No. TEMP-XO9YC8RZ

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

CALIFORNIA PRIVACY PROTECTION AGENCY; JENNIFER M. URBAN, ALASTAIR MACTAGGART, LYDIA DE LA TORRE, AND VINHCENT LE, IN THEIR OFFICIAL CAPACITIES AS BOARD MEMBERS OF THE CALIFORNIA PRIVACY PROTECTION AGENCY; AND ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SACRAMENTO,

Respondent,

CALIFORNIA CHAMBER OF COMMERCE

Real Party in Interest.

Sacramento County Superior Court, Case No. 34-2023-80004106
The Honorable James P. Arguelles, Judge, Department 32
(916) 874-5682

Petition for Extraordinary Writ of Mandate or Other Appropriate Relief

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August 4, 2023

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Case Name: *California Privacy Protection Agency et al. v. Superior Court of California, Sacramento County*

Court of Appeal No.:

CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

(Check One) **INITIAL CERTIFICATE** [X] **SUPPLEMENTAL CERTIFICATE** [ ]

Please check the applicable box:

[X] There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).

[ ] Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party *Check One*	Non-Party *Check One*	Nature of Interest *(Explain)*
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

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August 4, 2023
(Date)

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INTRODUCTION: WHY A WRIT SHOULD ISSUE

On June 30, 2023, Respondent Sacramento County Superior Court stalled enforcement of key regulations that implement Proposition 24, the California Privacy Rights Act of 2020. The voters who enacted the law wanted to strengthen consumer privacy protections, and they wanted enforcement of those strengthened protections to begin on July 1, 2023. The superior court's 12-month, statewide delay of enforcement is not supported by the law's text, and frustrates its purpose. Compounding the error, the court entered the order at the urging of a trade group representing undisclosed businesses that made no showing that they could not comply with the covered regulations. Absent immediate intervention by this Court, businesses will be free to violate critical privacy protections approved by the voters with impunity.

As set forth more fully below, this Court should take the extraordinary step of issuing a writ because the bulk of the superior court's order will almost certainly be moot well before an appeal is decided. During the pendency of an appeal, the superior court's stay of enforcement will irreparably harm both consumers and the voters, who clearly stated their desire for vigorous enforcement of the law starting on July 1, 2023. The superior court's unnecessary and unjustified delay of these privacy regulations also presents novel and important issues of great public concern, necessitating immediate writ relief.

In 2020, proponents of Prop. 24, urged voters to "make California privacy laws stronger" because, despite earlier efforts,

"[t]he world's biggest corporations are collecting deeply personal and private information about all of us" and "our current laws aren't strong enough to protect us or our families from those who would abuse our most personal information." (Vol. 2, Tab 6, p. 351.) Voters found that argument persuasive and enacted the law. They embraced the idea that, "[r]ather than diluting privacy rights, California should strengthen them over time." (Prop. 24, § 2(E) [Vol. 1, Tab 1, p. 38].) In particular, the voters wanted to address the "opaque" process many businesses use "to collect and trade vast amounts of personal information, to track [consumers] across the internet, and to create detailed profiles of their individual interests." (See *id.*, § 2(E), (F), (I).) And they wanted consumers to be able to "limit the use of their information to noninvasive proprivacy advertising, where their personal information is not sold or shared with hundreds of businesses they've never heard of[.]" (*Id.*, § 2(I).) Voters recognized that the unauthorized use or disclosure of consumers' personal information "creates a heightened risk of harm to the consumer, and they should have meaningful options over how it is collected, used, and disclosed." (*Id.*, § 3(A)(2) [Vol. 1, Tab 1, p. 39].)

Prop. 24 established a new agency, the California Privacy Protection Agency (Agency), charged with "vigorously enforc[ing] the law against businesses that violate consumers' privacy rights." (Prop. 24, § 2(L) [Vol. 1, Tab 1, p. 38].) The measure required the promulgation and adoption of regulations to further

clarify certain aspects of law. (Civ. Code,[1] § 1798.185.) The measure provides that the "timeline for adopting" final regulations under Prop. 24 shall be July 1, 2022, and that "[n]otwithstanding any other law, civil and administrative enforcement of the provisions of law added or amended by this act shall not commence until July 1, 2023, and shall only apply to violations occurring on or after that date." (§ 1798.185, subd. (d).) The first set of regulations was finalized on March 29, 2023—over three months before enforcement was set to begin on July 1, 2023. Although rulemaking continues in three discrete areas, the first set of regulations implements the bulk of Prop. 24's privacy protections.

One day after the first set of regulations became final, Real Party in Interest California Chamber of Commerce (Chamber) brought an action designed to stop enforcement before it could begin. It sued the Agency, its board members, and the Attorney General for a writ of mandate barring *any* enforcement until one year after *all* regulations required by Prop. 24 have been made final. (Vol. 1, Tab 1, p. 13.) In support of their petition, the Chamber alleged that Prop. 24 guarantees businesses a one-year grace period between the adoption of final regulations and enforcement. It further contended—without any supporting evidence—that its members would be severely prejudiced if enforcement commenced on July 1, as the voters intended.

[1] All further statutory references are to the Civil Code unless otherwise noted.

While acknowledging that a one-year delay between the promulgation of regulations and the commencement of enforcement is not clearly and expressly required by Prop. 24 (see Vol. 8, Tab 11, pp. 2176:14–17, 2198:9–21), the superior court nonetheless largely granted the Chamber's petition, staying enforcement of any regulations required by Prop. 24 for a period of 12 months from the date that the individual regulation has become final. (Vol. 8, Tab 10, p. 2162.) In doing so, the superior court ignored the Chamber's failure to support its claims of harm with evidence. (*Ibid*.)

Urgent intervention by this Court is necessary and appropriate. There is no clear, express command in Prop. 24 supporting the superior court's writ of mandate. Rather, the superior court based its order entirely on a shaky inference drawn from a single provision in Prop. 24, and granted relief that is contrary to express language in the measure, ignores the broader statutory scheme, and frustrates the voters' unmistakable objective of strengthening the protections for consumers' privacy. Moreover, in granting the equitable remedy of a writ of mandate—which functions here as a statewide injunction barring the Agency and the Attorney General from enforcing the required regulations—the superior court failed to weigh the competing harms or consider the public interest. Indeed, it held such considerations were irrelevant. Thus, without requiring any evidence of harm, the superior court effectively enjoined the enforcement of an entire set of regulations against all violators, regardless of whether they were

a party to the lawsuit, or whether they would actually be unfairly prejudiced, as the Chamber baldly asserted. The superior court's order is also unworkable in many respects, and inadvertently undermines existing consumer privacy protections that were not subject to the underlying writ, insofar as it prohibits the enforcement of recently enacted regulations which amended and superseded prior regulations.

In sum, writ relief is warranted here for three reasons. First, Petitioners lack an adequate, speedy remedy at law; although the superior court's order is appealable, any relief that may be afforded by an appeal will largely be moot by the time the appeal completes its course. Moreover, the time lost for enforcement and the resulting harms to California consumers while the appeal is pending cannot be remedied by any relief afforded by an appeal. Second, the issue presented here is one of great, statewide public importance: the superior court's order prevents the enforcement of critical aspects of Prop. 24 for at least one year, leaving tens of millions of California consumers without assurance of all the privacy protections they enacted into law back in 2020 and, in some cases, without the protections that they were afforded under a related 2018 law. Finally, this case presents an issue of first impression under Prop. 24; namely, what relief, if any, must be afforded under this statutory scheme where regulations required to be promulgated by a brand new public agency were not promulgated by the apparent deadline set forth in the text of the statute. "Where the issues raised are substantial, the matter is one of widespread interest, and the

issue is one which should speedily be resolved, appellate courts have discretion to review the issue immediately on petition for extraordinary writ." (*Los Angeles City Ethics Com. v. Super. Ct.* (1992) 8 Cal.App.4th 1287, 1299.)

Accordingly, Petitioners seek a writ of mandate or other appropriate order vacating the superior court's order and requiring the entry of a new order denying the Chamber's petition.

PETITION FOR WRIT OF MANDATE

I. JURISDICTION

1. This Court has jurisdiction. (Cal. Const., art. VI, § 10; Code Civ. Proc., § 1085.)

II. TIMELINESS OF THE PETITION

2. The superior court held a hearing on the Chamber's petition for writ of mandate on June 30, 2023. That same day, the court issued a minute order granting the petition in part, and barring enforcement of any regulations required under Prop. 24 for one year following the date that the individual regulation has become final through approval by the Office of Administrative Law. (Vol. 8, Tab 10.) On July 14, 2023, the Board of the Agency held a closed session in its public meeting to confer and receive advice from legal counsel regarding the superior court's order. On July 20, 2023, the court entered an Order and Judgment, incorporating its June 30 minute order, and issued a corresponding Peremptory Writ of Mandate. (Vol. 8, Tabs 12, 13.) The Chamber served Notice of Entry of Judgment on

July 24, 2023. (Vol. 8, Tab 14.) This Petition is filed within 60 days after entry of the challenged order. Thus, the Petition is timely. (See, e.g., *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701.)

III. AUTHENTICITY OF EXHIBITS

3. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits, constituting the record that was before the superior court, are paginated consecutively and concurrently filed under separate cover in the eight-volume Petitioners' Appendix. The exhibits are referenced by volume, tab, and, where applicable, by page number (e.g., "Vol.[ ], Tab [ ], p. [ ]").

4. All exhibits in Petitioners' Appendix are true and correct copies of original documents on file with the superior court in *California Chamber of Commerce v. California Privacy Protection Agency, et al.*, Sacramento County Superior Court Case No. 34-2023-80004106, except for Appendix Volume 8, Tab 11, which is a copy of the reporter's certified transcript of the June 30, 2023 hearing on the petition for writ of mandate.

IV. IDENTIFICATION OF PARTIES

5. Petitioners are the California Privacy Protection Agency; Jennifer M. Urban, Alastair Mactaggart, Lydia De La Torre, and Vinhcent Le, in their official capacities as board members of the California Privacy Protection Agency; and Rob Bonta, in his official capacity as Attorney General of the State of California. Petitioners are

respondents in the underlying matter, *California Chamber of Commerce v. California Privacy Protection Agency, et al.*, Sacramento County Superior Court Case No. 34-2023-80004106. Petitioners are charged with enforcing Prop. 24. (§§ 1798.199.90, subd. (a), 1798.199.40, subd. (a).)

6. Respondent is the Superior Court of Sacramento County, the Honorable James P. Arguelles, Department 32.

7. Real Party in Interest is the California Chamber of Commerce, petitioner in the underlying action, whose members include businesses subject to the requirements of Prop. 24.

V. BACKGROUND

A. The California Consumer Privacy Act of 2018

8. In 2018, the Legislature enacted the California Consumer Privacy Act of 2018 (CCPA), a landmark statute giving consumers more control over the personal information that businesses collect from and about them. The CCPA secured new privacy rights for Californians, including: (1) the right to know about the personal information a business collects about them and how it is used and shared; (2) the right to delete personal information collected from them (with some exceptions); (3) the right to opt-out of the sale of their personal information; and (4) the right not to be discriminated against for exercising their consumer privacy rights. (Assem. Bill No. 375, Stats. 2018, ch. 55, § 3.)

9. The CCPA became operative on January 1, 2020. (§ 1798.198, subd. (a).) It required the Attorney General to adopt final regulations implementing the CCPA "[o]n or before July 1, 2020," and vested the Attorney General with enforcement authority. (§ 1798.185, subd. (a); former § 1798.155, subd. (a).) It further provided that the Attorney General could not bring an enforcement action under the CCPA until July 1, 2020—the same date by which regulations had to be finalized—or "until six months after the publication of the final regulations . . . , whichever is sooner." (§ 1798.185, subd. (c).) Regulations implementing the CCPA became operative on August 14, 2020. (Vol. 1, Tab 1., p. 75.) A set of amendments to the regulations went into effect on March 15, 2021. (*Ibid.*)

B. Proposition 24

10. In November 2020, voters overwhelmingly approved Prop. 24, expanding upon and strengthening California's consumer privacy laws, with the aim of giving California consumers more control over how data brokers and other businesses collect, use, share, and profit from their personal information.

1. Key provisions

11. Prop. 24 amended and strengthened the 2018 CCPA in several ways. Among other provisions, the measure gave consumers additional rights over their personal information. Those rights include the right to correct inaccurate personal information maintained about them

and the right to limit businesses' use and disclosure of "sensitive personal information"—which includes precise geolocation, race, ethnicity, religion, genetic data, private communications, sexual orientation, and specified health information—to only specified purposes identified in the statute. (§§ 1798.106, 1798.121, 1798.140, subd. (ae)). It also:

- restricts businesses' collection, use, retention, and sharing of personal information to that which is reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed or another disclosed compatible purpose (§ 1798.100, subd. (c));
- sets requirements for contracts governing the sale or sharing of personal information with service providers, contractors, and third parties (§ 1798.100, subd. (d));
- requires additional disclosures to consumers (§§ 1798.100, subd. (a), 1798.130, subd. (a)(5), 1798.135);
- clarified that the existing right to opt-out of the sale of personal information includes the sharing of personal information for cross-context behavioral advertising (§§ 1798.120, 1798.140, subd. (ah)(1)); and

- triples the maximum penalties for privacy violations concerning children and teens under age 16 (§ 1798.155).

12. It also narrowed the criteria that determine whether particular businesses must comply. Following Prop. 24, only those businesses: (1) with annual gross revenues in excess of $25 million in the preceding calendar year; (2) that buy, sell, or share the personal information of 100,000 or more consumers or households; and/or that (3) derive 50 percent or more of their annual revenues from selling or sharing consumers' personal information, are subject to the CCPA, as amended by Prop. 24. (§ 1798.140, subd. (d).)

2. Express recognition of harm from misuse of consumers' personal information

13. In enacting Prop. 24, the voters expressly recognized the "asymmetry of information" created by the "opaque" process many businesses used to obtain consumers' consent to use their personal information. (Prop. 24, § 2(E)-(F) [Vol. 1, Tab. 1, p. 38].) Those opaque practices allowed businesses "to collect and trade vast amounts of personal information, to track [consumers] across the internet, and to create detailed profiles of their individual interests." (*Id.*, § 2(I).) The voters wanted consumers to "have the information and tools necessary to limit the use of their information to noninvasive proprivacy advertising, where their personal information is not sold or shared with hundreds of businesses they've never heard of[.]" (*Ibid.*)

14. In enacting Prop. 24, the voters expressly recognized that the unauthorized use or disclosure of consumers' personal information "creates a heightened risk of harm to the consumer, and they should have meaningful options over how it is collected, used, and disclosed." (Prop. 24, § 3(A)(2) [Vol. 1, Tab. 1, p. 39].) The voters also recognized that "[c]hildren are particularly vulnerable from a negotiating perspective with respect to their privacy rights[], and [p]arents should be able to control what information is collected and sold or shared about their young children and should be given the right to demand that companies erase information collected about their children." (*Id*., § 2(J) [p. 38].)

3. Enforcement and regulations

15. To achieve the goals of the new law, the voters created an independent "watchdog"—the California Privacy Protection Agency—whose mission is to "protect consumer privacy," "ensure that businesses and consumers are well-informed about their rights and obligations," and "vigorously enforce the law against businesses that violate consumers' privacy rights." (Prop. 24., § 2(L) [Vol. 1, Tab. 1, p. 38].)

16. Prop. 24 required the promulgation and adoption of regulations to further clarify certain aspects of law. (§ 1798.185.) The measure provides that the "timeline for adopting" final regulations under Prop. 24 shall be July 1, 2022, and that "[n]otwithstanding any other law, civil and

administrative enforcement of the provisions of law added or amended by this act shall not commence until July 1, 2023, and shall only apply to violations occurring on or after that date." (§ 1798.185, subd. (d).) The regulations required under Prop. 24 were not exempt from compliance with the Administrative Procedure Act (APA), which prescribes specific steps and timelines that agencies must follow when enacting new regulations—a process that generally takes months of preparatory work, followed by at least a year of formal notice, public comment, and then review by OAL.

17. The statute further specifies that the law "should adjust to technological changes" (Prop. 24, § 3(C)(4)), and makes clear that the Agency's rulemaking authority is ongoing and iterative. (§ 1798.185, subds. (a)(1)–(3) [updating or adding to certain definitions "to address changes in technology, data collection practices, obstacles to implementation, and privacy concerns"], (a)(5) [adjusting monetary thresholds], (a)(10), (12), (13), (17) [requiring regulations that "further define" various terms], (a)(19)(A) ["the requirements and specifications for the opt-out preference signal should be updated from time to time to reflect the means by which consumers interact with businesses"], and (b) ["may adopt additional regulations as necessary to further the purposes of this title"].)

4. The rulemaking process

18. The Attorney General was charged with rulemaking authority until July 1, 2021, or until six months after the newly established California Privacy Protection Agency provided notice that it was prepared to begin rulemaking, whichever was later. (§ 1798.185, subd. (d).)

19. In March 2021—within 90 days of the effective date of the Act—the Governor, the Attorney General, the Senate President, and the Speaker of the Assembly appointed the inaugural members to the five-member Board of the Agency. (§ 1798.199.10; Vol. 2, Tab 6, pp. 463–466.) On October 21, 2021, the Agency notified the Attorney General that it was prepared to assume rulemaking authority. (§ 1798.185, subd. (d); Vol. 2, Tab 6, p. 514.) Six months later, that authority was formally transferred, as outlined in statute. (§ 1798.185, subd. (d).)

20. The Agency immediately started work on regulations. Rather than speed through the process, the Agency acted deliberately to draft regulations with significant input from businesses and other stakeholders. (See, e.g., Gov. Code, § 11346.45 [requiring public participation and stakeholder input when promulgating regulations].) That effort started in September 2021, when the Agency invited preliminary comments on proposed rulemaking. (Vol. 2, Tab 6, pp. 488–494.) In March 2022, the Agency held a set of instructive pre-rulemaking informational sessions to inform the Agency Board, Agency staff, and the public on topics

relevant to the upcoming rulemaking. (Vols. 2–3, Tab 6, pp. 517–807.) On May 4, 5, and 6, 2022, the Agency held a set of sessions to provide an opportunity for stakeholders to speak on topics relevant to the upcoming rulemaking. (Vols. 3–5, Tab 6, pp. 809–1208.) All the while, the Agency was working on proposed regulatory text.

21. Following those pre-rulemaking activities, on July 8, 2022, the Agency started the formal rulemaking process by releasing a Notice of Proposed Rulemaking and publishing proposed regulations, commencing a 45-day public comment period which ended on August 23, 2022. (Vol. 1, Tab 1, p. 72.) The Agency received 138 separate sets of comments (both oral and written), consisting of over 1,100 pages, in the initial 45-day comment period. (Gov. Code, § 11346.4, subd. (a); Vol. 5, Tab 6, pp. 1321–1333.) In total, the Agency considered and responded to 782 unique comments. (See Gov. Code, § 11346.9, subd. (c); Vols. 5–6, Tab 6, pp. 1348–1696.)

22. On November 3, 2022, the Agency issued revised proposed regulations for a 15-day public comment period, ending on November 21. (Gov. Code, § 11346.8, subd. (c); Vol. 5, Tab 6, p. 1342–1346.) The Agency received 54 separate sets of comments consisting of over 450 pages. (Vol. 5, Tab 6, pp. 1333–1339.) In total, the Agency considered and responded to 338 unique comments. (Vols. 6–7, Tab 6, pp. 1698–1867.) No material changes were made to the revised proposed regulations in response

to the comments received; thus, on February 13, 2023, the Agency submitted its first regulatory package to OAL. (Vol. 2, Tab 6, p. 355.)

23. The final regulations were approved by OAL on March 29, 2023—over three months before enforcement was set to begin on July 1, 2023. (Vol. 2, Tab 6, pp. 354–355.)

5. The regulatory impact of the new rules on businesses

24. In submitting the first regulatory package to OAL for approval, the Agency explained that the regulations would impose a minimal impact on businesses because, on the whole, the regulations largely mirrored provisions that were already in existing statutes or regulations. "[A]lthough the new proposed draft regulations initially appear significant in scope, . . . [t]he vast majority of language in the proposed regulations either comes directly from the existing CCPA regulations or from the [Prop. 24] amendments." (Vol. 2, Tab 6, p. 363.) "Upon a close comparison of language in the proposed regulations against language in the baseline legal environment," the Agency determined that only two elements of the proposed regulations could possibly generate new or increased regulatory impacts. (*Ibid.*) Those two elements are:

- Cal. Code Regs., tit. 11, § 7023 – Requests to Correct. Whereas Prop. 24 (§ 1798.145) requires businesses to process consumer requests to correct inaccurate information, section 7023(d) of the regulations

introduces an additional documentation requirement for businesses that decide to delete instead of correct; and

- Cal. Code Regs., tit. 11, § 7026 – Requests to Opt-Out of Sale/Sharing. Whereas Prop. 24 establishes a requirement that businesses accept consumer requests to opt-out of the sale or sharing of their personal information, section 7026(h) of the regulations creates a new option for businesses to use existing GDPR[2]-compliant opt-out buttons to comply with the CCPA, rather than requiring a separate CCPA-specific opt-out button. Section 7026(a)(4) also clarifies that "cookie banners" by themselves are not an acceptable solution to the pre-existing "opt-out" button requirement.

(Vol. 2, Tab 6, p. 379.)

6. Remaining required regulations

25. The first set regulations did not address cybersecurity audits (§ 1798.185, subd. (a)(15)(A)), risk assessments (§ 1798.185, subd. (a)(15)(B)), and automated decisionmaking technology (§ 1798.185, subd. (a)(16)). The Agency issued an Invitation for Preliminary Comments on Proposed Rulemaking on February 10, 2023, soliciting comments through March 27, 2023. (Vol. 7, Tab 6, pp. 1920–1927.) In response, the Agency received 57 separate comments, totaling over 1,000 pages. While it

[2] GDPR stands for the European Union's General Data Protection Regulation. (See Vol. 7, Tab 6, p. 1937.)

continues the process of promulgating regulations on these last three topics, the Agency has expressly stated that "[r]egulations concerning cybersecurity audits, risk assessments, and automated decisionmaking technology will not take effect or be enforced by the Agency until adopted by the Board in compliance with the Administrative Procedures Act and approved by the Office of Administrative Law." (Vol. 2, Tab 6, pp. 387–388.)

C. The Underlying Litigation

26. On March 30, 2023, the Chamber filed a petition for writ of mandate in the superior court, alleging that because the "timeline for adopting" final regulations under Prop. 24 is July 1, 2022, and enforcement was set to begin on July 1, 2023, the voters provided businesses with an unwritten guarantee of sorts that no enforcement would occur until one year after the adoption of final regulations in all required areas, regardless of when final regulations were actually adopted. (Vol. 1, Tab 1, pp. 9–10.) As relief, the petition sought: (1) a writ of mandate compelling the Agency to promptly adopt final regulations and commanding Respondents to refrain from taking any steps to enforce *any* regulations required by Prop. 24 until at least one year after the Agency has adopted *all* regulations required by the Act; (2) a declaration that the Agency had a mandatory duty to adopt final regulations in all required areas by July 1, 2022, and that Prop. 24 establishes a minimum 12-month period between the Agency's adoption

of final implementing regulations and the commencement of enforcement; and (3) an injunction prohibiting Respondents from taking any steps to enforce Prop. 24 until one year after the Agency has adopted all required regulations under the Act. (*Id.*, p. 13.)

27. The petition alleged that an unidentified number of the Chamber's member businesses would be "severely prejudice[d]" by the Agency's plan to begin enforcement of the measure on July 1, 2023, by "depriving them of the one-year compliance grace period established in the plain language of Proposition 24." (Vol. 1, Tab 1, pp. 9, 11.) The petition further alleged that businesses subject to Prop. 24 will be "rush[ed]" to "reconfigure technical systems, re-engineer data flows, construct new tools, redesign websites and apps, update policies, revise contracts, train employees, and so on." (*Id.*, pp.11–12.)

28. The Chamber provided no supporting declarations or other competent evidence supporting these allegations.

29. The superior court heard the Chamber's petition for writ of mandate on June 30, 2023. (Vol. 8, Tab 11.) The court held that Prop. 24 required the Agency to promulgate regulations by July 1, 2022. (Vol. 8, Tab 12, p. 2221.) The court further held that "the voters intended there to be a gap between the passing of final regulations and enforcement of those regulations." (*Ibid.*) Accordingly, the court granted the Chamber's requested relief, in part, enjoining enforcement of any regulations required under

Prop. 24 for one year from the date that the individual regulation becomes final. (*Id.*, p. 2222.) Thus, to the extent the regulations finalized on March 29, 2023 were required under Prop. 24, they cannot be enforced until March 29, 2024; similarly, when the Agency finalizes regulations in the remaining three required areas, those regulations cannot be enforced for one year following the date they become final. (*Ibid.*) In granting this relief, the court failed to weigh the competing harms, and rejected Petitioners' argument that the Chamber was required, but failed, to make a showing of prejudice based on evidence. (*Ibid.*)

VI. ISSUE PRESENTED

30. Whether the superior court erred in prohibiting the Petitioners from enforcing Prop. 24's implementing regulations in the absence of any clear, express statutory language requiring a one-year gap between the promulgation of regulations and the commencement of enforcement, and in the absence of any showing of harm by Real Party in Interest California Chamber of Commerce.

VII. WRIT REVIEW IS APPROPRIATE IN THIS CASE

31. Writ review is appropriate in this case because Petitioners lack an adequate, speedy remedy at law; although the superior court's order is appealable, any relief that may be afforded by an appeal will largely be moot by the time the appeal completes its course. Moreover, time is of the essence; the time lost for enforcement and the resulting harms to California consumers while the appeal

is pending cannot be remedied by any relief afforded by the appeal. (See, e.g., *People ex rel. Becerra v. Super. Ct.* (2018) 29 Cal.App.5th 486, 494; *Los Angeles City Ethics Com. v. Super. Ct.*, *supra*, 8 Cal.App.4th 1287, 1299.)

32. Writ review is also appropriate here because the issue presented is one of widespread public interest and importance. The superior court's order prevents the enforcement of important aspects of Prop. 24, leaving tens of millions of California consumers without the vigorous enforcement commencing on July 1, 2023 that voters were promised. (See, e.g., *Henry M. Lee L. Corp. v. Super. Ct.* (2012) 204 Cal.App.4th 1375, 1383 ["Writ review is appropriate . . . [where] the issues presented are of great public importance and require prompt resolution"]; *People ex rel. Becerra v. Super. Ct., supra,* 29 Cal.App.5th at p. 494 [same].)

33. Finally, writ relief is warranted here because this case presents an issue of first impression under Prop. 24; namely, what relief, if any, must be afforded under this statutory scheme where regulations required to be promulgated by a brand new public agency were not promulgated in accordance with the timeline set forth in the text of the statute. (See, e.g., *Edamerica, Inc. v. Super. Ct.* (2003) 114 Cal.App.4th 819, 823 [writ relief is appropriate where a newly enacted statute has not yet been interpreted or applied by any appellate court]; *JSM Tuscany, LLC v. Super. Ct.* (2011) 193 Cal.App.4th 1222,

1236 [writ review appropriate where issues raised by petition are novel and important]; *Elden v. Super. Ct.* (1997) 53 Cal.App.4th 1497, 1504 [same].)

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully pray that this Court:

1. Issue a peremptory writ in the first instance directing Respondent Court to vacate its June 30, 2023 order, and enter a new and different order denying the Chamber's petition for writ of mandate in its entirety.
2. Alternatively, issue an alternative writ of mandate directing Respondent Court to vacate its June 30, 2023 order, and enter a new and different order denying the Chamber's petition for writ of mandate in its entirety, or to show cause why the Petitioners are not entitled to relief.
3. Award such other relief as may be just and proper.

Respectfully submitted,

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Supervising Deputy Attorney General

s/ Natasha Saggar Sheth
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Deputy Attorney General
Attorneys for Petitioners California Privacy Protection Agency, et al.

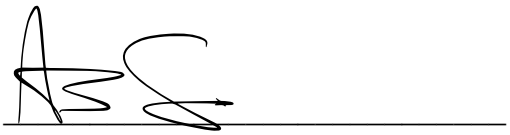
August 4, 2023

VERIFICATION

I, Ashkan Soltani, declare:

I am the Executive Director of the California Privacy Protection Agency, a petitioner in this original petition for writ of mandate, and respondent in the underlying litigation. I have personal knowledge of the facts alleged in the foregoing Petition based on personal participation or on examination of copies of original documents I believe to be true and correct, and the facts alleged in the Petition are true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed in _____, California, on August ___, 2023.



Ashkan Soltani

MEMORANDUM OF POINTS AND AUTHORITIES

In granting a writ of mandate enjoining the enforcement of regulations required under Prop. 24, the superior court failed to apply the proper legal standard and erred in three fundamental ways.

First, the superior court failed to require the Chamber to meet its burden to establish a clear right to the extraordinary relief it was seeking. Simply put, the relief granted by the superior court is not supported by the text of Prop. 24 or the ballot materials presented to the voters. In focusing on a single paragraph in a single section of the measure, the superior court failed to consider the relevant statutory language in the context of the statute as a whole and in light of the electorate's intent, and the relief it granted severely undermines the voters' overriding purpose in enacting Prop. 24, which was to strengthen and "vigorously enforce" protections for consumers' sensitive personal information.

Second, the superior court erred in failing to balance the relative harms before granting the equitable relief of writ of mandate. While the Chamber offered no evidence of any actual harm or prejudice that would befall its members if enforcement began on July 1, 2023, as intended under the statute—and, indeed, denied that it was required to do so in order to obtain relief—the voters expressly recognized the harm resulting from inadequate privacy protections when they voted Prop. 24 into law. Moreover, Petitioners offered evidence belying the Chamber's conclusory, unsupported claims of harm. But the superior court

did not take any of this into account when granting relief, and instead left the sensitive personal information of tens of millions of California consumers at ongoing risk during the stay of enforcement.

Third, the superior court's order is unworkable in many respects, and inadvertently undermines existing consumer privacy protections that were not subject to the underlying writ. Though the order provides that existing consumer privacy regulations enacted pursuant to the 2018 CCPA remain in effect and are enforceable, those regulations were amended and superseded by the Prop. 24 regulations at issue in the case, leaving businesses and consumers in an untenable state of uncertainty regarding their privacy rights and obligations. The superior court's order is also contrary to public policy in that it creates perverse incentives to manipulate and delay the rulemaking process by tying enforcement to the adoption of final regulations.

For these reasons, the superior court erred in granting relief. Because the challenged order is one of great statewide importance, involves a novel issue, and requires urgent resolution, writ relief is appropriate here. (See Petition, *supra,* ¶¶ 31–33.)

I. APPLICABLE LEGAL STANDARDS

The interpretation of a statute is a question of law subject to de novo review. (See, e.g., *Rodrigues v. Super. Ct.* (2005) 127 Cal.App.4th 1027, 1032; *Edamerica, Inc. v. Super. Ct.*, *supra*, 114 Cal.App.4th at p. 824.)

"In interpreting a voter initiative, [courts] apply the same principles that govern statutory construction." (*People v. Buycks* (2018) 5 Cal.5th 857, 879–880.) "Where a law is adopted by the voters, their intent governs. [Citation]. In determining that intent, [courts] turn first to the language of the statute, giving the words their ordinary meaning." (*Ibid.,* internal citation and quotations omitted.) "The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme in light of the electorate's intent." (*Robert L. v. Super. Ct.* (2003) 30 Cal.4th 894, 901, brackets omitted; see also, e.g., *California High-Speed Rail Authority v. Super. Ct.* (2014) 228 Cal.App.4th 676, 708 ["ascertaining the will of the electorate is paramount"].) "When the language is ambiguous, [courts] refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet." (*Ibid.*) Finally, "[s]tatutes are to be given a reasonable and commonsense interpretation consistent with the apparent [voter] purpose and intent and which, when applied, will result in wise policy rather than mischief or absurdity." (*Dyna-Med, Inc. v. Fair Emp. & Housing Com.* (1987) 43 Cal.3d 1379, 1392.)

II. THE SUPERIOR COURT ERRED IN GRANTING A WRIT OF MANDATE BARRING THE ENFORCEMENT OF REGULATIONS REQUIRED UNDER PROP. 24 FOR ONE YEAR

A. Prop. 24 Does Not Clearly and Expressly Tie the Commencement of Enforcement to the Promulgation of Regulations

"An applicant for a writ must show that his right thereto is clear and certain." (*Wallace v. Bd. of Education of City of Los*

Angeles (1944) 63 Cal.App.2d 611, 616.) "To construe a statute as imposing a mandatory duty on a public entity, the mandatory nature of the duty must be phrased in explicit and forceful language." (*In re Dohner* (2022) 79 Cal.App.5th 590, 598, review denied (Sept. 14, 2022), quoting *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 689; see also *The H.N. & Frances C. Berger Foundation v. Perez* (2013) 218 Cal.App.4th 37, 48 [same, quoting *Quackenbush v. Super. Ct.* (1997) 57 Cal.App.4th 660, 663]; *Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 914 [same].)

Here, the Chamber did not meet its burden demonstrating a right to relief. The relevant language of Prop. 24 states:

> **the timeline for adopting final regulations required by the act adding this subdivision shall be July 1, 2022.** Beginning the later of July 1, 2021, or six months after the agency provides notice to the Attorney General that it is prepared to begin rulemaking under this title, the authority assigned to the Attorney General to adopt regulations under this section shall be exercised by the California Privacy Protection Agency. **Notwithstanding any other law, civil and administrative enforcement of the provisions of law added or amended by this act shall not commence until July 1, 2023, and shall only apply to violations occurring on or after that date.** Enforcement of provisions of law contained in the California Consumer Privacy Act of 2018 amended by this act shall remain in effect and shall be enforceable until the same provisions of this act become enforceable.

(§ 1798.185, subd. (d), emphasis added.)

Based on the highlighted text, the Chamber argued Prop. 24 required the Agency to have final regulations in place by July 1, 2022, and that "the voters intended for enforcement not to begin for one year following the Agency's promulgation of final

regulations so as to allow sufficient time for affected businesses to become compliant with regulations." (Vol. 8, Tab 12, p. 2221.) Thus, the Chamber argued, "the Agency should be prohibited from enforcing the Act on July 1, 2023 when it failed to pass final regulations by the July 1, 2022 deadline." (*Ibid.*) The superior court agreed with the Chamber that the statute required the Agency to have final regulations in place by July 1, 2022. (*Ibid.*) The superior court then inferred that because subdivision (d) further provides that enforcement shall not commence until July 1, 2023, the voters must have intended there to be a one-year gap between the promulgation of final regulations and enforcement of those regulations. (*Ibid.*)

This was erroneous. The measure does not contain any express language—much less a clear, unequivocal mandate—linking enforcement with the promulgation of regulations; it merely provides that enforcement shall not begin until July 1, 2023, and only for violations occurring on or after that date. (§ 1798.185, subd. (d).) Indeed, at the hearing the superior court acknowledged that a one-year delay between the promulgation of regulations and the commencement of enforcement is not clearly and expressly required by Prop. 24. (See Vol. 8, Tab 11, pp. 2176:14–17, 2198:9–21.) Nonetheless, the superior court granted relief based on its interpretation of the single provision in question, without engaging in any further analysis of the voters' intent, and without considering the relative harms, as discussed further below.

The Chamber argued that the "one-year implementation period is an essential feature of Proposition 24" (Vol. 1, Tab 1, pp. 22–23), yet there was no mention of this supposed "essential feature" in the Voter Information Guide, including in the official title and summary of the measure's "chief purposes and points" (Elec. Code, § 9004, subd. (a)). Thus, aside from the lack of any clear mandate in the operative text, there was no basis for the superior court to assume that the voters contemplated any delay in enforcement connected to the promulgation of regulations. (See, e.g., *People v. Valencia* (2017) 3 Cal.5th 347, 371–72 [omission of any reference to Three Strikes Law in Attorney General's Official Title and Summary and Legislative Analyst's analysis of Proposition 47 suggests that no change to that law was contemplated by measure].)

Notably, the Legislative Analyst's analysis of Prop. 24 simply states that "[i]f approved, most of this proposition would take effect in January 2023. Some portions of the proposition, such as the creation of the new state agency and requirements for developing new regulations, would go into effect immediately." (Vol. 2, Tab 6, p. 348.) It also notes that the Agency is charged with developing a wide range of new regulations. (*Id.* at p. 349.) Entirely missing from the Legislative Analyst's analysis is any suggestion that the commencement of enforcement is tied to the adoption of final regulations. Thus, the voters understood that the law would take effect January 1, 2023 and enforcement would begin six months thereafter on July 1, 2023; there is no indication that they intended a one-year "grace period" following the

promulgation of regulations before enforcement could begin, much less that it was an "essential feature" of Prop. 24.

The superior court erred in failing to require the Chamber to meet its burden to demonstrate a clear, unequivocal right to extraordinary relief. The superior court also erred in failing to consider the relevant statutory language in the context of the statute as a whole and in light of the electorate's intent. In construing a statute, a court's "primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure." (*In re Littlefield* (1993) 5 Cal.4th 122, 130; *People v. Briceno* (2004) 34 Cal.4th 451, 459 [same].) "[S]tatutory language must . . . be construed in the context of the statute as a whole and the overall statutory scheme in light of the electorate's intent." (*People v. Briceno, supra,* 34 Cal.4th at p. 459 [brackets omitted]; see also, e.g., *Robert L. v. Super. Ct., supra,* 30 Cal.4th at p. 901 [same].) In enacting Prop. 24, the voters intended "to further protect consumer rights[.]" (Prop. 24, § 3 [Vol. 1, Tab 1, p. 38–39].) They also intended that when businesses violate consumers' privacy rights, they should be held accountable through "vigorous administrative and civil enforcement." (*Id.*, §§ 3(B)(7), 3(C)(7).) The entire measure is focused on strengthening consumer rights and ensuring that consumers have more control over how their personal information, including their sensitive personal information, is used. The court's order undermines these objectives.

In drawing an inference based on a single provision of Prop. 24, the superior court granted relief that is contrary to express

language in the measure and the voters' intent. The broad relief granted by the superior court cannot be justified by Prop. 24's text or the supporting ballot materials and severely undermines the voters' overriding purpose in enacting Prop. 24, which was to strengthen and build upon already established and enforceable privacy rights—not allow data brokers and businesses with more than $25 million in gross annual revenues still more time to profit from the misuse of consumers' personal information.

B. The Chamber Was Not Entitled to Writ Relief Where it Failed to Demonstrate Harm and Where the Superior Court Failed to Balance the Competing Equities

Even if voters intended for *some* "grace period" between the promulgation of regulations and enforcement—which, again, is not clearly supported in the text of the measure or the supporting ballot materials—the superior court erred in failing to balance the relative harms when considering what, if any, remedy was appropriate.

"Mandamus is an equitable remedy. It will not be used to compel the performance of acts which are . . . contrary to public policy[.]" (*Pratt v. Adams* (1964) 229 Cal.App.2d 602, 606; see also, e.g., *Acosta v. Brown* (2013) 213 Cal.App.4th 234, 259 [explaining "though mandate is ordinarily classed as a legal remedy it is 'largely controlled by equitable principles,'" quoting *Wallace v. Bd. of Education*, *supra*, 63 Cal.App.2d 611, 617].) "A court cannot properly exercise an equitable power without consideration of the equities on both sides of a dispute." (*Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 180;

see also, e.g., *California High-Speed Rail Authority v. Super. Ct., supra*, 228 Cal.App.4th at p. 707 [a writ will not lie "in the absence of prejudice"].) Importantly, where a "plaintiff seeks to enjoin public officers and agencies in the performance of their duties the public interest must be considered." (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1472–1473 [applying standard in context of motion for preliminary injunction]; see also *People v. Board of Parole Hearings* (2022) 83 Cal.App.5th 432, 446 [explaining that "in writ proceedings courts will look to the nature of the relief sought, not the label or procedural device by which the action is brought, to determine the parties' rights" [quotation marks omitted].)

Here, the Chamber offered only conclusory allegations, and no competent evidence, of any actual harm or prejudice that would befall its members if enforcement of Prop. 24's implementing regulations began on July 1, 2023 as intended under the statute—three months after the first set of regulations was finalized. The Chamber vaguely asserted that the *regulations* will require "redesigning the essential infrastructure of how businesses use and collect data; instituting new processes to manage the new rights of correction and sensitive data use limitations; renegotiating and updating contractual relationships with service providers, contractors, and third parties; revising privacy policies and other consumer-facing documents and consent interfaces; updating websites and apps; and designing and implementing employee training." (Vol. 1, Tab 3, pp. 177,

182.) It did not offer any evidentiary support for these allegations, nor did it explain how complying with the new implementing regulations, *as opposed to the changes brought by Prop. 24 itself*, would impose a significant burden on businesses.

By contrast, Prop. 24 expressly outlines the various harms resulting from the lack of strong consumer privacy protections. In enacting Prop. 24, the voters recognized that the unauthorized use or disclosure of consumers' personal information "creates a heightened risk of harm to the consumer, and they should have meaningful options over how it is collected, used, and disclosed." (*Id*., § 3(A)(2) [Vol. 1, Tab 1, p. 39].) The voters also recognized that "[c]hildren are particularly vulnerable from a negotiating perspective with respect to their privacy rights[], and p]arents should be able to control what information is collected and sold or shared about their young children and should be given the right to demand that companies erase information collected about their children." (*Id*., § 2(J) [p. 38].)

Moreover, Petitioners demonstrated that the Prop. 24 regulations made final in March largely mirror provisions that already existed, either in Prop. 24 itself or in regulations under the 2018 CCPA, belying the Chamber's unsupported claims of prejudice and harm. Specifically, when submitting the first regulatory package, the Agency determined that, "although the new proposed draft regulations initially appear significant in scope, . . . [t]he vast majority of language in the proposed regulations either comes directly from the existing CCPA

regulations or from the CPRA [Prop. 24] amendments." (Vol. 2, Tab 6, p. 363.)

The regulations build on existing law; to the extent Prop. 24 created new rights and requirements, businesses have known of those requirements since 2020. And while the first regulatory package was finalized on March 29, the regulations did not materially change since the time the revised proposed regulations were issued in November 2022. Thus, by July 1, 2023, businesses had at least eight months to become familiar with the new regulations.

A review of the required regulations demonstrates that they are focused on: (1) updating existing regulations to reflect the amendments made by Prop. 24; and (2) implementing the two new consumer rights within the existing regulatory framework. (See Vol. 2, Tab 5, pp. 329–330.) The regulations also provide businesses with flexibility in many areas with respect to how new consumer rights can be effectuated. (See, e.g., Cal. Code Regs., tit. 11, § 7012, subd. (c) [providing various options by which a business can provide consumers with a notice of collection.) And a number of regulations address the Agency's own powers and contain no requirements for businesses at all. (See, *id*., §§ 7300–7304 [addressing Agency's powers].)

Given their limited scope, the Chamber's unsubstantiated suggestion that entire business models need to be revamped as a result of the *implementing regulations themselves*, rather than the changes brought by Prop. 24, rings hollow, and the Chamber offered no support for it.

Even assuming that some smaller businesses may have a harder time getting into compliance (which, again, the Chamber did not support with any evidence), if they find themselves subject to an enforcement action, they will have an opportunity to demonstrate that they have been attempting to comply in good faith. (See, e.g., § 1798.199.100 [requiring enforcement agencies to "consider the good faith cooperation of the business"]; Cal. Code Regs., tit. 11, § 7301, subd. (b) ["As part of the Agency's decision to pursue investigations of possible or alleged violations of the CCPA, the Agency may consider all facts it determines to be relevant, including the amount of time between the effective date of the statutory or regulatory requirement(s) and the possible or alleged violation(s) of those requirements, and good-faith efforts to comply with those requirements."].) Such a unique, context-specific, fact-specific circumstance can be managed on an individual basis, and does not warrant broad relief for *all* affected businesses for an extended period of time.

In reality, businesses dealing heavily in consumers' personal data that are subject to the CCPA, as amended by Prop. 24, have known of the law's new requirements since 2020, and had over three months to digest the regulations before enforcement was set to begin on July 1, 2023. Indeed, many companies in California currently do or will soon have to comply with laws in other states such as Colorado (Colo. Rev. Stat. Ann. § 6-1-1301 et seq.) Virginia (Va. Code Ann. § 59.1-575 et seq.), and Utah (Utah Code Ann. § 13-61-101 et. seq.), in addition to the European

Union, all of which impose similar obligations for compliance. (See Vol. 2, Tab 6, pp. 363, 370; Vol. 7, Tab 6, p. 1937.)

Although the Chamber failed to submit evidence identifying a single business that cannot comply with even one of the March 29 regulations, the superior court prohibited Petitioners from enforcing the regulations against any and all businesses, regardless of their ability to comply. Thus, the superior court erred in failing to balance the relative harms, to the public on the one hand, and businesses subject to Prop. 24, on the other hand, when granting the extraordinary and equitable remedy of writ relief. The harms that will result to California consumers while an appeal of the superior court's order is pending cannot be remedied by any relief afforded by an appeal. Thus, writ relief is appropriate here.

III. THE SUPERIOR COURT'S RULING IS UNWORKABLE IN MANY RESPECTS, AND UNDERMINES CONSUMER PRIVACY PROTECTIONS THAT WERE NOT PART OF PROPOSITION 24

The superior court's order prevents the enforcement of any regulations required under Prop. 24 for one year from the date the individual regulation becomes final. In addition to the legal and equitable defects described above, the superior court's order leaves businesses and consumers in an untenable state of uncertainty regarding their privacy rights and obligations. Insofar as the now enjoined Prop. 24 regulations amended and superseded regulations promulgated under the 2018 CCPA, it is unclear which regulations currently govern businesses.

Prop. 24 expressly provides that "[e]nforcement of provisions of law contained in the California Consumer Privacy Act of 2018 amended by this act shall remain in effect and shall be enforceable until the same provisions of this act become enforceable." (§ 1798.185, subd. (d).) The superior court order reaffirms the same, stating that "regulations previously passed pursuant to the CCPA will remain in full force and effect until superseding regulations passed by the Agency become enforceable in accordance with the Court's Order." (Vol. 8, Tab 12, p. 2222.) However, because the recently enacted Prop. 24 regulations superseded the prior regulations in many respects, it is not clear whether the prior regulations are still effective and enforceable, notwithstanding the superior court's order.

The superior court's order essentially creates two competing standards that are in place at the same time: the standards under the 2018 CCPA and its implementing regulations, and the standards under Prop. 24 and its implementing regulations. The Prop. 24 regulations went into effect as of March 29, 2023, and superseded the 2018 regulations. While the superior court's order enjoined *enforcement* of the Prop. 24 regulations, it did not purport to render them legally ineffective. However, the superior court's order also provides, consistent with what the voters intended, that "regulations previously passed pursuant to the CCPA will remain in full force and effect until superseding regulations passed by the Agency become enforceable in accordance with the Court's Order." (Vol. 8, Tab 12, p. 2222; see also § 1798.185, subd. (d).) This leaves businesses in a state of

uncertainty as to which regulations they should be complying with: the 2018 regulations, which were ostensibly superseded but are still enforceable under the court's order, or the Prop. 24 regulations, which are technically in effect, but are not enforceable under the court's order to the extent they were a required regulation under Prop. 24. Similarly, this leaves consumers in a state of uncertainty as to what rights and protections they currently have under the law.

The superior court's order also creates perverse incentives to manipulate the rulemaking process. Tying the commencement of enforcement to the completion of the regulatory process perversely incentivizes businesses who may disagree with the law to attempt to delay the rulemaking process. Similarly, delaying enforcement of new required regulations for one year following their enactment perversely incentivizes the Agency to promulgate regulations as quickly as possible and forego voluntary, time-intensive—yet important—pre-rulemaking steps of the sort that the Agency took here: previewing text, holding public meetings, and receiving, reviewing, and considering stakeholder feedback. (See, e.g., *Voss v. Super. Ct.* (1996) 46 Cal.App. 4th 900, 908 ["The APA is intended to advance meaningful public participation in the adoption of administrative regulations by state agencies[.]"].) That outcome would work to the detriment of the rulemaking process, which is intended to promote public participation and input.

CONCLUSION

The superior court's order enjoining enforcement of regulations required by Proposition 24 for one full year following the date that each regulation became final (or will become final in the case of regulations that have yet to be promulgated) was contrary to applicable law, and leaves tens of millions of California consumers vulnerable to the misuse of their sensitive personal information during the pendency of the stay of enforcement. Because the challenged order is one of great statewide importance, involves a novel issue, and requires urgent resolution, writ relief is appropriate here. Thus, Petitioners respectfully request that this Court to grant their petition and direct the superior court to vacate its June 30, 2023 order, and enter a new and different order denying the Chamber's petition for writ of mandate.

Respectfully submitted,

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s/ Natasha Saggar Sheth
NATASHA SAGGAR SHETH
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CERTIFICATE OF COMPLIANCE

I certify that the attached Petition for Extraordinary Writ of Mandate or Other Appropriate Relief and accompanying memorandum of points and authorities uses a 13 point Century Schoolbook and contains 8,821 words.

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