommendation would be that we advance this package.
20 But I want you to know as a fellow board member, I
21 think you're raising a really excellent point. So I
22 mean, is this list comprehensive enough, is it the
23 right list; absolutely we need to address that. I just
24 think that right now, in the interest of time, I would
25 support moving this forward.

1 MS. URBAN: Thank you, Mr. Mactaggart.

2 I also agree. I'm not ready to speak on the specifics,
3 but it's absolutely -- they are good questions in a
4 thorny topic. I certainly agree, as I said, that the
5 substance is important. Thank you.

6 And Ms. de la Torre?

7 MS. DE LA TORRE: I just wanted to go
8 back to what our general counsel just mentioned when
9 she said -- I think it's possible for that conversation
10 to happen potentially between Ms. Kim and myself
11 between today and tomorrow.

12 I understand and it is a very valid
13 point that Ms. Urban is bringing into how do we get
14 through two days on everything and allow for those
15 kinds of conversations in multiple items. So my
16 suggestion would be table the idea of allowing for that
17 conversation until we are towards the end of the day.
18 If at the end of the day, there are no other items like
19 this item that might benefit from that conversation,
20 then I think it's very possible that we might sit down
21 for thirty minutes and come back with a suggestion
22 tomorrow that is sufficiently tied and that is the
23 consent of the board.

24 If at the end of the calendar today we
25 find ourselves in a situation where there are multiple

1 items, I myself would take the same position that Ms.
2 Urban and Mr. Mactaggart has suggested, which is do not
3 delay the package because we really want to the rules
4 to be final.

5 So if we could perhaps take that
6 approach, wait until the end of the day, and we will
7 know better how smooth thing are.

8 MS. KIM: Just to address Ms. de la
9 Torre's suggestion, I do not think it's something that
10 can be done in a day. And I'm happy to have a
11 conversation with her even at a break today as to why I
12 don't think it can be done in a day. But I don't think
13 it's something that is feasible to do, and that's why I
14 would recommend that we move forward, as previously
15 discussed.

16 MR. LAIRD: And I'll just take the
17 opportunity to clarify that while I do think it's
18 possible under Bagley-Keene to do these things, I
19 certainly -- any indication that these are not simple
20 fixes, I do recommend that staff be given sufficient
21 time to provide a complete legal analysis, so that we
22 can provide you the best service that we can.

23 MS. URBAN: Thank you, Mr. Laird.
24 Legally allowable does not necessarily mean practicable
25 or the best approach when balancing all the different

1 interests.

2 Ms. de la Torre, I appreciate your
3 thoughts of checking back at the end of the day. I
4 will defer to Ms. Kim on the question of whether for
5 this particular item that is feasible even in and of
6 itself. So I'm happy to check in at the end of the
7 day, but I am going to defer to Ms. Kim on whether for
8 the -- let me just back up and say the employee
9 questions and the other more complicated questions that
10 you identified, whether those are things that we
11 reasonably could really cover in this meeting.

12 With that, I'm going to suggest that we
13 take a break for ten minutes and come back at 11:40.
14 We're going to take kind of a late lunch break, so I
15 want to be sure people have time to get a drink and
16 they have time to stand up and move around.

17 I want to thank the board for as ever a
18 very robust discussion and for everybody's efforts to
19 try to help staff and try to help me find the balance
20 to do the work for the public. So we're going to take
21 a break and come back at 11:40. Thank you very much.

22 MS. KIM: Thank you.

23 (Whereupon a recess was taken)

24 MS. URBAN: Welcome back, everyone. I
25 wanted to give our monitor a chance to switch things

1 around and everyone to put their cameras on and let us
2 know if they're ready.

3 Thank you, Mr. Le.

4 Welcome back, Mr. Thompson and Mr.
5 Mactaggart.

6 MR. MACTAGGART: Thank you.

7 MS. URBAN: Wonderful. Welcome back,
8 Ms. de la Torre.

9 Thanks everyone, again, for the robust
10 discussion of the last item. We're going to go ahead
11 and move on to the next item that Ms. Kim has
12 identified.

13 In order to help us with our discussion,
14 I'm going to ask everyone to keep in mind that we have
15 three choices for each thing. One is of course to take
16 staff's recommendation as it is. Another would be to
17 propose minor modifications that are easy to implement.
18 And a third would be to propose things or bring up
19 topics that might be best suited for a future
20 rulemaking.

21 It is possible that there is a gray area
22 between the second two. But I would really like to
23 encourage the board to focus their priorities on things
24 that they prioritize highly for this rulemaking and
25 communicating to the staff anything that is important

1 for a next rulemaking if they think it's necessary at
2 this time. We're going to move through each of the
3 items and we will check in at the end of the day, as
4 Ms. de la Torre suggested.

5 Mr. Thompson?

6 MR. THOMPSON: Thank you, Chair Urban.
7 I had one other observation that goes into your third
8 category in subsection (m).

9 MS. URBAN: Um-hum, sure.

10 MR. THOMPSON: If I might before we move
11 on. I don't know if we're leaving the subject for now.

12 MS. URBAN: I apologize. I didn't hear
13 the last part. You didn't know if?

14 MR. THOMPSON: If we're leaving -- if we
15 were leaving subsection (m) at this time. There was
16 one other item I just wanted to ask a question about
17 and --

18 MS. URBAN: Okay. Yeah, it was my
19 intent to leave subsection (m). If it's an item -- so
20 you have a couple of choices. One, of course, is to
21 talk with staff at any time if it is in the third
22 bucket. If you think it is important to mention it
23 here in the public meeting, certainly I will give you
24 room to do that.

25 MR. THOMPSON: I think it's important to

1 mention in the public meeting.

2 MS. URBAN: Okay. Please go ahead.

3 MR. THOMPSON: So my question is, and
4 I'm open to -- if I'm missing a cross-reference or
5 something else in the statute, please let me know. But
6 the intersection of the addition of collect in
7 subsection (m) and then with the subsection (m)(4), the
8 example to -- the exception from the right to limit --
9 to ensure the physical safety of natural persons,
10 provided the use of the consumer's personal information
11 is reasonably necessary and proportionate for this
12 purpose. And then the example is -- for example, a
13 business may disclose a consumer's geolocation
14 information to law enforcement to investigate an
15 alleged kidnapping, which is obviously a situation we
16 would all want resolved quickly.

17 My question is typically the disclosure
18 of that kind of information would be subject to a court
19 order or a warrant. Are we creating a situation -- are
20 we giving permission for a disclosure if a company want
21 -- or a business wanted to acquire a court order, they
22 could. But are we giving additional permission there
23 that the disclosure could be made.

24 And where this intersection is
25 potentially concerning to me is -- obviously sensitive

1 personal information includes things such as racial or
2 ethnic origin, religious or philosophical beliefs. So
3 the kidnapping example is obviously a sympathetic one.
4 There could be businesses that exist now or arise that
5 collect information about people for these purposes and
6 those characteristics. And are we creating a situation
7 where that business could then disclose to law
8 enforcement if law enforcement believes that a person
9 of a certain philosophical bent is planning on planting
10 an explosive. I'm just making up a different -- or
11 taking some other action that that business that arose
12 to collect information could disclose it without a
13 court order if they so choose. If that interpretation
14 is in the realm of possibility that would be concerning
15 to me.

16 Certainly in the category of complex
17 issues that cannot be properly analyzed or resolved on
18 the fly. But if I'm missing something glaring that
19 concern is not valid, open to hearing that. If not, I
20 think we should look at how to potentially address this
21 down the road.

22 MS. URBAN: Thank you very much, Mr.
23 Thompson. I think this is a very important observation
24 myself. I am going to refrain from saying more and
25 encourage folks to refrain from analyzing things that

1 are best in the third bucket in this meeting, so that
2 staff have the time to analyze them.

3 I would like to say, as I did to Ms. de
4 la Torre, I think substantively that this is important,
5 personally. There may also be items that will arise
6 where I haven't had a chance to analyze whether I think
7 it is substantively important and I also think that we
8 want to be careful to remember that we have two paths
9 to suggesting things for future rulemaking. One is in
10 the meeting, one is to talk with staff. And I'm
11 hesitant to consider things on the fly just in general.
12 I've made that point before.

13 I do think this is an important point,
14 Mr. Thompson. I'm glad that you brought it up and we
15 will collect that. Ms. Kim, please nod if that sounds
16 right. We will collect that as well.

17 Mr. Mactaggart, you may have a word.

18 MR. MACTAGGART: Yeah, this is not to
19 say anything other than to Mr. Thompson, this is
20 something we considered at length when we were writing
21 it. I mean, if you look in 145, the exemptions, the
22 reason 145(a)(4) is structured so that you can -- if a
23 natural person is at risk of danger or death, you can
24 cooperate with a government agency, but that was --
25 there was quite a bit of toing and froing with civil

1 society folks. And so the caveats are that it has to
2 be approved by a high-ranking agency officer. It's got
3 to be a good faith determination it's a lawful basis.
4 And then because a court order can take too long in an
5 emergency situation -- if it's a suicide as you say or
6 a terrorist or something like that, it has to be a
7 court order within three days. And then even within
8 the (a)(2) exemption around the court order and
9 everything, it did actually -- there's also the
10 language around -- it's pursuant to a law enforcement
11 agency approved investigation, which gets you around
12 kind of the rogue investigator. So there's quite a lot
13 of thought that went into 145(a), some of those
14 exemptions there. And I just might have you take a
15 look at those too, just to make sure that there was
16 some thought about this whole area.

17 MS. URBAN: Thank you, Mr. Mactaggart.
18 I would please again like to encourage the board not to
19 get into substance that is not before us now, although
20 I certainly value everyone's perspective and noting
21 things that they think should be considered for another
22 rulemaking package. I really do not think that it is
23 the best use of our time or a good approach when we
24 haven't had a chance to analyze it carefully to have a
25 discussion about the merits of things that are outside

1 what we are considering today. That does not mean that
2 your expertise and observations are not valuable or
3 that -- it's simply a matter of trying to make sure
4 that we are most appropriately using this meeting. So
5 thank you. I am inclined to move on.

6 Ms. de la Torre, do you have something
7 on this?

8 MS. DE LA TORRE: I just wanted to move
9 back to the comment from Mr. Mactaggart because I
10 didn't completely understand it. So are we saying that
11 there's other language in the statute that was just not
12 incorporated into the list, that's why Mr. Thomas is
13 not reading it? His point seemed valid to me. Is that
14 the case; that there's language in the statute that was
15 just not incorporated in the rules?

16 MS. URBAN: Thank you, Ms. de la Torre.

17 Ms. Kim?

18 MS. KIM: Thank you. I just wanted to
19 note the context in which this exception is listed.
20 It's really with regard to the exception to giving a
21 consumer the right to opt out of the disclosure of the
22 sensitive personal information in this instance. I
23 believe the scenario that Mr. Thompson is raising would
24 be outside of that situation of the context of this
25 regulation, but it's certainly a valid one for the

1 staff to consider. And I do think that the staff
2 itself can do a bit more analysis of explaining
3 different situations to board members at a later time.

4 But I certainly -- Ms. de la Torre, to
5 answer your question, I don't think that the context is
6 not -- the context of what that exception falls into is
7 with regard to whether or not the right to limit is
8 offered to a consumer in those situations and it's
9 something that is statutorily included. And with
10 regard to what Mr. Thompson is talking about, I do
11 think it's a little bit of a different scenario that
12 certainly staff can analyze.

13 MS. DE LA TORRE: All right. My
14 question was to really try to understand Mr.
15 Mactaggart's comment. Did I answer incorrectly?

16 MS. URBAN: So thank you, Ms. de la
17 Torre. I think again it's an important question that
18 you have. I think that we should have this
19 conversation after staff has a chance to go through the
20 items in the third bucket, which is where Mr. Thompson
21 placed it. We could talk about the statute all day.

22 MS. DE LA TORRE: I was just trying to
23 understand a comment that another board member made;
24 that's all I'm trying to do. Is that something we want
25 to do later?

1 MS. URBAN: I think so.

2 MS. DE LA TORRE: Okay.

3 MS. URBAN: Thank you. All right.

4 Thank you, Mr. Thompson.

5 Ms. Kim, do you have what you need for
6 the moment on this provision and shall we move to the
7 next one?

8 MS. KIM: Yes, I believe it would be
9 appropriate to move on if everyone's ready to do so.
10 The next item or the sections that we will be covering
11 are basically all in Article 4. So it would be
12 sections 7050, 7051, 7052, and 7053. These are the
13 sections that pertain to service providers and
14 contractors and third parties.

15 And I just grouped them together just
16 because even though not all of the sections related to
17 those provisions were necessarily highlighted in gray,
18 I just wanted to provide a greater overview of the
19 comments made, so that I could bring awareness to the
20 actual changes that we did make as they relate to those
21 grayed-out portions. So I am taking a bit of a step
22 back to give a broader point of view regarding those
23 sections, although not every single provision, I think,
24 is really necessary to discuss or I don't anticipate
25 that the board will want to discuss all of these items.

1 So just giving -- taking a step back and
2 giving some explanation. We received many comments on
3 this whole article section about service providers,
4 contractors, and third parties. Contractors, as you
5 may recall, is a new term that was added to the statute
6 by the CPRA amendments.

7 Many of the comments I think have issues
8 with the law in and of itself and not necessarily are
9 regulations. Perhaps it is a bit of an oversight on
10 the comments part with regard to understanding that
11 these are requirements in the statute and not new
12 requirements or extrastatutory.

13 But just to give a general overview of
14 the themes that we were seeing, some of the comments
15 dealt with requirements of what needed to be in the
16 contracts. They claim that we were including things in
17 addition to what the law required and it was increasing
18 burden and they wanted some more flexibility on how to
19 include that information. I would note one particular
20 example is that they -- many commentators discussed or
21 noted that they thought it was extremely burdensome to
22 specifically identify the business purpose that they
23 were servicing within the service provider or
24 contractor contract. I do believe that this is
25 something that is explicitly required by the statute.

1 And so with regard to that, we have not made any
2 changes to the regulations.

3 Another comment that they suggested was
4 they -- some commentors objected to the similarity of
5 the contractual requirements for third parties; that it
6 was too prescriptive for third parties to have these
7 provisions included in their contracts. And generally
8 speaking, we did not make any significant changes to
9 those provisions because again, we believe that it is
10 explicitly referenced in the statute itself,
11 specifically 1798.100(d), and that's all set forth in
12 our ISOR.

13 There was additional comments about
14 assertions that cross-contextual behavior advertising
15 was something that service providers and contractors
16 could do under -- as a service provider or contractor.
17 And again, this is contrary to the law. We set forth
18 our explanation in the ISOR very explicitly. Although
19 we did make some slight changes to the regulations to
20 address that it pertains to the specific personal
21 information that is collected pursuant to some couching
22 of that language, and I'll explain it a little bit in
23 greater detail at a later time.

24 There were general other comments made
25 regarding extra examples where people had issues with

1 thinking that the examples in our contracts were
2 excessive or seeking some clarification or confirmation
3 that CCPA obligations apply to personal information.
4 Only the personal information collected by the service
5 provider and contractor and not all of the personal
6 information that particular entity holds.

7 There was some question as to asking us
8 to clarify what is a business purpose and when service
9 providers and contractors can combine personal
10 information, especially as it pertains to data
11 security. There were some objections to due diligence
12 requirements in 7051 and 7053.

13 But in addition, I just want to point
14 out that there was support for the requirements of
15 written contracts. There was support by people in the
16 public who appreciated the fact that we included some
17 baseline requirements for service providers and
18 contractors and third parties, so that it's easily
19 referenced and easy for these entities to understand.

20 So that's a general overview of some of
21 the comments that were made. Now I want to kind of
22 walk you through or explain some of the modifications
23 that were made to these sections generally.

24 One of the high level explanations I
25 would give is that we really made an effort to go back

1 to all of these regulations to tie all of the
2 requirements, particularly the requirements of what
3 needs to be in the contract, very closely with the
4 requirements of the statute. So we deleted some
5 sections as unnecessary, given explicit contractual
6 requirement. But we did take a closer look at
7 1798.100(d) in particular to really make specific and
8 really make clear what was required under the statute
9 to include.

10 I wanted to note that provisions in
11 Section 7052 were deleted because we thought that
12 1798.100 -- I'm sorry. The subsections in the
13 regulation 7052 were deleted because we thought that
14 Civil Code Section 1798.100(d) and 1798.135(f) were
15 clear enough with regard to what kind of obligations
16 third parties hold with regard to the personal
17 information at issue. And so that is part of the
18 reason we deleted those sections.

19 We also used more precise language
20 throughout the entire Article 4 about how the CCPA
21 obligations applies to the personal information
22 "collected pursuant to the written contract with the
23 business". Now, we capitalized the word C, "Collect"
24 because that is specifically defined in the statute.
25 And so we wanted to make sure that people saw it and

1 recognized that the definition or the term was being
2 used in the statute.

3 This language or this phrasing that we
4 used throughout this article is significant because it
5 accounts for the difference between what a service
6 provider is and what a contractor is. In many
7 instances, it sounds the same. And I think all of the
8 requirements that the regulations set forth would apply
9 equally to a service provider and a contractor, but
10 there is a slight nuance between the definition of a
11 service provider and contractor. And that's where a
12 service provider collects personal information from the
13 business or the consumer who is interacting with that
14 business directly for -- the service provider collects
15 from the business or consumer the personal information
16 that is necessary to service that business. In
17 contrast, a contractor may collect personal information
18 from another business in order to service the business
19 with whom they have the contract.

20 And so it's a very slight nuance. But
21 because of that, we wanted to make sure that we used
22 more precise language throughout article 4 and we
23 thought that collected pursuant to their written
24 contract to the business was the best -- or the most
25 accurate or precise way in which to designate or

1 articulate where the CCPA obligations -- to what
2 personal information those CCPA obligations apply to.

3 I do want to note there were a few
4 spots, one or two spots, where we forgot to change --
5 or we didn't catch changing that phrase, "collected
6 pursuant to a written contract". One is in 7050(a), so
7 we recommend making that change to maintain consistency
8 throughout the regulations. And we just wanted to -- I
9 wanted to make sure that the board was aware of that.

10 In addition, I wanted to note with
11 regard to 7050(b), for cross-contextual behavior
12 advertising services, we added that clarifying language
13 there as well that the service provider or contractor
14 is a third party with respect to cross-contextual
15 behavioral advertising services because that is not a
16 business purpose for which a service provider or
17 contractor can contract with a business and therefore
18 fall within exception to a sale or sharing of data. So
19 that is something that we were very -- we wanted to
20 clarify and make more precise.

21 But to be clear, there was a lot of
22 comments regarding that provision and we just want to
23 note I think the law is very clear that when a consumer
24 opts out of the sale or sharing of personal information
25 that also applies to cross-contextual behavioral

1 advertising services. And thus, cross-contextual
2 advertising services cannot be a valid business purpose
3 for which a service provider or contractor can contract
4 with the business. And that is because service
5 provider or contractor is an exception to sale or
6 sharing. So you cannot be in that exception to sale or
7 sharing when you're dealing with cross-contextual
8 behavioral advertising.

9 With regard to another modification we
10 made, we clarified where a service provider or
11 contractor can combine personal information even when
12 it's not explicitly addressed in the contract. And
13 that is notated in 7050(a)(3) for instances where the
14 service provider or contractor is building or improving
15 services contracted for; that doesn't need to be
16 explicitly stated in the contract. And again, with
17 regard to 7050(a)(4) as it relates today's security
18 fraud in a legal activity.

19 There is a new item that I wanted to
20 note again, another new item. And that's in
21 7051(a)(3). And I'll just note that that is on page --
22 I believe 56. In that instance, we do recommend
23 striking the last sentence in 7051(a)(3). And that
24 last sentence says "this section shall list the
25 specific business purposes and services identified in

1 subsection (a)(2). We thought it was -- the reason why
2 we're striking that language is because it's
3 unnecessary and duplicative, since the contract already
4 needs to identify that in (a)(2). So we just thought
5 it was a bit unnecessary and unnecessary and
6 duplicative in that instance.

7 Now, what I have teed up for a board
8 discussion today is basically four items and a few
9 additional modifications I want to bring to the board's
10 attention. The four on the chart -- sorry. And I'll
11 go through these in order chronologically. But they
12 are basically -- the first one is 7050(g) which
13 pertains to nonbusiness. And I can direct you to
14 7050(g). I believe it is on page -- I believe it's
15 page 55, in case you wanted to look at your notes or
16 your document. I may be off because I'm working off of
17 a different document on my computer, but I just wanted
18 to tee this up for the board.

19 Previously, we included a section called
20 Section 7050(a). And that is something that we
21 recommended that we withdraw in the proposed
22 modifications made. Upon reconsideration, we thought
23 it was not as applicable because of new contractual
24 requirements for service providers and contractors that
25 were included by the CPRA amendments. How we wanted to

1 address the situation instead was to add a new
2 definition of nonbusiness and explain how an entity
3 providing services should assess whether they are a
4 business.

5 Basically, we included this section in
6 subsection (g), whether an entity that provides
7 services to a nonbusiness which would be -- for
8 example, it would be, like, a nonprofit or a government
9 entity. Whether or not they must comply with the CCPA
10 request depends on whether that entity is a business as
11 defined by Civil Code Section 1798.140(d).

12 And so our new item or recommendation is
13 for us to just state that first line. Request depends
14 on whether the entity is a business. Add just the
15 reference to the actual definition of business that is
16 included in the statute, which is 1798.140(d). And
17 then we recommend that we delete the rest of the
18 language within that section.

19 We recommend deleting it because we
20 think the law's clear on its face. And I also think
21 that -- well, staff believes that the example could be
22 imprecise and open to nuances, depending on the factual
23 situation. And so for that reason, we think it's
24 better just to direct and direct those who are reading
25 the regulation to note what the statute says.

1 We do think that the regulation in and
2 of itself is necessary or is helpful and necessary to
3 clarify for businesses like how to -- or clarify for
4 these entities what to look at, but as to the example I
5 think that example is probably imprecise or it could be
6 interpreted as being imprecise. And so we don't think
7 it's necessary at this time and would rather just
8 proceed with the reference to the actual definition --
9 the definition of business in the Civil Code section.

10 So I'm going to take -- I'm going to
11 stop right there, just in case there's any questions or
12 discussion regarding that recommendation before moving
13 on to another discussion item.

14 MS. URBAN: Thank you very much, Ms.
15 Kim. For my own benefit, if you will indulge me, could
16 you suggest a page number for the last suggestion?

17 MS. KIM: Sure, it is page 55 and it is
18 subsection (g), so 7050 subsection (g).

19 MS. URBAN: Okay. I have green
20 underlining. I was looking for the deleted example.

21 MS. KIM: Oh, that is new. So basically
22 what the deletion would be --

23 MS. URBAN: Thank you; that's okay.

24 MS. KIM: Okay.

25 MS. URBAN: I apologize. I was looking

1 and I was listening. And so it's from the green text -
2 -

3 MS. KIM: Yeah.

4 MS. URBAN: -- that you are recommending
5 that the example be deleted. Thank you. My apologies.
6 I am in the right place. All right. And thank you,
7 Ms. Kim.

8 She has asked if there are questions or
9 comments on that change.

10 MS. KIM: Okay.

11 MS. URBAN: Okay. All right. It looks
12 like a prudent change to me. So thank you, Ms. Kim.
13 Shall we go to the next?

14 MS. KIM: Sure. The next section is 70
15 -- and this is the gray highlighted sections. It is
16 7051(a)(6), 7052(b), and 7053(a)(3). This is all the
17 provisions in these statutes that talk -- in these
18 regulations -- I'm sorry -- that refer to the same
19 level of privacy protection as required of businesses.
20 We just wanted to highlight -- I'm not sure if this is
21 really necessary for the board to discuss about. But
22 the reason why these sections were highlighted in gray
23 was we wanted to make sure to bring to the attention
24 our understanding of the statute as it pertains to
25 these contractual requirements for business -- for

1 service providers and contractors and even third
2 parties.

3 We wanted to note that Civil Code
4 Section 1798.100(d), (d)(2), and (d)(3) basically state
5 -- you know, (d)(2) states that the service provider,
6 contractor, or third party must be -- I'm sorry. The
7 contract with the service provider or contractor or
8 third party must include a provision that requires them
9 to provide the same level of privacy protection as
10 required under this title.

11 And then 1798.100(d)(3) goes on to
12 require that the service provider, contractor, or third
13 party uses the personal information transferred in a
14 manner consistent with the business's obligations under
15 this title. And so therefore, that is why we included
16 that language of providing the same level of privacy
17 protection as required of businesses because in
18 essence, the third party service provider or contractor
19 is standing in the shoes of the business.

20 In effect, this means that these people
21 are contractually required to treat it like the
22 business does. And so these modifications in this
23 section make that clear throughout.

24 MS. URBAN: Thank you, Ms. Kim.

25 All right. I am looking for hands. I

1 don't see any. Are there further subitems that you
2 would like to go through, Ms. Kim?

3 MS. KIM: With regard to this -- no.

4 MS. URBAN: Okay. Mr. Mactaggart?

5 MR. MACTAGGART: Sorry. And just Ms.
6 Kim, on the third party, 7052, the struck language,
7 (a), (b), and (c), just is your contention that --

8 MS. KIM: Yes.

9 MR. MACTAGGART: The new (a), (b), and -
10 - the new (a) and (b) cover?

11 MS. KIM: Yes, just to clarify -- I know
12 I'm anticipating your question, Mr. Mactaggart, so I'll
13 go ahead and note that. I believe in 752, we deleted
14 those sections because we think the obligations in
15 1798.100(d) and also included within the contractual
16 provisions in the regulations, which basically mirror
17 1798.100(d), are sufficient enough -- sufficient to
18 address these kinds of situations. And so that is why
19 at this point in time, we deleted those sections to
20 simplify implementation at this time and because we
21 thought that the other contractual provisions were
22 adequate to address those interests.

23 MR. MACTAGGART: And so the new (a) and
24 (b) talk about parties that don't have contacts, so --

25 MS. KIM: And those were not new

1 provisions. They were just moved over from the 7053
2 section.

3 MR. MACTAGGART: Okay. Shall not
4 collect, use, process, retain, sell, or share the
5 personal information that the business made available
6 to it, and then be able to talk to us about the
7 business made available to it. And I guess I would
8 just like to maybe flag for a future rulemaking that I
9 think is -- I mean, I might be misunderstanding, but
10 isn't there a world where there's a third party
11 processing information that the business hasn't made
12 available to it that just -- I'm just trying to think
13 about that. I guess made available would cover
14 selling.

15 MS. KIM: Yeah, I think we intentionally
16 use that phrase --

17 MR. MACTAGGART: Okay, yeah.

18 MS. KIM: -- because it seemed to be the
19 most -- the broadest ---

20 MR. MACTAGGART: Okay. I was thinking
21 of someone parked on someone's page, but if it covers
22 sale as well, I think we're good. Okay. Sorry. I'm
23 good. Thank you.

24 MS. URBAN: Thanks, Mr. Mactaggart.

25 Further questions?

1 All right. Ms. Kim?

2 MS. KIM: Yes.

3 MS. URBAN: Looking at my gray, is there
4 a more or is it time -- would you like to summarize?

5 MS. KIM: Sure. Well, as far as I
6 understand, what has been included as modifications in
7 section 7050, 7051, 7052, and 7053 --

8 MS. URBAN: Um-hum.

9 MS. KIM: -- that the board has no
10 issues or further discussion or changes to be made to
11 those sections. And in addition to the two highlighted
12 -- or three highlighted new items, one in which in
13 7050(a), where we want to apply the collected pursuant
14 to the written contract with the business that that is
15 also to be included. 7051(a)(3), the last sentence,
16 referencing the specified business purpose, will be
17 struck out. And with regard to 7050(g), anything after
18 the first sentence as slightly changed to reference the
19 Civil Code Section definition of business will be also
20 struck from that section. That is my understanding of
21 the modifications made to these sections.

22 MS. URBAN: Okay. Thank you, Ms. Kim.
23 We paused for part of that, but not all of it. So I
24 would like to pause now, based on Ms. Kim's I think
25 very succinct and clear summary.

1 Mr. Mactaggart, please go ahead.

2 MR. MACTAGGART: So my question, which
3 is not for this rulemaking, but is for the future -- so
4 the struck insertion in 7053(b), the orange language,
5 which is the top of page 60. When I look at this, a
6 business that -- the struck language is "that
7 authorizes third party to collect personal information
8 from a consumer through its own website". And then I
9 look at the statute in 1798.135(f). I would like to
10 ask staff to go back and look at that in the future
11 because the intention in 135(f) was that if you're a
12 newspaper, for example, and you know you have a service
13 provide -- other people, okay, third parties or service
14 providers collecting information -- call them third
15 parties -- collecting information on your website that
16 they also would eventually have to comply with the
17 consumer's request to opt out. And I think by striking
18 this language, we have potentially weakened or diverged
19 from the intent of 135(f), so I would like to ask them
20 to go back and look at 135(f) in light of the fact that
21 that was a pretty important concept, so.

22 MS. KIM: Thank you.

23 MS. URBAN: Thank you, Mr. Mactaggart.

24 So go ahead, Ms. Kim.

25 MS. KIM: Yes, I just wanted to address

1 that 753(b) was removed to simplify implementation at
2 this time because it pertains specifically to requiring
3 third parties to search for and look for the optout
4 preference signal.

5 I think my understanding and Mr.
6 Mactaggart's comment is actually broader than just
7 looking at the optout preference signal, but with
8 regard to any kind of request to opt out that is
9 forwarded to third parties or that are -- that is
10 reasonably apparent to third parties, we will certainly
11 take a look at that and I'll put that in that third
12 bucket of future rulemaking and for consideration.

13 MS. URBAN: Thank you, Ms. Kim, and
14 thank you, Mr. Mactaggart for pointing that out.

15 Ms. de la Torre?

16 MS. DE LA TORRE: Thank you. I just
17 wanted to point out that I have an item in 1750 that I
18 want to bring up. I don't think it's sufficiently
19 related to the conversation we're having, so maybe
20 something that needs to be moved to the end. But I
21 just wanted to flag it for the chair.

22 MS. URBAN: Okay, great, wonderful.
23 What is the subsection?

24 MS. DE LA TORRE: It's just a general
25 comment to 1750.

1 MS. URBAN: Right.

2 MS. DE LA TORRE: There's no specific
3 subsection.

4 MS. URBAN: Okay.

5 MS. DE LA TORRE: Thank you.

6 MS. URBAN: It is on the list.

7 MS. DE LA TORRE: I'm sorry.

8 MS. URBAN: Thank you very much.

9 MS. DE LA TORRE: Yes.

10 MS. URBAN: All right. Anything further
11 from the board, going off of Ms. Kim's I think very
12 helpful summary of the changes in these sections?
13 Okay. Thank you.

14 MS. KIM: Okay. The two remaining
15 sections are 7002 and 7025. I propose that we move
16 forward with 7025 first, to have the benefit of Mr.
17 Soltani's experience, technical experience. And I
18 don't want to catch him too late in the day, since he
19 is presently in Turkey. So I think it might make sense
20 to take 7025 first if it's all right with the board?

21 MS. URBAN: Please go ahead.

22 MS. KIM: Okay. Wonderful.

23 So with regard to 7025, this is the
24 section that pertains to optout preference signals.

25 MS. URBAN: Sorry, Ms. Kim. You know

1 what I'm going to ask for. I'm scrolling madly on my
2 chart, and --

3 MS. KIM: Sure.

4 MS. URBAN: -- my modified text. And so
5 if you have a page -- if you don't, it's okay. I'll
6 find it.

7 MS. KIM: No, no. It's page 40.

8 MS. URBAN: Okay. Thank you.

9 MS. KIM: Page 40, yeah. Page 40.

10 So the optout preference signal is
11 probably an area in which we receive the most amount of
12 comments. That being said, I have to say that none of
13 the comments that we received were things that we
14 didn't already anticipate seeing and in many respects,
15 the addressed by are current ISOR, but the initial
16 statement of the reasons that we had included with
17 regard to the draft regulations. We received many
18 comments on the section, both in support of optout
19 preference signals generally in our regulations
20 themselves, as well as those raising some concerns
21 about it.

22 The high level themes, I would say, with
23 regard to those sections had to do with a disagreement
24 as to the interpretation of the statute that it was not
25 mandatory, but optional. Again, I believed that our

1 initial statement of reasons very explicitly goes
2 through our understanding and our interpretation of the
3 statute. And so none of the changes -- there were no
4 changes made in response to those comments.

5 In addition, there were questions as to
6 the technical specifications or desiring that the
7 agency provide technical specifications. Comments
8 regarding whether or not -- comments alleging that the
9 agency did not comply with the guidance given in
10 1798.185(a) 19 through 20. And so again, I don't think
11 those were anything that we didn't anticipate and we
12 explained our reasoning within the initial statement of
13 reasons to address those concerns.

14 Some of the other concerns raised were
15 that implementing the optout preferences signal what's
16 too hard or burdensome. And with regard to that topic,
17 I do think that much of our regulations -- the draft
18 regulations are very similar if not identical to
19 regulations that are already in place that implement
20 the CCPA. And not only those that are in place for the
21 CCPA, but those that are already being enforced by the
22 attorney general's office. So I want to note that that
23 is already something that is required under the law
24 currently.

25 There were some concerns about the level

1 of friction allowed by the regulations, and so friction
2 in the process of using an optout preference signal.
3 And I do think some of our modifications address those
4 concerns. And just generally speaking, some people
5 pointed out that using optout preference signal may be
6 confusing to consumers.

7 That being said, there were also a
8 number of supporting comments that also reemphasize
9 that the optout preference signal is not optional;
10 mandatory, according to how the statute is written.
11 Support for how the optout preference should apply to
12 the consumer and not just the browser or device,
13 meaning that there should be some linkage between the
14 browser and device and the consumer if they are known
15 to the business. And that generally speaking, optout
16 preference signals should exist because they make
17 optout easy for consumers across different websites,
18 and that sort of thing.

19 So high level, I wanted to note the
20 changes that we have made to the section and also those
21 which are designated for a discussion. Sorry. Let me
22 take a step back. There are some changes that I will
23 tee up for discussion for the board. But I also wanted
24 to note for the board first that as I mentioned
25 earlier, no changes were made, based upon the argument

1 that the optout preference signal was optional. I
2 believe that's an incorrect interpretation of the law.

3 Also, with regard to technical
4 specifications and the compliance given, the comments
5 do not bring up anything new that wasn't already
6 considered and accounted for in the initial statement
7 of reasons.

8 We do make some clarification that a
9 business that does not sell or share personal
10 information does not need to respond to optout
11 preference signal. I believe this goes without saying,
12 but we added this language to make this clear in the
13 modifications. It's one of the consent items, it's not
14 designated for discussion necessarily today. We also
15 added language to make clear that when we refer to
16 processing of the optout preference signal that means
17 that the business is treating it as a valid request to
18 opt out of sale or sharing, just in case there was any
19 kind of ambiguity with regard to that.

20 We added some language throughout the
21 section to clarify that certain obligations only flow
22 to the consumer when that consumer is known to the
23 business. And with regard to 7025(g)(3), which is
24 talking about whether or not you can fully effectuate
25 the frictionless response, we added language to clarify

1 that if the business needs additional information from
2 the consumer to fully effectuate the requirement, they
3 do not qualify for that frictionless exception.

4 Those are just high level changes that
5 aren't necessarily ones that I thought were -- or that
6 staff designated for discussion from the board. But
7 those which the staff has identified for discussion,
8 two of which are on the chart and then two are
9 additional modifications that staff would like to
10 recommend, are basically 7025(c), 7025(c)(2),
11 7025(c)(4), (c)(7), (d). And basically, I'll go
12 through these chronologically. I don't think it's
13 necessary for me to necessarily go through them.

14 But I just wanted to make a note that
15 the following items are ones that I -- that staff
16 thinks either wants to make the board aware of because
17 they are a new modification or are ones that have been
18 previously highlighted on the chart. But because of
19 ease of reference, I'm going to walk you through them
20 chronologically, so it's not just going to be the gray
21 items first, but rather I'm going to walk you through
22 them chronologically, so that it makes a bit more
23 sense.

24 And so I'm going to start off with
25 7025(c). And 7025(c) is on page 40. This is the

1 section that really sets forth when a business has to -
2 - when a business is -- how the business treats an
3 optout signal, preference signal that it receives.

4 One of the things that staff had come to
5 -- have been thinking about is the way that the
6 regulations are set up is that a business is to treat
7 an optout preference signal as a valid right to opt out
8 for the browser and device and then if known for the
9 consumer; that is how the regulation is set up.

10 Now, the clearest example of when a
11 consumer is known to the business is when that consumer
12 is logged in to, like, say their account. And that
13 there's some type of connection made between the
14 browser's device and the business's account with the
15 consumer, so that there is some type of linkage.

16 But there can also be some cases or
17 instances where businesses have pseudonymous profiles
18 of the consumer associated with the browser. Or with
19 the browser or with the device identifier. And one
20 example would be a business identifies user 123 as
21 logged in in browser A, but also logged in -- or I'm
22 sorry. Let me not use the word "logged in". But one
23 example of pseudonymous is that a business might
24 identifier user 123 as being on their website, both
25 with using a browser, browser A, but also with regard

1 to a mobile device, B. So this is not associated with
2 necessarily a logged in account or an account name, but
3 rather a user 123. But it's linking across different
4 kinds of devices and browser identifiers.

5 And so what is -- what I think that this
6 understanding of "if known" with regard to the
7 consumer, yes, it's clear if it's "if known" with
8 regard to a logged in account. But it also would be
9 "if known" with regard to any kind of consumer profile
10 associated with that browser or device.

11 And we recommend including some language
12 in 7025(c)(1) that makes clear that the optout
13 preference signal should apply to the browser and
14 device and "any consumer profile associated with that
15 browser or device". That is the recommendation we make
16 and we want to just make that clarifying -- tee that up
17 for the board's discussion or questions related to
18 that, as to the direction we take.

19 MS. URBAN: Thank you, Ms. Kim.

20 Mr. Soltani, did you have something to
21 add on the --

22 MR. SOLTANI: Yeah, if it's helpful, I
23 can just kind of try to simplify this presentation in
24 the sense that typically individuals are known to
25 websites, either when you explicitly declare your

1 identity to the website by creating an account and
2 signing in -- and so that's often the logged-in known.
3 But more often or quite often, businesses often -- or
4 businesses link individuals' devices together in a
5 fashion known as probabilistic linking. So I might not
6 know who you are, but I might know that your phone and
7 your browser are linked to the same individual. And
8 that's another way of knowing the consumer as the same
9 consumer.

10 And I think the examples were to clarify
11 that those are also known individuals. They're known
12 by the definition of consumer link by any unique
13 identifier, including probabilistic identifiers, which
14 is in the definition of the statute. And so the
15 example was just to refer back to the unique identifier
16 and probabilistic identifiers as described in the
17 statute, if that's helpful.

18 MS. URBAN: Thank you.

19 Shall we ask for questions now, Ms. Kim?

20 MS. KIM: Oh, yes.

21 MS. URBAN: All right.

22 MS. KIM: Yes.

23 MS. URBAN: Questions or comments on
24 this? On -- excuse me. On accommodating pseudonymous
25 probabilistic identifiers for consumers and the changes

1 that were made in order to do that.

2 MR. MACTAGGART: Mr. Mactaggart, your
3 hand went up and it went down.

4 MS. KIM: Well, just to note, like a
5 thumbs up on a video, it probably would help if you
6 verbalized it, just for the transcript's sake, but
7 thank you.

8 MS. URBAN: Oh, is it a thumbs up?

9 Okay. Yes. Mr. Mactaggart if you have an agreement,

10 please state it for the transcript.

11 MR. MACTAGGART: All right. That's a
12 very valid point. This is my first recorded -- yes, I
13 agree. I think it's supported in the statute, given
14 the definition of personal information, so thank you.

15 MS. URBAN: Okay. Thank you, Mr.
16 Mactaggart.

17 Any other comments or questions?

18 I also agree. I think these are helpful
19 clarifying changes. The statute says what the statute
20 says and I think it's pretty clear. But I also think
21 that it's always helpful for the regulations to give
22 guidance of how people understand what the statute
23 says, so I think these are helpful clarifying
24 modifications and appreciate them. Further comments?

25 Okay. Ms. Kim, then, I think you said

1 that you have two items that you wanted to tee up
2 within this general area?

3 MS. KIM: Yes, there may be a couple
4 more, but let me go ahead and walk through. I just
5 want to make clear that with regard to this idea of
6 pseudonymous profiles that the direction that staff is
7 making and that appears to have no opposition with
8 regard to the board is making clear that the optout
9 preference signal is a valid request to opt out for the
10 browser and device and any consumer profile associated
11 with that browser or device in which the signal comes
12 from. Great.

13 So the next item is 7025(c) (2).
14 7025(c) (2) is also on page 40, but it also runs into
15 page 42 or possibly may run into page 42.

16 Now, as set forth in the regulations,
17 there is an optout preference signal that is mandatory
18 for businesses to honor as a valid request to opt out,
19 but there is also two kind of ways in which a business
20 can respond to them.

21 One way that is required is that they
22 respond and they can have a certain amount, a limited
23 amount of friction with regard to understanding and
24 interpreting the optout preference signal. And then
25 separately, there is this frictionless response to an

1 optout preference signal that gives the business an
2 additional benefit of falling within exception to
3 posting a do not sell my personal information link or
4 do not limit the use of my sensitive personal
5 information link. So that is a frictionless response.

6 What I wanted to do and explain here for
7 the board or tee up for understanding is that with
8 regards to (c)(2), the business is only allowed to
9 create friction in three ways. And to articulate this,
10 first, the business is allowed to ask the consumer if
11 they want to identify themselves to facilitate the
12 right to opt out for further kind of implication.

13 Like for example, the business is
14 allowed to ask the consumer to -- do you want to log
15 into your accounts, so that we can apply your request
16 to opt out to more than just the browser and device,
17 but perhaps offline sales that the business is getting
18 if they're selling or sharing their data to, say, other
19 marketing situations or something like that or other
20 businesses.

21 Second, the second instance in which
22 they can create "friction" would be to warn the
23 consumer of the conflict with a pre-existing account
24 setting and ask them if they want to opt back into the
25 sale or sharing of personal information. I'll go into

1 this in greater detail later, but that can only be done
2 once within a twelve-month period, especially if the
3 consumer is known. And there's other provisions that
4 apply to that.

5 And third, the third instance when they
6 can introduce friction is to inform of a conflict with
7 a financial incentive program and ask the consumer what
8 they want to do in that situation.

9 We think it is clear from (c)(1) that
10 with regard to scenario number one, which is the opt --
11 scenario number one is which the business says, hey, do
12 you want to identify yourself? Do you want to log into
13 the account, so that we can apply this to offline sales
14 or additional settings where we need to know who you
15 are. If the consumer does not decide to opt in, like,
16 it does not decide to account for themselves, the
17 business still needs to respond to the optout
18 preference signal, but only as to the browser and
19 device. I think that is clear from (c)(1).

20 But to the extent that that is not
21 clear, to the extent -- just to make sure that people
22 understand that fully, we do make a recommendation to
23 include in (d)(2) the language of, like, however, if
24 the consumer does not respond, the business shall still
25 process the optout preference signal as a valid request

1 to opt out of sale or sharing for that browser or
2 device or any consumer profile associated with that
3 browser and device.

4 We thought it might be helpful to
5 include that language, just to make that ultimately
6 clear that you can't just ask them do you want to log
7 in, and then if they don't respond or do anything, that
8 they could somehow ignore the optout preference signal
9 as a whole. And I don't think that's how the
10 regulation's written, but it certainly can be helpful
11 to make that explicit. So that is the item that we are
12 proposing here.

13 MS. URBAN: Thank you very, very much.
14 And could you just give us the regulation section and
15 subsection again, so that everyone can have it in front
16 of them if they have questions?

17 MS. KIM: Sure, it is 7025(c)(2).

18 MS. URBAN: Um-hum.

19 MS. KIM: What we propose including is
20 that in that section, we would -- just for ease of
21 readability, we would take the sentence that says "any
22 information provided by the" -- well, "any information
23 provided by the consumer shall not be used or disclosed
24 or retained for any purpose, other than processing the
25 request to opt out of sale or sharing". That's already

1 in there, but just for ease of reading, we'll move it
2 up a little bit. And then we would add at the very end
3 an additional line that says for example: A business
4 may give the consumer the option to provide information
5 that identifies the consumer, so that the request to
6 opt out of sale or sharing can apply to offline sale or
7 sharing of personal information. And then what we
8 would recommend adding is: However, if the consumer
9 does not respond, the business shall still process the
10 optout preference signal as a valid request to opt out
11 of sale or sharing for that browser or device and any
12 consumer profile the business maintains linked to that
13 browser or device.

14 MS. URBAN: Thank you very much. And
15 this is new. This is a new modification. I just want
16 to make sure --

17 MR. THOMPSON: Thank you.

18 MS. URBAN: Yes.

19 MS. KIM: Yes, this is a new
20 modification.

21 MS. KIM: I should have made the more --

22 MS. URBAN: Given that earlier in the
23 meeting, I was searching around for it, in case anybody
24 else was. This is a new modification that you are --

25 MR. THOMPSON: Yeah, I've read (c) (2)

1 now five times, looking for that, so thank you for that
2 clarification.

3 MS. URBAN: Yes. All right. Thank you
4 very much, Ms. Kim. I see that Mr. Thompson and I are
5 -- now, like, have the right language in the right
6 place.

7 And Mr. Mactaggart has his hand up.

8 MR. MACTAGGART: Thanks. Yeah, I
9 strongly support the addition of this language. My
10 concern originally with 7025(c) was that businesses
11 would use it as a way to kind of scare you into giving
12 more information, saying this isn't going to work
13 unless you give us your email, and then just kind of
14 have consumer friction and just general -- make it less
15 workable. And I think specifying it is useful because
16 I really think as long as it's one click, where I say
17 no, I don't want to do it, just X then I'm done, fine.
18 But if it's, like, six clicks where I have to --
19 everybody's going to turn off their optout. It's got
20 to be simple, so I support this language. Thanks.

21 MS. URBAN: Thank you, Mr. Mactaggart.

22 Mr. Le?

23 MR. LE: Yeah, I had a question. So to
24 what extent -- yeah, to Mr. Mactaggart's point and can
25 this friction having, like, this friction-having method

1 constitute a dark pattern? Is there any protections
2 against that? Yeah, so I'm just kind of curious how
3 those two sections interact with each other.

4 MS. KIM: Sure, thank you. And I can
5 answer that question. 7025 is for optout -- because an
6 optout preference signal is supposed to be seen as a
7 valid request to opt out, 7004, which is the section
8 that provides guidance regarding obtaining consent and
9 methods of -- creating methods for consumer requests,
10 still applies to an optout preference signal. So
11 creating six clicks and all that kind of stuff, if that
12 doesn't match up with the guidance provided in 7004
13 about having some synchrony and that sort of thing,
14 making it easy for consumers to execute or choice
15 architecture that would impair a consumer's choice,
16 those provisions would still apply.

17 What we note is that there is
18 essentially three instances in which a business may
19 allow a limited amount of friction, and those are
20 identified here. One is to ask the consumer if you
21 would like to log into your account or identify
22 yourself further, so that you can further execute that
23 request to opt out. And then in the instances of
24 financial incentive programs and previously included --
25 a previously existing setting. So those are the only

1 three instances that we think friction would be
2 allowed. And again, we have an extra scenario where
3 there's even less friction and then you have the
4 additional benefit of not having to post the do not
5 sell or share my personal information link.

6 MR. LE: Okay. Thank you.

7 MS. URBAN: Thank you, Mr. Le.

8 Ms. de la Torre?

9 MS. DE LA TORRE: Thank you, Ms. Urban.

10 Just going back to the comment from Mr. Le. I think
11 wondering -- because this whole friction is something
12 that has happened before and organizations that might
13 have an economic benefit in creating friction tend to
14 be really creative. So in terms of the strategy that
15 we're setting here, how are we going to monitor the
16 reaction in the marketing? If what we are proposing
17 results in something that maybe we're not really
18 anticipating, do we think that we will redo the rules
19 to address that behavior?

20 The goal really, I think, from the
21 proponents of the CCPA side, which assured that the
22 consumers had a easy way to express their preference
23 and that they really had a better experience navigating
24 online, being confident that their information was not
25 being used. So have we given it some thought? It's

1 not specific to the rules, but -- to this provision,
2 but I think it's sufficiently related to bring it into
3 the conversation, Ms. Urban.

4 MS. URBAN: Yes, thank you, Ms. de la
5 Torre. I quite agree. And I see that Mr. Soltani may
6 be able to shed some light on this.

7 MR. SOLTANI: I can jump in. Staff has
8 had a lot of discussions about this very point, Ms. de
9 la Torre. And the reason we flagged this as kind of a
10 board conversation is that there are tradeoffs, there's
11 policy tradeoffs. So indeed, providing the user the
12 ability to essentially further identify themselves or
13 authenticate themselves does create friction that might
14 disincentivize the use of a global setting to opt out
15 of sale.

16 However, the alternative incentive
17 exists where you may have an account with the business
18 and you essentially use the global setting to opt out
19 of sale, but the global setting only applies to your
20 current browsing session. And the additional kind of
21 data that's associated with your authenticated account,
22 the browsing history with your logged in account, will
23 then still be permitted to be sold because the business
24 doesn't have that link for you.

25 So this kind of additional friction,

1 while small -- and remember, the additional information
2 requested can't be used for any other purpose other
3 than effectuating the optout. Right. So this
4 additional friction while may provide a disincentive to
5 some folks also has a huge policy benefit if
6 particularly there's a lot of data associated with your
7 logged in account, and so that was kind of the
8 balancing. But I think it's an important point for the
9 board to consider whether it's worthwhile.

10 And then the thing that I'll flag is
11 that oftentimes users won't know which -- kind of what
12 state they're in, right. Whether you're logged into an
13 account or not, and may have misaligned expectations.
14 So that was kind of the goal of this balancing act, but
15 I do recognize there are tradeoffs.

16 MS. URBAN: Thank you, Mr. Soltani. It
17 is a balancing act, but there are benefits and also
18 potentially barriers. I did also want to respond to
19 Ms. de la Torre's sort of initial question, I think,
20 about treatment and everything that's going into the
21 decision as to which balance to work from now.

22 Absolutely I would certainly support and
23 I think that staff has on its radar to, as with other
24 provisions, keep a close eye on how things are
25 developing in the marketplace in order to inform

1 whether or not in the future it would make sense to
2 amend the regulation in order to address something that
3 has arisen that wasn't anticipated.

4 And I would also just say that that is
5 going to be the case and must be the case for all
6 situations and all regulations certainly under our
7 purview because we are working in a space where
8 technology is changing rapidly, innovation is happening
9 rapidly. Social aspects are changing.

10 And of course we have in our statute a
11 reminder and a responsibility to do exactly that, to
12 keep an eye on the technology and any changes, so that
13 we can be responsive. So I just wanted to respond to
14 that part. And we can talk about that and we can also
15 talk about the balance that we've struck right now,
16 which I also support. But I wanted to be sure that
17 that didn't get left on the table.

18 So Ms. de la Torre?

19 MS. DE LA TORRE: Thank you, Ms. Urban,
20 for the commentary. Really helpful.

21 And thank you, Mr. Soltani.

22 MS. URBAN: Wonderful. Thank you, Ms.
23 de la Torre.

24 Mr. Mactaggart?

25 MR. MACTAGGART: Yes, I just had a quick

1 question. I apologize if it's out of order or
2 chronological order, but there's a same change in 7027
3 around limiting the personal information. And so are
4 you also making the conforming change, Ms. Kim, in
5 7027(e) with respect to limit the personal -- limit the
6 use of my personal information? Because I think that
7 same change needs to be made there as well to make sure
8 the businesses don't use it as an opportunity to kind
9 of scare people into getting more information than
10 people can understand.

11 MS. KIM: Yes. I just want to note
12 currently as written, 7025 pertains to the optout
13 preference signal applying to a valid request to opt
14 out of sale or sharing. We do acknowledge that the
15 statute would extend that to a request to limit, but
16 because that is -- as far as we are aware, there is no
17 optout preference signal existing that addresses that
18 new right yet; that is why we need a deliberate
19 decision to couch 7025 to only apply to a request to
20 opt out of sale and sharing at this time.

21 I do think to note with regard to what
22 Chairperson Urban said that this is an iterative
23 process, I do believe that as time progresses and as we
24 see things develop in the market or even as after we
25 implement these provisions immediately, we can come

1 back and really address the optout preference signals
2 to the extent they exist or have developed as they
3 pertain to a request to limit in the future.

4 MR. MACTAGGART: Yeah, I'm just
5 concerned about 7027(e). But even if it's not an
6 optout signal, it still says that a business may ask
7 the consumer for additional information. And I suppose
8 your answer will be the second sentence that says,
9 well, the business -- if it can comply without
10 additional information, it shall do so. I'm a little -
11 - I just think you could maybe have some language kind
12 of just telling the business no. By the way, it's not
13 four clicks to tell the consumer that you can still
14 comply. Because I get nervous about the whole dark
15 pattern thing, and so that's kind of where I'm coming
16 from.

17 MS. KIM: Oh, thank you. And just to be
18 clear, 7004, which pertains to dark patterns and
19 methods to submit requests, would also apply to the
20 methods to submit a request to limit, so I don't think
21 that there should be any kind of confusion with regard
22 to that.

23 MS. URBAN: Thank you, Ms. Kim.

24 Mr. Soltani, did you have clarifying --
25 okay.

1 MR. SOLTANI: I just wanted to clarify,
2 Board Member Mactaggart. So your concern is in limit
3 SPI that it be equally applied to pseudonymous
4 nonlogged-in kind of users and then also equally -- I
5 think we can take that back to make sure that it's
6 consistent.

7 So what I hear you to be saying is
8 outside of even the global kind of automatic optout of
9 sale -- the optout preference signal, any time a person
10 clicks either their regular kind of do not sell button
11 or they use my personal information that it be applied
12 to their kind of nonlogged-in state. And the business
13 can ask for additional information and then but not for
14 -- but if the user declines offering that that it be
15 applied to that nonlogged-in state as well. Is that
16 what I understand you to be saying?

17 MR. MACTAGGART: Yes, yes.

18 MR. SOLTANI: So we can -- I believe we
19 architected it that way, but we can be sure to go back
20 and confirm. And then if not, kind of plan that for a
21 future meeting.

22 And Lisa feel free if -- I just wanted
23 to just clarify it, but that's what I understood him to
24 be asking.

25 MS. KIM: Okay. I understand that. I'm

1 going to have to take a look at it, just to ensure and
2 refresh my memory as to whether that's the case. To
3 the extent that there is additional clarifying language
4 that can be included, I do recommend that that be done
5 in a future rulemaking package as opposed to
6 immediately. But certainly that's something that we
7 can put on our list of items to revisit.

8 MS. URBAN: Thank you.

9 Ms. de la Torre?

10 MS. KIM: You're muted.

11 MS. DE LA TORRE: I have a process
12 question that might not belong here. I'm going to
13 formulate it and then ask Ms. Urban how we may want to
14 address it.

15 In terms of these kind of suggestions
16 like this, suggestion that Mr. Mactaggart just made who
17 basically improved on the structure of the rules, if
18 they are going to be considered for the future, how
19 does that mechanically happen? Because there's no
20 subcommittee. Initially, I think they will go back to
21 staff and then I'm going to -- we need to do some
22 thinking on the process to kind of list those and
23 understand when and how they will happen.

24 MS. URBAN: Thank you, Ms. de la Torre.

25 It is a little bit -- I mean, it's a more general

1 question, using the example of Mr. Mactaggart's
2 observation and suggestion. Mr. Laird can, like, reach
3 in and like, hook me away if I'm getting off topic, but
4 I think that we might as well talk about it now if we
5 can.

6 So I think it's a good question Ms. de
7 la Torre because we've operated from this point forward
8 -- as you know and as we mentioned earlier, we started
9 without staff. And so we formulated a plan that
10 allowed us to move forward with our rulemaking
11 obligations without staff. And that involved the
12 subcommittees kind of digging in at a level that is
13 fairly uncommon. And then the subcommittees began
14 working with staff as we gained resources.

15 Now we're in a state where we have
16 resources of staff, we have resources of counsel. And
17 so we can I think rely on staff to be sure to be
18 collecting each of these items. They will formulate
19 future rulemaking packages. And I don't think that it
20 makes sense to try to get into at this time exact
21 details of how they report to the board, like what
22 they're thinking they're going to put into the next
23 rulemaking package and so forth. I think we can talk
24 about that down the road or staff can sort of make
25 recommendations. But we do not rely on subcommittees

1 in order to do rulemaking packages in any way, other
2 than the fact that we didn't have resources of staff
3 and counsel at the time we started.

4 Subcommittees, just as a reminder
5 because I think it's always helpful, are solely
6 advisory. They don't make any decisions. Otherwise,
7 we would be out of compliance with Bagley-Keene as it
8 is. And so frankly -- I mean, just to sum up, it's a
9 pretty -- now that we have resources of staff, it's
10 pretty straightforward to collect these things into
11 potential rulemaking packages and put them together in
12 a way that makes sense in the future.

13 MS. DE LA TORRE: All right. So a
14 related question, and I will ask Mr. Thompson to
15 refresh my recollection, but is that something that
16 that is connected to the process of the committee or it
17 happens completely outside of the presence of
18 committee? That's in part why the question came up
19 when I was actually needing direction.

20 And Ms. Urban, we don't need to have an
21 answer right now. I mean, it might not be the meeting
22 to discuss it. I just was trying to understand.

23 MS. URBAN: I think we are now skating,
24 though -- I think Mr. Laird will tell us if the cane is
25 coming out, but I think we're skating away --

1 MS. DE LA TORRE: Right.

2 MS. URBAN: -- from the question of how
3 to deal with the topics in this conversation. But
4 thank you for the question.

5 MR. LAIRD: And thank you, Ms. de la
6 Torre and Ms. Urban. I just jumped in to say -- I just
7 want to say I know staff, legal staff sort of that
8 aren't on camera are taking vigorous notes on all of
9 this right now, and we do plan to monitor and be
10 supportive with these efforts. But I agree that
11 probably best for a future agenda item to sort of
12 tackle the specifics of how we want to operate the
13 rulemaking process going forward (indiscernible).

14 MS. URBAN: Mr. Laird, is it okay for me
15 to observe that we did discuss in your May meeting, I
16 believe it was, some thoughts about subcommittees sort
17 of through this rulemaking process and at the end of
18 it?

19 MR. LAIRD: Yeah, absolutely. I guess
20 I'm just suggesting -- and I think to Ms. de la Torre's
21 point, we don't need to come to a resolution today, but
22 --

23 MS. URBAN: Right. Yeah, okay. All
24 right. Thank you very much for the question, Ms. de la
25 Torre.

1 Anything else on this subitem?

2 Ms. Kim, would you like to summarize
3 this for us or move on and summarize --

4 MS. KIM: I can move on to the next
5 item.

6 MS. URBAN: Okay.

7 MS. KIM: I believe that the
8 understanding of including that language to (c)(2) to
9 make it more explicit was well-received.

10 MS. URBAN: Thank you, Ms. Kim. I
11 apologize. I do want to just remind everyone that
12 we're planning to take a later lunch break, starting at
13 1:45. I believe it was 1:45. So definitely raise your
14 hand if you're desperate for a drink of water or
15 something, but otherwise that's the plan.

16 All right. Thank you, Ms. Kim. Sorry
17 for the interruption. Please go ahead.

18 MS. KIM: Great. So moving on to 70 --
19 this is also somewhat of a new item, so you may not
20 readily see it. But it's under 7025(c)(4), so it's on
21 the very next page. I'll turn to it myself.

22 As I mentioned to you that there's those
23 three limited situations in which you may introduce
24 friction in the optout preference signal, in responding
25 to optout preference signal. We address the third

1 situation, which is regarding financial incentive
2 programs. So the question is, how is a business to
3 respond to an optout preference signal when it
4 conflicts with the consumers' participation in a
5 financial incentive program.

6 What we had done previously and noted
7 for the board in our board materials was that we
8 changed the word "shall" to "may" in (c)(4); that this
9 is instead of the business shall notify the consumer
10 that it is conflicting with the financial incentive
11 program, we said the business may do so because that
12 gives a bit more flexibility to the business as to how
13 to respond to optout preference signal. And it
14 simplifies implementation at this time.

15 But then I think one thing we noticed
16 was that the question then becomes -- that change we
17 realize leads to two questions. The first question is
18 how should a business treat an optout preference signal
19 if the business does not ask the consumer, chooses not
20 to ask the consumer, hey, this is conflicting. And
21 then the second question that it raises was how should
22 a business treat an optout preference signal if it does
23 ask that the consumer just exes out, does say anything
24 in response explicitly.

25 How we had framed this previously was

1 that -- and the reasoning that we set forth in our
2 initial statement of reasons was that if the business
3 does ask and the consumer just exes out without making
4 any further notation that the business could ignore the
5 optout preference signal as to the financial incentive
6 program. And so we also included some language that
7 says with regard to that financial incentive program,
8 the business may ignore the optout preference signal.

9 We do not -- like, but the question I
10 think then becomes if the business does not ask, should
11 they still process the optout preference signal. And I
12 believe that they should still process the optout
13 preference signal because that is what's required in
14 the framework presently. And that if you were to
15 change that, the business would have an incentive not
16 to ask because then they could always ignore without
17 giving the consumer the choice at all. And so what we
18 propose as a recommendation to add to (c)(4) is to
19 include the language in the last sentence that says if
20 the business asks and the consumer does not confirm --
21 does not affirm their intent to withdraw, the business
22 may ignore the optout preference signal. Just to
23 clarify that is only in the situation where a business
24 asks that they can apply that exception if the consumer
25 decides not to do anything further.

1 MS. URBAN: Thank you. Thank you.

2 Thank you, Ms. Kim. And so this is again new in the
3 discussion?

4 MS. KIM: It is both -- yes, it is both
5 new, but also kind of sprinkled in with some changes
6 that we had previously made, yes.

7 MS. URBAN: Understood. Okay. Thank
8 you very much.

9 Mr. Thompson?

10 MR. THOMPSON: I had a question, just to
11 clarify. Where is the insertion and what are the
12 words?

13 MS. KIM: Sure.

14 MR. THOMPSON: Because I just want to
15 make sure I'm --

16 MS. KIM: Sure.

17 MR. THOMPSON: I don't want to do the
18 same thing.

19 MS. KIM: Sure.

20 MR. THOMPSON: And then I have an
21 observation on your commentary.

22 MS. KIM: Sure. So in (c)(4), the very
23 last sentence of that section begins with the word
24 "if". "If the consumer does not affirm their intent to
25 withdraw". So with that language, what we would

1 recommend including is to say if the, new language,
2 business asks and the consumer does not affirm the
3 intent to withdraw, the business may -- they'll proceed
4 there. So basically, we would be inserting four words:
5 business asks and the consumer. So that is what we
6 propose including.

7 MR. THOMPSON: So it would read: If the
8 business asks and the consumer does not affirm their
9 intent to withdraw?

10 MS. KIM: Yes.

11 MR. THOMPSON: Thank you.

12 MS. URBAN: And did you have an
13 observation, then, Mr. Thompson?

14 MR. THOMPSON: I did. Well, as I think
15 Ms. Kim was posing somewhat of a policy question for
16 some feedback, and you teed up two scenarios. One was
17 where there is that conflict that is unresolved. The
18 business receives a global optout. They ask do you
19 want to remain in the financial incentive program, and
20 the consumer does not respond. And then you teed up
21 the other question, which was should the business ask
22 and how strong should the requirement that the business
23 ask be in the regulation.

24 My personal opinion on the former
25 question is a decision to participate in a financial

1 incentive program seems like an affirmative act that
2 trumps the passive act of nonresponse. So I'm reading
3 that as if I chose to participate in a financial
4 incentive program, it's almost super -- I don't want --
5 this is maybe too strong, but it's, like, super
6 consent. I did that on purpose very deliberately. I
7 probably had to take some steps to do it. So my
8 passive nonresponse should not trump the active
9 participation; that's on the former question.

10 I think my view on your latter question
11 is yes, the business should ask. And I think the
12 question maybe for the board and for staff is how
13 strong is the requirement that the business ask in that
14 situation.

15 MS. URBAN: Thank you, Mr. Thompson.

16 Could I check my understanding of what
17 you said? I believe that I agree with you and I want
18 to check my understanding of what you said. Oh, now
19 I'm giving you incentive to just, like, if I'm wrong
20 but it sounds good to just agree with me.

21 So in the situation where the business
22 asks, the consumers previously opted in. They don't
23 say anything. They've already opted into that
24 financial incentive program and thus the appropriate
25 outcome is that the business keeps the consumer in the

1 financial incentive programs if the consumer has
2 already opted in in the past. And then in a situation
3 --

4 MR. THOMPSON: Correct, that's what I
5 was saying.

6 MS. URBAN: Okay. Thank you. And then
7 in a situation where the business didn't ask, now that
8 we've changed this to "may", obviously they're not
9 going to get a response from the consumer, so let me
10 just back up.

11 As I understand the order of events --
12 Ms. Kim, please correct me -- at some point, a consumer
13 is opting into a financial incentive program at some
14 point in time. At another point in time, which may be
15 fairly close in time or may be very far in the future,
16 the consumer has set an optout preference signal that
17 the business detects and the business detects that and
18 also realizes that the consumer opted in to their
19 financial incentive program at some point in the past.
20 The business can either at that point ask the consumer
21 or not ask the consumer what the consumer wants to do.
22 If the business asks the consumer and the consumer says
23 keep me in the financial incentive program,
24 everything's copacetic, we're good -- if the business
25 asks the consumer and the consumer says oh, I did that

1 ten years ago. I don't want to be in that financial
2 incentive program, then the business respects that
3 choice and everything is good.

4 If the business asks the consumer what
5 the consumer would like to do and the business does --
6 sorry. The consumer does not respond, the business has
7 given the consumer the opportunity to state their
8 preference and they got no response, previously the
9 consumer had opted into the financial incentive program
10 and so the business can keep the consumer in the
11 financial incentive program.

12 If however that optout preference signal
13 comes in and the business does not ask the consumer
14 what the consumer's preference with regards to that
15 optout preference signal is -- or doesn't give the
16 consumer a chance to clarify, I suppose, because the
17 optout preference signal says I want to opt out -- then
18 the business needs to respect the optout because we
19 don't want to create a situation wherein --

20 Okay. So is that correct technically?

21 Okay.

22 MS. KIM: Yes.

23 MS. URBAN: Because this I suppose is a
24 policy point, so I should make it my --

25 MS. KIM: Yes.

1 MS. URBAN: We don't need to create a
2 situation where there is an incentive for businesses
3 not to ask.

4 MR. THOMPSON: Right.

5 MS. URBAN: Right. We always want to be
6 encouraging the consumer to be able to express the
7 consumer's preference. And so I do support this. I
8 think it was carefully thought through in order to
9 balance the fact that you -- in this world, we're going
10 to undoubtedly have situations where a consumer kind of
11 wasn't thinking about it and they didn't really want to
12 opt out of that financial incentive program. And we're
13 also going to have situations where they do. And we
14 want to be sure that we have clear guidance. So I
15 think that this is a good change.

16 MS. KIM: If I could just -- I know Ms.
17 de la Torre's hand is raised, but I just want to
18 interject, just to clear -- to make sure or to affirm
19 Chairperson Urban's interpretation of this.

20 I also wanted to note that currently how
21 the CCPA regulations read is that with regard to a
22 business who does not ask, they must still honor the
23 optout preference signal. So with regard to how it
24 currently operates, it's actually -- actually, let me
25 take a step back.

1 How CCPA regulations currently operate
2 is a business may ask. But if they do not ask, they
3 still have to honor the optout preference signal. In
4 addition, how it works now, which is a bit of a
5 departure from what we are proposing here, is that if
6 the business asks and the consumer does not respond,
7 they just X out of the question, does not respond to
8 it, they must still honor the optout preference signal,
9 which is the difference between what we are proposing
10 now. Is that in that instance where a consumer does
11 not respond, we are saying that the business may ignore
12 the optout preference signal because -- precisely what
13 Mr. Thompson noted, is that there is an idea that
14 consent was given and consent was given in accordance
15 with 7004 about no dark patterns were included in that
16 consent, and so there is that policy justification.

17 MS. URBAN: Thank you, Ms. Kim. Thank
18 you.

19 Ms. de la Torre and then Mr. Mactaggart.

20 Ms. de la Torre?

21 MS. DE LA TORRE: I have some questions
22 and they are related, but they are not completely a
23 follow-up to what just was said, so Ms. Urban, feel
24 free to maybe allow others to participate and then I
25 can ask at the end.

1 MS. URBAN: Okay. Sure. Let's go to
2 Mr. Mactaggart and then return when it's an appropriate
3 time, Ms. de la Torre.

4 Mr. Mactaggart?

5 MR. MACTAGGART: Thank you. I had a
6 question for Ms. Kim. And I may be missing it, but
7 given that in this statute it's -- financial incentive
8 sounds like it's money, but it's also service
9 difference. You can offer different speed, you could
10 offer a different offering. And in the regs, there is
11 a nondiscrimination 7080. And there is the 7081, the
12 calculating the value of consumer data.

13 I've always believed that one of the
14 things here, which is going to be helpful over time, is
15 sort of transparency, so that when -- at some point,
16 the business says, well, yes because we can charge you
17 150 dollars more per month if your cell phone plan
18 includes us selling your location, they have to
19 actually tie that to actually the value of your cell
20 phone data, and then people will be sort of, like,
21 what; that's crazy. I'm not going to -- there will be
22 some transparency there. Or they shouldn't be able to
23 use an inflated number, just to kind of push you into
24 something.

25 And so a couple things. I guess one

1 point for Madam Chair would be to say could we in the
2 future look at the financial incentive language here,
3 in this part here and tie it back to the language --
4 statute in 125, where it talks about if that price or
5 difference is reasonably related to the value provided
6 to the business by the consumer's data, and I just
7 didn't see that tie-in here. And even in the
8 definition of financial incentive in the regs, I didn't
9 see it tie in to section 7080 or 7081. I may be
10 missing something, but I just think that the -- I don't
11 want to stop the train right now, but I would like the
12 staff to -- and it's complicated, so I would like to
13 just put it on the agenda for the future, but trying to
14 tie back this difference in price, financial incentive
15 thing to a reasonable relation to the value of the data
16 and start to incent some transparency, where we're
17 starting to get a glimpse into what companies are
18 making by selling our data.

19 MS. URBAN: Thank you very much, Mr.
20 Mactaggart.

21 Ms. Kim, are you comfortable kind of
22 reading back to Mr. Mactaggart the suggestion?

23 MS. KIM: Yes. My understanding of Mr.
24 Mactaggart's comment, and please do correct me if I'm
25 wrong, is that you would like for staff to take some

1 time and look at the difference of price of service --
2 I'm sorry. Let me restate.

3 From my understanding of Mr.
4 Mactaggart's comment is not necessarily related to this
5 provision of 7025 at all, but with regard to generally
6 speaking 7080, 7081, and Civil Code Section 1798.125
7 about the provisions that related to financial
8 incentives that are price or service differences and
9 whether or not they are reasonably tied to the value of
10 consumer data. And wanting to put that on the agenda
11 for future rulemaking to investigate or to analyze and
12 recommend additional language or regulations that
13 pertain to those items; is that correct?

14 MR. MACTAGGART: Yeah, just because
15 right now, the definition of financial incentive in the
16 regs does not tie in to any of those, 7080, 7081, or
17 1798.125. And I think it's a really important -- and
18 this is one of the distinctions we have, compared to
19 the proposed federal bill ADPPA, which didn't have any
20 of this consumer protection. And so I really don't
21 want to see us lose that consumer protection here.
22 Thank you.

23 MS. URBAN: Thank you, Mr. Mactaggart.

24 Do you have what you need, Ms. Kim?

25 MS. KIM: Yes, I do. Thank you.

1 MS. URBAN: Okay. Seeing no further
2 hands on this, I think it would be appropriate to
3 circle back to Ms. de la Torre now.

4 Ms. de la Torre, please go ahead.

5 MS. DE LA TORRE: Thank you, Ms. Urban.
6 I have two questions. I found the explanation of Mr.
7 Thompson and the summary by Ms. Urban really helpful.
8 But I was not sure if we were talking about situations
9 where consumers are logging in versus consumers not
10 logging in, and how the logistics work. Because to me,
11 if the organization doesn't know exactly -- I mean,
12 they have identity of the browser, but they don't know
13 who the person is. I'm not sure how they can
14 operationalize meaningfully an optout of a financial
15 incentive program.

16 MS. KIM: I could speak generally to
17 this, but it really kind of is probably fact-specific
18 as to how businesses operate their financial incentive
19 programs and whether or not it is tied to pseudonymous
20 profiles as opposed to a logged in or, like, an
21 account-specific or consumer-specific situation.

22 So I believe that the optout preference
23 signal, to the extent it's linked to a pseudonymous
24 profile that the business is aware of when the response
25 is related to that optout preference -- when it is

1 related to a consumer profile that is associated with a
2 browser or device, then yes, the business should
3 respond in this manner set forth in (c)(4).

4 If that financial incentive program is
5 linked to a known consumer, like an account with a
6 logged-in kind of situation, then that would be also
7 the distinguishing marker, the determining factor with
8 regard to whether or not -- how the business responds
9 to, say, an optout preference signal that is just sent
10 by a browser or device. I'm not sure if that answered
11 the question, but if -- I'm sure that Mr. Soltani might
12 have additional language, to the extent that you have
13 additional technical questions.

14 MR. SOLTANI: Yeah, I'm happy to drop
15 in. Ms. de la Torre, do you want to kind of restate --

16 MS. URBAN: Well, first I just wanted to
17 check if Ms. de la Torre found Ms. Kim's explanation --
18 if that answered your question.

19 MS. DE LA TORRE: Right.

20 MS. URBAN: Okay.

21 MS. DE LA TORRE: Right. That was
22 really helpful. I think what I take away is that to
23 the extent that the consumer can be identified, then
24 you have to apply that optout to the incentive program.
25 But to the extent -- in general terms, but to the

1 extent that the consumer cannot be identified, it would
2 make sense for a popup coming up, like, you might have
3 an incentive program with us. If there is no
4 identification, I think that would be a potential
5 undesirable outcome that will be confusing.

6 So follow-up question on this. So in
7 the example that Mr. Thompson proposed and Ms. Urban
8 summarized, there's a lapse in time between the moment
9 that the consumer consents and the moment that the
10 consumer is browsing or visiting a site with an optout
11 signal on. What happens if in that period of time, the
12 program changes? Because to me, at the moment that the
13 consumer enter into the program, those incentives might
14 have (indiscernible) disconnect with what Mr.
15 Mactaggart was mentioning, right. Like, if the
16 incentive has changed, the program has changed, then
17 somehow the customer should be made aware of it and not
18 just -- we shouldn't make the assumption that the
19 consent is valid where the relationship has kind of --
20 there has been a long span of time, particularly if
21 there are changes to the program.

22 MS. URBAN: Yes. If it's all right,
23 I -- the way that I see this connecting to what we're
24 talking about now in terms of the provision and the
25 opt-out preference signal is that that is an important

1 policy reason to make sure the structure that Ms. Kim
2 and staff set out is the structure so that -- because
3 one of the scenarios that could happen is precisely
4 what you described, Ms. de la Torre, which is a
5 consumer signs up for a financial incentive program,
6 opt in at .1, we get to time, .2, maybe it's been a
7 long time, maybe something has changed about the
8 financial incentive program, we don't really know.

9 And so if the business doesn't ask and
10 could still not respect the opt out, then we could have
11 a real mismatch between the consumers' preferences and
12 the mismatch. In my view, your scenario is a really
13 important example of when that mismatch could be
14 something that we really do not want to have for the
15 consumer.

16 In terms of the general, the more
17 broader question of if one consents to a financial
18 incentives program at one point in time and then later
19 it changes, I think that that's a broader question and
20 would defer to Ms. Kim to whether it's something that
21 would be appropriate for looking into again for the
22 future.

23 But as you can imagine, Ms. de la Torre,
24 even if the consumer opted into the financial
25 incentives program and never set up an opt-out

1 preference signal, in five years that program could
2 change, and I think you're asking, is the consent still
3 good at that point, and that I think is a question that
4 is not just about the opt-out preference signal, if
5 that makes sense, but that the opt-out preference
6 signal architecture, the regulatory architecture and
7 the statutory architecture around the opt-out
8 preference signal that has been constructed for the
9 opt-out preference signal takes that kind of situation
10 into account.

11 Does that make sense?

12 MS. DE LA TORRE: Yes, yes. Absolutely.
13 So in a high level kind of perspective of what I'm
14 trying to say is notifications are tricky. If we over
15 notify our consumer, the consumer is going to stop
16 looking at the notification. It's going to get
17 navigated away.

18 And so it's not helpful if we're getting
19 too many notifications, but at the same time, they are
20 pretty useful and appropriate in some circumstances,
21 and how do we strike the right balance so that we have
22 experience that I think the intent of the law is
23 proposing, which is a much better experience and
24 navigating online and understanding of the general
25 preferences of the consumer without bombarding with

1 them with notifications at the same time highlighting
2 what is important for them to reconsider, whether they
3 still want to participate at some point in the
4 financial program.

5 So thank you. Yeah. That's exactly
6 where I was trying to go.

7 MS. URBAN: Thank you, Ms. de la Torre.
8 I realized another habit that the Board has, and I am a
9 terrible sort of -- I'm a terrible example of the
10 habit. Sometimes the Board does thumbs-up or things,
11 but also we nod, and there was nodding going on while
12 Ms. de la Torre was talking, and the transcript has no
13 idea that there's nodding going on. So thank you, Ms.
14 de la Torre.

15 And I'm going to pause here, and ask
16 again if Ms. Kim would like to summarize because I
17 would like to be sure that you feel confident that you
18 have guidance from the Board that on this provision and
19 on the proposals the balance that you have struck for
20 now has supported the Board?

21 MS. KIM: Yes. I will go ahead and
22 reiterate that. I think the clear recommendation or
23 the new recommendation that is not already reflected in
24 the modifications in the document would be that we add
25 the language to the last line or last sentence of

1 (c)(4) that says -- that basically states, if the
2 business asks and the consumer does not affirm their
3 intent to withdraw, the business may ignore the opt-out
4 preference signal.

5 We may also, to the extent that the
6 Board -- we can also include language to make clear
7 that if the business does not ask at all, they should
8 still process the opt-out preference signal as is
9 because that is what is currently required under the
10 CCPA regulations, and so as to not further incentivize
11 businesses to not ask so that they can advantage of
12 that provision. That is my understanding moving
13 forward.

14 MS. URBAN: Thank you, Ms. Kim. I see
15 more nods. I'll add mine.

16 MR. THOMPSON: Yes. Agreed.

17 MS. URBAN: Thank you, Mr. Thompson.
18 Ms. de la Torre?

19 MS. DE LA TORRE: Yes. Absolutely
20 agree. Just a small clarification that for financial
21 incentives, the way the laws is structured, it allows
22 for flexibility, but it also creates a potential risk
23 that those incentives might be used to the detriment of
24 individuals that might have -- not the same financial
25 situation, right? Like a discount is not the same to

1 me that somebody who's much wealthier than me or to
2 somebody who's in a worse situation financially.

3 So to me, this specific area of
4 financial incentives and how organizations are reacting
5 to them and whether we're really creating that choice
6 and that fairness, is an area where I will definitely
7 encourage the Agency to be active and monitor,
8 particularly in that space. In the space where we
9 might be creating incentives for groups in society,
10 that's -- might find the (indiscernible) discount very
11 attractive when the actual backend of it is not fair so
12 that the privacy can also be protected.

13 MS. URBAN: Thank you, Ms. de la Torre.

14 MS. KIM: Thank you, Ms. de la Torre.
15 That is so noted. I believe it is similar in vein with
16 Mr. Mactaggart's comments earlier. So, so noted.

17 MS. URBAN: Yes. All right. Ms. Kim,
18 what's next?

19 MS. KIM: What's next? Okay. We're
20 getting close, everyone. With regard to 7025(c)(6), I
21 just want to also note that 7025(c)(6), we had changed
22 may -- I'm sorry, "shall" to "may" to simplify
23 implementation at this time. This was not necessarily
24 something that we had highlighted, but I just want to
25 bring it to your attention for awareness sake.

1 With regard to --

2 MR. THOMPSON: Sorry. I think you said,
3 "shall" to "may," and it was "should" to "may."

4 MS. KIM: "Should" to "may," I
5 apologize. You're right. We had changed the language
6 of "should" to "may." And the reason being is to
7 simplify implementation at this time.

8 With regard to --

9 MS. URBAN: I think Mr. Mactaggart --

10 MS. KIM: Oh, I'm sorry.

11 MS. URBAN: -- would like to ask a
12 question or make a comment.

13 MR. MACTAGGART: Yeah. I just would
14 love to put on the list for future consideration not to
15 let that one drop off. I thought that was a great idea
16 originally, and I'd love to maybe -- it would be great
17 if just, I'm on the web, and I don't have to think
18 about whether I'm opted out or not. I can automatic
19 confirm.

20 It's kind of like my kids, when they
21 unclick their seat belt, the little thing lights up on
22 the dashboard saying, your kids undone a seat belt, and
23 it's just nice to know without me be like, hey, have
24 you guys got your seat belts done up, and it just would
25 be nice to be able to see on a website whether they've

1 opted me out.

2 So it does not need to happen now. I
3 get that it's complicated. I get that it's -- but I
4 think it's something that would be really consumer-
5 friendly in the future.

6 MS. URBAN: Thank you, Mr. Mactaggart.

7 Ms. de la Torre?

8 MS. DE LA TORRE: Yeah. I appreciate,
9 and I understand the reasons why the Agency is making
10 the change, but I also am very supportive of the
11 preference and the idea that Mr. Mactaggart expressed.

12 And in reality, when we think about
13 future iterations of the rules, I think that we're
14 going to have to deal not only with the (indiscernible)
15 we're providing the Agency right now, but with changes
16 that we are not seeing coming in right now, and it
17 might surprise us.

18 I, personally, feel, and I am one of
19 those, hopefully not rare individuals, who click "no"
20 on the banners. I really try to opt out with the
21 difficult system that we have now, and I, personally,
22 constantly wonder if it's working. I'm like, is
23 somebody listening on the other side?

24 And having some form of way for the
25 consumer to just be confident that that's actually

1 happened in a way that is streamlined and simplified
2 will have a lot of value. Thank you.

3 MS. URBAN: Thank you, Ms. de la Torre.
4 I also click and make my choices and make I think
5 privacy protective choices, and hope that I'm not
6 making them into a void. So I also support staff's
7 recommendation to table this for now, and also would
8 like to align myself with Mr. Mactaggart and Ms. de la
9 Torre on considering it more in the future.

10 MS. KIM: Staff appreciates that
11 feedback, and we'll take that under consideration.
12 We're working to move things in an incremental way so
13 that we can quickly put these regulations into place,
14 but certainly I think that's a -- we appreciate that
15 feedback.

16 Moving forward, we're -- I only have --
17 I think I only have one more item left on for this
18 section, and it is regard to 7025(c)(7)(b).
19 7025(c)(7)(b), that is the modification -- this was
20 highlighted in gray. It's one of the gray rows, and I
21 wanted to bring it to the Board's attention.

22 This modification to the example set
23 forth in 7-B -- and that is on page 41, I believe --
24 address that situation number 2 that I had previously
25 alluded to. As you may recall, there are three

1 instances in which a business may introduce some level
2 of friction with regard to opt-out preference signal,
3 and the first was, do you want to apply it to offline
4 sales or identify yourself so that we can apply it to
5 more than just the online browser and device.

6 The second situation is, oh, this
7 conflicts with your pre-existing settings, do you want
8 to opt back in, just clarifying whether or not you
9 really intended to change your pre-existing settings.

10 What we did was we clarified the example
11 to note that the business can't ask Noel, in this
12 instance, to opt back into the sale or sharing for
13 twelve month per Section 7026(k). 7026(k), which is an
14 already existing regulation implements Civil Code
15 Section 1798.135(c)(4) with regard to how many times a
16 business may ask the consumer to opt back in after they
17 have opted out, and there's a restriction of twelve
18 month.

19 Now, we have noted that if the business
20 knows it's Noel, and they've already asked them one
21 time to opt back in, they can't do that every single
22 time Noel comes to that website, especially if they
23 know it's Noel that's coming to that website.

24 We also noted that if you do ask that
25 question, though, you don't fall within the exception

1 of the frictionless response that allows you to -- that
2 exempts you from posting the "do not sell or share my
3 personal information" link.

4 So we just wanted to bring that
5 modification to the Board's attention just so that it's
6 clear. We wanted to make the example especially clear
7 as it relates to other provisions in the regulations.

8 MS. URBAN: Thank you, Ms. Kim. That
9 makes sense to me.

10 Other comments or questions from the
11 Board? Yes, Mr. Thompson?

12 MR. THOMPSON: I'm fine with the change
13 in the proposal, but would ask as we move -- as we
14 continue on this rule making in the future, that we
15 think about what those time periods are and what the
16 basis for them are. And a year sounds good, but I
17 just --

18 I would love for us to know that there
19 is a basis, either in consumer expectation, business
20 preference, et cetera. As we go forward, hearing from
21 the regulated and the public about those intervals
22 might be helpful. I think a year is a great starting
23 point, but we may want to refine that down the road.

24 MS. URBAN: Thank you, Mr. Thompson.
25 And I will just observe that the modifications will

1 have the benefit of the fifteen-day comment period as
2 well. So there will be an opportunity for a comment on
3 what the modification is saying now, and I think your
4 point about, again monitoring and keeping an eye on
5 things is very well taken.

6 Anything else from the Board in terms of
7 questions or comments on this?

8 All right. Ms. Kim?

9 MS. KIM: I believe that's all for 7025.
10 Did you -- I'm not sure -- I don't think there's
11 necessarily any need to reiterate the direction with
12 regard to 7025(c)(7)(b) because it is what is the
13 language inside the proposed modifications.

14 MS. URBAN: Um-hum.

15 MS. KIM: So just want to make sure of
16 that as for 7025, that is all the existing points I
17 have designated or the staff has designated for
18 discussion.

19 MS. URBAN: Thank you very much, Ms.
20 Kim.

21 Mr. Thompson?

22 MR. THOMPSON: As we closed out 7025, I
23 wanted to just make the observation, this is a big
24 stride forward, and thank the staff and the
25 subcommittee members and anyone else who were involved

1 drafting the initial proposed draft and the revisions.

2 I think our comments and our discussion
3 reflect that the work that was done was really
4 thoughtful and deliberative, and I'm glad that we're
5 doing this, and I think it represents a big step
6 forward, and I didn't want this moment to pass without
7 acknowledging that.

8 MS. URBAN: Thank you very much, Mr.
9 Thompson. I quite agree. There's a lot of complicated
10 thought work to do and balancing to do, and I really
11 appreciate the staff's technical work on this issue and
12 the Board's careful consideration of it.

13 Ms. de la Torre?

14 MS. DE LA TORRE: I just want to say
15 (indiscernible).

16 MS. URBAN: Thank you.

17 MS. KIM: Thank you, everyone. I
18 believe our staff, who is all listening right now,
19 really appreciates that as well.

20 MS. URBAN: It shows that there's a lot
21 of thought, a lot of work, a lot of expertise that's
22 goes in, that has gone in to both the proposed rules,
23 the original draft proposed rules, and the
24 modifications.

25 So we have just under ten minutes before

1 we take our lunch break. Ms. Kim, I will ask for your
2 judgment in terms of whether you would like to
3 introduce the next topic or whether you would like to
4 wait?

5 Mr. Thompson would like -- go ahead.

6 MS. KIM: I agree. The next section is
7 7002. So this is a really good --

8 MS. URBAN: Okay.

9 MS. KIM: -- breaking point for our
10 lunch break.

11 MS. URBAN: Yes. I know that was on
12 your list for discussion that staff recommends for
13 discussion. All right. Let's take our late lunch
14 break. We will reconvene at 2:30, unless someone tells
15 me they need more time. Please do now. You have the
16 opportunity, and it's fine, and otherwise, we'll come
17 back at 2:30.

18 Okay. Thumbs-up for the transcript.

19 Thanks, everyone. See you back here at 2:30 p.m.

20 MS. KIM: Thank you.

21 (Whereupon a recess was taken)

22 MS. URBAN: Welcome back, everyone. I
23 understand we had some tech issues. Mr. Sabo, are we
24 ready to continue now?

25 MR. SABO: Yes.

1 MS. URBAN: Okay.

2 MR. SABO: We're recording.

3 MS. URBAN: Okay. Thank you very much.

4 The California Privacy Protection Agency is now
5 returning from break, and we will continue our
6 discussion of agenda item number 3. And I believe that
7 Ms. Kim was ready to introduce the next item.

8 MS. KIM: Yes, I was. So thank you. I
9 hope you all had a nice lunch break.

10 MS. URBAN: Actually, Ms. Kim, just
11 because it has been a fairly long conversation, would
12 it be helpful if I just mentioned where I understand
13 that we are and where we're headed at the high level?

14 MS. KIM: Sure.

15 MS. URBAN: Okay. So we've been walking
16 through the items that are highlighted in gray in the
17 chart with some related discussion. I believe this
18 might be the last of those items that Ms. Kim is going
19 to introduce.

20 Then, our plan is to move to the batched
21 items and also to circle back on things that we have
22 saved for discussion then, and I know I have something
23 from Mr. Le, and I have something from Ms. de la Torre,
24 and it is possible that Board members might want to
25 pull an item that hasn't been mentioned yet out of the

1 batched items. So there will be the opportunity for
2 that, and we'll have a discussion on those items. Just
3 so that everyone who's been dipping in and out has a
4 sense of where we are.

5 And now, I'll turn it back over to Ms.
6 Kim. Thanks very much.

7 MS. KIM: Thank you. So what I have on
8 our last gray item for discussion by the Board is
9 Section 7002, and that is the restrictions on
10 collection and use of personal information. Some
11 people have designated this our data minimization
12 section, and we can talk about it, and I'm happy to
13 walk through the changes we've made here.

14 To start off with, we received many
15 comments in this section, both again, in support of the
16 regulation as well as addressing some concerns that
17 they have about the regulation, itself. From a high
18 level, the general themes that we saw with regard to
19 this section was first that the comments claimed that
20 the regulation doesn't consider the statutory
21 requirements for notice and opt out.

22 Some noted that the average consumer
23 test is not specified or defined or is ambiguous,
24 confusing, or too subjective. Others have noted that
25 the regulation lacks any type of balancing test or

1 objective guide for companies to apply, and that it
2 should apply balancing tests such as those in GDPR or
3 other jurisdictions.

4 Some note that other jurisdictions do
5 not use the "average consumer standard" and may
6 conflict with those laws and/or the average consumer
7 test hampers business' ability to process data for
8 backend processes that maybe the consumer is not aware
9 of.

10 That being said, there are a number of
11 commentators who expressed their support of the
12 regulation. They support the use of consumer
13 expectations as part of the business' assessment as to
14 whether the processing of personal information is
15 reasonably necessary and proportionate to achieve that
16 purpose.

17 And generally speaking, they support the
18 concept of compatibility standard for businesses or
19 proportionality requirements for businesses.

20 In light of many of these comments as
21 well as further analysis by our staff, we made some
22 significant modifications to Section 7002, and I want
23 to walk the Board through those changes.

24 First off, I wanted to note that we
25 spent a lot of attention to address how each portion of

1 Civil Code Section 1798.100(c), 100(c) statutory
2 requirements should be understood by businesses and
3 consumers. So we spent some time really emphasizing
4 and explicitly stating in Subsection A what 1798.100(c)
5 says. And we organized each aspect of the law clearly
6 in each of these subsections and provided factors for
7 determining each aspect of the law. So really, this
8 was meant to be helpful guidance with regard to
9 understanding and interpreting Section 1798.100(c).

10 So just on a high level, Section C sets
11 out the law. It's directly from 1798.100. It says --
12 it explains how 1798.100(c) has to be read in
13 connection with 1798.100(a). So this is that portion
14 that basically breaks down that -- hold on. Let me
15 bring up my document just to make sure I'm not
16 citing -- speaking about it incorrectly.

17 But it specifically says, "in accordance
18 with Civil Code Section 1798.100(c), a business'
19 collection, use, retention, and/or sharing a consumer's
20 personal information shall be reasonably necessary and
21 proportionate to achieve."

22 Subsection A, the purpose for which the
23 personal information was collected or process as that
24 is understood by the requirements set forth in
25 Subsection B, and then two, another disclosed purpose

1 that is compatible with the context in which the
2 personal information was collected.

3 And then we kind of note to the fact
4 that Subsection C helps gives the factors to understand
5 what is compatible within the context the personal
6 information was collected.

7 Now, Subsection B explains what the
8 reasonable expectations of the consumer would be. So B
9 sets forth the interpretation of (a)(1). So the
10 purposes for which personal information was collected
11 or processed shall be consistent with the reasonable
12 expectations of the consumer. And we believe that is
13 consistent with the guidance provided in the Civil Code
14 Section 1798.185(a)(10), which specifically says,
15 "notified purposes should be consistent with the
16 consumer's expectations", and it also generally, the
17 factors included within Subsection B considers other
18 jurisdictions and how they understand or factor in --
19 or take certain things into consideration when
20 determining what purposes are to be used for the
21 personal information collected in process.

22 Now, I can go into any of the specific
23 factors, but instead, for right now, I'm just going to
24 stay at a high level and describe each of the
25 subsections. Moving forward with regard to Subsection

1 C, this explains (a) (2), what are the purposes that are
2 compatible with the context in which personal
3 information was collected, and we provide some helpful
4 guidance with regard to what should be considered in
5 determining compatibility.

6 And then Subsection D explains what is
7 reasonably necessary and proportionate. It
8 specifically emphasizes how every purpose identified in
9 Subsection (a) (1) or (a) (2), whether it be the purpose
10 for which personal information was collected or
11 processed or another compatible purpose or a disclosed
12 purpose that is compatible with the context in which it
13 was collected.

14 In any/either of those situations, the
15 amount that is collected and used and retained or
16 shared should be reasonably necessary and proportionate
17 to that purpose.

18 We do have a new item within that
19 section of D -- and I'll come back to it, but I just
20 want to explain that Subsection D is really that
21 concept of data minimization. Like, for whatever
22 purpose you're collecting, do you still have to
23 consider the minimum amount that is really necessary to
24 accomplish that purpose and limit it to that, or limit
25 it within that proportionality of that minimum amount.

1 With regard to Subsection E now, this is
2 the natural -- explains what happens when a business
3 can't meet the requirements of (a)(1). It is taken
4 from the statute and explicitly gives the guidance that
5 the business must obtain the consumer's consent with
6 regard to any purpose that does not fall within (a)(1)
7 or (a)(2).

8 And then Subsection F explains that the
9 disclosures about disclosed purposes should be in the
10 notice at collection, and that is reflected or based
11 upon 1798.100(a).

12 As I mentioned or I noted, there is a
13 new item that we would like to include in 7002(d). And
14 again, 7002(d) is the section that talks about
15 reasonably necessary and proportionate. We suggest
16 adding language to clarify that even for purposes for
17 which a consumer consents to the collection use,
18 retention, sharing of that personal information, the
19 business must still undergo this reasonably necessary
20 and proportionate analysis.

21 I think that is consistent with how
22 100(c) should be read, but we just want to make that
23 additional clarification to note in D that both for any
24 purpose identified in (a)(1), any purpose identified in
25 (a)(2), and any purpose identified in Subsection E,

1 which is where a consumer obtains -- or the business
2 obtains consent, all of those purposes should undergo
3 the same reasonably necessary and proportionate
4 analysis to ensure that whatever use, sharing,
5 retention of that information is reasonably necessary
6 and proportionate to achieve that purpose.

7 So that is a high level. I imagine this
8 is going to be a topic that the Board members may have
9 opinions about. I'm happy to field those questions and
10 provide guidance.

11 MS. URBAN: Thank you very much, Ms.
12 Kim. And I think that it probably is a good idea to
13 stay at the high level now because the high level,
14 itself, is interlocking. The statute is interlocking,
15 and the regulation is interlocking.

16 I just want to say that I really
17 appreciate and am impressed with the work that the
18 staff has done here to help regulated entities and
19 consumers understand the relationship among the
20 different subsections of 1798.100. I think there's
21 real value in both quoting the statute and then putting
22 it together in such a way that people can easily follow
23 it.

24 And I certainly agree with your last --
25 the new suggestion, which would be an additional

1 clarification in the regulations that just helps people
2 read the statute and then gives them guidance that
3 makes it more concrete. So I really appreciate the
4 work on this one, in particular. I mean, all of them,
5 but I think this is a very helpful regulation.

6 So thank you, Ms. Kim, and I'm sure
7 Board members will let you know if they don't want to
8 stay at the high level, and we can get there as well
9 when we get there.

10 All right. Comments or questions? I
11 have Ms. de la Torre to start us off.

12 MS. DE LA TORRE: Thank you. I want to
13 go a little bit on the background on why we have this
14 rule? I'm trying to remember this, and I don't think
15 it was ever listed in the topics that were assigned to
16 the subcommittees. So I know that Mrs. Urban knows
17 better than me because it came from her subcommittee.
18 So is it correct that it was never specifically
19 assigned? I mean, it was not specifically assigned the
20 Board, and it is not mandatory for this deadline that
21 we have.

22 How did this committee take on this
23 task, and why do you prioritize it, and how was it
24 assigned, I guess?

25 MS. URBAN: Thank you. As a mechanistic

1 matter -- I hope that I will remember enough, Ms. de la
2 Torre. We were on the regulations subcommittee
3 together. So now, I'm scared.

4 But as I know you will recall, Ms. de la
5 Torre, and to refamiliarize everyone else, the very
6 beginning of the process when we didn't have the
7 resources of staff, Ms. de la Torre and I were the
8 regulation subcommittee, who put together the first --
9 the two subject matter subcommittees and the rule
10 making process subcommittee, the plan for that.

11 And as that part of that task, we
12 identified a number of provisions for regulation. Most
13 of them are drawn from 185 -- excuse me, 1798.185, and
14 there was a sense I think between Ms. de la Torre and
15 myself, at least, which we conveyed to the Board -- and
16 I think had agreement. I mean, we didn't vote on this
17 like since, but consensus that in our first, like, most
18 highest priority was anything that was mandatory in the
19 first rule making package. And so that was the reason
20 why we kind of marched through 185. We also had a
21 couple of other items on there.

22 And the reason we did it that way is
23 because again, remember, we didn't have the benefit of
24 staff resources, and the Board operates under Bagley-
25 Keene, and we had to be very clear as to who would be

1 working on what items so that we didn't accidentally
2 have more than the two members on a subcommittee
3 working on the same issue as we're bound by Bagley-
4 Keene.

5 When we got through that list, we had
6 allocated and everybody knew who was working on what.
7 In November, I think it was, we finished as a group, as
8 a Board, the allocation, which Mr. Thompson and Ms. de
9 la Torre shepherded for us as part of the rule making
10 process subcommittee, and then we left the rest of it
11 to staff, now that we were developing resources of
12 staff, who would be able to direct traffic without
13 accidentally putting -- giving more than the two
14 members on a subcommittee information about the same
15 thing.

16 And that, I think, was the right stage
17 to do that because we were then at the point where we
18 had allocated the kind of chunks that we could see, and
19 staff was in the best position, just as a practical
20 matter, too, to understand how things interacted. And
21 so they directed traffic.

22 I obviously don't have any insight into
23 the new rule subcommittee's work under Bagley-Keene,
24 other than the items I know were allocated to it. So
25 there may well be things in addition that staff have

1 brought to that subcommittee for sort of guidance and
2 discussion that we will -- and I know there are things
3 that are allocated that we will see at a future Board
4 meeting.

5 Similarly with the update CCPA rule
6 subcommittee, Angela Sierra and myself, there were
7 things that staff included that worked together with
8 the rest of the regulatory package. I think it made --
9 yes. I do believe that this would have been one of
10 them because I don't remember it being on our initial
11 list. I don't recall directly if there are others. We
12 can all look at the list and look at the most -- but
13 anyway, so that's how the process worked.

14 In terms of why it's in there, my own
15 thinking about it -- and again, this was -- staff was
16 directing traffic, but I think it makes sense for it to
17 be in there, both because of the fact that regardless
18 of whether it's listed in 1798.185, as I said, I just
19 think it's helpful to help people parse and apply that
20 provision, and also, it's intimately connected to the
21 notice requirements, and the notice requirements are
22 interrelated.

23 So that is my understanding of this
24 history. I hope I got it right. And a little bit
25 about how I, personally, think that it connects.

1 MS. DE LA TORRE: Thank you so much for
2 that helpful explanation. The reason why I was asking
3 is because I know the public is aware of the
4 presentations they have come forward from the
5 committees, and there's very specific lists, and they
6 won't find this particular item in the list.

7 And I, myself, was wondering why this --
8 quite honestly, when we talked about directing traffic,
9 our allowing the staff to direct traffic, I'm not
10 really sure that I understood the way the other
11 subcommittee understood it. But this is just part
12 of -- yes, the way we work is so isolated, but I
13 totally support the fact that it was allocated to the
14 CCPA subcommittee. I think it was better resource and
15 more able to take on the task. I just wanted to make
16 sure that we communicated to the public why this is
17 here. Thank you.

18 MS. URBAN: Sure. Thank you, Ms. de la
19 Torre.

20 Are there additional comments or
21 questions on this provision?

22 MS. DE LA TORRE: I have --

23 MS. URBAN: Mr. --

24 MS. DE LA TORRE: Go ahead.

25 MS. URBAN: Mr. Le, Mr. Mactaggart?

1 MR. LE: Yeah -- no. I just wanted to
2 say that, yeah. I didn't see this. This wasn't part
3 of my subcommittee, but I was very glad to see this
4 language. I've long thought that this notice-and-
5 consent approach where -- you know, businesses can kind
6 of notice away any use of data, was quite flawed, and
7 with this connecting the use of data to people's
8 reasonable expectations, seems to me a much better
9 approach. So I'm very happy to see this language, and
10 I do think what we see here will factor into the
11 comments I have around 712 and 713 later on.

12 MS. URBAN: Okay. Thank you very much,
13 Mr. Le.

14 And just to clarify, the concept that
15 you've just described is in the statute, and the
16 regulation helps apply, helps people apply the statute.

17 MR. LE: Right. And yeah. Sorry.
18 There were so many comments around what's explanation,
19 and now there's more factors, a lot more explanation of
20 how businesses can approach this.

21 MS. URBAN: Yes. Thank you very much.

22 Mr. Mactaggart?

23 MR. MACTAGGART: Well, this is all where
24 you all part or unhappy that I joined the Board because
25 I don't have a 30,000-foot-level comment. I have a

1 two-foot comment. However, first of all, I love the
2 regs. If I could just ask, in the examples, like for
3 example, 702(b)(2) and (b)(4), it's a small little
4 thing, but what I would love if we said that when the
5 consumer has an expectation that the business' use of
6 their fingerprint will be used for the purpose of
7 unlocking a mobile device, if we could just in all
8 those examples put, "will only be used" or "will be
9 limited to the use of."

10 I just want to further lockdown this
11 reasonable expectation that -- there's not a like, oh,
12 and we also used it for this. And I know that that's
13 generally what it said, but my suggestion -- and we
14 don't need to redo it here, my suggestion would be
15 where possible if Lisa -- I'm sorry, Ms. Kim, if the
16 staff could look at this and potentially see any areas
17 where you could put a -- because there's a number of
18 places where you could put "limited to" or "only used
19 for the purposes of," and I think it just clarifies
20 again in everybody's mind that that's only what you're
21 using for. My two cents.

22 MS. URBAN: Thank you, Mr. Mactaggart.
23 Can I offer a friendly amendment?

24 MR. MACTAGGART: Yes.

25 MS. URBAN: I support the two-foot

1 intervention. Thank you for it. Is it okay with you
2 if staff take that and use their legal analysis to
3 decide whether that is something that is required
4 legally, would be helpful legally, just to be sure if
5 we're going to parse the individual words, that is does
6 meet the goals that you've just articulated?

7 MR. MACTAGGART: Sure. Yes. That's
8 fine. And I would be interested to find out if it's
9 not the case, why it wouldn't be the case.

10 MS. URBAN: Hmm.

11 MR. MACTAGGART: So if they're not going
12 to be able to say it, maybe then can tell us why just
13 because it feels -- it might be belt and suspenders,
14 but sometimes that's a good thing when you're dealing
15 with --

16 MS. URBAN: Yes.

17 MR. MACTAGGART: -- a lot of --

18 MS. URBAN: And I'll just say, I don't
19 know. I just -- I think that I want to be cautious.
20 Just as a lawyer, sometimes the way interpretation is
21 done, sort of in a formal manner, something that seems
22 like it adds clarity, doesn't, and I don't think that's
23 the case here. I don't know that that's case here. I
24 just wanted to be sure that staff had the discretion to
25 do the proper analysis on that and implement the change

1 that you're looking for, which is to be absolutely
2 clear about the limits here. And that is something
3 that I certainly support.

4 Okay. Other comments or questions? Ms.
5 de la Torre?

6 MS. DE LA TORRE: I'm on mute. I'm
7 sorry. So I was hoping to go section by section, and
8 maybe I can share the question that I have, and Mrs.
9 Kim can answer, and I don't know if other Board members
10 might have additional comments or questions. Would
11 that be a good approach to follow as it is a
12 structuring into different positions?

13 MS. URBAN: Ms. Kim, can we move from
14 the 30,000-foot view?

15 MS. KIM: Yes, by all means.

16 MS. URBAN: We went to the 200-foot
17 view, and I guess maybe now, Ms. de la Torre, we're at
18 the 1,000-foot view. I don't know. But if that's all
19 right with you, Ms. Kim, I'm going to let Executive
20 Director Soltani give us the guidance or make his
21 comments, and then we can go through as Ms. de la Torre
22 suggested.

23 MR. SOLTANI: I just wanted to, if I
24 could, just make an observation based on the earlier
25 conversation, which is that rather than potentially

1 requesting that staff interpret the statute, if it
2 would be possible to just give guidance to staff on the
3 direction that you'd like us to go, since that would
4 make, similar to the earlier conversation with regards
5 to the changes Mr. Mactaggart suggested, letting staff
6 interpret -- or sorry, implement those changes is
7 often, particularly in a really kind of high level and
8 core piece of statute, I think would be more effective
9 than having Lisa or others try to respond to very
10 detailed legal questions in real time. So that would
11 be my only suggestion based on the earlier conversation
12 this morning.

13 MS. URBAN: Thank you, Mr. Soltani. I
14 think that we got that message earlier, and appreciate
15 Mr. Mactaggart's willingness to let staff, for example
16 analyze the little thing, but yes. Absolutely. We
17 don't want to try to do legal interpretation on the
18 fly.

19 All right. Ms. Kim, Ms. de la Torre was
20 hoping to go somewhere below 30,000 feet. Are we ready
21 to do that?

22 MS. KIM: Of course.

23 MS. URBAN: Okay. Ms. de la Torre?

24 MS. DE LA TORRE: Thank you. First of
25 all, I just want to second the words of Mr. Le. I

1 think that this particular provision of the law in CPRA
2 moves the needle for work considerably by moving us
3 away from the notice and consent framework that privacy
4 legislation has been traditionally crafted around in
5 the U.S. more into a purpose limitation, secondarily, a
6 purpose analysis, and the data minimization.

7 This is very common. I would say this
8 is universal in jurisdictions that have data protection
9 laws, and it's also something that has been in place
10 for a very, very long time. Like, probably from the
11 70s, there were revelations that were implemented into
12 this kind of approach. So I'm very happy to see that
13 happen here in California.

14 So the 7002(b) -- and if Mrs. Kim, if I
15 understand it correctly -- is our initial purpose
16 analysis. How will this business identify what is an
17 appropriate purpose for using the data based on the
18 initial collection. Interrupt me if I'm wrong, but I
19 think I just said that a moment ago, and that's how it
20 reads to me.

21 So one question that I had is in
22 Proposition 24, in the section that talks about the
23 intent of the law, they've set really good -- I think
24 there is really good language that supports this idea
25 of initial purpose. It's in section 1(b)(3). I'm

1 going to read it out loud.

2 And it says, "business should collect
3 consumer's personal information only to the extent that
4 it is relevant and limited to what is necessary in
5 relation to the purpose for which it is being
6 collected, used, and share."

7 I didn't see that link into the rules,
8 but it might be that it's in the ISOR. Like there is a
9 cross-reference to it in the ISOR. Could you help me
10 understand if that's the case?

11 MS. KIM: I believe we do reference it
12 in the ISOR as a consideration as to how we drafted
13 Section 7002.

14 MS. DE LA TORRE: Okay. That's great.
15 If that was not the case, I wanted the chance to list
16 it because I think it will make it much stronger from
17 the perspective of our statutory authority to implement
18 an initial purpose limitation requirement.

19 Another thing that I think I heard you
20 mention is that this comes from other jurisdictions,
21 and I am familiar with many jurisdictions that have
22 this purpose, but what I have not seen in other
23 jurisdictions is the factors that we have here.

24 So the first sentence, "the purpose for
25 which the personal information was collected, the

1 process shall be consistent with the reasonable
2 expectation of the consumer", that, I think has my full
3 support, and I've seen it in many places.

4 But I have never seen the five specific
5 factors that we list here. Did we take them from
6 another jurisdiction, or was that more the Agency
7 created it based on the language of CCPA?

8 MS. KIM: So I just want to clarify.
9 With regard to the way Subsection A is structured is
10 that it is really mapping out Section 1798.100(c),
11 which is the actual language of the statute. So with
12 regard to our ISOR, we do refer to the intent and
13 purposes that are set forth with regard to Proposition
14 24, but with regard to the actual regulation, itself,
15 we made it a point to be very specific and closely
16 aligned to the actual statutory language, and that is a
17 decision -- that is why it was crafted in the way that
18 it was.

19 With regard to the different factors, I
20 will have to go back and look at my notes, but
21 generally speaking, we took into consideration
22 different jurisdictions and different types of tests
23 that are out there with regard to determining purposes
24 for which personal information were collected, some of
25 which include different tests that are set forth in

1 GDPR.

2 But to note, GDPR is a different statute
3 than the California Consumer Privacy Act or Protection
4 Act. It doesn't exactly always match in accordance
5 with it, but it's certainly something that we took into
6 consideration and used to help us understand and help
7 us give guidance as to how to walk different statutory
8 components of 1798.100(c).

9 MS. DE LA TORRE: I'm going to --

10 MS. URBAN: I have to -- maybe it is 3
11 o'clock, and I should -- but I do have a law professor
12 sort of urge at the moment to say that ISOR stands for
13 Initial Statement of Reasons, and GDPR stands for
14 General Data Protection Regulation and in CRPN. So
15 thank you for indulging me in that little interlude.

16 And I believe, Ms. de la Torre, you were
17 going to follow up with another question, perhaps?

18 MS. DE LA TORRE: I'm very familiar with the GDPR,
19 and it does have that initial purpose. It doesn't have
20 factors. What it has is -- so initial purpose -- what
21 it has is a list of requirements, not factors. So you
22 have to obviously make sure that it aligns with the
23 consumer reasonable expectation, and then the
24 requirements are, you have to be clear from the outset
25 on why you're collecting, comply with the

1 recommendation obligations, comply with (indiscernible)
2 related obligations.

3 And obviously, this -- and we're going
4 to move to C now. I'm sure that if you were to change
5 the purpose, then you have to run your new purpose
6 through the secondary purpose test.

7 So the secondary purpose test does have
8 factors. I've seen them everywhere, but I've never
9 seen factors for the initial purpose. Maybe they are
10 coming from jurisdictions I'm not familiar with, Mrs.
11 Kim?

12 MS. KIM: No. I think it's --

13 MS. DE LA TORRE: Or maybe --

14 MS. KIM: It's factors that -- so just
15 to be clear, again, the CCPA and the amendments to the
16 CCPA by the CPRA are not the GDPR. It's a different
17 framework in which it functions. While I believe CCPA
18 took into consideration and had the benefit of having
19 GDPR exists prior to its enactment, this is not a --
20 like, it's not the same framework, and so what we have
21 done is interpreted or set forth the provisions that
22 are in the Civil Code section and did our best to
23 provide helpful guidance that is informed, not only
24 about other jurisdictions, just informed by various
25 other considerations. It may not be solely GDPR. It

1 could also be taking into consideration federal laws,
2 how the FTC has worked with regard unfair competition
3 laws --

4 MS. DE LA TORRE: Right, right, right.

5 MS. KIM: -- generally, consumer
6 expectations. There's so many different kind of legal
7 considerations that I think informed our inclusion of
8 certain factors into this test. So that's what I --

9 MS. DE LA TORRE: Okay. So let me ask
10 you this question another way because I think that
11 maybe we're saying the same thing, but maybe I'm not
12 expressing my idea clearly. So we don't -- we're not
13 reading the factors in 7002(b) as factors under which
14 some calculation under those factors will lead to
15 disregard the reasonable expectation of the consumer?

16 That's a requirement that doesn't go
17 away because of a balancing of factors, right? So
18 that's --

19 MS. KIM: I'm sorry. I'm not sure if I
20 understand the question.

21 MS. DE LA TORRE: So it's perfect
22 because I'm probably not making myself clear. So the
23 way I think about initial purpose, that's a
24 requirement. It's a requirement that there has to be a
25 coordination between the purpose and the reasonable

1 expectations. So it's not subject to factors. It's a
2 requirement.

3 If there are factors, it seems to me
4 that there is some kind of balancing or equilibrium,
5 and if the factors point in one direction, then we have
6 to align with the consumer's expectation, and if they
7 point in a different direction, you might not have to
8 align with the consumer expectation. I mean --

9 MS. KIM: No. I don't --

10 MS. DE LA TORRE: -- they -- the only --

11 MS. KIM: Sorry. I apologize. I didn't
12 mean to interrupt you, Mrs. de la Torre. What I wanted
13 to say is no. I don't think that that is the case.
14 What the requirement is that this purpose for which
15 personal information was collected or processed has to
16 be consistent with the reasonable expectations of the
17 consumer --

18 MS. DE LA TORRE: Correct.

19 MS. KIM: -- and the factors are
20 provided as helpful guidance because many people have
21 asked, well, what are the reasonable expectations of a
22 consumer? How do I figure that out? And those factors
23 were really included to give guidance to businesses to
24 understand, like, here's what should be considered when
25 you're trying to determine what the reasonable

1 expectations of a consumer are.

2 MS. URBAN: Thank you, Ms. Kim.

3 Mr. Mactaggart?

4 MR. MACTAGGART: Yeah. So if I'm
5 understanding, Ms. de la Torre, you're just trying to
6 clarify that -- where these factors came from, and then
7 are they conclusive or sort of are they, did they come
8 down the tablet, and are they forever immutable? And I
9 guess my point would be the statute specifies
10 reasonable expectations, and it specifies the context
11 in which they're collected.

12 And this is where it tasks originally
13 the AG and now the Agency with coming up with
14 regulations. And so this would be, in my mind, 185(b)
15 for the regulations to implement the statute.

16 And when I went through them, I thought
17 it was a pretty good list of -- and again, I guess I'm
18 new to this process. So I apologize if I'm talking too
19 much or whatever. But it does feel like this is a good
20 starting spot. And as they change, if it turns out
21 there is something that's missing, we could probably
22 add it.

23 And I had my little issues about the
24 wordsmithing, but I think it's a pretty good -- I mean,
25 are there ones that for you, you think, oh, that

1 shouldn't be in there? Or did I look to this --

2 MS. DE LA TORRE: No, no. I was just
3 surprised by the approach, but I think Mrs. Kim just
4 explained it, that these are not factors that might
5 lead to disregarding the consumer's expectations, that
6 they are just factors to help businesses --

7 MR. MACTAGGART: Correct. That's my
8 interpretation.

9 MS. DE LA TORRE: -- derive --

10 MR. MACTAGGART: I don't want to speak
11 for Ms. --

12 MS. DE LA TORRE: Okay.

13 MR. MACTAGGART: That's my --

14 MS. DE LA TORRE: I think that's what
15 she just said. That makes sense to me.

16 MS. URBAN: Yeah. We can't change the
17 foundational requirements of the statute, but I mean,
18 the Agency cannot, but the Agency can help people
19 implement it.

20 MR. MACTAGGART: Same thing for C, they
21 go through -

22 MS. URBAN: Exactly.

23 MR. MACTAGGART: -- okay. Well, what is
24 another disclosed purpose? It's compatible. They're
25 doing -- the staff is doing their best to come up with

1 those, and again, I thought they were a good starting
2 point, especially, I really liked (c)(3), which I
3 thought was an innovative approach. I'll stop talking,
4 but I thought it was a reasonable approach to the task
5 that the Agency is given under the statute.

6 MS. URBAN: Thank you very much, Mr.
7 Mactaggart. Mr. Thompson?

8 MR. THOMPSON: I actually, what Mr.
9 Mactaggart's last comment was, was an excellent segue
10 and very similar to what my observation was, which I
11 think the staff has a difficult job to do with
12 defining -- meeting the mandate that's in the statute
13 to align further with consumers' expectations is the
14 way I read it in the underlying statute.

15 And when I first read our ISOR in the
16 regulations, I struggled with, okay. How do we
17 determine what consumers' expectations are, and those
18 change over time. I have kids. Their expectations are
19 different than mine. I grew up in a different era
20 where all the collection of this information didn't
21 exist. So my expectations are different than somebody
22 who's fifteen.

23 But I think that this is an excellent
24 way to start to express that. I assume it's going to
25 take refinement over time and clarification, but I

1 thought the examples and the illustrative examples were
2 very helpful. To take an amorphous concept and put it
3 into words was a big task, and I think the staff did a
4 good job. So I just wanted to share that.

5 And I think the approach makes sense to
6 me, but I also want to recognize that we're going to
7 have to probably continue to refine over time. I don't
8 have a proposed change, but this is -- somebody used
9 the phrase, is this immutable? This is an area where I
10 think some refinement will, over coming years, will be
11 needed because people's expectations -- what a
12 reasonable expectation by a consumer is will change
13 over time.

14 MS. URBAN: Thank you very much, Mr.
15 Thompson. If I could take Chairperson's prerogative
16 and offer a comment in response to Mr. Thompson and
17 other things that I've heard the very good conversation
18 now. Expectations are likely to be affected again by
19 technological change, by social change, by many things,
20 and that is one real power of having a statute that
21 specifically has the Agency do implementing regulations
22 because the regulations -- nothing is immutable.

23 Let me just pause and say, nothing is
24 immutable. The legislature can amend the statue. At
25 the same time, the statute is more stable and is

1 intended to be stable, and the regulations are intended
2 to be stable guidance, but they are the place in which
3 we can help reflect and respond to changes as they come
4 up.

5 I've also been listening to Ms. de la
6 Torre's sort of questions and the expertise that's
7 embedded within them with a lot of interest, and I
8 don't know -- this may be a little too nerdy of a
9 comment, but okay, I'm going to say it anyway, I think
10 that the approach that staff have taken with 7002 is a
11 really elegant balance that takes into account -- or at
12 least when I read it, I think it's taking into account,
13 both some of the sources they looked at, like the GDPR,
14 which is a valuable thing to do, of course, because we
15 want to be as coherent as we can in general, and also
16 takes into account the fact that, of course, California
17 is its own jurisdiction, but also that California is in
18 the United States, which has its own history with these
19 concepts.

20 The Fair Information Practice Principles
21 from which data minimization and purpose disclosure
22 both come were developed in the 1970s in the United
23 States, and then as Ms. de la Torre alluded to earlier,
24 eventually, some of the things in the Fair Information
25 Practice Principles, FIPPS, kind of got dropped in the

1 overall framework, and we ended up with sort of some
2 kind of notice and then choice.

3 But and at the same time, Europe was
4 taking a more complete approach. And so we have both
5 of those things, the histories, and both the statute, I
6 think and staff's intervention take into account, like
7 we were in one place in the U.S. and another place in
8 Europe, and we would like to be cohesive and coherent
9 as we can, and reflecting that history of the FIPPS as
10 well, both in the statute and in the regulation.

11 So I just think it's an elegant -- it's
12 definitely a more elegant approach than my comments
13 just now, and again, I really commend the staff. Are
14 there other comments or questions?

15 MS. DE LA TORRE: Not on that section.
16 I just wanted to clarify that we're not talking about,
17 you know, a set of factors that could deviate from the
18 obligation, but I do have comments on other sections.

19 Let's go around and see if anybody wants
20 to share comments on this section before we move on.

21 MS. URBAN: Thank you, Ms. --

22 MS. DE LA TORRE: Or you already can
23 see --

24 MS. URBAN: So you don't have further
25 comments on 7002?

1 MS. DE LA TORRE: On 7002(b).

2 MS. URBAN: Okay.

3 MS. DE LA TORRE: So I would like to
4 talk about (c).

5 MS. URBAN: I see. Okay. Please go
6 ahead.

7 MS. DE LA TORRE: Okay. So the (c)
8 section -- so the first section is our primary purpose.
9 You have to connect that to the expectation of the
10 consumer. We're giving you factors so that you can
11 understand what that expectation is.

12 (c) is a secondary purpose test, as I
13 understand it, which, you know, I'm going to go into my
14 professional role here a little bit, but apologies for
15 that. So what it basically means is, okay, I have this
16 data that I collected for this specific purpose, and
17 the consumer expects me to do this. But I really want
18 to use it for something that's different. Is there a
19 universe where I can do that? And in general, the
20 answer is probably not. You have to go back and get
21 consent. But there is an exception to that general
22 rule. And that's the secondary purpose test.

23 When the purposes are sufficiently
24 aligned based on a test that has factors, then you
25 might proceed and -- and use the data for that

1 secondary purpose. So apologies on that piece. But I
2 just am trying to give a little bit of perspective
3 here.

4 So the one thing that surprised me in
5 this section is that there are only two factors because
6 I'm used to five. And I don't know why the other three
7 are missing, and maybe they're missing for a good
8 reason. And I was going to maybe ask Ms. Kim if we
9 could go through the ones that I'm used to seeing and
10 are not there and we can learn -- you know, there
11 was -- there a reason for it --

12 MS. KIM: Sure.

13 MS. DE LA TORRE: -- maybe that's
14 California specific.

15 So the first factor is -- this is any
16 order. The first factors that link between those
17 purposes and the purposes of the intended part of the
18 processing that exists in other jurisdictions. The
19 second one is the context in which the data was
20 collected. That makes a lot of sense. And this is
21 another jurisdiction.

22 I don't see as a factor the nature of
23 the personal information. So to me that should be a
24 factor because if the information is sensitive, then
25 I'm not that inclined to allow for a secondary use

1 without consent versus if the information is not
2 sensitive. Why did we choose to not include that as a
3 factor?

4 MS. KIM: You know, we'll -- like, I --
5 I'm just trying to take some -- a moment to, like,
6 digest that a little bit. Just to clarify with regard
7 to, you know, A or a second this concept of secondary
8 purpose, I understand what is being said. And I think
9 in many ways, this idea of compatible with the context
10 in which it was collected is similar, perhaps not
11 identical to secondary purpose, but it's similar
12 because it's just a difference in how we're describing
13 it. But it's certainly something that we can take into
14 consideration if we add -- wanted to add -- as you
15 notice, it's part of the test for (b). It's, you know,
16 something to be considered.

17 Sorry. I guess I'm stumbling over my
18 words. I'm going to jot this down and kind of give
19 some thought to it. Perhaps this is something we can
20 continue to move forward on, if you want to identify
21 other factors for us to consider in adding to that
22 compatibility test.

23 MS. DE LA TORRE: Okay. Thank you. So
24 I definitely would like to add that factor because to
25 me it shouldn't be equally easy to use for a secondary

1 purpose sensitive information and nonsensitive
2 information. And I don't know, you know, what is the
3 right context of doing it. I don't know if it's in the
4 context of these we're making or a future one. Maybe
5 we can table that for the end of the conversation.

6 So the other factor that I'm used to
7 that is not there is considering the consequences of
8 the intended further processing to the individuals. To
9 me, that's something that should be considered when
10 you're thinking about secondary purposes. Those
11 secondary purposes in many cases could be beneficial to
12 the individual. In those cases, I think that is more
13 understandable to not have to go back and obtain
14 consent versus those purposes are not beneficial to the
15 individual. That should be a factor to maybe not allow
16 for that secondary use without consent. Why -- maybe
17 would you support including that factor I guess?

18 MS. KIM: So could you repeat what the
19 factor is? Consequences to other consumers, is that --

20 MS. DE LA TORRE: Consequences of the
21 intended activities for the individuals to whom the
22 data relate for the individuals that whose personal
23 data we're talking about.

24 MS. KIM: Yeah. How about this? I'll
25 write this down. And perhaps during a break -- let me

1 give it -- give a chance for me to just really kind of
2 sit with it. But I appreciate that.

3 MS. DE LA TORRE: And let me stop here
4 and just express appreciation for all the work that you
5 have done and the staff has done and all of the time
6 that you have been here trying to help us with this.
7 And so I'm just trying to build on what we are doing
8 and provide ideas for improving.

9 So there's that one more factor. Let me
10 do one more --

11 MS. URBAN: I'm sorry. Ms. de la
12 Torres, can I just follow up on what you just said?

13 MS. DE LA TORRE: All right.

14 MS. URBAN: So given that we've been
15 following a structure of the proposed -- the
16 modification staff suggested in the chart, the
17 modification staff suggests -- have suggested to me the
18 specific modifications of the tax, modifications
19 perhaps proposed by board members, and then things that
20 are important to include in a future, potential
21 revision or a future rulemaking for a new topic
22 entirely, are you proposing -- or you're maybe not
23 proposing yet. But are you thinking that this is
24 something that we would think about for a future
25 modification? Because, I mean, that's what I --

1 MS. KIM: Yeah, that would help to
2 clarify. Is this something that you want us to include
3 this time around or something to -- that we can kind of
4 sit and chew on a little bit longer?

5 MS. DE LA TORRE: I would like to table
6 that conversation for the end because, from my
7 perspective, again, giving priority to moving this
8 package forward is very important. But at the same
9 time, maybe not including the sensitive -- the personal
10 information as a factor is a reason enough to delay
11 this particular provision, not the rest of the rules.
12 but this particular provision. And maybe then we can
13 move forward with the second package. That should
14 be -- maybe, you know, I'm just guessing, but maybe
15 six, eight months away, because the core of this is
16 already in the law. Like, we're basically restating
17 something that in my view is in the law. It's just
18 making sure that we don't create unintended
19 consequences or that we are thoughtful and we come up
20 with the best package possible. So let's table that
21 for the end and then we can decide.

22 MS. URBAN: Okay. So what we will --
23 we'll return to sort of the bucket there at the end.

24 I do want to give Mr. Mactaggart, Mr.
25 MR. LEE: , and Mr. Thompson a chance to comment. I

1 think I have the order you raised your hands in,
2 correct? It's Mr. McTaggart and Mr. Le and Mr.
3 Thompson.

4 So, Mr. McTaggart, please go ahead.

5 MR. MACTAGGART: Thank you. You know, I
6 think as usual, Ms. de la Torre's heart's in the right
7 place trying to push for maximum consumer protection
8 here. I do think though that right now, in the
9 interest of getting these things out, the difficulty
10 probably is that -- staff was looking at the statute.
11 And some of those comments might go a little further
12 than the statute, which is pretty specific about the
13 context. And so I think these -- I guess my two cents
14 would be that these -- you know, 702C does a good job
15 of elucidating the statutory language in 100C and is
16 good for now. And there may be a time to revisit it in
17 the future. But I think it's I think it's really a
18 good start for now, and I think it's on safe ground,
19 again what's in the statute.

20 MS. URBAN: Thank you, Mr. Mactaggart.

21 Mr. MR. LEE: ?

22 MR. LE: Yeah. I -- yeah. I do
23 appreciate those additional secondary purpose factors.

24 I do wonder if, you know, at least the
25 nature of the data is kind of incorporated because we

1 say what are the reasonable expectations and the
2 compatible purpose. And that is a factor in (b). So
3 do those reasonable expectation factors get
4 incorporated into C? I don't know.

5 I think it to kind of second Mr.
6 Mactaggart, I think this is in good grounds. You know,
7 we have the reasonable expectations kind of restated in
8 this section that would cover the nature of the data
9 used and kind of the consequences of that use and, you
10 know, perhaps. And I guess I would -- I would say to
11 the extent we could get this in, you know, to the
12 next -- you know, within the next board meeting and
13 then we could actually just vote on it and still fit
14 the schedule if that was possible and the staff thought
15 that was possible, then I would support that.

16 But yeah, if this is going to take
17 longer and it would delay the regulation a lot and --
18 or would require us to take out consideration of C, I
19 wouldn't want to do that.

20 MS. URBAN: Thank you, Mr. Le.

21 Mr. Thompson?

22 MR. THOMPSON: My comment was on a
23 different subject, so I can wait until this is done.

24 MS. KIM: Let me go ahead and then just
25 interject. Board member Le reminds me as to some of

1 the reasoning as to why that wasn't included in
2 subsection C, and it was because we thought it was
3 somewhat duplicative since subsection (c) with regard
4 to the compatibility analysis takes into consideration
5 reasonable expectations of consumer and that it also
6 includes the source of the -- or the nature of the
7 personal information as well as the consequences of
8 that or some of these considerations. We just thought
9 it was duplicative.

10 But I do want to give some thought as to
11 whether or not it's something that we can either
12 address quickly or not. I think it's something that I
13 would like to consult with other members of the staff
14 in order to make that determination.

15 MS. URBAN: Thank you, Ms. Kim.

16 Additional comments?

17 MS. KIM: And just to be clear, Ms. de
18 la Torre, what a board member -- it was those two
19 factors or were there additional factors as well?

20 MS. DE LA TORRE: There's one more that
21 I don't see. Another factor that I'm really used to is
22 the existence of appropriate safeguards in both the
23 original purpose and the -- in the further processing.
24 And this would -- it really talks about is ideas or
25 like encryption and certain minimization. And to me,

1 again, these are factors that naturally should point
2 towards more flexibility in the secondary-use purpose
3 where if they are not there, it should maybe be seen in
4 a more restrictive way.

5 But, like if you have taken steps to
6 create more security and to create some form of
7 anonymization, you might be in better grounds to use
8 the data for a secondary purpose without relying on
9 additional consent.

10 MS. KIM: Yes. And I do have a point
11 with regard to that, because I do think those are
12 things that we considered. But instead we included
13 them in the factor test for subsections (d) with regard
14 to reasonably necessary and proportionate. And since
15 every single purpose has to undergo all of -- the all
16 of the various factors to be considered, I do think
17 it's -- that concern is sufficiently addressed by
18 including that consideration in subsection D.

19 MS. URBAN: Thank you, Mr. Kim.

20 Mr. Soltani? Oh, no?

21 MS. KIM: You're muted.

22 MR. SOLTANI: I was just going to
23 rearticulate. Ms. de la Torre, so is your concern just
24 the order that things are in or -- because, I mean, it
25 sounds like most of the pieces you're highlighting

1 we've applied just in a different format that -- that
2 conforms to the structure of the statute. And so as
3 Ms. Kim outlined that we have the kind of compatibility
4 test in C, but we have the data minimization function
5 in D, and then we have essentially the purpose
6 limitation and (b). And it's just applied in a
7 different format.

8 And I recognize it might be alien if
9 you're looking at it from a European lens. But we are
10 in California, and we have a different statute. So I
11 just want to understand what your guidance rather than
12 kind of -- again, back to the earlier point, I would
13 love your guidance on what would you like staff to do
14 and in what time line. And I'd like the board to
15 provide that input because we've done -- we've spent
16 probably the most amount of time on this section. And
17 we feel like it conforms to what the statute guides us
18 to do and, including the purpose and intent of the
19 statute. And so I just would love the guidance rather
20 than kind of more of an interrogation, to be honest.

21 MS. DE LA TORRE: So I'm not -- I'm not
22 sure -- I'm not sure how to -- whether provide the
23 comments without having a conversation, but maybe I
24 shouldn't have a conversation. Is that what you're
25 saying, that I should just --

1 MR. SOLTANI: No. I would just love to
2 see -- yeah, no. No. It's not that I want to
3 discourage conversation. I just want to kind of
4 discourage -- so back to the earlier point that I made,
5 the goal of the staff is to kind of take the policy
6 direction from the board and implement that policy
7 direction, conforming to the restrictions of the
8 statute. And so we've spent quite a lot of time trying
9 to implement the statute. If there are pieces missing,
10 then we would love to know what you think the statute
11 should do and what the rest of the board think --
12 sorry, what the guidance should do.

13 But rather than trying to essentially
14 interrogate what staff's interpretation is in real
15 time, which I don't think serves -- you know, Ms. Kim,
16 for example, is trying to be responsive, but I think
17 it's kind of putting her on the spot. We'd be happy to
18 take guidance --

19 MS. DE LA TORRE: Okay.

20 MR. SOLTANI: -- and then try to come
21 back with whether we could try to implement that
22 guidance in either this time frame or in the next time
23 frame. But I think for the purposes, we're kind of
24 trying to assimilate what you'd like to see. It would
25 be just great if, like -- if there is a problem with

1 how we've implemented other than it being out of order,
2 I think would be helpful to understand.

3 MS. DE LA TORRE: Okay. Thank you. I'm
4 going to try to do it in a different way. And I do
5 apologize if I made Ms. Kim feel uncomfortable in any
6 way. I have great admiration for her professionally.
7 She has crafted, you know, a whole set of rules that I
8 will be incapable. To be honest, when she's providing
9 her comments, I'm like, oh, she's going faster than I
10 could ever go.

11 So if my approach in any way deviated
12 from expressing that professional admiration, I
13 apologize. And that was -- that was not the intent of
14 it.

15 MS. KIM: So it wasn't taken that way
16 too. I just wanted to clarify.

17 MS. DE LA TORRE: Okay. And I
18 appreciate Mr. Soltani, you know, being a little bit,
19 you know, guarding the staff. And I appreciate that.
20 So let me try it in a different way. And if it's not
21 helpful, you can let me know and I can adapt.

22 But I mean, to Mr. Soltani's point,
23 precisely what I'm trying to do is be very specific
24 with my guidance so that it is easier to take in by
25 staff and analyzed. And I'm available to have further

1 conversations if that's part of the process or, you
2 know, we can decide. But okay.

3 So -- and in regards to the order, so
4 that's another thing that I was surprised about because
5 (d) is data minimization, right? That's what I
6 understood from the comments earlier. And data
7 minimization in our lease has factors. And I don't
8 conceive data minimization as something that's subject
9 to factors. You have to minimize your data no matter
10 what. So if you're doing something that could be done
11 without using sensitive information, you have to do it.
12 There is no factors. If you could -- if you're doing
13 something that is taking a large amount of data and you
14 could do it with half of that data, we still minimized
15 data -- sorry, I mispronounced that, that is -- it's
16 from my perspective an obligation that is not subject
17 to factors.

18 Maybe that's the way I'm used to looking
19 at it. But there could be room. And Ms. Kim pointed
20 to this because the statute anyway requires you to run
21 all of the states. Maybe we end up in a place that's
22 similar. So --

23 MS. KIM: Yes. I mean, I --

24 MS. URBAN: Thank you, Ms. de la Torre.

25 I would like to now circle back around

1 to the question of the buckets, because the -- excuse
2 me, the categories of potential change or potential
3 additional modifications, whether they are potential
4 additional modifications to the language that's right
5 here on the page or potential additional modifications
6 when and if we revisit. And I think there's embedded
7 in here a request to revisit section 7002 in a future
8 rulemaking package.

9 This is really sounding to me like it is
10 most appropriately dealt with in the latter. And this
11 is -- this is the reason why. As Mr. Soltani said,
12 this required a lot of thought and work in order to be
13 sure that the statute and the guidance are perfectly
14 aligned and that it provides useful guidance to the
15 public. And so I think that it's been carefully
16 considered as it is.

17 Secondly, the requirements of the
18 statute, and I don't know if this is entirely
19 responsive to your last potential concern, Ms. de la
20 Torre, which I definitely support the general idea of
21 the concern -- but the statute itself is not something
22 that is modified by the regulations. It cannot be
23 modified by the regulations. So those fundamental
24 protections are already in the statute.

25 And the way that I -- the way that I

1 analyze that, if there is something here that I would
2 like to see added, for example, a different factor,
3 would be that that we have the protection from the
4 statute now. We have the guidance from 7002 as
5 modified, suggested as modified by the staff now. And
6 that is both protective of the public, good guidance
7 for businesses now. And we definitely can look at
8 improving it in the future if that's needed. But I
9 currently am not seeing, or hearing at least, something
10 that I would think didn't fall into that last category
11 because I think it is something that would need to be
12 considered pretty carefully.

13 Okay. Mr. Le and then Mr. Mactaggart?

14 MR. LE: Yeah, I agree with that. And I
15 think perhaps Ms. de la Torre, and we all could be
16 served by maybe one-on-one meetings with Ms. Kim around
17 some of these questions around interpretation -- for
18 example, I believe, you know, (d) says if a business's
19 use is reasonably necessarily proportionate, it's based
20 on whether the minimum personal information was used.
21 So that that may align with your kind of thoughts, Ms.
22 de la Torre, and it may not. But I think that would
23 probably be better served in kind of these one-on-one
24 rather than asking Ms. Kim right now to explain whether
25 or not that's the right interpretation of (d)(1). So I

1 would like this -- if we can table this and move on.

2 It's just my one -- just one vote on it.

3 MS. URBAN: Thank you very much, Mr. Le.

4 Mr. Mactaggart?

5 MR. MACTAGGART: Thank you. Yeah. I'd

6 echo Mr. Le and actually Mr. Thompson's comments that

7 this -- the only thing we know for sure is these

8 standards are going to change over time. And

9 expectations will change.

10 I actually think Ms. de la Torre, maybe

11 she's raising a point that none of us really expected

12 to see factors. And it's funny. If you just remove

13 the three words "factors" from the end of each

14 paragraph and just based on the following, you might

15 not have had the same reaction, Ms. de la Torre. So

16 just either you could remove those words, it reads the

17 same, or you could just mentally not focus on the word

18 "factor." It's just kind of -- it's almost just --

19 it's a way of layout, just like laying out these --

20 some of these tests which will change over time.

21 So I think they're just -- to me,

22 they're not dispositive. They're just helpful

23 guidance. And so I would also echo Mr. Le's suggestion

24 just that we move on with this because I think --

25 MS. URBAN: Okay, thank you. I

1 appreciate -- I appreciate those perspectives from Mr.
2 Le and Mr. Mactaggart.

3 I'm also inclined for us to move to the
4 next category of things with the expectation that Ms.
5 Kim -- and I think that she has very carefully
6 collected the observations and thoughts that Ms. de la
7 Torre provided.

8 UNIDENTIFIED SPEAKER: I -- I have a --

9 MS. URBAN: But first I wanted to make
10 sure -- I want to check with Mr. Thompson. And yes, I
11 will circle back to you, Ms. de la Torre. I just want
12 to be sure that other board members have the
13 opportunity to weigh in.

14 MR. THOMPSON: My observation on this
15 discussion is I feel like we -- we're all going through
16 this process for the first time. And we have various
17 interlocking, overlapping, and sometimes contradictory
18 constraints on what we can talk about and with whom and
19 when. So I fully understand the desire to take the
20 opportunity when it is presented to get questions
21 answered.

22 I concur with Mr. Le's observation.
23 There are other -- there are other venues. But I am --
24 I tend to defer to the desire to get questions answered
25 because our process is a little bit confusing. I think

1 probably we hear some consensus around the nature of
2 the of the input and guidance that occurs in a -- as we
3 consider changes to the rules. But this is our first
4 time. So I think we're kind of feeling our way along
5 as we go.

6 I'm going to hold there for a second
7 just because I had a minor observation comment
8 modification on subsection (b) but happy to discuss
9 that and bring that up at the appropriate time.

10 MS. URBAN: Thank you, Mr. Thompson.

11 And I do agree that it is enjoyable, at
12 least for us, if not for everybody watching, to nerd
13 out a little bit together as a group. We just remind
14 everyone as well, I think this echoes some of what Mr.
15 Le was suggesting as well, that at the top of the
16 meeting we discussed that there are different
17 approaches that we can take with the policy guidance
18 that we give the staff in terms of timing and where it
19 might be implemented.

20 And also we have more than one path to
21 provide feedback and to ask questions. And one is in
22 the meeting, and one is talking with staff. And I
23 absolutely love to nerd out. And I absolutely support
24 Ms. de la Torre asking all of her questions. But I do
25 think that we need to make a decision on a continuum of

1 when one path is better. And I tend to agree that I
2 think we have things on the table now for staff to
3 consider and that it would be a good idea to move to
4 the next topic. But I don't want to do that without
5 circling back to Ms. de la Torre to check in with her
6 since she was the person who started this very
7 interesting conversation.

8 MS. DE LA TORRE: So I wanted to clarify
9 a couple of things. Ms. Kim has not been only enough
10 generous enough to endure me right now, but also took
11 two hours of her time this week to go with me over this
12 section. And we together went through it granularly.
13 And I expressed to her my difficulty of correlating the
14 concepts to the concept that was in -- that I'm more
15 used to. And the purpose was to basically educate
16 myself, which probably she failed to do because of my
17 deficiencies, but also to kind of let her know that I
18 was going to bring up these things.

19 I won't follow the same process because
20 I think that Mr. Soltani made a very good comment that
21 it seemed like an interrogation. It was not meant to
22 be an interrogation. It was meant to be a
23 conversation.

24 But I have several other things that
25 came to mind for me when I was reading this section

1 that I'm just not aligned with how the minimization
2 purpose limitation and the secondary purpose use that
3 I'm used to see implemented, which cause confusion, to
4 the extent -- and this is going back to Mr. Soltani, to
5 the extent that it's just changing in order. So long
6 as they are there and the effect is the same, that
7 wouldn't be anything that should delay the rules.

8 From my perspective, my main concern is
9 that what we're talking about is really kind of the
10 core of how we switch from notice and concern to
11 something that's more functional. And I think it's
12 really important to get that core right from the
13 beginning if we're going to go through the process.

14 So again, thank you to all of you for
15 your feedback. And if you can endure, I have a few
16 more comments. And there's only one that is really
17 confusing to me and I think a second one that is very
18 important that maybe are missing of where this -- but I
19 can highlight those as I go through it. This is a good
20 idea for me to continue?

21 MS. KIM: For me, certainly. I would
22 like to know those items so that even if we don't
23 implement them immediately, it's something that we can
24 take under consideration and understand.

25 I did want to respond to your response

1 regarding data minimization. We don't have anything
2 specifically that says data minimization in our
3 statute, but we do have the language of reasonably
4 necessary and proportionate. And in many ways, we
5 interpret that as somewhat synonymous to this concept
6 of data minimization. And so -- but those factors, I
7 think, minimum is certainly there. But there's also
8 the language of some type of proportionality that we
9 wanted to include that. We didn't think it really made
10 as much sense in the compatibility section, but it made
11 sense with the regard to necessary and proportionate,
12 like the additional safeguards, having appropriate
13 safeguards, that sort of thing. So that is why it's in
14 subsection (d) and we think it serves kind of the same
15 purpose. Ultimately, you get to the same endpoint
16 essentially. But yes, please do. Go ahead.

17 MS. URBAN: Thank you.

18 MS. DE LA TORRE: Again, my --

19 MS. URBAN: Ms. de la Torre, can you
20 offer your next -- can you offer your next two points
21 together?

22 MS. DE LA TORRE: I maintain on being
23 granular with exactly that, just to be able to provide
24 clarity so that the guidelines are clear, whether it's
25 something that we as a board decide maybe we want to

1 give the staff more time to craft this absolutely the
2 way we see then basically move it forward in the second
3 train that's coming or whether we say, well, this is
4 good enough, we're going to implement it this way and
5 we will modify it, whatever, which I think we should --
6 that's a conversation to have at the end.

7 But okay. So the one thing that was
8 more worrisome to me because I'm very connected with
9 this space is that under the European framework and
10 really under the modernized convention 101, which is
11 basically what is being implemented in many other
12 countries, there is a set of purposes that are excluded
13 from the secondary test and I think for a good reason.
14 Processing archiving purposes and for public interest,
15 scientific and historical research purposes which are
16 very, very often secondary purposes and statistical
17 purposes are a priori considered compatible. They are
18 not necessarily run through the test the same way that
19 that other uses are. And I couldn't see that reflected
20 in this section 7002. And I am concerned that that
21 could lead to unintended consequences in restricting
22 uses of data that are beneficial for society.

23 And the example that -- it's a
24 high-level example hopefully -- that came to mind is if
25 we're trying to fight global warming and we want to use

1 electricity consumption in households in California, to
2 me, that's secondary purpose -- we should be much more
3 flexible in making it compatible than a purpose that's
4 very commercial, for example. So that's another thing
5 that I will definitely urge us to consider to what
6 degree we want to identify these statistical scientific
7 historical research purposes as something that should
8 be less restricted perhaps than other secondary
9 purposes.

10 One more thing is that it's also to my
11 understanding universal, but I think it could be
12 addressed in other places of CCPA is legal compliance.
13 Secondary uses for legal compliance are usually
14 excluded from any kind of factor test because if you're
15 legally required to do something, even if that was not
16 respected by the consumer, you should -- you should be
17 able to do it, right?

18 The last one is journalistic purposes.

19 MS. KIM: Could I just respond to that
20 point? Legal compliance issues are included in
21 1798.145 Civil Code Section. So I just want to make a
22 note I don't think it's necessary to include that here.

23 MS. DE LA TORRE: Thank you.

24 Like I mentioned before, Ms. Kim, you
25 know, ran circles around when it comes to citation. So

1 that might be something that is already included
2 somewhere else in the law.

3 But even as we consider improving on
4 this version, maybe we should mention it here just for
5 more clarity. That would be my suggestion.

6 And the last one is journalistic
7 purposes. The use of data for secondary purposes in
8 the journalistic space is something that should have a
9 different set of considerations because that is, again,
10 a use that in my opinion is supportive of freedom of
11 speech and also in the -- in the public benefit.

12 So I'm just -- so that -- the core one
13 for me there in terms of exceptions to the secondary
14 purpose test is really the scientific historical
15 research piece. And just try to maybe bring it up, if
16 not in this iteration, as soon as possible, because we
17 do not want to create a situation where this law that
18 was intended for one very good purpose ends up having
19 consequences that were not intended.

20 But the one thing that was really most
21 difficult for me to understand in this section is who
22 is the consumer. Because I read the examples. And the
23 different examples kind of tended to give me different
24 answers. So my first question was -- and this is not
25 Ms. Kim. This is just me asking myself. Is the

1 California resident to whom the data relates the
2 consumer that we're talking about here in the examples?

3 So there's one example, for example --
4 there's one example that says I think is in (b)(2). If
5 a business collects the consumer's fingerprints in
6 connection with setting up the security feature of
7 device -- and it goes on to an example. I think Mr.
8 Mactaggart made reference to that example. In that
9 example, to me, the consumer is the individual who's
10 providing the fingerprint.

11 But when I read, for example, the
12 example in (c)(3), and this would be the situation
13 where the consumer is uploading all of his or her
14 pictures to the cloud for a -- to a provider for
15 storage, it reads to me as we mean by consumer, not the
16 person -- the people who are in the pictures but the
17 person who's uploading the pictures to the cloud.

18 And then there's this idea of the
19 reasonable consumer as possibly what we're referring
20 to. But I think that was in the prior draft and it is
21 not in the newer draft. And I might be incorrect about
22 that, but I think that was one of the changes.

23 And then there's another section that
24 talks about -- I think this is actually (d)(2), the --

25 MS. URBAN: Actually, Ms. de la Torre,

1 thank you -- I mean, thank you for being efficient, but
2 that's two categories of comments. And I just wanted
3 to make sure we paused and caught those.

4 With regard to press freedom,
5 statistical use of scientific research, concepts that
6 are similar as Ms. Kim suggested for the first one are
7 in 1798.145. They are concepts that are similar. Of
8 course, it's not exactly the same words that the GDPR
9 uses. The concepts are similar there.

10 And so again, for me, this is a great
11 candidate for staff to be able to analyze for future
12 potential tweak to the rules to try to help, you know,
13 make it as strong and understandable and helpful as
14 possible but not something that is necessary to handle
15 now.

16 And with regards to the conversation
17 that is happening now with regards to reasonable
18 consumer, again, I mean, this is the kind of thing that
19 staff would need to do a careful interpretation, a
20 legal analysis in order to get the baseline question
21 answered and then apply that back to the regulation. I
22 am not seeing anything that should prevent us from
23 moving forward with this, although I really encourage
24 you to work with staff to sort that out. But it is --
25 don't think that that is a kind of a small item in just

1 in terms of the analysis, I don't mean in terms of the
2 ultimate change, just in terms of the analysis.

3 MS. DE LA TORRE: Is it appropriate for
4 me to talk right now or should we --

5 MS. URBAN: Do you have the third -- do
6 you have -- you had one more item.

7 MS. DE LA TORRE: Well, in the consumer,
8 there's a section that talks about the possible
9 negative impacts to consumers, which seems to me it
10 might be all of California residents. So it's not a
11 definition that is without consequence, because in this
12 section we say two things, that the reasonable
13 expectation of the consumer is what should be
14 considered, so we should know who the consumer is; and
15 second, that we have to go -- businesses have to go
16 back to the consumer to obtain consent. And the
17 businesses definitely need to know who the consumer is.

18 And maybe there is an answer for it. I
19 just was confused by the examples. The law defines
20 consumer to mean a California resident. But it is
21 important to identify who that resident is to
22 operationalize this provision.

23 MS. URBAN: Thank you, Ms. de la Torre.
24 I think that was a very helpful encapsulation of the
25 question.

1 At this point, I am inclined to, again,
2 have Ms. Kim have collected the very good thoughts and
3 feedback and potential things to consider and to
4 respect the opinion of other board members that we go
5 ahead and move on to the next thing. We can consider
6 circling back in the future.

7 But I think that we should spend time on
8 the next item on the list, which is the -- which is the
9 sort of bucket of things and with any that staff have
10 identified to bring forward. I also have Mr. Le's
11 request from earlier, Ms. de la Torre's request from
12 earlier, and there may be additional requests. So
13 thank you very much, Ms. de la Torre. I really
14 appreciate the detailed sort of analysis and questions
15 and conversation.

16 And we're going to go ahead and move on
17 to the next thing and then consider circling back to
18 this, as you alluded to earlier, with regards to sort
19 of bucket of -- process bucket with which to treat some
20 of this information.

21 So, Ms. Kim, am I correct where we are
22 in the --

23 MS. KIM: I -- yes. But I believe Mr.
24 Thompson mentioned that he had a comment, a small
25 comment with regard to subsection (b).

1 MS. URBAN: Oh, that's right, he did.

2 Thank you. Thank you for saving me from accidentally
3 skipping over that.

4 Mr. Thompson?

5 MR. THOMPSON: Thank you, Chairperson
6 Urban. Thank you, Ms. Kim.

7 The question I had was about
8 (b) (2) (4) -- sorry. Yeah, (b) (2) (4). (b) (4). It's
9 been a long day already. (b) (4), that factor, the
10 specificity, explicitness, prominence of the disclosure
11 is one of the things to be considered in whether or not
12 the purpose was reasonable. I am maybe misstating that
13 slightly.

14 And my question was, should that --
15 should another factor in that be the
16 straightforwardness and ease of understanding the
17 disclosure which is laid out in 7003? If the
18 disclosure is a factor in establishing the
19 reasonableness of the of the consumer's expectations,
20 should the disclosure also be plain language and easy
21 to understand? And a way to achieve that might be just
22 a tie back to section 7003(a).

23 MS. KIM: Thank you.

24 MS. URBAN: Sorry, Ms. Kim. Go ahead if
25 you'd like. I was going to put to Mr. Thompson the

1 same question I put to Mr. McTaggart earlier, which is
2 that this seems a helpful mechanistic suggestion. Are
3 you comfortable with staff looking at them together and
4 analyzing whether it would be the best choice to tie
5 back directly in the text or to continue with what we
6 have now, which of course 7003 applies to notices
7 generally? Are you -- is that acceptable to have staff
8 sort of use that discretion or would you like to
9 propose a specific change?

10 MR. THOMPSON: I'm comfortable with that
11 approach. I mean 1, if the analysis is that the
12 requirements in 7003 would apply to that specific
13 notice, in my mind, I was thinking that if you're going
14 to assess the notice as a factor in -- if one is going
15 to assess the notice as a factor in the reasonableness
16 of a consumer's expectation, that it needed to be
17 clear. So I liked the tieback, but I think you started
18 with what would I be comfortable with staff taking a
19 look at that and determining and using their discretion
20 on whether or not further clarification there or a tie
21 to 7003 or no change. I'm comfortable with that
22 approach.

23 MS. URBAN: Thank you very much, Mr.
24 Thompson.

25 Ms. Kim, I just wanted to -- again,

1 because I'm trying to keep track of where we are with
2 the different items in the conversation, I talked over
3 you just a little bit. And I apologize for that. So I
4 will turn it back to you if there was something that
5 you were planning to say.

6 MS. KIM: No. I think -- thank you, Mr.
7 Thompson, for that notation. I did want to just point
8 out that we specifically -- one of the examples of the
9 disclosure was the notice at collection. And the
10 notice at collection must comply with 7003. And
11 generally speaking, 7003 applies to all notices and
12 disclosures to consumers. But it's certainly something
13 that we'll take under consideration and analyze as to
14 whether it's necessary to include that tieback here.

15 MR. THOMPSON: Thank you.

16 MS. URBAN: Thank you very much, Mr.
17 Thompson.

18 Okay. Ms. Kim -- and again, and part of
19 the reason I had to interject is because we are now at
20 the part of the day where if there are too many
21 intervening comments or conversation, I am wary of my
22 ability to remember what it was that I was going to
23 ask.

24 And so that ties to the next thing,
25 which is, am I correct that our next topic is the the

1 batch topic along with items that have been identified
2 earlier in the conversation? Am I correct or is there
3 another quote unquote, gray item to cover? And
4 whichever it is, please let us know where we go next.

5 MS. KIM: Yes. I believe with that the
6 ending of that conversation, we are past all the gray
7 highlighted items. Next on the agenda was just to
8 bring attention to the board with regard to new
9 modifications that staff has suggested with regard to
10 the proposed regulations. Some of those were already
11 covered in the gray area, so be mindful of that. But
12 because, you know, we wanted to make sure -- some of
13 these are ticky-tacky, but at the same time, since
14 they're not in front of the board previously, I really
15 wanted to make a point to ensure that the board members
16 were aware of this.

17 So this is going to be kind of a
18 line-item-by-line-item thing. If you could just please
19 bear with me, because it may be a bit tedious because I
20 will be highlighting some typos and things of that sort
21 to draw -- you know, just to ensure that because
22 they -- some of it is -- could be considered
23 substantive, though I would deem them to be consent
24 items. If I had originally included them in the
25 package to begin with, they would have been highlighted

1 in white. But I do think that it's something that I
2 need to highlight or bring to the board's attention.

3 So I'll just go ahead and note each of
4 these. To the extent I'm not making myself clear, you
5 have any confusion as that -- as to what I'm saying,
6 please do let me know. I have to say I have it written
7 on a list on my computer. And so I may not be able to
8 direct you to the page number as quickly because I'll
9 be going back and forth between different pages. But
10 I'll try -- I'll do my best to be able to do that for
11 you. So the --

12 MS. URBAN: Before you --

13 MS. KIM: I'm sorry --

14 MS. URBAN: -- start, Mr. Thompson --

15 MS. KIM: -- Mr. Thompson.

16 MS. URBAN: did you need a
17 clarification?

18 MR. THOMPSON: I'm -- a process check.
19 This is all under one agenda item, correct?

20 MS. URBAN: Yes.

21 MR. LE: So if this agenda item carries
22 over to till tomorrow, does the public comment occur
23 tomorrow --

24 MS. URBAN: Yes.

25 MR. THOMPSON: -- or do we have any

1 requirement to do public comment at each meeting?

2 MS. URBAN: No and -- no.

3 MR. THOMPSON: Okay.

4 MS. URBAN: And indeed, I would like the
5 public to have the benefit of the entire conversation
6 so that they can respond to that. But yes. Yes.

7 MR. THOMPSON: Thank you.

8 MS. URBAN: Public comment will come
9 after we finish discussing the whole agenda item.

10 MR. THOMPSON: Thank you.

11 MS. URBAN: Thanks for the question.

12 All right.

13 Ms. Kim?

14 MS. KIM: All right.

15 MS. URBAN: Take it away, the ticky-
16 tacky.

17 MS. KIM: The ticky-tacky.

18 So the first ticky-tacky or the first
19 section is 7001(d). This is the definition of
20 alternative opt-out link. And this is page 2. It's
21 just a quick -- we had said do not sell for share, and
22 it should be changed to "or share." So that's a typo
23 that we made a change to.

24 The next item is 7001(g). And that is
25 on page five. (gg). I'm sorry, (gg). So 7001(gg),

1 right to limit. This is the definition of right to
2 limit. We made a small change that states that the
3 right to limit means the consumer's right to request
4 that a business limit the use of sensitive personal --
5 you limit the use and disclosure of a consumer's
6 sensitive personal information. It previously had said
7 "the," and it's inconsistent with the other ways that
8 we described the rights. And so that is why we made
9 that change there.

10 With regard to 7002(a), 7002(a)(1) --
11 oh, 7002(a), we made a slight modification. We --
12 whenever the regulations reference the civil code
13 section, we use the term subdivision. But whenever we
14 reference the regulations, we use subsection. So we
15 just caught an inconsistency there. So we change
16 subsection to subdivision.

17 7002(a)(1) and (a)(2), this is just an
18 ordering change that seemed to be a bit more precise.
19 We had changed "shall comply with subsection (b)'s
20 requirements." And instead we're reforming it to say,
21 "shall comply with the requirements set forth in
22 subsection (b)." This is just something that we
23 thought just conforms it to other sections and makes a
24 little bit more sense there.

25 Same with 7002(a)(2). And again, this

1 is on page 6.

2 As we discussed previously -- okay. I'm
3 sorry. 7004(a)(2), that is on page 10, I believe,
4 7004(a)(2). We changed "it" to "that." So with regard
5 to (a)(2), symmetry and choice, within the -- right in
6 the line that says right before it, illustrated
7 example, the path for a consumer exercise, a more
8 privacy protective option shall not be longer or more
9 difficult or time consuming than the path to exercise a
10 less privacy protective option, because that would
11 impair or interfere with the consumer's ability to make
12 a choice, instead of "it would pair or interfere." Oh,
13 we also change the verb tense so that instead of saying
14 impairs to basically align with the subject. So that
15 would impair, impair or interfere with the consumer's
16 ability to make a choice.

17 7004(c) is on page 13. I have to just
18 say a shoutout to my staff -- or to the attorneys,
19 because since I noted that I don't know the page
20 numbers there, they're slowly sending me the page
21 numbers to help with this process. So I just want to
22 give a special thanks to the attorneys for -- that work
23 on our staff. They're pretty amazing.

24 So 7004(c), 7004(c), again, that is
25 in -- I believe it is page 13. Oh, I believe we

1 already discussed this point. We already discussed
2 this point about deleting the sentence that says for
3 example.

4 MS. URBAN: Okay. Yes. That one we --

5 MS. KIM: Yes.

6 MS. URBAN: That one we covered earlier.

7 MS. KIM: We did already discuss that
8 one.

9 7011(d) is on page 14. And on that
10 note, we just added the word "and accessible." So the
11 very first line of 7011(d) says, "The privacy policy
12 shall be posted online and accessible through a
13 conspicuous link." I think it just made some
14 clarification there about accessibility.

15 And then also with regard to the last
16 sentence, we noted a mobile application may include a
17 link to the privacy policy in the application setting
18 menu. That's to conform to consistency because we had
19 changed that in 7003(d). So it's a conforming to a
20 different section and the next section.

21 The next section --

22 MS. URBAN: Thank you, Ms. Kim. If it's
23 all right, I will also raise my hand with just a
24 process clarification. And please do keep marching
25 through. But I will be keeping my eye out for board

1 members if there's anything that they would like you to
2 pause on. And otherwise I will check in with them at
3 the end. But just to let the board members know, I'm
4 keeping an eye out just in case -- just in case you
5 need a clarification or something as Ms. Kim goes
6 through.

7 All right. Thank you, Ms. Kim.

8 MS. KIM: Thank you.

9 MS. URBAN: Let me turn it back over to
10 you.

11 MS. KIM: Okay. So we are in
12 7012(g)(3)(A). That is on page 22. The very first
13 illustrative example talks about a third party -- I'm
14 sorry. It talks about an analytics business. That has
15 been struck out to say ad network. And what we have
16 recommended is to add the word "third party ad network"
17 just to be more clear that we're talking about an ad
18 network that is acting as a third party.

19 The next reference is on page 31. And
20 that is 7022(b)(2). 7022(b)(2) on page 31. We added
21 language to clarify that the business shall make the
22 change itself where the service provider or contractor
23 enables it to do so. So this is just -- this is a
24 section that pertains to a request to delete. What we
25 had written there was that a business is to notify its

1 service providers and contractors to delete from their
2 records consumers' personal information.

3 And then we had included language, or if
4 unable to do so, the personal -- they should do it
5 themselves. I think there was a slight confusion like
6 is it themselves? So we just included that language to
7 say if enabled to do so by the service provider or
8 contractor, the business shall delete the personal
9 information that the service provider or contractor has
10 collected to make that clear.

11 The next point is 7023(d)(1). And that
12 is on page, I believe, 33 -- 34 or close to 34.

13 (d)(1), the line that we had added, consumers should
14 make a good-faith effort to provide businesses with
15 all. And then we made the change all necessary
16 information available at the time of the request as
17 opposed to relevant. We tighten that language up a
18 bit.

19 With regard to 7025(c)(1), this is on
20 page 40. Actually, this is what we had discussed
21 previously about including the language about other --
22 any consumer profile that is associated with the
23 browser or device. And so I have that on my list of
24 things to change.

25 Moving forward, 7026(a)(1) is on page

1 45. And there we have included just some clarifying
2 language in that first sentence. We added, "If the
3 business processes and opt-out preference signal in a
4 frictionless manner," to clarify that the privacy
5 policy option is only available to businesses that
6 process the opt-out preference signals in a
7 frictionless manner. So that language just added at
8 the end. So now it reads, if we go through the whole
9 thing, "A business that collects personal information
10 from consumers online shall at a minimum allow
11 consumers to submit requests to opt out of sale or
12 sharing through an opt-out preference signal in at
13 least one of the following methods: an interactive
14 form accessible via the do not sell or share my
15 personal information link, the alternate opt-out link,
16 or the business's privacy policy if the business
17 process is an opt-out preference signal in a
18 frictionless manner."

19 Next is 7027(b)(1). This is a similar
20 change. However, it's slightly different in that we
21 deleted the last option or the business's privacy
22 policy because that's not an option here because the
23 opt-out preference signal is not -- the frictionless
24 manner does not apply to the opt-out preference signal
25 yet.

1 And I believe that Mr. Mactaggart might
2 have raised his hand but --

3 MS. URBAN: Oh, my apologies, Mr.
4 Mactaggart. So I -- there -- that's the other thing is
5 to please be patient and leave your hand up, because
6 I'm looking at the language and the Zoom and the
7 language and the Zoom. And so I apologize if I missed
8 it.

9 MR. MACTAGGART: Yeah. That was
10 actually my fault. It was a very half-hearted hand
11 waive, which Ms. Kim caught. So thank you so much.
12 And I just was interested in Ms. Kim's -- I apologize.
13 I thought I could come back to it. But the 70 --
14 726(a)(1) (ph.) you were just talking about. So
15 that -- if you read it again, so it said alternatively
16 optimally, or if the business is in the process of
17 optout --

18 MS. KIM: I --

19 MR. MACTAGGART: -- privacy policy --

20 MS. KIM: It says -- sorry. It says,
21 "Or if the business" privacy policy -- "if the
22 business process is an optout preference signal in a
23 frictionless manner

24 MR. MACTAGGART: Okay. So in your -- in
25 your expertise, that -- that's very clear that it's

1 only for the people who process it in the frictionless
2 manner?

3 MS. KIM: Yes. I mean, that is my
4 understanding. If there is a better -- if you suggest
5 a different way --

6 MR. MACTAGGART: Well, I -- or -- I
7 would just the -- frankly, if the frictionless manner
8 in the front or if the business processes it, then the
9 business -- it's a small thing. I just -- this one
10 freaks me out a little bit just because I want to make
11 sure it's not buried on page, like, 475 of the privacy
12 policy itself. I -- but I think that's a great
13 change, by the way. Thank you.

14 MS. URBAN: Thank you, Mr. MacTaggart.

15 MS. KIM: Okay. Moving forward,
16 727(b)(1) (ph.) we've already discussed. 727(m) (ph.),
17 I believe that we have also discussed that previously.
18 728(a), and this is on page 52. This is again a small
19 typo change. I believe in this instance where we used
20 "request to opt in to sale" and we had the hyp -- the
21 backslash sharing --

22 MS. URBAN: I think it's a forward
23 slash.

24 MS. KIM: Forward slash?

25 MS. URBAN: But my British partner calls

1 it a stroke.

2 MS. KIM: Okay. A stroke.

3 MS. URBAN: Anyway, it's like that.

4 MS. KIM: My apologies.

5 So basically we took out the symbol and

6 added or because we generally do not use the forward

7 slash when referring to request to opt in. And so we

8 just made that consistency change.

9 MS. URBAN: So it says now, "sale or

10 sharing"?

11 MS. KIM: Yes.

12 MS. URBAN: Instead of (indiscernible)?

13 MS. KIM: Request to opt in to --

14 MS. URBAN: Yes.

15 MS. KIM: "Request to opt in to sale or

16 sharing personal information".

17 MS. URBAN: Thank you.

18 MS. KIM: Next we are looking at 7050(a)

19 (ph.). And I believe this is a section that I had

20 already kind of eluded to. We just changed the word

21 from and through -- and I'm sorry, 7050(a) is on page

22 53. I believe I already mentioned this to the Board

23 that we changed from and through and added that

24 standard language of "collected pursuant" to its

25 written contract with business.

1 I believe we already spoke about the
2 next item. So 7050(e) is on page 55. And this is just
3 a reference. We noted -- we changed the reference to
4 "these regulations" which is on the fourth line. And
5 instead inputted section 7051(a) to be more precise
6 that we are speaking specifically or referring
7 specifically to that regulation.

8 MS. URBAN: Thank you, Ms. Kim. I just
9 want to be sure I'm in the right place and that -- (e),
10 is it "complies with these requirements" that's being
11 changed?

12 MS. KIM: Yes.

13 MS. URBAN: Okay.

14 MS. KIM: Yes. So that that sentence,
15 the second sentence that starts with, "for example, a
16 business' disclosure of personal information to a
17 person who doesn't have a contract that complies with"
18 and then we wrote section 7051(a) to be explicit as
19 speaking regarding our section about contractual
20 provisions.

21 MS. URBAN: Okay. Thank you. Just so
22 it's easy for you later on the transcript, initially
23 you replaced the word "requirements" as regulations
24 when you were going through it. And I want to just
25 establish so that it's very easy for you later, that on

1 page 55(e), that is where the change will go in.

2 MS. KIM: Yes. And thank you for noting
3 that.

4 Our next change is -- and we're getting
5 close to the end -- so I believe this is the last
6 one -- is 7051(a)(3). This is on page 56. Again,
7 we've already -- actually, we've already covered this
8 one. This is the example of where we struck out the
9 very last sentence, the section "shall the specific
10 business purposes and service identified" in section
11 (a)(2) because it was duplicative of 7051(a)(2).

12 I believe that is all of my specific
13 references.

14 MS. URBAN: All right. Thank you very
15 much.

16 So these were the changes to batched
17 items that the staff are suggesting. I will now -- I
18 think that we can happily take potential batched items
19 that Board members would like to discuss. But I
20 would -- because I have two already on my list, I do
21 want to be sure that we get to those early in this
22 conversation.

23 So Mr. MacTaggart, do you have something
24 to suggest that we talk about or request that we talk
25 about? Or do you --

1 MR. MACTAGGART: I --

2 MS. URBAN: And also, did you want to
3 comment on, like, the batch because that's also --

4 MR. MACTAGGART: Yeah. I just have
5 one --

6 MS. URBAN: -- (indiscernible).

7 MR. MACTAGGART: -- question for --

8 MS. URBAN: Yeah.

9 MR. MACTAGGART: -- Ms. Kim on her -- I
10 missed the change you made -- sorry -- on the
11 7027(b)(1) which is page 48. I'm sorry. I was writing
12 70.6 --

13 MS. KIM: Sure.

14 MR. MACTAGGART: -- (a)(1).

15 MS. KIM: 7027(b)(1), we deleted the
16 words "or the businesses privacy"

17 MR. MACTAGGART: Yeah.

18 MS. KIM: -- "policy"; that one?

19 MR. MACTAGGART: Yep. Thank you.

20 MS. KIM: Great.

21 MS. URBAN: Thank you, Mr. MacTaggart.

22 All right. I think the most efficient
23 thing to do would be now to return to the additional
24 items that Board members identified as we were talking
25 through some of the indi -- items identified for

1 individual discussion earlier in the day. And the
2 first of those I have on my list is from Mr. Le. And I
3 believe it's from section 7012.

4 MR. LE: Yeah. That's right. Thank
5 you.

6 Yeah. I just have some guidance, you
7 know, particularly or just concerns around the
8 notice -- notice fatigue, essentially, particularly
9 around the offline data collection. And I, perhaps,
10 thought it would be good if staff put in more examples
11 on how businesses that are, you know, covered by the
12 CPPA can kind of minimize the notice requirements. You
13 know, whether it's QR code or what's, like, the best
14 way to display those codes if they're only using the
15 data in ways that it's reasonably expected? And you
16 know, in my head is like a large chain that uses
17 surveillance cameras, perhaps, other than the purpose
18 for what people would expect, what could they put up?
19 You know, what level of notice is required?

20 I thought maybe businesses would
21 appreciate some more examples of what need to be on
22 there because I imagine there's a lot of requirements
23 on all the things that you have to put on these
24 notices. Is there a shorter way to do it for offline
25 businesses? If not, then, you know, that's something

1 to think about. But I believe there is ways to get
2 around that if they're only using data where they don't
3 have to get more explicit consent. And -- yeah -- just
4 get your thoughts on, you know, whether or not it's
5 possible to have another example around that.

6 MS. URBAN: Thank you, Mr. Le.

7 May I put to you the same -- I think I
8 might get to every Board member undoubtedly, including
9 myself today, if I put to you the same question I put
10 to Mr. MacTaggart and Mr. Thompson as to whether you
11 are comfortable with staff taking that observation and
12 feedback and making a decision as to whether it would
13 make sense to add an example now --

14 MR. LE: And that was my request. Yeah.

15 MS. URBAN: Oh. Okay. Thank you --

16 MR. LE: Whether it's possible.

17 MS. URBAN: Yep.

18 MR. LE: Yeah.

19 MS. URBAN: I'm going to get around to
20 myself here in a minute I'm pretty sure.

21 All right. Mr. Le, was that the comment
22 on 7012? Or did you have more that you would like to
23 share?

24 MR. LE: Yeah. I guess the other one is
25 7012(f). You know, I think there were some comments

1 around, like, you know, the idea that, you know, you
2 had to direct a consumer directly to the section that
3 has (e1 through e6). You know, we got some comments
4 saying, like, that's hard to comply with because of
5 other jurisdictional requirements. Perhaps -- you
6 know, there's ways around that. You know, you could
7 put -- you could link to, you know, a table of contents
8 that has those six things. But perhaps some guidance
9 for businesses that have to deal with that, could be
10 helpful for staff to look at for the next batch.

11 MS. URBAN: Thank you very much, Mr. Le.
12 I think those are both really helpful observations and
13 suggestions for the next batch. And also, I would
14 observe that they're very amenable or they could very
15 much be informed by observing, again, how things are
16 happening in the marketplace. I also attended to the
17 comments about the deep thinking, for example. And I
18 think it will be really helpful to know how that is
19 experienced in the marketplace. Thank you, Mr. Le.

20 All right. Next on my list is section
21 7050 from Ms. De La Torre.

22 MS. DE LA TORRE: Thank you. I have
23 another final item. But that 7052 -- 50 and the next
24 sections are the sections that talk about service
25 providers, contractors, third parties and their

1 contractual probation so they have to it in place. And
2 my comment is not for this set of rules. I support the
3 rules as they are. But I think that one thing we could
4 do with relatively small investment that will really be
5 beneficial is to create a template of what is a
6 contractual service provider, how do they look like for
7 a contractor and a third party and publish them. And
8 then allow businesses to incorporate them by reference.
9 This is so much easier than creating your own template
10 and negotiating it. It takes you from two pages to one
11 line that you can correct. And effectively it
12 standardizes the contractual requirements.

13 So I know that is not something we can
14 do now. But I think it's an investment that we could
15 think about making in the near future so that we can
16 facilitate compliance, especially for small and medium-
17 sized businesses that may not have their own attorney.
18 They might find paying for an attorney is really
19 expensive. If they just know that here's your
20 paragraph. You put in your service provider contract
21 and maybe there's an exhibit with it, and you have to
22 provide some high level description of where the
23 contract is about. That will make compliance more
24 accessible and much cheaper, quite honestly.

25 MS. URBAN: Thank you, Ms. De La Torre.

1 All right. Those were the items on my
2 list pulled out from the discussion earlier. Are there
3 additional items from -- oh. And Ms. Kim, were you
4 raising your hand or --

5 MS. KIM: Yes. I --

6 MS. URBAN: Okay.

7 MS. KIM: -- was just reminded of
8 additional item that may be useful. And this is going
9 back to 7027(m) with relation to all of the exceptions,
10 you know, for the right to limit. We -- just to -- in
11 the preamble to 7027(m), we had included the term
12 "collect" in addition to "use or sensitive
13 information". We had done that initially because we
14 had included the new subdivision 8 that talks about
15 "for purposes that do not infer characteristics about
16 the consumer". That was -- that language that was
17 taken from the statute "refers to collection of that
18 information for purposes that do not infer"
19 characters -- characteristics about the consumer".

20 But upon further reflection, we think
21 it's more appropriate to put the word "collects" back
22 into -- in 8 instead of including it in the preamble.
23 I believe it's more precise and aligns more closely
24 with the statute. And so that is another
25 recommendation that the staff makes.

1 MS. URBAN: Thank you very much, Ms.
2 Kim.

3 MR. THOMPSON: Can I just say that -- so
4 that what Ms. Kim just outlined is, in part, why I put
5 my hand down.

6 MS. URBAN: Okay.

7 MR. THOMPSON: Because that -- I was
8 going to flag that item that there was, I believe, a
9 resolution to the concern that I raised earlier. And
10 as usual, the staff is all over it and was ahead of me.

11 So thank you for -- I appreciate, Ms.
12 Kim, you and others working this offline and us getting
13 to a resolution that addressed that concern. Thank
14 you.

15 MS. URBAN: Thank you, Mr. Thompson.

16 Ms. MacTaggart?

17 MR. MACTAGGART: Yes, Madame Chair. Is
18 now when I should -- I have a couple of sort of
19 random -- going through the statute --

20 MS. URBAN: Way to sell it, Mr.
21 MacTaggart.

22 MR. MACTAGGART: But I -- well, I
23 don't -- they're randomly ordered. But I -- they are,
24 nevertheless, I think important are these ones. Is now
25 the time you'd like me to go through those?

1 MS. URBAN: Certainly.

2 MR. MACTAGGART: Okay. All right. So
3 my first one is 7013, on page 25. It's E for Edward,
4 three. And I just was sad to see this one go. That's
5 on page 25. This is about the collecting stuff from
6 your TV. And I would just like -- by the way, none of
7 my comments are asking to be changed this time around.
8 But they're all being asked to put in the bucket of,
9 would the staff please consider these going forward. I
10 personally, you know, when the TV's looking at you and
11 you don't know if -- you have to go through six steps
12 to figure out if it's actually -- if your privacy
13 settings are enabled. And then you get out of your
14 movie and your kids yell at you. I'd love it to be
15 easy.

16 So I'd love what was removed to go back
17 in. then 74 -- or some kind of concept dealing with
18 the device. And cars as well. It's a big one for cars
19 as well. Those devices. So I think it's really
20 important. I think people really care about it. So I
21 think we should not let that one go. But I understand
22 for now.

23 MR. THOMPSON: Sorry. Mr. MacTaggart?

24 MR. MACTAGGART: Yeah.

25 MR. THOMPSON: You're on page 25 at the

1 top?

2 MR. MACTAGGART: Yeah.

3 MR. THOMPSON: I just want to follow
4 along.

5 MR. MACTAGGART: Yeah. That was the
6 stricken part. And I just -- whether it --

7 MR. THOMPSON: The TV?

8 MR. MACTAGGART: -- that or something
9 else, just even your car, you have to go through sixty-
10 five screens to figure out if it's -- every time you
11 hook your phone up it says, "can we download all your
12 data".

13 Then 70 -- the next one is 7014, on page
14 26. And this is 7014 the stricken, again, language
15 (e)(3). And I think Mr. Le was talking about this a
16 little bit. But just I do think it's appropriate for
17 us to give guidance on the brick-and-mortar rule. Like
18 what are we going to see at a point of sale eventually.
19 Like, if people just bring your credit card to the
20 table, as sometimes happens. Or if you're checking out
21 at Walgreens or whatever, you know, what's the -- and I
22 know that's a long, complicated conversation. I just
23 want to make sure we don't let that one go. I think
24 the brick-and-mortar disclosures are important.

25 MS. URBAN: May I verbalize my nod,

1 please?

2 MR. MACTAGGART: Yes.

3 MS. URBAN: And then ask you to
4 continue, Mr. MacTaggart?

5 MR. MACTAGGART: Great. Thank you.

6 On page 38, I know this is -- I may not
7 get unanimous support here. But this is around -- this
8 is 7024(d). So there's a concept that you don't want
9 to disclose. And this is not this set of regs, this is
10 from before. So I just want to be clear, this is
11 not -- this is totally off -- I mean, it does not need
12 to be determined right now but eventually. The concept
13 here is that you shouldn't be disclosing really
14 sensitive, personal financial information in response
15 to a question because of risk for fraud. And yet, up
16 above in 7023(i) (ph.) there is -- when you want to
17 correct, there's a way -- we have language saying that
18 a business shall not disclose the information but may
19 provide a way to confirm that the personal information
20 maintains is the same as what the consumer has
21 provided.

22 So in the right to correct there's a
23 notion of, like, do you have my correct Social Security
24 number. And the business figures out a way to tell you
25 whether you're correct or not. And there's a notion of

1 them not sending the information necessarily but being
2 able to confirm that they have it right because
3 otherwise how can you correct. But then down here they
4 say, no, we're just never going to tell you. And I
5 think there should be a spe -- an analogous process
6 because otherwise you have this odd thing of how do you
7 know -- how is this correct?

8 You have this right -- you have to
9 request a correction before you can find out if what
10 they have is actually correct because you have no right
11 way to find out what they actually have, whether it's
12 correct or not, under this right to know. And I just
13 think that there should be some way of having the same
14 concept, that I think was a good concept, that you
15 developed for right to correct should also be right to
16 know because, you know, somehow you have to figure out
17 if what they have about you is correct or not in order
18 to decide whether you want to make the right to -- a
19 right to correct. So that's 7027(d). otherwise you're
20 sort of in a Kafkaesque kind of world where you need to
21 correct information but you don't know if it's correct
22 or not.

23 Then 7026(f), this is on page 46. Again,
24 this is not a this round. This is something that was
25 developed prior. This is a round of right to opt out

1 and then the business having to cease selling and share
2 the information within a certain time frame. And this
3 says, you know, I paid -- the consumer says please
4 don't sell my information. And then the business says
5 okay. And the sta -- and the regulations say they have
6 to do -- stop selling as soon as feasibly possible but
7 no later than fifteen business days from the date the
8 business received the request.

9 And this is one I actually think that
10 our director, one of his -- piece of research that was
11 really interesting was back in the day when he was
12 figuring out that you can go to a car dealer and they
13 were all selling information about how many times you'd
14 been at the car dealer. So they knew -- they had
15 ultimate negotiating power over you because they knew
16 that you'd been to six car dealerships looking at this
17 particular car or looked at it online. And if you ask
18 a business to stop selling your information and they
19 can continue to sell it, that first fifteen days is
20 super important.

21 And I understand that the -- you know,
22 one interpretation the staff's written "as soon as
23 feasibly possible" kind of covers that off, I would
24 like staff to investigate whether or not it's possible
25 to tie the time -- especially just for online sales --

1 tie the ceasing to sell to the same repetitively with
2 which they sell your information. IE: if you show up
3 on a site and five microseconds later they're selling
4 your information in real-time bidding process, and you
5 tell them don't sell my information, they should also
6 be able to stop selling your information in that same
7 time frame. Because otherwise they might say well,
8 it's a day before it's feasibly possible for us to go
9 through all those things. And that one day is, you
10 know, super value.

11 It's like the -- it's most valuable that
12 first hour and kind of declines from there. And so I
13 just want to make sure it's not a loophole there. So
14 I'd like to tighten up that language, the "as soon as
15 feasibly possible" and tie it to the repetivity with
16 which they're selling your information.

17 MS. URBAN: Thank you, Mr. MacTaggart.
18 I just want to check if Ms. De La Torre's raised hand
19 is responsive to Mr. MacTaggart's recent suggestion or
20 if you have a new item for me to come back to when he's
21 done with his list?

22 MS. DE LA TORRE: No. I was wondering
23 is he -- is Mr. MacTaggart is going through his
24 sections, if there's an opportunity for the other Board
25 members to interact because if we wait until the end,

1 it seems like there's multiple sections. I mean, we
2 could have that conversation whichever way the Chair
3 thinks is best. But I did have a comment to the page
4 38 -- or more than a comment, a question, in that we're
5 going -- you know, moving forward. So I just don't
6 know if there's motivation to stop after every section.

7 MS. URBAN: Okay. Yes. Let's go
8 through the list. I have no insight into how many
9 items are on each list. Although, a Board member could
10 tell me. So I think it's going to be most efficient if
11 you jot them down, Ms. De La Torre. And then we'll
12 come back when Mr. MacTaggart has finished his list.
13 Thank you.

14 MR. MACTAGGART: I think I'm on my last
15 one. Well, second-last one. The -- and I do think
16 given that the -- we should think about -- this is a
17 much longer discussion -- the, you know, 145(m) and (n)
18 expired. And the legislature did not deem it
19 appropriate to act -- to extend them. I'm not very
20 concerned about 145(m) which is the employee/employer
21 exception in the statute because there's tons of
22 employee law in California where businesses have to
23 keep you file -- they have to your records for years
24 after you're -- you know, leave. You can access your
25 files. All that stuff is, I think, separate.

1 But the B-to-B exemption in 145(n), I do
2 think it would be -- behoove us to have some guidelines
3 about, you know, what is important with respect to
4 promoting privacy. This gets all into the extended
5 purpose of it. But allowing it. And Ms. De La Torre,
6 this kind of gets into some of your earlier comments
7 that, you know, what promotes privacy but also promotes
8 workability. So I think that that's something that I
9 would urge the staff to address, the 145(n) exemption.

10 Oh. And sorry. My very, very last -- I
11 promise -- point here is -- I'm going to go all the way
12 back to the beginning. I'm sorry. 7 -- I'm sorry. I
13 jotted this down out of order. I apologize. 7003(e)
14 which is on page 10 of 72. This is for the mobile
15 applications, the link to opt out. The statute says,
16 "prior to downloading" -- that it should be available
17 to a consumer prior to downloading. And this
18 regulation, 7003, says, "which must be accessible
19 through the platform page or download page".

20 And the only thing I'd like to suggest
21 to the staff is I actually would like -- would welcome
22 the screen before I download the app saying, "do you
23 want to opt out" because if it's on the download page,
24 who knows where it's going to be on the download page
25 or how it is, and your kid's sitting there saying I

1 want the app right now. And I'd love to be able to
2 have it, you know -- what the statute says is, "prior
3 to downloading". So that's my final point on that
4 7003(d).

5 MS. URBAN: Thank you very much, Mr.
6 MacTaggart. I'm pausing to decide whether I would like
7 to recommend that we now have any comments on Mr.
8 MacTaggart's list or we get -- is -- if there's any
9 other items Board members want to bring up and then
10 come back to the very top. I think there's a balance
11 between efficiency on -- in terms of letting people get
12 their thoughts on the table and efficiency in helping
13 people key in to the discussion that we're having at
14 the moment. So my initial thinking is that we can
15 respond to Mr. MacTaggart's comments. But I am open to
16 either.

17 Mr. Thompson?

18 MR. THOMPSON: My question/comment was
19 not specific to Mr. MacTaggart's list and when we
20 respond to it. It was more kind of how we're
21 proceeding for the rest of today and tomorrow. Only
22 because I'm sensitive to time.

23 MS. URBAN: Yep.

24 MR. THOMPSON: I've got some -- I have
25 other obligations that I need to attend to at some

1 point. And I didn't know if it's -- it seems clear we
2 will be meeting again tomorrow.

3 MS. URBAN: I'm not sure that it is
4 clear.

5 MR. THOMPSON: Oh. Okay.

6 MS. URBAN: No. That -- so I was hoping
7 that every -- I didn't -- again, I didn't -- I don't
8 know how long the list is. But I was hoping that
9 everyone's potential additional items would be on the
10 table. And then I was going to do a time check with
11 staff in terms of what we have left to consider and
12 public comments. So both of those components do need
13 to happen today. And I think we have found ourselves,
14 perhaps inevitably, in the odd gray -- the gray area
15 where, depending on how long the Board talks and
16 depending on how much public comment the public would
17 like to engage in, it is potentially possible that we
18 could finish today if we stayed somewhat longer than 5,
19 as I suggested earlier in the morning.

20 It's also possible that if we simply be
21 more realistic to go until tomorrow. And I was hoping
22 for it to be much clearer. But I think that, you know,
23 we could move forward a little bit longer and see if we
24 are close to the end of our conversation at least or
25 not.

1 And I think I would ask you, Mr.
2 Thompson, if you have a -- if you have a hard
3 constraint at a particular time because, of course,
4 that's also important information for us to consider?

5 MR. THOMPSON: I mean, define hard
6 constraint. My son has a game that I'd really like to
7 get to.

8 MS. URBAN: That's a constraint. And
9 you can characterize it as hard, or medium, or -- I
10 mean, that is -- yes, it's your constraint.

11 MS. DE LA TORRE: I -- my preference
12 would also be to stick to what's announced or make it
13 shorter, not to -- and not be a situation where we stay
14 beyond that. I just -- I don't know if other members
15 are welcome to share their thoughts here at this point.
16 But I -- my heart is with Mr. Thompson.

17 MR. THOMPSON: Yep.

18 MS. DE LA TORRE: I would prefer to
19 restart tomorrow and end in a reasonable time today.

20 MR. THOMPSON: My preference would be
21 not to go past 5:30 if we can.

22 MS. URBAN: Thank you. Okay. That's
23 very helpful, Mr. Thompson. Do others have a similar
24 preference or are supportive of Mr. Thompson's
25 preference, with regards to ending at 5:30 because I do

1 think that helps us? No? Okay. All right. Meaning
2 that we will need to come back tomorrow, I think almost
3 certainly. Okay. Then that is what we will do. And I
4 think and I hope that we should be able to get any
5 remaining items that haven't yet been discussed at
6 least on the table. And that will allow everybody to
7 have all of that information as we -- after we recess
8 during the evening.

9 Okay. Ms. De La Torre, I believe that
10 you had -- were hoping to make comments or ask
11 questions about Mr. MacTaggart's -- some of Mr.
12 MacTaggart's items? Would you like to go ahead,
13 please?

14 MS. DE LA TORRE: I had a question that
15 came to mind. And then I have one final item on my end
16 that I haven't mentioned that would be also for future
17 bill making. But the question is, I will -- we're on
18 page 38. And I think this is -- like Mr. MacTaggart
19 mentioned a section that has not verified initially
20 from the prior bill making. But now it has to be
21 interpreted in the context of we have a right to
22 correct. I was just not clear as to what was the
23 modification that Mr. MacTaggart envisions.

24 The section currently says, "a business
25 shall not disclose in a response to a request to know"

1 a number of items that, you know, we had confide -- I
2 understand the restriction in that bill for items that
3 are usually very irrelevant in terms of the potential
4 for identity theft and maybe protecting those from
5 disclosure can prevent the misuse of the regs to obtain
6 information that can be used for identity theft. But I
7 didn't completely understand what he was suggesting
8 that the business should provide the information or
9 should be allowed to provide the information, or -- we
10 could go back to that.

11 MS. URBAN: Thank you, Ms. De La Torre.

12 Mr. MacTaggart, I understood you to be
13 pointing out something that you saw as a potential, not
14 inconsistently exactly, but a way that the connection
15 between those two rights and how they're implemented
16 could be improved. And that you were asking staff to
17 look into that. But if you have a specific -- do you
18 have a specific answer to Ms. De La Torre's question
19 because if so, then please go ahead and say it. And if
20 not, then I think it's completely fair to -- as well to
21 ask staff to work on that, what you idneti -- like the
22 the potential issue you identified in the proposed
23 regulation.

24 MR. MACTAGGART: Sure. So the issue
25 here is simply that in the new right to correct, in

1 7023(j) which is on page 36 and 37, what the right to
2 correct says to consumers in the regulations is that
3 with respect to this category of super sensitive
4 information the business doesn't disclose to you when
5 you're correcting it, but it provides a way to confirm
6 that the personal information it maintains is the same
7 as what the consumer provided. So you say here's my
8 Social Security number, and they say great, yep, that's
9 correct, that's what we have for you. And if it's
10 wrong, then they're like okay, we're going to correct
11 it, right? And that's -- obviously you kind of need to
12 do that to correct.

13 So my point is then overlay that concept
14 where I can actually go somewhere and I can say do you
15 have my correct information and they correct it. Now,
16 overlay that concept when I go to the business just to
17 say hey, what do you have about me, they don't tell me
18 any of my information. And I -- that's a weird thing
19 because you have to go correct your information not
20 knowing whether that information is correct in order to
21 find out if it is correct around this information. So
22 I mean, maybe there's -- it's sort of a chicken-and-egg
23 thing. I'm just trying to think. It would be nice to
24 figure out -- I've always thought that even if they
25 make me go show up with a notarized, you know, driver's

1 license and an attorney -- you know, a whole bunch of
2 stuff -- I mean, I can buy a house with my driver's
3 license.

4 But under our regulations, I can't show
5 up with my driver's license and a notary and get my
6 financial information. And it's weird. I have always
7 thought that's a little strange. I don't care if they
8 make it super, super strict. But it is strange to me.
9 And then you have this concept now that they do tell
10 you if you -- if the information you have is correct.
11 So that's -- that was my point about page 38. It is
12 not burning. It does not need to be addressed in --
13 now. And I don't really need to take up everybody's
14 time at 5 o'clock on a Friday night about this.

15 MS. URBAN: Thank you, Mr. MacTaggart.

16 Ms. De La Torre, do you understand
17 the --

18 MS. DE LA TORRE: Yes.

19 MS. URBAN: -- consensual question Mr.
20 MacTaggart --

21 MS. DE LA TORRE: Very --

22 MS. URBAN: Okay.

23 MS. DE LA TORRE: Very -- I understand.

24 MS. URBAN: Do you have other questions
25 for him?

1 MS. DE LA TORRE: I think I just wanted
2 to express support for the other comments that he had
3 and the -- specifically the comment on employee data
4 and consumer-to-consumer data. We should be thoughtful
5 about the fact that this is absolutely new. That this
6 will start next year. And organizations that intend to
7 be compliant might not completely understand how to get
8 there. So I support his comment on being thoughtful
9 about that.

10 MS. URBAN: Thank you very much, Ms. De
11 La Torre.

12 All right. Let me pause to provide an
13 opening and opportunity for any other Board reactions
14 or questions to items that Mr. Le, Ms. De La Torre, and
15 Mr. MacTaggart suggested, and Mr. Thompson.

16 MS. DE LA TORRE: I have one more item.

17 MS. URBAN: Okay. You have --

18 MS. DE LA TORRE: It's really fast.

19 MS. URBAN: -- an -- a new -- sorry.

20 MS. DE LA TORRE: It's frivolous. This
21 is very simple.

22 MS. URBAN: Okay. Please, go ahead.

23 MS. DE LA TORRE: It will be unanimous.

24 So I do not understand why, but our notice says -- and
25 the individual response says, do not include a required

1 to highlight that consumers have the right to complain
2 to the AG and the CPPA. And that's a small thing to
3 ask businesses to add. And it's very, very helpful to
4 consumers because consumers sometimes might get that
5 response that they disagree with. But they don't have
6 a clear idea as to who to bring that to. So to require
7 that that response include a reference to either the
8 AG, or the Agency, or possible a link to an easy form
9 that they could use to raise their concern, I think
10 would be very valuable. Both in privacy notices and
11 responses to requests.

12 MS. URBAN: Thank you very much, Ms. De
13 La Torre.

14 Are there additional items? I -- let me
15 just back up and say, Ms. De La Torre, you would like
16 to put this on the list of things for staff to consider
17 working into a future --

18 MS. DE LA TORRE: Absolutely.

19 MS. URBAN: -- (indiscernible) for the
20 regulations. Okay. Thank you very much. All right.
21 Well, I find myself with none. So I had a very
22 edifying time listening to the -- to this in the last
23 hour or so and really appreciate everyone's thoughtful
24 attention to the proposed rules, and the modifications,
25 and going through the -- going through all of the

1 items. We didn't speak out individually at the top of
2 the meeting. And I find everything to be helpful
3 interventions. And I'm glad that staff will be looking
4 at those things.

5 Ms. Kim, did you have anything else that
6 you wanted to bring up before I move to the question of
7 categorization for Ms. De La Torre's question and
8 comments about 702 that we discussed, returning to --
9 at this point in the conversation?

10 MS. KIM: I don't have anything else to
11 add.

12 MS. URBAN: Okay. Thank you. Thank
13 you, Ms. Kim.

14 In that case, Ms. De La Torre, shall we
15 circle back?

16 And I just want to check my notes --
17 give me one second -- so that I can introduce this
18 properly. Okay. So in the discussion of 7002 --
19 proposed regulation 7002 and the modifications to
20 proposed regulation 7002, the Board has had a fairly
21 extensive conversation with observations, and
22 backgrounds, and helpful analysis by Ms. De La Torre
23 and others. Mr. MacTaggart suggested two more minor
24 potential modifications to the rule. And Ms. De La
25 Torre suggested considering also some kind of broader

1 review and looking at, for example, the different
2 factors and how 7002 might apply to the employee data
3 that Mr. MacTaggart mentioned a few minutes ago along
4 with other things.

5 I won't try to summarize the whole
6 conversation because I think it's most helpful to speak
7 of it in those, sort of, three categories. There is
8 the proposed modification from staff on the page of the
9 document that we have for the meeting. We have Mr.
10 MacTaggart's two potential suggested changes. And we
11 have Ms. De La Torre's background. And there were
12 several specific examples. But I think if it's fair to
13 say, Ms. De La Torre, a kind of conceptual framework
14 that you were offering.

15 So what we discussed was circling back
16 around with regards to the -- we call -- I said
17 buckets. But I apologize for that because I think we
18 have more than one kind of bucket. So I'm going to
19 call it process path that the sets of the -- those sets
20 of items should go into. Obviously we have the
21 modifications from staff before us already today.
22 There's Mr. MacTaggart's suggestions. And so one thing
23 we might consider is whether that is something that Mr.
24 MacTaggart is comfortable with staff looking at and
25 considering where -- whether to add them? Or if he

1 wants the Board to consider those specific changes now?

2 And then there's the question of the
3 broader conceptual observations and potential changes
4 that Ms. De La Torre suggested. And for those, I think
5 that the path of having -- staff having time and the
6 benefit of analysis and speaking with Ms. De La Torre
7 about it more to consider for a future rule making
8 package makes the most sense to me. So that's the path
9 that I would suggest putting it on. But I wanted to
10 circle back on that because we didn't make a final --
11 we didn't come to a, sort of, final place on those
12 items.

13 So I'd first like to ad -- start with
14 Mr. MacTaggart. And actually I'll start with Ms. Kim.
15 Well, I'll start with Mr. MacTaggart and ask if you had
16 a goal of -- again, asking staff to consider and to use
17 the staff's discretion and expertise to decide whether
18 to make any language changes for this package -- for
19 these modifications or whether you wanted to -- us to
20 talk about the language changes you suggested
21 specifically now?

22 MR. MACTAGGART: I am fine with having
23 staff use their discretion.

24 MS. URBAN: Okay. All right. Thank
25 you, Mr. MacTaggart.

1 And then, Ms. De La Torre, are you
2 comfortable with having staff work with you, work with
3 others, you know, analyzing the proposed regulations
4 and modifications in line with all the good
5 observations that you brought up for potential revision
6 to the -- to 7002?

7 MS. DE LA TORRE: So I'm not sure
8 because one of the things that I don't --

9 MS. URBAN: Okay.

10 MS. DE LA TORRE: Let me backtrack. I
11 am absolutely support relying on staff. But I don't
12 know that the staff can make the changes that I'm
13 suggesting fast enough for the rules to move forward
14 expeditiously. So I'm doubting whether -- you know,
15 what would be the best --

16 MS. URBAN: Let me -- I'm sorry, Ms. De
17 La Torre. I think I might have been unclear about
18 that. I agree with you with what you just said. And
19 so that's why I was -- maybe I should go back to
20 buckets. I was -- I'm now changing -- let's add
21 another analogy. I'm changing courses in midstream at
22 5:05. Maybe not a good idea. But that the correct
23 bucket or process path would be for your observations
24 and background in some specific proposals and some
25 conceptual ideas, not to be dealt with with the

1 language we have on the page now in these proposed
2 modifications but worked on as part of any additional
3 amendments we might make to the regulations in a future
4 package.

5 MS. DE LA TORRE: Okay. So let me
6 repeat back to make sure I'm understanding. What
7 you're saying is whether the modifications are
8 considered drafted before we put the code for work or
9 comment, or after; meaning 7002 will be enacted in one
10 form and potentially modified eight months later; is
11 that what we're talking about?

12 MS. URBAN: Potentially modified. I
13 don't know about eight months. But potentially
14 modified in the next --

15 MS. DE LA TORRE: So --

16 MS. URBAN: -- package, yes.

17 MS. DE LA TORRE: So the reason it's
18 difficult for me to answer that question is because I
19 don't know what that means in terms of specifically to
20 act it. So if we enact 7002 now, for example, without
21 that factor that I was talking about sensitive
22 information doesn't mean that for one year that's not a
23 factor that is relevant for that determination?
24 Because I mean, what happens when it changes, right?
25 Is it retroactive? I don't think it can be

1 retroactive. So we will be enacting it knowing that --
2 it's a difficult question for me to answer really. I
3 would love to take some time -- and quite honestly,
4 hear the comments of the commentators to kind of see, you
5 know, what is the reaction of the public because I see
6 benefits and disadvantages.

7 To me, Federal rule is mandatory. If
8 it's something that we have to enact before the
9 deadline, then I'm very inclined to say even if it's
10 imperfect we should move it forward. But my
11 understanding is that 7002 is not mandatory. It was
12 never assigned because it was not mandatory. So we do
13 have the luxury of deciding maybe to not enact it as
14 this, rely on the statute, and enact it in a more
15 perfected form. And I think that's something that's
16 worth some consideration.

17 MS. URBAN: Thank you, Ms. De La Torre.
18 Mr. MacTaggart?

19 MR. MACTAGGART: Yeah. I can -- I'm
20 sympathetic to that approach. At the same time I feel
21 like everybody's trying to figure out where things are
22 going. And to the extent that we have at least this
23 codified and certain, there is the question of will the
24 sensitive personal information aspect that you're
25 talking about, Ms. De La Torre, be added and how --

1 what that's going to look like. But I would again just
2 urge us to move forward with what's here.

3 And I don't think it's problematic, I
4 guess, Ms. De La Torre, to add things because I think
5 we're going to be adding things for the foreseeable
6 future. Almost every Board meeting there's going to be
7 something that was noticed. And I just think -- I was
8 talking to Mr. Laird about previous committees he's
9 staffed. And he said it's just very traditional, many
10 State committees, to rule-making -- many rule-making
11 sessions a year.

12 So I would urge us to go forward with
13 this and to take your point of view into account with
14 the staff and not delay this passage for that.

15 MS. URBAN: Thank you, Mr. MacTaggart.
16 I agree --

17 MS. DE LA TORRE: I just --

18 MS. URBAN: I agree, finally, with Mr.
19 MacTaggart on this. The question for me is whether the
20 proposed regulation is valuable and adds value and
21 implementation -- helps with implementation of the
22 statute. It is not a question of whether or not it was
23 on the initial list. It is clear to me that the -- in
24 my view, this adds value. It is helpful. There is no
25 proclusion for us amending it later. And indeed, there

1 shouldn't be because we will be responding to
2 circumstances. That is the role of a regulatory body
3 with administrative authority to do rules is to respond
4 to circumstances.

5 So for me, the question is the value and
6 whether it helps guide those who are relying on the
7 statute. I think the statute has very strong
8 fundamental protections. And 7002, with the
9 modifications staff has proposed, are valuable and
10 helpful. And I see no reason not to move forward. And
11 indeed, I think that that would take us backwards in
12 terms of the service we're providing for the public.

13 That is not to say that we couldn't
14 improve it in the future, that we couldn't take into
15 account some of the larger questions that you raise,
16 Ms. De La Torre. And I don't think that those things
17 are incompatible at all. So I agree with Mr.
18 MacTaggart.

19 Mr. Le?

20 MR. LE: Yeah. No disagreement there.
21 I also think many of these questions or issues of
22 interpretation may already be addressed in the statute.
23 It's just not appropriate to kind of get into those
24 legal questions and interpretations right now. So to
25 the extent possible, if staff is available to kind of

1 talk about those questions one-on-one, maybe that could
2 avoid some of the -- could allay some of the concerns
3 while avoiding delaying what we -- I think is already a
4 pretty solid set of regulations for Californians.

5 MS. URBAN: Thank you very much, Mr. Le.

6 All right. I'm not going to leave this
7 item completely yet, but I think that we are at the end
8 of the list. Have I missed anything? Okay. Then I'm
9 happy to ask Ms. De La Torre if she is comfortable with
10 the Board's consensus here or -- what? I'm sorry.

11 MS. DE LA TORRE: I mean, there's --

12 MS. URBAN: Go ahead.

13 MS. DE LA TORRE: Yeah. In terms of my
14 position, I would like to listen to the commentators.

15 MS. URBAN: Oh. I see.

16 MS. DE LA TORRE: And that I think --

17 MS. URBAN: Yes.

18 MS. DE LA TORRE: -- will happen
19 tomorrow. I think that we should all listen to them
20 before we make a final determination. I'm assuming
21 that vote doesn't happen until after that anyway,
22 right?

23 MS. URBAN: That's correct.

24 MS. DE LA TORRE: Okay.

25 MS. URBAN: Thank you.

1 MS. DE LA TORRE: So then --

2 MS. URBAN: And I --

3 MS. DE LA TORRE: -- that's what my
4 preference would be --

5 MS. URBAN: I apologize. You said that
6 earlier. And I made a note. And then I forgot. All
7 right.

8 In that case, Ms. Kim, how would you
9 like to proceed with some -- let me just back up and
10 say, so the plan is to summarize where we are in terms
11 of what are the components of the modifications that we
12 are going to consider formally with a motion. And
13 obviously the modifications proposed by staff within
14 the documents provided for agenda three today are some
15 of those components, modifications proposed by staff in
16 this meeting, and modifications proposed by Board
17 members to the extent that there are changes to the
18 language right now.

19 And I think Ms. Kim is planning to give
20 us a little bit more description of those so that we
21 have it all before us as we are thinking about it and
22 so the public has it all before them when they are
23 commenting. And so my question, sort of as a matter of
24 process and timing, Ms. Kim, is if you would like to do
25 that before we end today or you would like to do it at

1 the beginning of tomorrow?

2 MS. KIM: I could probably do it today.
3 But I also think that it might be wise to do it
4 tomorrow once I've gotten a chance to review all of my
5 notes and make sure I didn't miss anything and consult
6 also with our staff to see if they caught something
7 that maybe I hadn't in my notetaking. So my
8 recommendation is that tomorrow when we start off I can
9 go ahead and list out all of the, you know,
10 modifications that I believe have been discussed by the
11 Board and the direction that the Board has given to use
12 with regard to moving forward for the fifteen-day
13 notice and summarize them tomorrow morning. And then
14 allow for that to, you know, just -- sometimes I think
15 clearer after a few hours. But I'm certainly happy to
16 do it now if you would bear with me as well.

17 MS. URBAN: Say no more, Ms. Kim.
18 That's why I asked. So that makes perfect sense to me.
19 And with a last call for emergency things that popped
20 up while we were talking that we need to put on the
21 list -- and I'm going to pause right here. Okay. I'm
22 hearing none. We will now recess the meeting. We are
23 considering currently agenda item number three in our
24 notice meeting for October 28th and 29th of 2022 of the
25 California Privacy Protection Agency Board. We will

1 recess our discussion of agenda item three now. And we
2 will return tomorrow morning at 9 a.m. to continue our
3 discussion of this agenda item.

4 Before people start to leave, I just
5 want to double check with Mr. Laird whether that is
6 appropriate process and I've said the right words
7 because we don't -- you know, we mostly have one-day
8 meetings. And I want to be sure that I've recessed us
9 appropriately?

10 MR. LAIRD: Yeah. Absolutely.
11 Everything you said is correct.

12 MS. URBAN: Okay. In that case, I
13 declare this meeting of the California Privacy
14 Protection Agency Board in recess until tomorrow
15 morning, October 29th, 2022, at 9 a.m. Thank you very
16 much for a robust, careful decision and for your
17 careful attention to the materials that we are
18 considering today. And I look forward to seeing you
19 all in the morning. Thank you.

20 (End of recording)

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1 C E R T I F I C A T E

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5 BE IT KNOWN that the foregoing
6 proceedings were reported by Anne Manscill, and reduced
7 to written form under my direction; that the foregoing
8 52 pages constitute a full, true, and accurate
9 transcript; all done to the best of my skill and
10 ability.

11 DATED this 22nd day of November, 2022.

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____ *Anne Manscill* ____

ANNE MANSCILL