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21 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 22 IN AND FOR THE COUNTY OF SACRAMENTO

23 CALIFORNIA CHAMBER OF COMMERCE,

Case No.

24 Petitioner,

Action Filed:

25 vs.

VERIFIED PETITION FOR WRIT  
 OF MANDATE [C.C.P. § 1085]  
 AND COMPLAINT FOR  
 DECLARATORY AND  
 INJUNCTIVE RELIEF [C.C.P. §§  
 1060 & 526a]

26 CALIFORNIA PRIVACY PROTECTION  
 27 AGENCY; JENNIFER M. URBAN,  
 28 ALASTAIR MACTAGGART, LYDIA DE LA  
 29 TORRE, and VINHCENT LE, in their official  
 30 capacities as board members of the California  
 31 Privacy Protection Agency; ROB BONTA, in  
 32 his official capacity as Attorney General of the  
 33 State of California; and DOES 1-100,

34 Respondents.



## INTRODUCTION

1  
2 1. Proposition 24, the "California Privacy Rights Act of 2020," adopted  
3 by California voters in November 2020, established sweeping new requirements  
4 regarding businesses' collection, retention, and use of consumer data and created  
5 an entirely new state agency called the California Privacy Protection Agency  
6 ("CPPA" or the "AGENCY"). It also expressly required the AGENCY to adopt a  
7 mandatory set of final regulations on or before July 1, 2022, and provided a  
8 period thereafter of at least one year for California businesses to prepare for the  
9 new law, in reliance on those final regulations, before enforcement could begin  
10 on July 1, 2023:

11 [T]he timeline for adopting final regulations required by the  
12 act adding this subdivision shall be July 1, 2022. ...  
13 Notwithstanding any other law, civil and administrative  
14 enforcement of the provisions of law added or amended by this  
15 Act shall not commence until July 1, 2023, and shall only apply  
16 to violations occurring on or after that date. (Civ. Code §  
17 1798.185(d) [attached in full as Petition Exhibit ("Pet. Ex.") 1].)

18 2. The law required the AGENCY to adopt a complete set of final  
19 regulations in 15 new substantive areas by July 1, 2022, providing businesses  
20 with a one-year grace period prior to enforcement of those new rules. But, to  
21 date, the AGENCY still has not published a *single* final regulation, nearly *nine*  
22 *months* past the mandated deadline. The AGENCY has not sought a legislative  
23 extension, judicial relief from the deadline, or emergency rulemaking—all of  
24 which were available options. Instead, the AGENCY ignored the deadline. Yet,  
25 the AGENCY is preparing to begin enforcement on July 1, 2023, leaving  
26 businesses scrambling to manage complex new requirements across their  
27 systems and products for rules that are not yet finalized. In fact, the AGENCY  
28 has not even previewed in draft form many of the required regulations,  
seemingly taking the position that it can issue those rules whenever it wants

1 and leave businesses with little or no time to implement those regulations before  
2 they are enforceable. The AGENCY's piecemeal approach and disregard of  
3 statutory deadlines is regulation by fiat that effectively and improperly rewrites  
4 Proposition 24 and severely prejudices California businesses by depriving them  
5 of the one-year compliance grace period established in the plain language of  
6 Proposition 24.

7       3. While the AGENCY has not published a single final regulation to  
8 date, it has previewed expansive new obligations in a partial set of draft  
9 regulations, filed with the Office of Administrative Law. The draft  
10 regulations contain detailed, complex requirements totaling 66 pages that all  
11 businesses subject to the law must follow. Yet, because the AGENCY delayed  
12 adopting final regulations well past the deadline, and has continually altered  
13 its draft regulations throughout the rulemaking process, businesses have  
14 been unable to act with certainty as they take steps towards compliance.  
15 Instead, businesses have been stuck in limbo during this ongoing rulemaking  
16 process, raising thousands of pages of comments and questions with the draft  
17 regulations and waiting to see if and how the AGENCY addresses those  
18 comments. Given the AGENCY's decision to commence enforcement of  
19 Proposition 24 on July 1, 2023, notwithstanding its failure to publish  
20 final regulations by the statutory deadline and the one-year compliance period  
21 in Proposition 24, businesses are now facing, at most, a period of only three  
22 months to comply with an expansive set of new regulations.

23       4. Making matters worse, the draft regulations submitted to the Office  
24 of Administrative Law are themselves incomplete. Despite a clear statutory  
25 mandate, the AGENCY has not even issued proposed regulations regarding  
26 some of the most complicated new requirements of Proposition 24. These include  
27 cybersecurity audits, "risk assessments," and automated decision-making  
28 technology. These are completely novel legal requirements with potentially large

1 operational business impacts, yet businesses have not even had a sneak peek of  
2 what the rules will be. If and when those regulations are drafted, businesses will  
3 (it seems) be expected to comply on severely shortened notice, in direct  
4 contravention of Proposition 24. These brand new rules can reasonably be  
5 expected to require significant operational work (as they are new requirements),  
6 which Proposition 24 accounted for by giving businesses a year to prepare. But  
7 the AGENCY's failure to timely promulgate regulations in these critical areas  
8 means that businesses may have no grace period whatsoever.

9       5. Escalating the prejudice of the AGENCY's delay, Proposition 24 also  
10 eliminated the statutory safe harbor — the right of businesses to cure alleged  
11 violations before administrative enforcement. Previously, businesses could avoid  
12 penalties by addressing violations within 30 days of receiving a notice of alleged  
13 noncompliance. Proposition 24 makes a cure period wholly discretionary,  
14 meaning that the AGENCY can choose to immediately institute administrative  
15 enforcement actions. The removal of this safe harbor further underscores the  
16 importance for businesses to receive the voter mandated one year to develop,  
17 update, and implement systems to comply with the new regulations.

18       6. Though the AGENCY has blown through Proposition 24's deadlines,  
19 it has rejected requests to correspondingly adjust the date when enforcement  
20 will commence. The AGENCY's actions thus put businesses on a dramatically  
21 shortened timeline—in direct conflict with the plain language and structure of  
22 Proposition 24—with no safe harbor, resulting in prejudice unilaterally created  
23 by the AGENCY. Businesses will have far less time to reconfigure technical  
24 systems, re-engineer data flows, construct new tools, redesign websites and apps,  
25 update policies, revise contracts, train employees, and so on. These are complex,  
26 far-reaching, and arduous undertakings that require significant time and  
27 expense.

1           7.     Rushing implementation and forcing businesses to perform these  
2 tasks in a few short months or less is not what the voters intended. Proposition  
3 24 clearly mandated, and its terms specifically provided business with, a  
4 minimum one-year window between the date that a complete set of final  
5 regulations is issued and commencement of enforcement. (Civ. Code §  
6 1798.185(d).) This one-year window is necessary to provide California businesses  
7 with sufficient time to make the wide range of changes necessary to conform to  
8 the sweeping new requirements of Proposition 24 and implementing regulations.

9           8.     This Petition and Complaint therefore seeks to require the AGENCY  
10 to satisfy its statutory obligation to adopt the complete final regulations required  
11 by Proposition 24 and to toll enforcement of the law and implementing  
12 regulations until one year from the date the AGENCY adopts final regulations,  
13 as expressly required by Proposition 24. (Civ. Code §§ 1798.185(a), (d).) Such  
14 tolling is necessary to conform to the statutory requirement and voters' intent  
15 that businesses receive a one-year grace period to update their systems and  
16 processes to comply with the new legal requirements.

17           9.     In the absence of such relief, the ballot measure's plain language and  
18 will of the voters will be thwarted, and wide swaths of California's economy –  
19 each and every business with more than \$25 million in annual gross revenues –  
20 will be required to rush to design and implement complex compliance  
21 infrastructure. As a non-exhaustive set of examples, in a matter of a months or  
22 even weeks, businesses will need to rush to redesign technical infrastructure;  
23 create processes to manage the new rights of correction and sensitive data use  
24 limitations; revisit and potentially redesign consent interfaces in their websites  
25 and apps; negotiate and revise contracts with service providers, contractors, and  
26 third parties; significantly revise privacy policies and other consumer-facing  
27 documents; update websites and applications; and train employees. And that is  
28 to say nothing of some of the most complex and difficult areas for which draft

1 regulations have not even been previewed. Businesses that cannot condense a  
2 year's worth of preparation into a few short months (or less) will face exposure  
3 to administrative and civil prosecution, including significant administrative and  
4 civil fines, cease and desist orders, and injunctions.

5 10. Petitioners therefore seek:

- 6 a. A writ of mandate compelling the AGENCY to promptly adopt the  
7 final regulations referenced in Civ. Code §§ 1798.185(a)(8)-(22),  
8 as required by Proposition 24, and commanding Respondents and  
9 all other public officers acting by and through their authority to  
10 refrain from taking any steps to enforce Proposition 24 on or after  
11 July 1, 2023, until the AGENCY has adopted the required final  
12 regulations and provided businesses with the required minimum  
13 one-year grace period from final adoption to conform their  
14 practices to the new rules;
- 15 b. A declaration from this Court that the AGENCY violated its legal  
16 duty to adopt final regulations by July 1, 2022 and that  
17 Proposition 24 establishes a minimum 12-month period between  
18 the AGENCY's adoption of final implementing regulations and  
19 the AGENCY's commencement of enforcement, such that the  
20 statute and accompanying regulations cannot be enforced until  
21 12 months after the date when final regulations are adopted;
- 22 c. An injunction prohibiting Respondents, and all other public  
23 officers acting by and through their authority, from making any  
24 expenditure of public funds to enforce Proposition 24 and its  
25 accompanying regulations until 12 months after the adoption of  
26 final implementing regulations; and
- 27 d. Any other equitable or other relief deemed proper by the Court.
- 28

**PARTIES**

11. Petitioner CALIFORNIA CHAMBER OF COMMERCE is a non-profit corporation organized under Section 501(c)(6) of the Internal Revenue Code.

12. Petitioner CALIFORNIA CHAMBER OF COMMERCE'S members and supporters include numerous businesses in the State of California that are subject to the requirements in the California Consumer Privacy Act of 2018 ("CCPA") and Proposition 24 (the California Privacy Rights Act, or "CPRA"), as well as the regulations promulgated pursuant to those statutes. Petitioner CALIFORNIA CHAMBER OF COMMERCE, as well as a number of Petitioner's members and supporters, submitted numerous comments to the AGENCY during the course of the rulemaking process, including to request that enforcement of Proposition 24 be tolled until one year after final regulations have been issued to provide businesses with sufficient time to understand and implement the obligations established in the regulations.

13. Petitioner CALIFORNIA CHAMBER OF COMMERCE brings this proceeding on its own behalf and on behalf of its member businesses that are subject to Proposition 24. Petitioner CALIFORNIA CHAMBER OF COMMERCE's members would otherwise be entitled to bring this suit in their own right, the interests that Petitioner seeks to protect in this lawsuit are germane to its purpose, and neither the claims asserted, nor the relief sought herein, are unique to specific businesses and therefore do not require the participation of each and every member of Petitioner.

14. Many of Petitioner CALIFORNIA CHAMBER OF COMMERCE'S members are subject to Proposition 24 and will be harmed if the obligations in Proposition 24 are allowed to be enforced starting on July 1, 2023, just weeks or months after (or even before) regulations have been finally adopted and without

1 providing the statutory one-year grace period necessary for those members to  
2 understand and implement their compliance obligations.

3 15. Respondent AGENCY is a new state agency created by Proposition  
4 24 to implement and enforce the 2018 CCPA and Proposition 24, the 2020 CPRA.  
5 Respondent AGENCY is empowered to conduct investigations of potential  
6 violations of the statutes and regulations within its jurisdiction, and upon  
7 determining a violation exists, to order businesses to cease and desist violations  
8 and pay administrative fines of up to \$2,500 per violation (and up to \$7,500 per  
9 violation for certain infractions). (Civ. Code §§ 1798.199.55(a), 1798.199.90(a).)  
10 Respondent AGENCY is governed by a five-member board. (*Id.* §  
11 1798.199.10(a).)

12 16. On information and belief, absent an order from this Court,  
13 Respondent AGENCY will begin enforcement of Proposition 24 on July 1, 2023,  
14 despite the fact that the necessary implementing regulations have not been  
15 published, and in any event, may or will be issued just weeks or months prior to  
16 July 1, 2023, and possibly thereafter, in contravention of the mandatory deadline  
17 and one-year implementation period established in Proposition 24. (Civ. Code §  
18 1798.185(d).)

19 17. Respondents JENNIFER M. URBAN, ALASTAIR MACTAGGART,  
20 LYDIA DE LA TORRE, and VINHCENT LE (together "Respondent BOARD  
21 MEMBERS") are members of the governing board of the AGENCY and are sued  
22 in their official capacities only. On information and belief, absent an order from  
23 this Court, Respondent BOARD MEMBERS will cause Proposition 24 to be  
24 implemented and enforced beginning on July 1, 2023, despite the fact that the  
25 necessary implementing regulations have not been published, and in any event,  
26 may or will be issued just weeks or months prior to July 1, 2023, and possibly  
27 thereafter, in contravention of the mandatory deadline and one-year  
28 implementation period established in Proposition 24. (Civ. Code § 1798.185(d).)

1           18. Respondent ROB BONTA is the Attorney General of the State of  
2 California ("ATTORNEY GENERAL") and is sued in his official capacity only.  
3 Respondent ATTORNEY GENERAL is the state's chief law officer, serves as  
4 legal counsel to state officers and most state agencies, boards, and commissions,  
5 and assists state officers with the interpretation and enforcement of state law,  
6 including the state Constitution. Prior to the formation of the AGENCY, the  
7 ATTORNEY GENERAL was responsible for the promulgation of consumer  
8 privacy regulations in the State of California. The ATTORNEY GENERAL and  
9 AGENCY share enforcement responsibilities with respect to Proposition 24. On  
10 information and belief, absent an order from this Court, Respondent  
11 ATTORNEY GENERAL will cause Proposition 24 to be implemented and  
12 enforced beginning on July 1, 2023, despite the fact that the necessary  
13 implementing regulations have not been published, and in any event, may or will  
14 be issued just weeks or months prior to July 1, 2023, and possibly thereafter, in  
15 contravention of the mandatory deadline and one-year implementation period  
16 established in Proposition 24. (Civ. Code §§ 1798.185(a), (d).)

17           19. Respondents DOES 1-100 are any and all state and/or local  
18 government officials that may attempt to implement and enforce Proposition 24  
19 on and after July 1, 2023. Petitioners are unaware of the true names and  
20 capacities of these DOE Respondents and therefore sue such Respondents by  
21 fictitious names. When the true identities and capacities of these Respondents  
22 have been determined, Petitioners will amend this Petition and Complaint to  
23 insert such identities and capacities.

#### 24                           **JURISDICTION AND VENUE**

25           20. This Court has jurisdiction over this action pursuant to Code of Civil  
26 Procedure sections 526a, 1060, and 1085. Petitioners are entitled to a writ of  
27 mandate because they are beneficially interested in the outcome and do not have  
28 a plain, speedy, and adequate remedy in the ordinary course of law. Section 1085

1 authorizes the issuance of a writ of mandate. Section 1060 authorizes this court  
2 to issue declaratory relief. Section 526a authorizes this court to order injunctive  
3 relief.

4 21. Venue is proper under Code of Civil Procedure sections 393 and 394  
5 because the events and actions of Respondents giving rise to the claims alleged  
6 herein occurred in Sacramento County.

### 7 FACTUAL ALLEGATIONS

#### 8 **A. The 2018 CCPA**

9 22. In 2018, the Legislature enacted the California Consumer Privacy  
10 Act of 2018 ("2018 CCPA") (Tit. 1.81.5 [commencing with Section 1798.100] of  
11 Part 4 of Div. 3 of Civ. Code). (AB 375, Stats. 2018, ch. 55.) The 2018 CCPA was  
12 the nation's first legislation to comprehensively regulate the collection and use  
13 of consumer personal data. (Assem. Com. on Privacy and Consumer Protection,  
14 Jun. 27, 2018 analysis of AB 375 (as amended Jun. 25, 2018), p. 1.)

15 23. The 2018 CCPA provided consumers with new rights regarding their  
16 personal information, including the right to know what personal information is  
17 being collected about them and whether their personal information is being sold  
18 and to whom; the right to access their personal information; the right to delete  
19 personal information collected from them; the right to opt-out or opt-in to the  
20 sale of their personal information, depending on age of the consumer; and the  
21 right to equal service and price, even if they exercise such rights. (AB 375, Stats.  
22 2018, ch. 55.) These rights are currently in effect and are being enforced.

23 24. The 2018 CCPA assigned administrative oversight and  
24 implementation to Respondent ATTORNEY GENERAL, including the  
25 responsibility for adopting implementing regulations. (AB 375; Civ. Code §  
26 1798.185.) The 2018 CCPA provided express direction to the ATTORNEY  
27 GENERAL to promulgate regulations on seven specific matters and provided  
28

1 catch-all authority to the ATTORNEY GENERAL to adopt regulations "as  
2 necessary" to further the purposes of the Act. (Civ. Code §§ 1798.185(a)-(b).)

3 ***B. Proposition 24 Significantly Broadens the 2018 CCPA.***

4 25. In November 2020, California voters approved Proposition 24, the  
5 California Privacy Rights Act of 2020 (the "2020 CPRA"). The 2020 CPRA  
6 amended 18 of the 21 statutory sections CCPA originally created and added 21  
7 new statutory sections to Title 1.81.5.

8 26. Overall, the law makes sweeping changes to materially expand the  
9 scope of the 2018 CCPA in various respects. To name some examples:

- 10 a. It imposes new requirements for businesses to protect personal  
11 information, including by minimizing data collection, limiting  
12 data retention, and protecting data security. It also extends  
13 various requirements in the 2018 CCPA to the sharing of  
14 personal information, not just the sale of such data. (See, e.g., Civ.  
15 Code §§ 1798.110, 1798.115, 1798.120, 1798.135.)
- 16 b. It adds three new substantive consumer privacy rights: (1)  
17 consumers may opt-out of the "sharing" of personal information;  
18 (2) consumers can direct businesses to correct personal  
19 information that they possess; and (3) consumers can direct  
20 businesses to limit their use and disclosure of "sensitive" personal  
21 information, a novel category not contained in the 2018 CCPA.  
22 (Civ. Code §§ 1798.106, 1798.120, 1798.121, 1798.140(ae).)
- 23 c. It requires businesses to notify and work with contractors, service  
24 providers, and any third parties to whom the business has sold or  
25 shared personal information to implement consumer requests  
26 regarding personal information. (Civ. Code §§ 1798.105,  
27 1798.100(d) [requiring agreements with such entities that  
28 contain specified terms], 1798.121, 1798.130(a)(3)(A).) It also  
requires new provisions to be included in contracts with service  
providers, contractors, and third parties. (See, e.g., Civ. Code §§  
1798.100(d), 1798.140(ag).)
- d. It expands the temporal scope of data covered by requests for a  
copy of personal information collected, sold, or shared. (Civ. Code

1 §§ 1798.110(b), 1798.130(a)(3), 1798.115(b), 1798.130(a)(4)(B).)

- 2  
3 e. It amends the penalty and enforcement provisions in the 2018  
4 CCPA by adopting a new \$7,500 penalty for each violation of the  
5 title involving the personal information of a minor (Civ. Code §  
6 1798.199.90) and repealing mitigation provisions in the 2018  
7 CCPA that allowed businesses to avoid penalties by addressing  
8 alleged violations within 30 days of receiving a notice of alleged  
9 noncompliance (Civ. Code § 1798.155 [no longer containing the  
10 cure period that was in the 2018 CCPA]).

11 27. In addition, the 2020 CPRA introduced many new requirements that  
12 are not spelled out in the statute, but are instead left to regulatory rulemaking.  
13 Those include rules about performing cybersecurity audits on an annual basis;  
14 conducting risk assessments about the processing of personal information; and  
15 the use of “automated decision-making technology.” (Civ. Code §§  
16 1798.185(a)(15), (16).)

17 28. In addition, the 2020 CPRA created the AGENCY and transferred  
18 regulatory authority from the ATTORNEY GENERAL to the AGENCY. (Civ.  
19 Code § 1798.185(d).) In connection with the AGENCY’s rulemaking duties, the  
20 2020 CPRA expressly required the AGENCY to adopt a full set of regulations on  
21 15 new subjects,<sup>1</sup> stating that the “timeline for adopting final regulations  
22 required by the act adding this subdivision shall be July 1, 2022.” (Civ. Code §  
23 1798.185(d).) The AGENCY has expressly acknowledged that these regulations  
24 are legally required and integral to “operationaliz[ing] new rights and concepts  
25 introduced by the CPRA” and to providing the “clarity and specificity [necessary]  
26 to implement the law.” (Pet. Ex. 2.)

27 29. To name just a few examples:

- 28 a. The AGENCY must establish by regulation how often and under

<sup>1</sup> The 2018 CCPA required regulations on seven subjects, and the 2020 CPRA requires regulations on fifteen additional subjects. (Civ. Code §§ 1798.185(a)(1)-(22).)

1 what circumstances a consumer may request correction of  
2 personal information, how a business is required to respond, and  
3 what businesses can do to resolve concerns regarding the  
4 accuracy of information and to prevent fraud. (Civ. Code §  
1798.185(a)(8).)

- 5 b. The AGENCY must define standards such as “impossibility” and  
6 “disproportionate effort” that establish guardrails regarding the  
7 extent of efforts businesses must expend to implement certain  
8 customer requests. (*Id.* § 1798.185(a)(9).)
- 9 c. The AGENCY must issue regulations regarding what constitutes  
10 a “dark pattern”—i.e., design elements in interfaces that cannot  
11 be used to gain consumer consent because they are deemed  
12 manipulative. (*Id.* § 1798.185(a)(20).)
- 13 d. The AGENCY must define what constitutes the processing of  
14 personal information for a “business purpose,” a critical threshold  
15 concept that governs the scope of numerous business obligations  
16 regarding personal information. (Civ. Code §§ 1798.185(a)(9)-  
17 (10), 1798.135(f), 1798.140(ag).)
- 18 e. The AGENCY must establish requirements and technical  
19 specifications for an “opt-out preference signal” to indicate a  
20 consumer’s intent to restrict the sale, sharing, use, or disclosure  
21 of personal information and to limit the use or disclosure of the  
22 consumer’s sensitive personal information. (See Civ. Code §§  
23 1798.185(a)(19), 1798.120.)
- 24 f. The AGENCY must establish rules related to cybersecurity  
25 audits, risk assessments, and automated decision-making  
26 technologies, regulatory categories left entirely to the Agency,  
27 with no substantive rules included in the actual statute. (See Civ.  
28 Code §§ 1798.185(a)(15), (16).)

29 ***C. The 2020 CPRA Deliberately Sets the Deadline for Final***  
30 ***Rulemaking and the Start of Enforcement One Year Apart.***

31 30. Proposition 24 explicitly mandates that the AGENCY adopt  
32 regulations addressing *all* of the 15 new topics listed in subsection  
33 1798.185(a)(8)-(22) no later than July 1, 2022. Specifically, the statute provides

1 that that the “timeline for adopting final regulations *required by the act*  
2 *adding this subdivision* [i.e., Prop. 24] *shall be July 1, 2022.*” (Civ. Code §  
3 1798.185(d), emphasis added; see also Pet. Ex. 3, Written Justification for  
4 Earlier Effective Date [“The CPRA *requires* the Agency to adopt regulations to  
5 operationalize the CPRA amendments to the CCPA by *July 1, 2022*], emphasis  
6 added; Pet. Ex. 2 [“The Agency is directed to adopt regulations to further the  
7 purposes of the Act”].)

8 31. This is a mandatory instruction, as the statutory scheme makes  
9 clear. Subdivision (a) of section 1798.185 lists the regulations that “shall” be  
10 adopted, which includes the list of 15 separate substantive areas newly added by  
11 the 2020 CPRA. Subsection (b) of section 1798.185 lists additional regulations  
12 that “may” be adopted, which are those “necessary to further the purposes of this  
13 title.” (Civ. Code §§ 1798.185(a), (b).) The July 1, 2022, deadline is tied to  
14 regulations “required by the Act.” (*Id.* § 1798.185(d).) The regulations that are  
15 “required” are those set forth in subdivision (a)—the ones the Agency “shall”  
16 adopt. Thus, it is clearly obligatory for the Agency to promulgate the full set of  
17 1798.185(a)(8)-(22) regulations by July 1, 2022. (See *De Leon v. Juanita’s Foods*  
18 (2022) 85 Cal.App.5th 740, 752 [30-day statutory deadline for payment of  
19 arbitration fees is “clear and unambiguous”].)

20 32. Particularly telling is that the voters used both “shall” and “may” in  
21 the same provision to signify which administrative actions are obligatory and  
22 which are discretionary. (See *Common Cause v. Bd. of Supervisors* (1989) 49  
23 Cal.3d 432, 443 [“it is a well-settled principle of statutory construction that the  
24 word ‘may’ is ordinarily construed as permissive, whereas ‘shall’ is ordinarily  
25 construed as mandatory”]; *City of Grass Valley v. Cohen* (2017) 17 Cal.App.5th  
26 567, 577 [“The use of ‘may’ and ‘shall’ in the same statutory provision is  
27 illuminating.”]; *Atkinson v. Elk Corp. of Tex.* (2006) 142 Cal.App.4th 212, 228.)  
28

1 The Agency had a mandatory duty to adopt all of the subdivision (a)(8)-(22)  
2 regulations by July 1, 2022.

3 33. And if there were any ambiguity about this mandatory obligation  
4 (there is not), the drafters of Proposition 24 eliminated it by expressly stating  
5 that "final regulations implementing the new provisions of the CPRA *have to be*  
6 *adopted*" by July 1, 2022. (Californians for Consumer Privacy, *CPRA Timeline*,  
7 <https://www.caprivacy.org/cpra-timeline/> [Prop. 24 proponents' ballot measure  
8 committee statement].)

9 34. The law is equally clear that the voters did not intend for Proposition  
10 24 to be enforced until the Agency issued the full set of final regulations *and*  
11 businesses received a one-year grace period to conform their operations and  
12 practices with those new statutory and regulatory requirements. In the very  
13 same provision (entitled "Regulations"), the voters specified that businesses  
14 would have *at least* one year to make conforming changes based on the text of  
15 the final regulations, prior to any Agency enforcement. The statute states:  
16 "Notwithstanding any other law, civil and administrative enforcement of the  
17 provisions of law added or amended by this act ***shall not commence*** until July  
18 1, 2023 [i.e., one year after the AGENCY's mandatory deadline for issuing final  
19 regulations], and shall only apply to violations occurring on or after that date."  
20 (Civ. Code § 1798.185(d), emphasis added.)

21 35. This one-year implementation period is an essential feature of  
22 Proposition 24. The Proposition significantly revised the 2018 CCPA and left  
23 numerous critical details to be addressed through a complete set of regulations,  
24 as explained above. The voters therefore established a detailed, orderly, and  
25 phased implementation and enforcement timetable. Under this framework,  
26 development of the implementing regulations would commence immediately  
27 (Prop. 24, § 31(b)), final regulations would be issued no later than July 1, 2022  
28 (Civ. Code § 1798.185(d)), the law would be operative on January 1, 2023, and

1 enforcement would begin no earlier than July 1, 2023. (Prop. 24, §§ 31(a)-(b); Civ.  
2 Code § 1798.185(d).) The plain text thus establishes a timeline with two inter-  
3 related steps: (1) the Agency would adopt a complete set of final regulations no  
4 later than July 1, 2022; and (2) the Agency would begin enforcement no earlier  
5 than one year later, July 1, 2023.

6 36. The voters' intent that businesses have sufficient time to implement  
7 the new requirements in an orderly way is corroborated by the law's findings,  
8 declarations, and purpose sections. The voters explained that one of the primary  
9 purposes of law's orderly implementation provisions was to "strengthen[]  
10 consumer privacy *while giving attention to the impact on business and*  
11 *innovation.*" (Prop. 24 § 3(C)(1), emphasis added; *see also id.* §§ 3(C)(2), 3(C)(4).)

12 37. Altogether lacking from these or any other component of Proposition  
13 24, including the legislative history, is any statement indicating that the Agency  
14 can issue mandatory regulations in a piecemeal format, or miss its own deadlines  
15 but hold others against businesses. The AGENCY's disregard for the statutory  
16 deadlines and scheme is incompatible with the deliberate effort in Proposition  
17 24 to provide businesses with a one-year grace period to make the updates  
18 needed to comply with a new and complete set of complex legal requirements.

19 38. Even if businesses wanted to complete these updates before July 1,  
20 2023, they could not do so absent final regulations. Proposition 24 does not alone  
21 give businesses sufficient guidance to know what is required by the law. The  
22 statutory provisions are too skeletal and indefinite to give businesses reasonably  
23 fair notice of what is expected of them and how they can achieve compliance.  
24 This is evident from the long list of required regulations in Section 1798.185(a),  
25 the 66 pages of detailed regulations that the Agency has proposed (see Pet. Ex.  
26 4), and the extensive comments provided during the rulemaking process. The  
27 voters themselves understood this to be the case and architected Proposition 24  
28 accordingly; they mandated the issuance of a series of highly substantive

1 regulations by a date certain and extended enforcement a minimum of one year  
2 into the future.

3 39. Two examples illuminate the Act's vagueness and the critical need  
4 for gap-filling regulations. First, the entire scope of the consumer's statutory  
5 "right to correct" information consists of three very general paragraphs that  
6 provide that: (1) consumers "shall have the right to request" that a business  
7 correct inaccurate information; (2) businesses "shall disclose" that consumers  
8 have a right to request corrections; and (3) businesses that receive such requests  
9 "shall use commercially reasonable efforts" to correct inaccuracies. (Civ. Code §  
10 1798.106.) Entirely lacking are any standards or criteria for a business to  
11 determine how, for example, to discern which requests are credible, how to  
12 authenticate the identity of the requester, how quickly requests must be  
13 processed, how to determine the accuracy of information subject to a request,  
14 how to communicate determinations with consumers, whether the business has  
15 obligations to work with service providers and contractors when it does  
16 determine that information is inaccurate, how often a business must assess  
17 repeat requests for correction, and numerous other details that are critical to  
18 enabling a business to conform to the new legal requirement. Tellingly, the draft  
19 regulations submitted in February—which have not yet been published—spend  
20 four single-spaced pages providing proposed answers to these and  
21 numerous other questions that are left unanswered by the statutory text. (See  
22 11 C.C.R. § 7023 [explaining, for instance, some of the various factors that a  
23 business should consider in its totality of the circumstances analysis of whether  
24 information is accurate].)

25 40. Second, the brief language in Proposition 24 establishing a  
26 consumer's right to direct a business to limit its use of sensitive personal  
27 information leaves numerous weighty questions unaddressed. (Civ. Code §  
28 1798.121 [businesses that have received such requests may only use personal

1 information for limited purposes].) These include the interface a business must  
2 provide to enable a consumer to submit a request, whether a business must (or  
3 can) verify the identity of the requester and what to do if the request is  
4 fraudulent, how quickly a business must fulfill a request, whether a business  
5 must (or can) communicate with service providers and contractors about the  
6 request, whether a business must notify the consumer that it has fulfilled the  
7 request (and, if required, what to do to satisfy this requirement), and when a  
8 business can use sensitive personal information without being required to offer  
9 consumers a right to limit this use. These and numerous other questions are  
10 addressed in another nearly four pages of single-spaced regulatory text in the  
11 draft regulations published in February—which were nearly eight months late  
12 and still are not published. (See 11 C.C.R. § 7027.)

13 41. These are just two of the numerous significant requirements in  
14 Proposition 24 that cannot be implemented or enforced with any degree of  
15 certainty or consistency in the absence of detailed regulations. (*Compare* Civ.  
16 Code § 1798.135 [opt-out preference signals], *with* 11 C.C.R. § 7025; *compare* Civ.  
17 Code § 1798.140(l) [brief definition of “dark pattern” interface], *with* 11 C.C.R. §  
18 7004 [extensive standards for interfaces for CCPA requests and requests to  
19 obtain consumer consent that must be followed to avoid a dark pattern]; *compare*  
20 Civ. Code §§ 1798.105, 1798.130 [exemptions from requirement to delete or  
21 disclose information if doing so would require “disproportionate effort”], *with* 11  
22 C.C.R. § 7001(j) [detailed definition of key term]; *compare* Civ. Code §§  
23 1798.140(j)(1), 1798.140(ai) [definitions of “contractor” and “third parties”], *with*  
24 11 C.C.R. §§ 7051, 7053 [detailed requirements for contracts with service  
25 providers, contractors, and third parties].)

1       **D.    The AGENCY Still Has Not Published Any Final Regulations**  
2       **and Has Not Even Started Work on Numerous Other,**  
3       **Required Regulations.**

4       42.   Despite the statute's express deadline for issuing the required  
5       regulations, the AGENCY still has not published a single final regulation. It was  
6       not until July 8, 2022—one week *after* the deadline for adoption of final  
7       regulations—that the AGENCY published its first Notice of Proposed  
8       Rulemaking, Initial Statement of Reasons, and text of Proposed Regulations.  
9       (Pet. Ex. 2.) That first set of belated draft regulations was piecemeal and  
10      incomplete; it only addressed 8 of the 15 new topics listed in Section 1798.185(a).

11      43.   In response to that partial draft set of regulations, the AGENCY  
12      received more than 100 written comments, many of them thorough, detailed, and  
13      technical. On November 3, 2022, the Agency issued a modified text of Proposed  
14      Regulations, containing a variety of substantive revisions to the July 8, 2022,  
15      draft. This revised set of partial proposed regulations led to another round of  
16      over 50 detailed comments.

17      44.   On February 3, 2023, the AGENCY's Board approved the revised set  
18      of Proposed Regulations, and on February 14, 2023, the AGENCY submitted the  
19      rulemaking package with that partial set of proposed regulations to the Office of  
20      Administrative Law for final review (the "February Draft Regulations"). The  
21      February Draft Regulations cover 66 pages and contain 41 separate sections that  
22      will require businesses to undertake extensive substantive changes to their  
23      practices and policies. (Pet. Ex. 4.) These include overhauling privacy policies,  
24      establishing an entirely new framework for handling sensitive personal  
25      information, establishing procedures to track and timely communicate with  
26      third parties with whom personal information is shared, renegotiating contracts  
27      to ensure compliance, and implementing extensive new procedures to receive  
28      and process consumer requests to correct personal information. (11 C.C.R. §§  
7014, 7023, 7024(h)-(i), 7027, 7050-7053.)

1        45. The AGENCY is not only woefully late on these February Draft  
2 Regulations, but it concedes (as it must) that they are materially incomplete.  
3 Though the statute called for a full set of regulations on 15 new topics, both the  
4 Notice of Proposed Rulemaking and Initial Statement of Reasons state that the  
5 February Draft Regulations only cover the topics contained in paragraphs (8)-  
6 (11), (18)-(20), and (22) of Civil Code section 1798.185(a). (See Pet. Ex. 2.) In  
7 other words, the February Draft Regulations address only eight of the fifteen  
8 new regulatory topics specified in Proposition 24. This piecemeal approach is  
9 incompatible with the mandatory language of the 2020 CPRA requiring the  
10 Agency to issue "final regulations" regarding *all* fifteen substantive areas by July  
11 1, 2022. (Civ. Code §§ 1798.185(a), (d).)

12        46. The Agency has not published even draft regulations addressing  
13 some of the most novel and complicated topics mandated by the law's rulemaking  
14 provision. The Notice of Proposed Rulemaking expressly acknowledges that  
15 "[t]he Agency will not be promulgating rules on cybersecurity audits (§  
16 1798.185(a)(15)(A)), risk assessments, (§ 1798.185(a)(15)(B)), or automated  
17 decision-making technology (§ 1798.185(a)(16)) at this time." (Pet. Ex. 2.)

18        47. The absence of final, clarifying regulations on these and other topics  
19 will leave countless businesses guessing at the concrete actions they will need to  
20 undertake to conform to the law.

21        ***E. The February Draft Regulations, Proposed Nearly Eight***  
22        ***Months Late, Make Numerous Substantive Changes to the***  
23        ***Obligations of Petitioners and Other Businesses and Are***  
24        ***Incomplete.***

25        48. The February Draft Regulations are lengthy and impose a complex  
26 set of requirements on businesses. (See Pet. Ex. 4.) Many of those requirements  
27 are net new, meaning they appear in the regulations but not the underlying  
28 statute. (See ¶¶ 38-42, *supra*.) As a result, once adopted, businesses will need to

1 make significant and substantive changes to their operations to comply with the  
2 regulations.

3 49. In addition, as noted above, there are key provisions that have not  
4 yet even been proposed, which leaves countless businesses guessing at the  
5 concrete actions they will need to undertake and whether they are even subject  
6 to certain requirements. For example, the statute mandates that businesses  
7 whose processing of personal information presents "significant risk" to  
8 consumers' "privacy or security" perform an annual cybersecurity audit and  
9 submit to the Agency "on a regular basis" a risk assessment. (Civ. Code §  
10 1798.185(a)(15).) But the law does not define when a business's processing of  
11 personal information presents "significant risk" to consumer privacy or security,  
12 nor does it provide any actionable information about the required scope of the  
13 audit, the procedures necessary to ensure it is "thorough and independent," the  
14 frequency of the risk assessment, or how a business should conduct the  
15 mandatory process of "weighing the benefits resulting from the processing" of  
16 personal information against "the potential risks to the rights of the consumer  
17 associated with that processing." (*Id.* §§ 1798.185(a)(15)(A), (B).)

18 50. Likewise, businesses have been provided with no information about  
19 their obligations when utilizing "automated decision-making technology." (Civ.  
20 Code § 1798.185(a)(16).) The statute does not even define the term. Instead, it  
21 leaves to the AGENCY to "[i]ssu[e] regulations governing access and opt-out  
22 rights with respect to businesses' use of automated decision-making technology,  
23 including profiling and requiring businesses' response to access requests to  
24 include meaningful information about the logic involved in such decision-making  
25 processes, as well as a description of the likely outcome of the process with  
26 respect to the consumer." (*Id.*) Businesses have no way to prepare today for  
27 whatever these rules may require. Changes to internal machine processes, as  
28 well as requirements to explain the logic of such processes, could be an intensely

1 burdensome operational process that may easily require at least a full year to  
2 implement.

3 ***F. The AGENCY's Delays Violate the Law and Have Prevented***  
4 ***Businesses from Understanding their Legal Obligations.***

5 51. The AGENCY's eight-month delay in issuing final regulations,  
6 combined with the complexity and number of issues involved, have prompted a  
7 wide swath of businesses and other interested parties to call on the AGENCY to  
8 toll enforcement of the law, in line with the text of Proposition 24. Together, the  
9 AGENCY received 27 written comments and 10 oral comments (including  
10 comments from Petitioner California Chamber of Commerce) requesting  
11 preservation of the time sequencing set forth in Proposition 24 to give businesses  
12 sufficient time to make conforming changes to comply with the law.

13 52. The AGENCY, however, has failed to heed these requests, reasoning  
14 that businesses had been aware of the "general contours" of the *proposed*  
15 regulations and that any deferral of enforcement would be less "effective in  
16 carrying out the purpose and intent of the CCPA than having the regulations  
17 take effect in accordance with the standard rules governing rulemaking"  
18 contained in the Administrative Procedure Act. (Pet. Ex. 5.) The AGENCY stated  
19 only, and without elaboration, that it "*may* consider the effect that the delay in  
20 adopting the regulations has had on a business' ability to comply." (*Id.*, emphasis  
21 added.)

22 53. This is both unhelpful and cold comfort for businesses. First, the  
23 draft regulations have been evolving over time, and their uncertain draft state  
24 fails to provide businesses with the certainty necessary to make conforming  
25 changes. Businesses want to comply with the law, but before undertaking  
26 technical changes, revising contracts, updating policies, and so on, they need to  
27 know what the law actually requires. That is still not yet clear because no final  
28 regulations have been adopted to date. Second, the AGENCY's statement that it

1 "may" consider its own delay in an enforcement action is purely discretionary.  
2 The AGENCY can still enforce immediately on July 1, 2023, if it so chooses, and  
3 businesses, with scarce time to prepare and no mandatory safe harbor cure  
4 period, will have little protection against potential regulatory actions carrying  
5 penalties of up to \$2,500 to \$7,500 for each violation, as well as cease and desist  
6 orders and injunctions. (Civ. Code §§ 1798.155, 1798.199.90, 1798.199.95).)

7 54. This situation is manifestly unfair, as it penalizes businesses for the  
8 AGENCY's own tardiness in issuing mandatory regulations. Moreover, it plainly  
9 violates the will of voters who enacted Proposition 24. Voters clearly intended to  
10 give businesses a full year to comply with a complete set of mandatory  
11 regulations. The AGENCY has ignored its statutory deadline and the  
12 requirement to promulgate a complete set of regulations. Petitioners seek a  
13 reasonable tolling of any efforts to enforce Proposition 24 and implementing  
14 regulations until at least one year after final regulations have been adopted,  
15 thereby providing businesses with the one year the voters originally intended to  
16 come into compliance with numerous, substantive, new legal requirements.

### 17 **FIRST CAUSE OF ACTION**

#### 18 **Writ of Mandate – Code of Civil Procedure §§ 1085 and 1086**

19 55. Petitioners reallege and incorporate by reference Paragraphs 1  
20 through 54 above, as if fully set forth herein.

21 56. Petitioners are beneficially interested in the issuance of a writ as  
22 requested and have no plain, speedy, or adequate remedy at law as to all causes  
23 of action set forth herein.

24 57. A writ of mandate is necessary commanding that Respondents and  
25 all other public officers acting by and through their authority refrain from  
26 enforcing Proposition 24 and implementing regulations until 12 months after  
27 adoption of final implementing regulations because Respondents' failure to  
28 perform their mandatory duty to timely promulgate implementing regulations

1 creates a clear, present, and impermissible conflict with the statutory scheme  
2 enacted by the voters. Respondents' failure to perform their mandatory duties  
3 also prejudices and deprives businesses of the statutorily required one-year  
4 timeframe to enable them to comply with the statute and regulations in  
5 contravention of the intent of the voters.<sup>2</sup>

6 58. A writ of mandate is also necessary commanding that Respondent  
7 AGENCY and Respondent BOARD MEMBERS promptly adopt the final  
8 regulations required by Proposition 24.

### 9 SECOND CAUSE OF ACTION

#### 10 **Declaratory Relief – Code of Civil Procedure §§ 1060 and 1062**

11 59. Petitioners reallege and incorporate by reference Paragraphs 1  
12 through 58 above, as if fully set forth herein.

13 60. Proposition 24 required that regulations for its implementation be  
14 promulgated by July 1, 2022, precisely 12 months before the measure would  
15 become fully operative and enforceable by the AGENCY. As of March 30, 2023,  
16 the regulations have not been published in final form. In fact, as of this date, the  
17 AGENCY has not even issued initial draft regulations with respect to at least  
18 three substantive requirements imposed by Proposition 24. These delays and  
19 failures to satisfy the obligations of Proposition 24 leave businesses in the  
20 untenable position of needing to guess at the concrete steps they will need to  
21

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22 <sup>2</sup> For clarity, the one-year tolling and prohibition of enforcement should apply to all  
23 regulations required under Section 1798.185(a)(8)-(22), and the one-year time period  
24 should run separately from the adoption date of each required regulation. For example,  
25 if some regulations are adopted in April 2023 and others in September 2023, then  
26 businesses should be afforded the same amount of time to come into compliance with  
27 the regulations that were adopted in September 2023 as the regulations that were  
28 adopted in April 2023. The statute clearly contemplated a complete set of regulations  
by July 1, 2022, and the Agency's decision to proceed in a piecemeal approach should  
not be held against businesses. The only way to preserve the statutory framework is to  
give businesses a full year grace period running from whenever each regulation is  
adopted.

1 take to bring their operations into compliance with the law. In addition to  
2 requiring businesses to move to chaotically implement a wide range of new  
3 practices, Respondent BOARD MEMBERS' and AGENCY's failure to timely  
4 perform their duty under Civil Code section 1798.185(d) will expose Petitioners  
5 and numerous other businesses to civil prosecution and punishment.

6 61. An actual controversy has arisen and now exists between Petitioners  
7 and Respondents as to whether Proposition 24 is enforceable as of July 1, 2023,  
8 in the absence of implementing regulations and the observance of the one-year  
9 implementation grace period, both of which are required by Civil Code section  
10 1798.185(d).

11 62. Petitioners are informed and believe that Respondents will begin to  
12 enforce Proposition 24 starting on July 1, 2023, despite Petitioners' and others'  
13 repeated requests for an adjustment to the enforcement deadline, unless  
14 restrained from doing so by a court of law.

15 63. Petitioners therefore seek a declaration pursuant to Code of Civil  
16 Procedure sections 1060 and 1062 that the Respondents AGENCY and BOARD  
17 MEMBERS had a legal duty to adopt final regulations by July 1, 2022, and that  
18 Proposition 24 establishes a minimum 12-month period between adoption of  
19 final implementing regulations and commencement of enforcement.

20 64. Petitioners further seek a declaration from this Court that  
21 businesses are not subject to enforcement on July 1, 2023, given the AGENCY's  
22 failure to timely adopt regulations consistent with the text of the statute.

23 65. Petitioners further seek a declaration pursuant to Code of Civil  
24 Procedure section 1060 that, pursuant to the foregoing, any actions taken by  
25 Respondents and Does 1-100 to enforce Proposition 24 and implementing  
26 regulations before, on, or after July 1, 2023, are improper and shall have no force  
27 or effect until one year has passed after the date on which final regulations are  
28 adopted.

[illegible]

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1 and implementing regulations cannot be enforced until 12 months after the date  
2 when each regulation is adopted.

3 3. Enjoin Respondents and all other public officers acting by and  
4 through their authority from making any expenditure of public funds enforce  
5 Proposition 24 and implementing regulations on or after July 1, 2023, until 12  
6 months after the date each of the regulations is adopted.

7 4. Grant such other and further relief as it deems necessary and  
8 appropriate.

9  
10 Dated: March 30, 2023

Respectfully submitted,

11 NIELSEN MERKSAMER  
12 PARRINELLO GROSS & LEONI LLP

13 By: 

14 Sean P. Welch  
15 Kurt R. Oneto  
16 David J. Lazarus  
17 *Attorneys for Petitioner*  
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I am the Executive Vice President and Chief Financial Officer for Petitioner California Chamber of Commerce in the above-captioned case. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof. The facts state therein are true and within my personal knowledge, except those matters which are alleged upon information and belief, and as to those matters, I believe them to be true.

Executed on March 29, 2023, at Sacramento, California.

VERIFIED PETITION FOR WRIT OF MANDATE & COMPLAINT FOR DECLARATORY &  
INJUNCTIVE RELIEF [C.C.P. §§ 1085, 1060, & 526a]