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*Via TrueFiling*

13 August 2021

The Honorable Chief Justice Tani Cantil-Sakauye & Associate Justices  
Supreme Court of California  
350 McAllister Street, Room 1295  
San Francisco, California 94102-4797

Re: *All of Us or None—Riverside Chapter, et al. v. W. Samuel Hamrick, Jr., et al.*  
Supreme Court Case No. S269654

Supplement to Amici Letter of Consumer Data Industry Association &  
Professional Background Screening Association Re: Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On July 15, 2021, the Consumer Data Industry Association (CDIA) and the Professional Background Screening Association (PBSA) filed and served a letter as amici curiae pertaining to the petition for review filed by plaintiffs-appellants in the above-referenced matter.<sup>1</sup>

The purpose of the letter was to urge the Court to grant review of the Court of Appeal's entire opinion pursuant to California Rules of Court, rule 8.512, subdivision (c). This review is necessary to settle an important question of law. The Court of Appeal's opinion prohibits the use of dates of birth, driver license numbers, and other identifiers to filter online search results, even in the course of otherwise lawful criminal background checks. But contrary to the opinion's holding, nothing in the Rules of Court prevents this type of filtering.

The Court of Appeal's mistaken holding is already having disastrous consequences—namely, the collapse of meaningful criminal background screenings in California and enormous obstacles in getting people into jobs in virtually every sector of the economy. In the ensuing weeks since the opinion issued, amici's worst apprehensions are rapidly being realized, as superior courts in counties across California have begun removing search fields from their websites, most notably fields that permit filtering by date of birth. Amici are submitting this supplemental filing to inform the Court of specific new developments since

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<sup>1</sup> The July 15 letter had 20 co-signatories, not counting the CDIA and PBSA. On July 22, 2021, amici filed a supplemental list of 13 additional co-signatories.

their letter of July 15, which lend statistical support to the conditions they initially described.

Below is a chart, current as of today's date, listing the California superior courts that have removed date-of-birth search fields from their websites and/or public access terminals in the wake of the Court of Appeal's decision in *Hamrick*. The data points in the chart are sourced from first-hand field reports from amici's member organizations and from the 2020 Census results (released August 12, 2021). The data indicate that:

- More than half the state's population—22.3 million Californians—currently live in a county whose superior court has removed the date-of-birth filter from its online search engine, thus severely restricting the availability of meaningful criminal background checks in that county.
- More than 43% of Californians currently live in a county that has eliminated the date-of-birth filter entirely—not only online, but even at the public access terminals at the courthouse.

| <b>County (Listed in Order of Size)</b> | <b>County Population Estimate as of April 1, 2020<sup>2</sup></b> | <b>County's Percentage of California Population</b> | <b>Date-of-Birth Search Field Available in Online Criminal Records?</b> | <b>Date-of-Birth Search Field Available at Public Access Terminals at Courthouses?</b> |
|---|---|---|---|--|
| Los Angeles                             | 10,014,009  | 25.33%  | No  | Mostly no <sup>3</sup>   |
| Riverside                               | 2,418,185   | 6.12%   | No  | No   |
| San Bernardino                          | 2,181,654   | 5.52%   | Retiring  | Retiring <sup>4</sup>  |
| Santa Clara                             | 1,936,259   | 4.90%   | No  | Yes  |
| Alameda                                 | 1,682,353   | 4.26%   | No  | Yes  |
| Fresno                                  | 1,008,654   | 2.55%   | No  | Yes  |

<sup>2</sup> United States Census Bureau Population Division, *2020 Census of Population and Housing* <<https://www.census.gov/quickfacts/fact/table/US/PST045219>> (as of Aug. 13, 2021).

<sup>3</sup> Each courthouse in Los Angeles County is using its own approach to verify date of birth in specific cases. Some locations are charging \$15.00 per search, while others are imposing 15-minute time limits at public access terminals. The following courthouse locations are providing no verification assistance as to date of birth: Airport, Bellflower, Burbank, Downey, and Norwalk.

<sup>4</sup> San Bernardino Superior Court plans to retire its current search portal containing a search field for date of birth and replace it with a new portal that lacks this feature.

| County (Listed in Order of Size) | County Population Estimate as of April 1, 2020 | County's Percentage of California Population | Date of Birth Search Field Available in Online Criminal Records? | Date of Birth Search Field Available at Public Access Terminals at Courthouses? |
|----------------------------------|--|--|--|---|
| Kern                             | 909,235  | 2.30%  | No   | No <sup>5</sup>   |
| Ventura                          | 843,843  | 2.13%  | No   | No <sup>6</sup>   |
| San Joaquin                      | 779,233  | 1.97%  | No   | No  |
| Tulare                           | 473,117  | 1.20%  | No   | Yes   |
| Yuba                             | 81,575   | 0.21%  | No   | Yes   |
| <b>TOTAL</b>                     | <b>22,328,117</b>                              | <b>56.49%</b>                                | Answer is no for 56.49% of Californians                          | Answer is no for 43.37% of Californians   |

As anticipated in the July 15 letter, lawful background check activity is crippled in these jurisdictions, which in turn is causing massive delays in getting people hired and working. Amici anticipate that many more—and perhaps all—superior courts in California will take similar action in the next several months. Amici therefore respectfully ask the Court to take these additional data points into account as it considers whether to grant review of the Court of Appeal's decision.

Respectfully Submitted,

TROUTMAN PEPPER HAMILTON SANDERS LLP

/s/ Elizabeth Holt Andrews

Elizabeth Holt Andrews (Cal. Bar No. 263206)

<sup>5</sup> Upon in-person request, Kern County Superior Court clerks will verify date of birth on specific criminal cases, providing an estimated turnaround time of 30 days.

<sup>6</sup> Upon in-person request, Ventura Superior Court clerks will verify date of birth on specific criminal cases.

|   |  |
|---|--|
| <b>PROOF OF SERVICE (Court of Appeal)</b><br><input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service   |  |
| <b>Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.</b> |  |
| Case Name: ALL OF US OR NONE - RIVERSIDE CHAPTER v. HAMRICK<br>Court of Appeal Case Number: S269654<br>Superior Court Case Number: 37-2017-00003005-CU-MC-NC  |  |

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My  residence  business address is (*specify*):  
Troutman Pepper Hamilton Sanders LLP, Three Embarcadero Center, Suite 800, San Francisco, CA 94111
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):

**Supplement to Amici Letter of Consumer Data Industry Association & Professional Background Screening Association  
Re: Petition for Review**

- a.  **Mail.** I mailed a copy of the document identified above as follows:

- (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
  - (a)  **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
  - (b)  **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
- (2) Date mailed: **08/13/2021**
- (3) The envelope was or envelopes were addressed as follows:
  - (a) Person served:
    - (i) Name:
    - (ii) Address:
  - (b) Person served:
    - (i) Name:
    - (ii) Address:
  - (c) Person served:
    - (i) Name:
    - (ii) Address:

Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).

- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Francisco, CA

|   |  |
|---|--|
| Case Name: ALL OF US OR NONE - RIVERSIDE CHAPTER v. HAMRICK | Court of Appeal Case Number:<br>S269654                  |
|   | Superior Court Case Number:<br>37-2017-00003005-CU-MC-NC |

3. b.  **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 8/13/2021

Elizabeth Holt Andrews

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

**APP-009, Item 3a**

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