**ATP LEGAL ALERT**

**ENFORCEMENT OF ALL NEW CAL. PRIVACY REGS DELAYED**

Last Friday, the Superior Court for Sacramento County, CA issued an order that has a profound effect on the new CPRA[[1]](#footnote-1) regulations which the California Privacy Protection Agency (“Agency”) had intended to start enforcing on July 1. The lawsuit was brought by the California Chamber of Commerce. The Court held that:

1. The 12 components of the new regulations that were adopted on March 29, 2023,[[2]](#footnote-2) cannot be enforced until March 29, 2024; and
2. The remaining 3 regulatory components, including regulations about the use of automated decision-making, cannot be enforced until one year following their adoption.

Among the significant rulings by the Court, it found that,

* “the plain language of the statute [Cal. Civ. Code § 1798.185] indicates the Agency was required to have final regulations in place by July 1, 2022. The parties agree Subdivision (d) allows the Agency to begin enforcement a year later, on July 1, 2023. The very inclusion of these dates indicates the voters intended there to be a gap between the passing of final regulations and enforcement of those regulations. The Court is not persuaded by the Agency’s argument that it may ignore one date while enforcing the other.”
* “The Court hereby stays the Agency’s enforcement of any Agency regulation implemented pursuant to Subdivision (d) for 12 months after that individual regulation is implemented. (See Legislature of State of Cal. v. Padilla (2020) 9 Cal.5th 867, 879 [the Court may reform statutory and constitutional amendment deadlines to effectuate the enactors’ clearly articulated policy judgments when it is feasible to do so].) By way of example, if an Agency regulation passes regarding Section 1798.185 subdivision (a), subsection (16) (requiring the Agency issue regulations governing automated decision-making technology) on October 1, 2023, the Agency will be prohibited from enforcing a violation of said regulation until October 1, 2024. The Agency may begin enforcing those regulations that became final on March 29, 2023 on March 29, 2024.”
* “The Court is not persuaded by the Agency’s argument that Petitioner has not demonstrated how California businesses have been prejudiced by the Agency’s failure to adopt final regulations by July 1, 2022, or how they will be prejudiced by the Agency’s enforcement of regulations beginning July 1, 2023. The Agency points to no authority indicating Petitioner must make any such showing, nor is the Court persuaded that Petitioner must do so. The Court’s finding that the Agency failed to timely pass final regulations as required by Section 1798.185 is sufficient to grant the Petition.”

**NOTE:** Although the new CPRA Regulations cannot be enforced until March 29, 2024, either the Agency or and the California Attorney General can fully enforce the original CCPA Regulations.

**CONCULSION**

Accordingly, testing organizations now have reasonable time to implement these the Agency regulations adopted on March 29, 2023. Moreover, any additional regulations that we expect to be adopted, including those covering the use of automated decision-making, cannot be enforced until one year after their adoption, so testing organizations will have a full year to implement procedures around those new regulations.

We will continue to monitor developments on the California Privacy Protection Agency and its adoption of additional regulations, as well as the enforcement of the original CCPA Regulations.

1. The California Privacy Rights Act of 2020 (“CPRA”), also known as Proposition 24, was a California ballot proposition approved by a majority of voters after appearing on the ballot for the general election on November 3, 2020. Thus, the Court’s references to “voters.” [↑](#footnote-ref-1)
2. The previously adopted rules cover such requirements as data processing agreements, consumer opt-out mechanisms, mandatory recognition of opt-out preference signals, dark patterns, and consumer request handling. [↑](#footnote-ref-2)