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August 17, 2026

Honorable Administrative Presiding Justice
and Associate Justices of the Sixth District Court of Appeal
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113

Re: ***Google LLC v. Superior Court of Santa Clara County* (*Haynie*), No. H054687 — Amicus Letter of Washington Legal Foundation Supporting the Petition for Writ of Mandate**

To the Honorable Court:

Washington Legal Foundation writes to urge the Court to grant Google LLC's petition for a writ of mandate. Courts of Appeal may consider amicus letters in deciding whether to issue an alternative writ or an order to show cause. WLF asks the Court to consider this letter. (See Advisory Com. comment, Cal. Rules of Court, rule 8.487; *Regents of Univ. of Cal. v. Superior Court* (2013) 220 Cal.App.4th 549, 557–558.) WLF writes because the order below reaches far beyond these parties.

WLF is a nonprofit, public-interest law firm and policy center with supporters nationwide, including many in California. It promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as amicus curiae in cases addressing the liability of online intermediaries and the constitutional protection of commercial speech. (See, e.g., *In re Facebook, Inc.* (Tex. 2021) 625 S.W.3d 80.) No party or counsel for a party authored this letter, and no one other than WLF funded its preparation or submission.

The order reaches every business that advertises in California.

Nearly every advertisement is aimed at some slice of the market. The acne cream maker aims at teenagers. The hearing-aid maker takes pages in *Longevity*, not *Seventeen*. No one mistakes any of this for bigotry. It is how sellers find buyers—how commercial information flows to the people who want it.

The superior court's June 11, 2026 order makes that everyday practice a civil rights violation. Because advertisers used Google's tools to direct certain insurance and banking advertisements to younger audiences, the court held, Plaintiffs—seniors who saw other ads instead—have stated a claim under the Unruh Civil Rights Act, an "offense" carrying statutory damages of no less than $4,000 per violation. (Civ. Code, § 52, subd. (a).) On that logic, every business that considers the age of its audience—which is to say, every business that advertises—is a lawbreaker many times over: the retirement planner who aims at seniors, the pediatric dentist who aims at parents of adolescents, and the platforms that carry their messages.

Yet audience selection is the opposite of invidious. It reduces search costs for consumers and advertising costs for businesses. It lets small firms compete with large ones. And it is why a 66-year-old sees advertisements for Medicare enrollment rather than student loans. (See Lau, *A Brief Primer on the Economics of Targeted Advertising* (FTC, Jan. 2020) pp. 5, 12 <https://perma.cc/G8F5-NRU6>.) It is matchmaking, not blacklisting.

The order misreads the Unruh Act, *Liapes*, and Section 230.

The Unruh Act condemns invidious exclusion, not ordinary marketing. A plaintiff must "plead and prove intentional discrimination"—"willful, affirmative misconduct." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1172, 1175 (*Harris*).) The Act forbids "only arbitrary, invidious or unreasonable discrimination"; commercial distinctions supported by the nature of the enterprise, legitimate business interests, or public policy are lawful. (*Javorsky v. Western Athletic Clubs, Inc.* (2015) 242 Cal.App.4th 1386, 1395, 1398 (*Javorsky*).) Age distinctions routinely qualify for that safe harbor: a bar may exclude minors (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 31); a bank may offer seniors preferential rates (*Sargoy v. Resolution Trust Corp.* (1992) 8 Cal.App.4th 1039, 1044); a health club may discount memberships for the under-30 set (*Javorsky*, *supra*, 242 Cal.App.4th 1386). What the Act condemns is treatment that is "malicious, hostile, or damaging." (*Id.* at p. 1404.)

The superior court never conducted that inquiry. It accepted that businesses may lawfully treat age groups differently "with respect to pricing" yet held that "differential advertising" is another matter. (Slip Op. 8.) That has it backwards: advertising is how lawfully differentiated products find the customers they were designed for. If a bank may offer seniors a preferential account, it may tell them about it—and on the order's logic, *Sargoy*'s bank acts lawfully in designing its senior account yet commits a $4,000 offense against the young each time it advertises that account to anyone eligible for it. The court then inverted the pleading burden, overruling the demurrer because "Defendants have not shown that the alleged discrimination is not arbitrary and invidious as [a] matter of law." (Slip Op. 10.) But reasonableness is not an affirmative defense; arbitrary, invidious misconduct is the *plaintiff*'s element to plead. (*Martinez v. Cot'n Wash, Inc.* (2022) 81 Cal.App.5th 1026, 1036; *Harris*, *supra*, 52 Cal.3d at p. 1167.)

Liapes v. Facebook, Inc. (2023) 95 Cal.App.5th 910 does not hold differently. That case involved a platform that *required* every advertiser to select age and gender parameters and itself deployed modeling that skewed delivery by sex. (*Id.* at pp. 923–924, 929.) Most important, *Liapes* never analyzed whether that practice was invidious or arbitrary. It even acknowledged that age-based distinctions are "reasonable and nonarbitrary" when "a strong public policy" supports them. (*Id.* at p. 925, fn. 8.) And it left open the very defense Google presses here, noting that Facebook "d[id] not argue its allegedly discriminatory ad platform is justified by any public policy." (*Id.*) Google makes exactly that argument. A decision that accepts the strong public policy behind age-based distinctions never confronts those policy justifications forecloses nothing here.

The order's flawed Section 230 holding compounds the error. The court held that Plaintiffs pleaded around the statute because Google "knew that its tools could be used unlawfully in the housing, employment, and certain consumer financial contexts and took action to prevent those unlawful uses"—yet did not impose identical restrictions here. (Slip Op. 11–12; SAC ¶¶ 60–62.) Google's voluntary policing in one domain thus became the evidence of its culpability in another. That inverts a statute Congress enacted—under the heading "Protection for 'Good Samaritan' blocking"—precisely so that providers would self-regulate without fear that the effort would be held against them. (*Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 331, followed in *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 39–40.) A rule that converts self-policing into an admission teaches platforms a simple lesson: police nothing, know nothing. And the order rests on an unpublished memorandum that is not binding even within the Ninth Circuit. (Slip Op. 10–11, citing *Vargas v. Facebook, Inc.* (9th Cir., Oct. 13, 2023, No. 21-16499) 2023 U.S.App. Lexis 27288; see 9th Cir. R. 36-3(a).) "Close cases . . . must be resolved in favor of immunity." (*Fair Housing Council of San Fernando Valley v. Roommates.com, LLC* (9th Cir. 2008) 521 F.3d 1157, 1174 (en banc).) This one is not close.

An appeal cannot repair the error.

Writ review of an order overruling a demurrer is reserved for exceptional cases like this one. (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 851.) The petition presents purely legal questions on a closed record—precisely the posture in which writ relief is most appropriate. (See *City of Huntington Park v. Superior Court* (1995) 34 Cal.App.4th 1293, 1297.) The questions are "of widespread interest" (*Brandt v. Superior Court* (1985) 37 Cal.3d 813, 816; accord *Coulter v. Superior Court* (1978) 21 Cal.3d 144, 148), and will unquestionably recur. Left standing, the order's reading of *Liapes* will replicate through the superior courts before any appeal can correct it. WLF's appearance here is itself evidence of the breadth of the interests at stake. (Cf. *Regents*, *supra*, 220 Cal.App.4th at pp. 557–558.)

And three injuries are already accruing that no appeal can undo. *First*, the order strips Google of a statutory immunity whose value is destroyed by the litigation itself. Congress enacted section 230 to spare intermediaries "the burdens associated with defending against state-law claims" that treat them as publishers of third-party content. (*Hassell v. Bird* (2018) 5 Cal.5th 522, 544.) An immunity from the burdens of suit is not restored by winning the suit; every day of discovery, motion practice, and trial preparation consumes what the statute was written to preserve.

Second, the order chills protected speech as long as it stands. Advertising is constitutionally protected expression, and choosing an audience is part of the speech itself; a message aimed at everyone reaches no one. The Supreme Court has twice condemned efforts to suppress commercial information for the audience's supposed good—warning that such suppression "hits the hardest" at "the poor, the sick, and particularly the aged." (*Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.* (1976) 425 U.S. 748, 763; accord, *Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 577.) While this case ambles toward judgment, any rational advertiser will stop tailoring by age in California. And the bespoke information older consumers value most—the Medicare window and senior discounts—will dry up first. Small businesses, which depend on inexpensive digital advertising because they can afford nothing else, will suffer most.

Third, the order's exposure forecloses the ordinary remedy. On Plaintiffs' theory, every undelivered impression is a $4,000 offense, no actual damage required, and the putative class is every older Californian who used Google while logged in. No rational defendant litigates annihilating classwide exposure to the final judgment an appeal requires; the error is built to evade review. "Delay and expense of trial is a valid consideration in deciding whether to grant writ review." (*H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1367.) Here they are decisive.

The questions presented are purely legal, they govern the marketing practices of an entire economy, and the injuries the order inflicts—federal immunity stripped, speech chilled, settlement coerced—are precisely the injuries appeal cannot undo. WLF respectfully urges the Court to issue an alternative writ or order to show cause and, after briefing, a peremptory writ directing the superior court to vacate its June 11, 2026 order and enter a new order sustaining Google's demurrer.

Thank you for the Court's consideration.

Respectfully submitted,

/s/ Cory L. Andrews
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cc: All counsel of record (via TrueFiling)

PROOF OF SERVICE

I am employed in Washington, D.C. I am over the age of 18 years and not a party to this action. My business address is 2009 Massachusetts Avenue NW, Washington, D.C. 20036.

On August 17, 2026, I served the *Amicus Letter of Washington Legal Foundation Supporting the Petition for Writ of Mandate* on all interested parties by causing the document to be transmitted electronically via the Court's Electronic Filing System operated by ImageSoft TrueFiling.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 17, 2026, at Washington, D.C.

/s/ Cory L. Andrews
CORY L. ANDREWS