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Changes Coming to the California Privacy Rights Act: What You Need to Know

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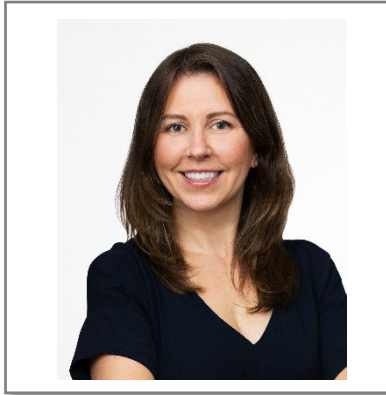
November 3, 2022

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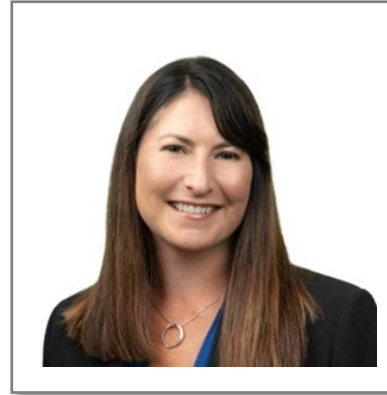


Speakers



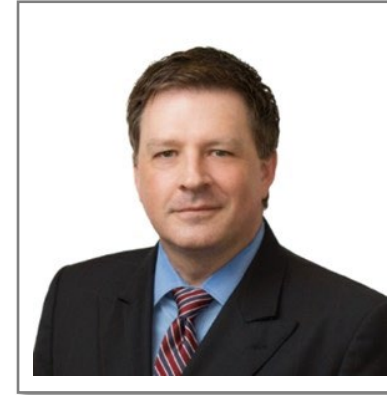
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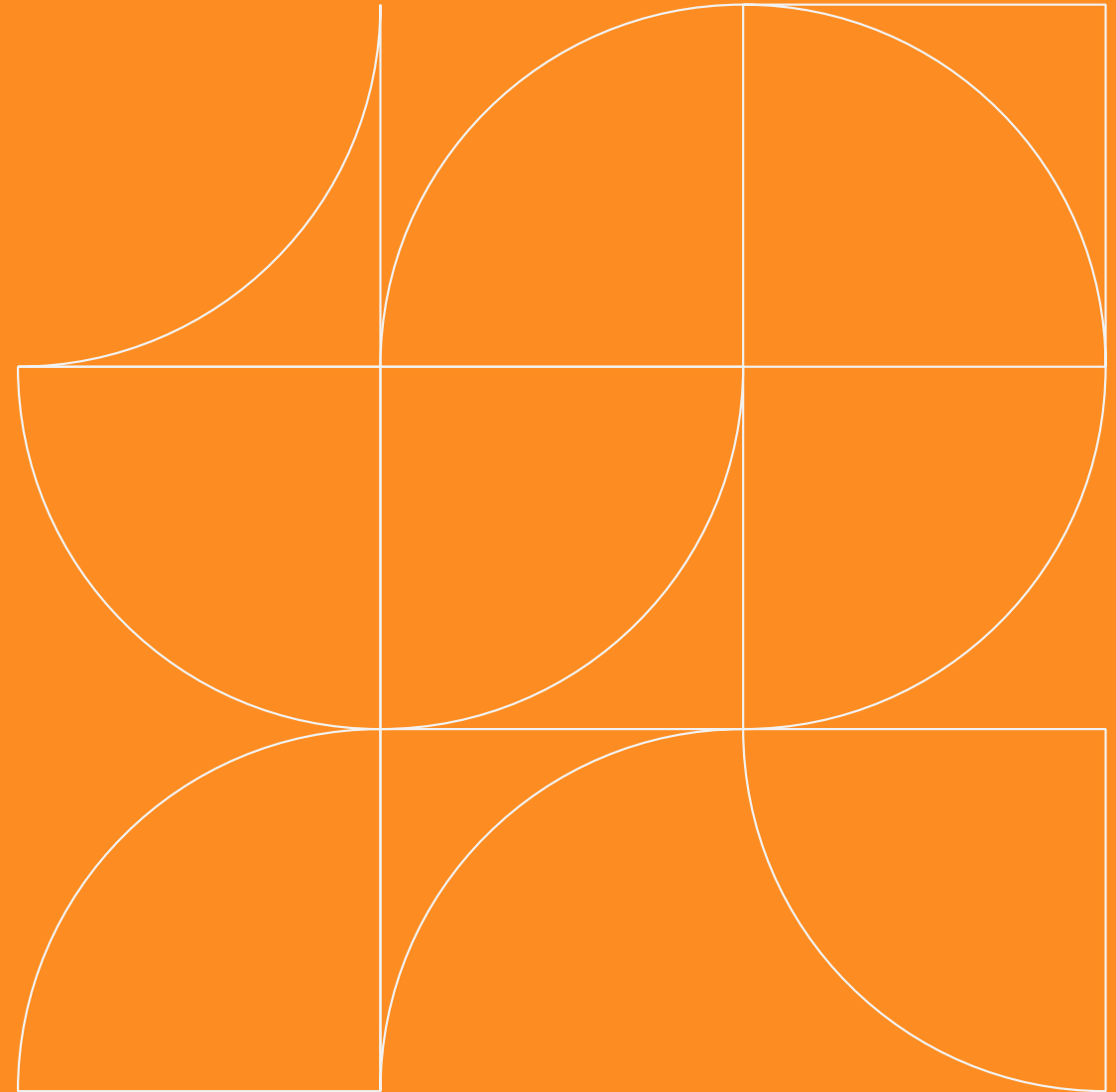
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Agenda

- 1 | CPRA: New Landscape
- 2 | What's Changed?
- 3 | Compliance

CPRA: New Landscape





What's New?

- New Scope
 - Employees are now covered
- New Concepts
 - Sensitive Personal Information
 - Collection Limitation
 - Purpose Limitation
- Consumer Rights
 - No Right to Correct Incorrect Data
 - Right to Limit Use of Sensitive Data
- Business Obligations
 - No Secondary Use
 - Auditability of Compliance Program
 - Non-AG Enforcement

Extra-Territorial Application & 'Doing Business' in CA



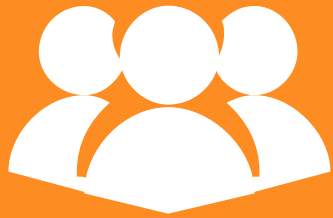
- The Act applies to **for-profit** entities doing **business** in CA (regardless of physical presence)
- Data in the information age knows no borders
- “The provisions of this title are not limited to information collected electronically or over the Internet, but apply to the collection and sale of **all** personal information collected by a business from consumers.”

Business



- When does the CCPA apply to my business?
 - annual gross revenues in excess of \$25 million;
 - annually buys, sells, or shares for commercial purposes the personal information of 100,000 or more consumers or households; OR
 - Derives 50% or more of its annual revenues from selling consumers' PI
- Not non-profits (usually)
- California's "long arm statute" defines scope
 - "Purposeful Availment" of the jurisdiction

Consumer

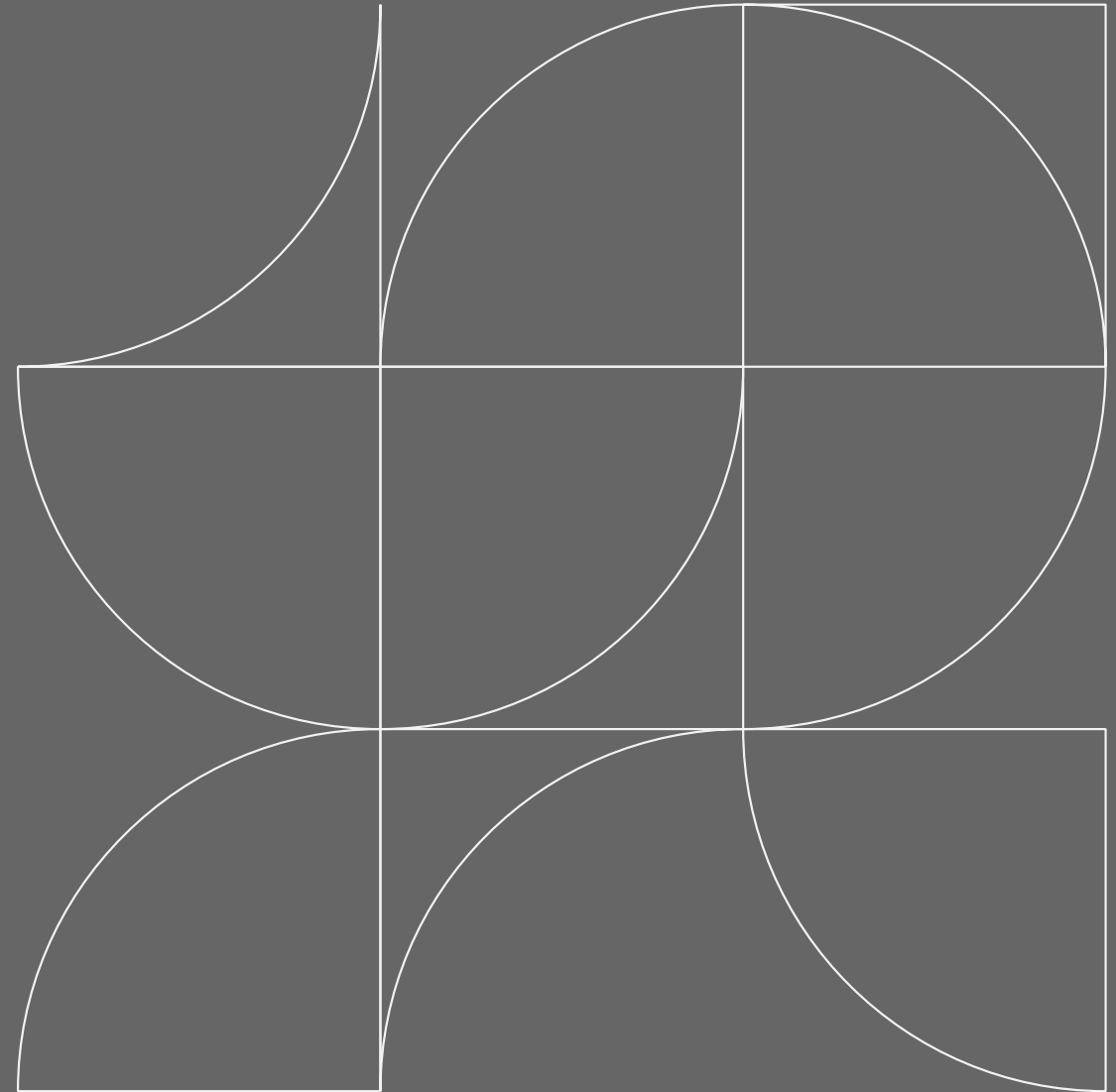


- A natural person who is a CA *resident* however identified, including by any *unique identifier*
- Resident is defined by the tax code
 - *Resident* means
 - (1) every individual who is in the State for other than a temporary or transitory purpose, and
 - (2) every individual who is domiciled in the State who is *outside* the State for a temporary or transitory purpose.
 - All other individuals are nonresidents

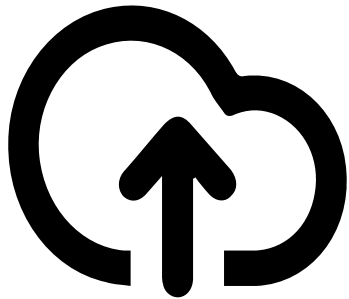
Basically, if you pay CA taxes, you are a Consumer

- There used to be an *exception for employees*. That *expires* Jan. 1, 2023

What's Changed?



Personal Information



Any Information that identifies, **relates to**, describes, is capable of being associated with, or could reasonably be linked, directly **or indirectly**, with a consumer or **household** such as:

- Identifiers
- Certain categories
- Protected classification characteristics
- Commercial Information
- Biometric Information
- Internet Information
- Geolocation Data
- Audio, electronic, visual, thermal, olfactory
- Inferences based on behavior (OBA)

Sensitive Personal Information



Personal Information:

- A social security, driver's license, state identification card, or passport number
- An account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account
- Precise geolocation
- Racial or ethnic origin, religious or philosophical beliefs, or union membership
- The contents of a consumer's mail, email, and text messages **unless the business is the intended recipient of the communication**
- Genetic data
- Health data
- Sex life or orientation

Sale & “Share”



Sale:

- Selling, renting, releasing, disclosing, disseminating, **making available**, transferring, or otherwise communicating
- Orally, **in writing**, or by electronic or other means
- A consumer’s PI by the business to another business or a 3rd Party
- For monetary or **other valuable consideration**

Share:

- Disclose for the purposes of **cross-contextual behavioral advertising**

Significant New Limitations



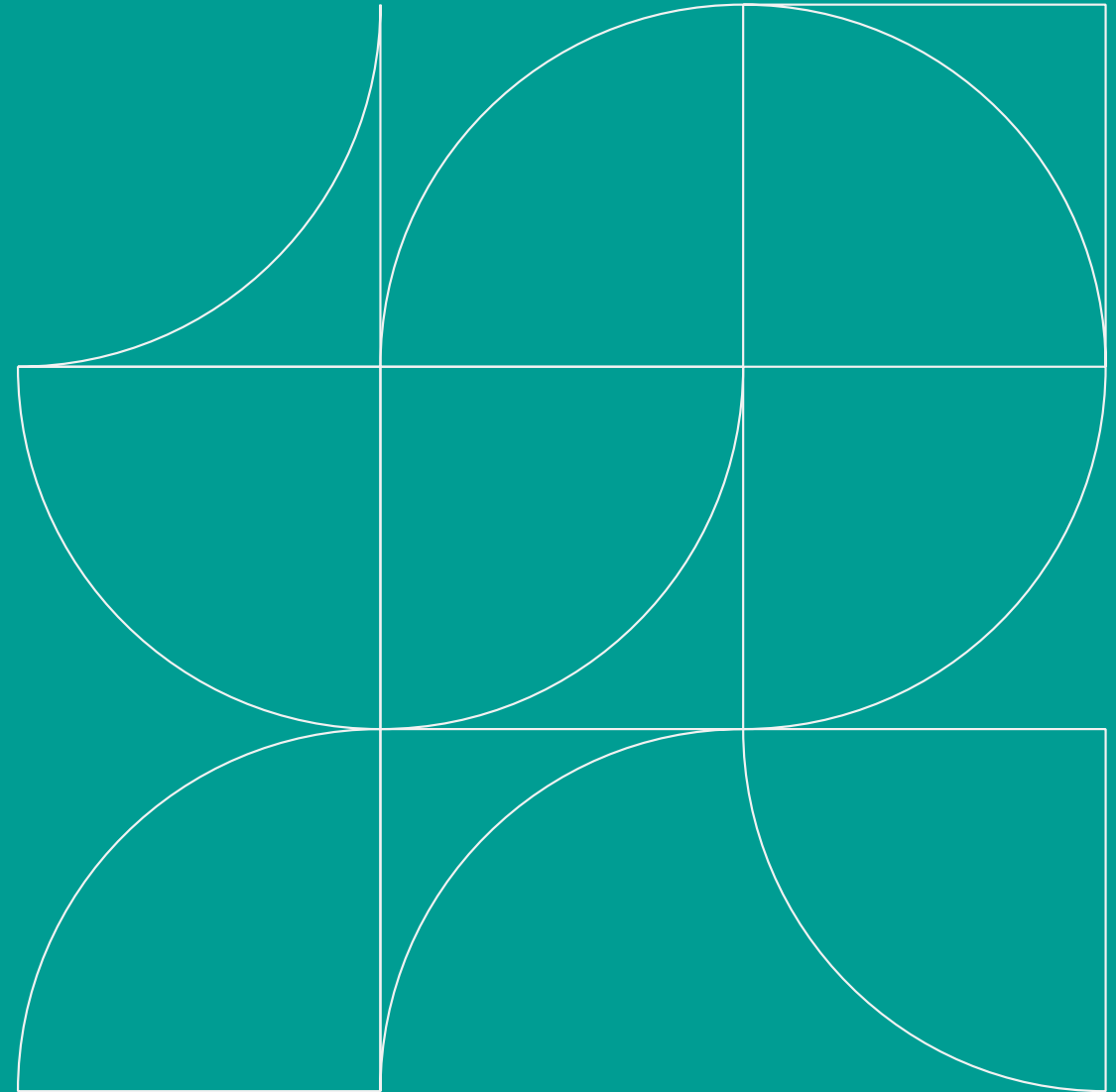
- Purpose Limitation
 - No “**Secondary Use**”
 - Only use data for specific purpose collected
- Collection Limitation
 - Only collect data that is “**Necessary**” and “**Proportionate**” for the purposes
- Storage Limitation
 - When purpose for collection is over → **Delete**
 - Affirmative obligation to delete data

Data Subject Rights



- Rights include:
 - Know
 - Access
 - Deletion
 - Opt out of sale (more broadly defined as the exchange of personal information for monetary or other valuable consideration)
 - Nondiscrimination
 - Data portability
 - *Rectification and correction*
 - *Opt out of sharing for cross-context behavioral advertising*
 - *Limit use and disclosure of sensitive personal information*
 - *Opt out of the use of automated decision-making*

Compliance



Business Obligations



- 3 General Areas
- Duty to comply:
 - **Post** notice of consumer rights
 - **Inform** consumers of data handling practices
 - **Respond** to consumers exercising their rights
- Duty to protect the security of PI
- Duty to:
 - **Train** employees
 - **Contract** as required (vendor management)

Rights Management



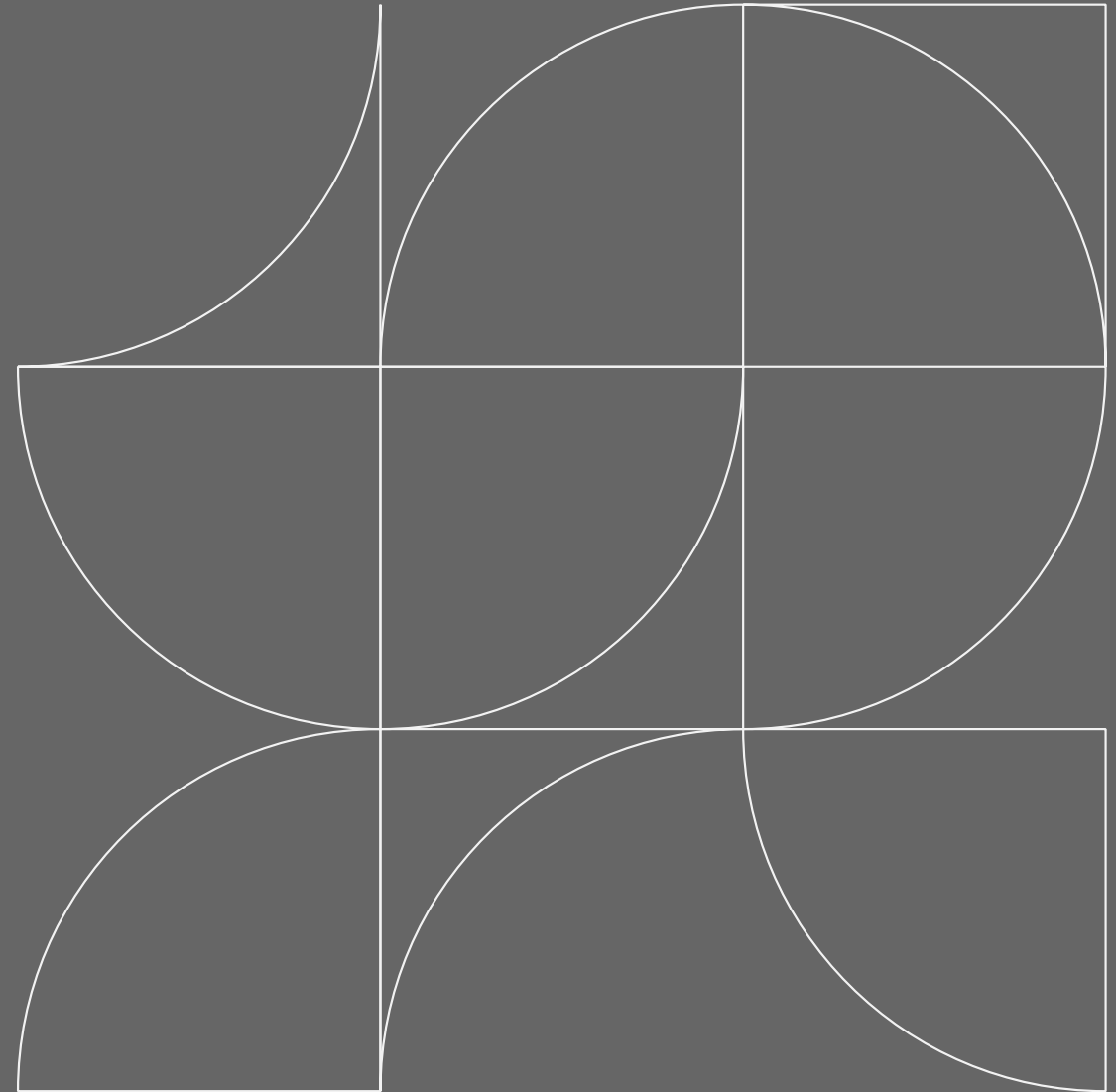
- Rights are not absolute:
 - Need to **develop standards** detailing when rights requests will be honored or not
 - Proposed regulations **prohibit** the disclosure of certain categories of Personal Information (e.g. SSN, DLN)
 - Need to **develop processes** to intake and manage requests
 - Some rights requests already have analogous processes in place
 - Personnel File access
 - Data correction

Security and Audit Requirements



- Additional security requirement similar to GDPR:
 - A business that collects a consumer’s personal information **shall implement reasonable security procedures and practices** appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure in accordance with Section 1798.81.5
- CPRA expects regulations requiring cybersecurity audits and **risk assessments** for companies whose processing presents a significant risk to consumer privacy or security (reminiscent of a DPIA under GDPR)

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Enforcement and Fines

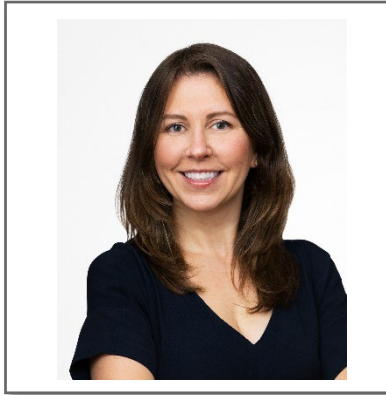
- **Enforcement**

- CCPA was enforced by the Attorney General
 - AG also was in charge of rulemaking
- CPRA will be enforced by the newly created CPPA
 - CPPA was supposed to come out with regulations in July 1, 2022
 - CPPA met in late February and reported that they do not expect to meet this deadline, and expects rules to be published as late as the Fourth Quarter of 2022

- **Fines**

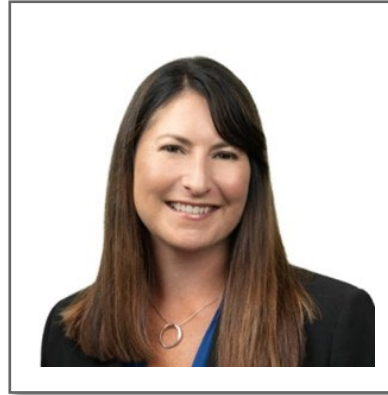
- CCPA
 - Up to \$2,500 for each violation and \$7,500 for each intentional violation
 - Statutory damages from \$100-\$750 per violation
- CPRA
 - Keeps CCPA fines and adds \$7,500 fine for violations related to consumers under the age of 16
- CPRA removes 30 day cure period

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Thank you

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