

Comment: California AG assembles privacy enforcement team preparing for national enforcement footprint.

In Brief : The California Department of Justice is preparing to take its place beside the US Federal Trade Commission as a US privacy enforcer with the personnel, budget and enabling law to give it a national footprint when the landmark California Consumer Privacy Act takes effect next month. In doing so, the California DOJ is girding for combat against multinational technology firms with almost limitless legal resources. It is preparing to enforce the CCPA beyond the boundaries of California — and potentially, beyond the United States.

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The California DOJ, headed by state Attorney General Xavier Becerra, has begun a four-fold expansion of its privacy enforcement team. The agency is in the process of hiring lawyers and legal analysts, and is budgeting money for technology experts who will help the agency not only enforce CCPA, but defend the fledgling law from an anticipated wave of court challenges.

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The new California privacy law “is complex and broad in its scope; it will apply to many companies across the country, if not the globe,” the state DOJ told California lawmakers in requesting ongoing funding of about \$4.5 million a year in a budget document obtained by MLex (see [here](#)). “Since the law is the first of its kind in the United States, enforcement will leverage significant resources for complex investigations and prosecutions against opponents typically represented by some of the largest and most sophisticated law firms.”

Prior to this year, California’s privacy enforcement team was a small sub-section of five attorneys within the DOJ’s Consumer Law Division Privacy Unit, a team under Nicklas A. Akers, a senior assistant attorney general; and Stacey D. Schesser, a supervising deputy attorney general who Becerra described as “quite honestly, the point person” for enforcement of the CCPA.

Schesser and Akers are veteran California DOJ lawyers who have helped guide multi-state privacy and data security investigations of the likes of Facebook (see [here](#)) and Equifax.

Another key member of the DOJ team is Eleanor Blume, a special assistant attorney general who joined the agency in 2017 from the Consumer Financial Protection Bureau, where she was a counsel for five years, joining in the early years of that regulator.

Blume, Schesser and Akers are getting a lot more firepower. With additional funding from the legislature in the 2019-20 budget, the privacy unit will add seven more lawyers. But Becerra has asked for, and received, funding to support a total of 23 additional positions for future years, including eight deputy attorneys general, eight legal analysts, six clerical staffers and \$250,000 a year for expert consultants.

The DOJ privacy unit’s expansion will ultimately give it nearly two dozen fulltime privacy enforcers, including lawyers and other support staff. That compares with about 40 people within the FTC who are dedicated to national privacy and security protection, a number that FTC Chairman Joseph Simons is trying to get Congress to bolster (see [here](#)).

The California DOJ isn’t going to begin enforcement of the CCPA until July 2020, although hiring of those new deputy AGs and other staffers is under way.

But unlike the FTC, Becerra's office won't just have to enforce the new law; it will also have to defend it from what the California DOJ expects will be multiple court challenges that could limit enforcement, as well as challenges to the proposed regulations that would direct its enforcement.

The Attorney General's Civil Law Division believes it will have to defend four lawsuits through the 2023-24 fiscal year, including state and federal lawsuits that would challenge the CCPA, and two other state lawsuits challenging the CCPA regulations and amendments to the regulations.

Since the CCPA was "only recently passed, no lawsuits have yet been filed, and the number of lawsuits that will be filed is uncertain. Nonetheless, given the economic and privacy interests at stake, litigation is probable," the attorney general's budget document says.

The privacy unit already got its first taste of conflict against Facebook when it launched an investigation into the company's privacy practices in June 2018 in the wake of the Cambridge Analytica privacy leak.

The investigation hasn't gone smoothly. The AG filed a lawsuit in state court in San Francisco in November (see [here](#)) seeking to force Facebook to comply with two investigative subpoenas demanding information about the company's data-sharing policies with third-party apps on its platform dating back to 2013.

Schesser, a nine-year veteran of the California DOJ, and Akers, the chief of the Consumer Law Section who has been with the agency for 13 years, have been directly involved in the Facebook probe, along with Lisa B. Kim, a deputy attorney general who joined the DOJ in 2015 after working as a privacy litigator for the firm Reed Smith.

Facebook is being defended by the prominent firm Wilmer Hale, whose team includes Washington-based lawyers Benjamin Powell and Maury Riggan. It's one example of the caliber of legal opponents the California DOJ will face in enforcing the CCPA.

But Becerra said at a recent press conference that California investigators have had fewer tools and penalties in the Facebook investigations than they will have after the CCPA takes effect Jan. 1.

Schesser and Akers have strong reputations among lawyers with other states' attorney general offices for their work on multi-state probes, said Matthew Fitzsimmons, a former assistant attorney general in Connecticut who headed the state's privacy and data breach enforcement efforts and served with Schesser on committees guiding multi-state investigations.

"I thought she was fantastic," Fitzsimmons said of Schesser. "She is very bright and able but also practical — not one of those lawyers who took a hard line and stuck to it."

"Being California, they very well could throw their weight around and make demands of businesses and even other state attorneys general offices," he said. "But that didn't happen in my experience in the privacy area. It was much more collaborative."

Akers and Schesser "have both been doing it long enough that what you see is what you get. [Schesser] may play it close to the vest, but I think as an office experienced with the CCPA, they have really tried to be open and have it not be a 'gotcha' where on Jan. 2 they go after certain companies," Fitzsimmons said.

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