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Court of Appeal Case No.: B350578

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

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**VARIETY MEDIA, LLC,**  
Petitioner,

vs.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE  
COUNTY OF LOS ANGELES,**  
Respondent,

And,

SEAN ROSE,

**Real Party In Interest.**

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Appeal From the Superior Court for the County of Los  
Angeles  
Case No. 25STCV018565  
The Honorable David S. Cunningham III

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**APPLICATION FOR PERMISSION TO FILE AMICI CURIAE  
LETTER BRIEF; AMICI CURIAE BRIEF OF ASSOCIATION OF  
CORPORATE COUNSEL AND ITS CALIFORNIA CHAPTERS IN  
SUPPORT OF PETITIONER**

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## **APPLICATION FOR LEAVE TO FILE AMICUS CURIE BRIEF IN SUPPORT OF PETITIONER**

### **A. Application**

California Invasion of Privacy Act (“CIPA”) claims are being used by a small group of repeat litigants in ways that do not advance Californians’ privacy interests. The Association of Corporate Counsel (ACC) can assist the Court by presenting the perspective of in-house counsel who regularly receive and respond to CIPA demands and litigation, and by addressing points not fully briefed by the parties. For these reasons, ACC requests leave to file the accompanying brief.

No party or party’s counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. Other than the amicus curiae, its members, or its counsel, no person or entity made a monetary contribution intended to fund the preparation or submission of the brief.

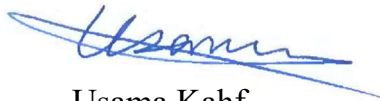
### **B. Statement of Interest**

The Association of Corporate Counsel (ACC) is a global legal association that promotes the common professional and business interests of in-house counsel who work for corporations, associations, and other organizations through information, education, networking, and advocacy. Founded as the American Corporate Counsel Association in 1981, it has grown from a small organization of in-house counsel to a worldwide network of more than 47,000 in-house lawyers employed by over 10,000 corporations, associations, and other organizations in more than 100 countries. It has long sought to aid courts, legislatures, regulators, and other

law or policy-making bodies in understanding the role and concerns of in-house counsel, and is a frequent amicus participant in important cases affecting in-house counsel.

ACC's membership is organized into more than 60 chapters globally, four of which are located in California: the Sacramento, San Francisco, San Diego, and Southern California chapters. Together the four California chapters represent more than 4,800 in-house counsel living and working in the state.

Respectfully submitted,



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## **SUMMARY OF ARGUMENT**

California Invasion of Privacy Act (“CIPA”) lawsuits have surged, creating substantial risk for any business operating a website accessible to Californians. This proliferation diverts in-house counsel from core compliance and governance work and leaves them without clear guidance on how to reconcile modern privacy compliance obligations with expansive and unsettled CIPA theories. The experience of ACC’s members demonstrates the disruptive effects of these demands and the tension they create with day-to-day privacy compliance programs under comprehensive privacy regimes.

This case presents an opportunity to clarify that CIPA should not be read to criminalize or otherwise prohibit routine, disclosure-supported use of modern website technologies that are integral to compliance with contemporary privacy frameworks. Absent such clarification, businesses will continue to face recurring CIPA threats that force reassessment or disablement of essential website functionality, create operational paralysis, and divert resources away from privacy modernization and consumer-protective improvements.

This dramatic uptick in litigation and threatened litigation has done more than simply distract businesses from implementing proper privacy controls to comply with California law; it has made it virtually impossible to operate a website that can be accessed by California consumers without facing significant risk of opportunistic litigation.

In-house counsel are at the forefront of dealing with these disruptive CIPA matters. Businesses rely on their in-house counsel to provide advice

on the legality of business decisions and regulatory compliance. However, rather than overseeing their individual business's compliance with its legal and ethical obligations, in-house counsel are jumping from one CIPA demand letter to the next. These relentless demands obstruct in-house counsel from cultivating an understanding of the governing privacy rules and regulations and ensuring compliance in a way that serves the business, its customers, employees, and California as a whole.

Moreover, CIPA demand letters and litigation offer no benefit to businesses or the public. Unlike the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 (Prop. 24) with regulations taking effect in 2023 and 2026 (collectively, the "CCPA"), CIPA lacks a regulatory framework. Thus, there is little ability for in-house counsel to provide decision makers with clear direction on how to comply with data privacy laws while also avoiding liability under CIPA. Reversing the lower court's decision will enable in-house counsel to provide advice to businesses without the distraction and fear of CIPA litigation.

## **ARGUMENT**

### **A. CIPA Demands and Litigation Routinely Disrupt Compliance Efforts and Operations.**

In-house counsel are increasingly pulled from their regular duties to address CIPA demand letters, arbitrations, and lawsuits, which divert attention from important compliance, legal, and ethical obligations. ACC members report that CIPA demand letters have become a regular and recurring part of the legal workload, rather than isolated or unusual events.

These letters sometimes arrive monthly or in clusters as new plaintiff theories emerge and all require a significant time commitment to address.

Conflicting judicial decisions regarding whether and how CIPA applies to website technologies exacerbate this disruption and uncertainty for in-house counsel. CIPA does not specifically address website analytics, cookies, or pixels, leading courts to reach inconsistent conclusions on the statute's applicability to such tools.

Digital wiretapping litigation has exploded in recent years, with over 4,300 lawsuits filed since February 5, 2022, of which around 3,300 were filed in California, all related to website cookies, pixels, and similar technology.<sup>1</sup> This does not include arbitration matters and the tens of thousands of demand letters businesses across the country have received, demanding thousands of dollars per website “click.” Because CIPA includes *criminal* penalties, Cal. Pen. Code § 638.51, subd. (c), and allows for a private right of action with a civil penalty of \$5,000 per violation, Cal. Pen. Code § 637.2, companies frequently make business decisions to settle even frivolous claims to avoid protracted litigation and perceived penal risk.

While the current matter pending before this Court involves Penal Code Section 638.51 and whether a website pixel can qualify as a pen register or trap and trace device, this is not the only CIPA claim that opportunistic claimants have raised. Other CIPA claims include wiretapping or aiding and abetting a third party in wiretapping under Penal Code Sections 631

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<sup>1</sup> Fisher Phillips Digital Wiretapping Litigation Map, <https://www.fisherphillips.com/en/resources-and-innovation/trackers-and-maps/wiretapping-litigation-map> (last visited April 3, 2026).

and 632 based on use of routine website features and tools such as a search bar, software developer kits, real-time bidding, fingerprinting software, application and programming interfaces (“APIs”), website analytics, cookies, pixels, chat features, session replay, and SaaS products. These matters are not limited to California. Claimants have sought to rope in non-California businesses whose websites are merely viewable in California, even with little to no interaction within the state itself. Additionally, many CIPA claims have been filed in other states, including Florida and New York, requiring courts in other states to interpret and apply California law where even the courts in California are divided. As a result, businesses must continually reassess and at times disable core website tools, renegotiate vendor contracts, repeatedly revise disclosures, and conduct ongoing internal investigations and data mapping—yet the demands persist. As businesses address one theory out of an abundance of caution, plaintiffs’ counsel create new theories under which to sue businesses. These evolving theories mean that even the most diligent of businesses are playing a never-ending game of whack-a-mole as they cannot know what technologies or uses are going to be claimed non-compliant next.

These realities impose recurring and significant drains on time and resources, impede compliance efforts, and create operational paralysis.

**B. CIPA Demand Letters Frequently Recast Routine Website Technologies as “Interception” or “Pen Registers” Under an Outdated Framework, Even as Modern Privacy Laws Anticipate Their Use.**

CIPA is a 1967 statute historically focused on telephonic wiretapping, not modern web technologies. By contrast, comprehensive privacy frameworks contemplate lawful use of online tools when accompanied by appropriate disclosures and consumer controls such as an effective opt-out mechanism. This mismatch fuels demand letters asserting that pixels, session replay, chat tools, and cookie analytics constitute unlawful “interception” or “pen registers,” despite their ordinary role in enabling privacy notices, preference management, and other compliance functions.

While the shifting theories of plaintiffs continue to evolve, businesses lack authoritative guidance on how CIPA applies to these technologies. Unlike CCPA which has extensive regulations that specifically address sharing of data through website cookies (*see e.g.*, Civ. Code §§ 1798.110, 1798.120, 1798.135; Cal. Code Regs. tit. 11, §§ 7002, 7011, 7013, 7026), CIPA provides no guidance as to how businesses can provide website functionality, security, accessibility, and privacy protections. There simply is no CIPA standard that can be utilized, and as each new website tool becomes a target of litigation, businesses continually need to spend countless hours and resources guessing at how best to avoid CIPA liability – while still maintaining CCPA compliance.

CIPA demand letters recur regularly and require substantial effort to investigate, respond to, and manage, consuming significant in-house and

outside counsel resources. The lack of clear guidance on how CIPA applies to modern website technologies leaves decision makers aware of the risks but without clarity about what specific steps are required for compliance.

**C. The Tension Between Deploying Necessary Website Technologies for Compliance and Avoiding CIPA Litigation Is Acute and Ongoing.**

Businesses seeking to operate privacy-respectful, modern websites face conflicting pressures: to deploy tools needed to meet comprehensive privacy expectations and to avoid expansive CIPA theories that target those same tools. Absent clarity, companies are forced to choose between disabling technologies essential to functionality and compliance or risking serial CIPA claims, causing ongoing disruption to legal work and business operations.

Routine third-party technologies—ADA accessibility, analytics, pixels, cookies, chat tools, and SaaS integrations—are integral to operating functional, consumer-facing websites and to administering privacy controls and disclosures and complying with website accessibility requirements under state and federal disability rights laws. Pressures to disable or severely restrict these tools to avoid CIPA exposure impose material operational costs and degrade user experience and compliance capabilities. Most businesses are not software developers themselves, so they must rely on third parties to enable various aspects of their websites, including third parties that facilitate cookie consent, accessibility, cybersecurity, search functionality, and other essential features. To work properly, many of these tools must collect certain data points about each user, browser, and device.

(See e.g., *Licea v. Hickory Farms LLC*, No. 23STCV26148, 2024 WL 1698147, at \*4 (Cal. Super. Ct. Mar. 13, 2024) (finding strong public policy against holding IP addresses as subject to CIPA as “providing an IP address for purposes of connecting the website” would render every single entity a potential “violator”); *Aviles v. Liveramp, Inc.*, No. 24STCV19869, 2025 WL 487196, at \*1 (Cal. Super. Ct. Jan. 28, 2025) (“Plaintiff has not alleged anything above and beyond how the internet normally works” after alleging defendant collected information about the user’s device and software including operating system name and version number, browser name and version number, geolocation data, and email address).) Paradoxically, many of the CIPA matters clogging the courts claim that these tools are pen registers or trap and trace devices precisely because they collect this type of information. If plaintiffs’ theories are sustained by the Court, it will literally be impossible for most businesses to comply with CIPA while maintaining a modern and functioning website and also complying with applicable laws related to privacy, cybersecurity, and accessibility.

**D. Without Clarification, Businesses Will Be Driven to Seek Court Orders Merely to Operate Their Websites.**

Are California courts prepared for potentially hundreds of thousands of businesses to file applications for court orders permitting use of pixels and cookies on their websites? If CIPA is construed to treat common website tools as pen registers or trap-and-trace devices, then based on the language of the statute, obtaining court orders is the only safe harbor to continue website operations. Such a result would border on the absurd and further burden already strained judicial resources. See Penal Code § 638.51, subd.

(a) (“a person may not install or use a pen register or trap and trace device *without first obtaining a court order* pursuant to Section 638.52 or 638.53.”) (emphasis added). Moreover, to the extent that the plaintiffs’ bar insists that CIPA can be interpreted broadly, businesses will also argue that they have the authority to seek court orders for pen registers and trap-and-trace devices. *See* Pen. Code §§ 638.52 and 638.53 (permits peace officers – a term undefined in the context of CIPA – to seek court orders).<sup>2</sup>

Clarification that CIPA does not govern routine, disclosure-supported use of website technologies will avoid unnecessary strain on courts and allow companies to focus on meaningful privacy compliance.

As CIPA provides no guidance as to how businesses may comply, with each new claim—even meritless claims—businesses must engage in numerous, costly actions to try and minimize liability. These actions include outside counsel fees, vendor audits, increased cybersecurity and privacy insurance premiums, and internal staffing strain. Further, each new allegation requires businesses to reexamine their analytics tools, data flows, disclosures, and core business functions, even if such processes are already CCPA compliant. This waste of resources affects all California businesses, but especially hits smaller businesses that simply cannot shoulder the burden of both CCPA compliance and constant CIPA claims.

Indeed, given the inconsistencies between CIPA and CCPA, the judicial system will likely see an influx of requests for court orders to install cookies and pixels on websites in a way that is consistent with both CIPA

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<sup>2</sup> Even the California Courts of Appeal would need to seek a court order. Its website located at <https://appellate.courts.ca.gov/> uses common website technologies at issue in this lawsuit like Google Analytics.

and CCPA. Such an increase in judicial processes will inevitably overburden an already burdened judicial system.<sup>3</sup> An influx of businesses seeking court orders to operate their websites in California, all to avoid the repeat litigants seeking statutory damages under CIPA, will create further delays for those seeking adjudication of legitimate claims through the judicial system. A ruling affirming the trial court's decision on Variety Media's demurrer will have a palpable and adverse effect on businesses, the courts, and Californians.

**E. The Court Should Clarify That Modern Privacy Compliance, Not CIPA, Governs Routine Website Operations.**

The California Legislature enacted comprehensive privacy frameworks to address online privacy and anticipate use of website technologies with appropriate notice and consumer choice. Reading CIPA to prohibit these same technologies creates an irreconcilable conflict that impedes privacy modernization and harms consumers by diverting resources away from improvements that comprehensive privacy regimes encourage. Clarification will align legal incentives with real-world compliance programs and reduce opportunistic litigation. Despite litigants trying to cobble together CIPA

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<sup>3</sup> California superior courts crisis, Nila Daniels, MPH, EBSCO, <https://www.ebsco.com/research-starters/law/california-superior-courts-crisis> (viewed April 3, 2026); California's 'Judicial Hellhole' Poses Challenge to Businesses, Ashley Fickel, Kyle Besa, Bloomberg Law, [https://www.bloomberglaw.com/bloomberglawnews/legal-exchange-insights-and-commentary/X87ODFM0000000?bna\\_news\\_filter=legal-exchange-insights-and-commentary#jcite](https://www.bloomberglaw.com/bloomberglawnews/legal-exchange-insights-and-commentary/X87ODFM0000000?bna_news_filter=legal-exchange-insights-and-commentary#jcite); Press Release - Congressman Valadao Joins Bipartisan Effort to Address Court Backlog in California, Faith Mabry, <https://valadao.house.gov/news/documentsingle.aspx?DocumentID=1523>.

claims based on an underlying privacy right, CIPA is not the correct law to protect online privacy rights; it is the CCPA.

By enacting the CCPA, the California Legislature made clear its intent to regulate the virtual space to protect California consumers. The Legislature recognized the devastating effects that can result from the unauthorized disclosure of personal information and loss of privacy. Assem. Bill No. 375 (2017-2018 Reg. Sess.) § 2. CCPA established certain consumer rights, such as the right to know what personal information is being collected, whether that information is sold or disclosed and to whom, and the right to say no to the sale of personal information. *See* Civ. Code § 1798.100 *et seq.* Thus, the Legislature made clear that the CCPA was to be the proper law governing data privacy for businesses to follow.

Despite the CCPA's express focus on websites and sharing of data through cookies, some courts have reasoned that CIPA can still impose a stricter requirement. They based their reasoning on a generic preemption clause in the CCPA, which provides, "in the event of a conflict between other laws and the provisions of this title, the provisions of the law that afford the greatest protection for the right of privacy for consumers shall control." Civ. Code § 1798.175. Relying on this language, these courts have found that the CCPA instructs them to apply CIPA to website usage. *See e.g., Mirmalek v. Los Angeles Times Commc'ns LLC*, No. 24-CV-01797-CRB, 2024 WL 5102709, at \*5 (N.D. Cal. Dec. 12, 2024).

However, this rationale ignores the fact that the CCPA was expressly created to govern website data collection, storage, and processing and to provide consumers with specific rights regarding this data (rights they

never had before the CCPA was enacted), while CIPA (including the 2015 amendment regulating pen registers and trap and trace devices) makes no mention of website data and cookies. Such a broad application of CIPA essentially renders meaningless the entire CCPA opt-out framework and ignores the extensive regulatory regime created by the State. A general law that is silent on its application to specific technology should not be read to render meaningless a subsequently enacted law that specifically regulates that technology. (*Rodriguez v. Ink America Intern. Group LLC*, No. 25STCV15350, 2025 WL 4034985, at \*4 (Cal. Super. Ct. Dec. 10, 2025), “SB 690’s stated purpose indicates that CIPA was not intended to apply to website tracking tools. Instead, such conduct is intended by the Legislature to be covered by the CCPA and CPRA.”)

Indeed, the CCPA expressly contemplates the lawful use of online website tools, so long as businesses provide appropriate notice and honor opt-out and deletion rights. If this is a matter of which law provides greater protection, the CCPA clearly prevails through its explicit enactment of consumer rights and protections. CCPA also institutionalizes these protections and ensures a regulatory landscape without the need for parties to seek a court order before every website interaction to avoid CIPA violations.<sup>4</sup>

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<sup>4</sup> See *Who, Me? A Wiretapper? Common Website Activities May Subject Your Business to Demands Under the California Invasion of Privacy Act*, 2025, Kimberly Castellino Metzger, JD Supra WLNR 33128239, “[i]t is important to note that there is nothing inherently illegal about the use of tracking pixels in California. They are common website marketing tools used for legitimate commercial purposes such as website and product/service optimization, conversion tracking, and ad retargeting. In fact, while the California Consumer Privacy Act (CCPA) requires covered businesses to

To that point, CCPA explicitly authorized regulatory rulemaking (Civil Code section 1798.185, *see* Code of Regulations title 11, sections 7000 *et. seq.*) and established an administrative enforcement body, the California Privacy Protection Agency (“CalPrivacy”). (Civ. Code § 1798.199.10.) These regulations were created through California’s robust public participation process allowing organizations and industries to provide useful input and data to the rulemaking authorities as they implemented CCPA provisions. (*See* Civ. Code § 1798.185.) Through the regulations and CalPrivacy, businesses that operate websites should have all the necessary oversight and information to comply with the CCPA. However, the attempts to overlay CIPA on top of California’s online privacy regulatory regime leaves in-house counsel in the dark on how to avoid CIPA allegations while simultaneously complying with the CCPA’s comprehensive requirements.

An example of this entrenched conflict is the Legislature’s use of exemptions for certain entities and industries from the CCPA’s requirements. (Civ. Code § 1798.145.) This clear legislative intent allowing certain entities and industries to be exempt from the rigors of the CCPA conflicts with interpreting CIPA as a stricter data privacy law. Allowing CIPA litigation to attack these expressly exempt organizations runs counter to the clear legislative intent of the CCPA regarding website governance.

Claimants are seeking to fit the square peg of CIPA into the round hole of online privacy protections while ignoring the square hole presented by

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notify California consumers if they disclose personal information to third parties for cross-context behavioral advertising and allow them to opt out, opt-in consent is not required to collect personal data for this purpose.”

the CCPA. Such a clear inconsistency between the applicability of the 1967-enacted CIPA and the 21st century-enacted CCPA should provide this Court with all the context necessary to find that CIPA is not designed to regulate online websites. CCPA expressly is.

Thus, this Court should find that CIPA does not apply to online website privacy protections because the California Legislature has already enacted such a law, the CCPA, to protect these exact online privacy rights.

### **CONCLUSION**

In-house counsel and the courts need guidance on CIPA's applicability to website operations. Ongoing uncertainty has significant operational and compliance consequences, including recurring, resource-intensive demands; pressures to disable essential technologies; and diversion from modernization and consumer-protective initiatives. The Court should grant the Petition and issue a writ of mandate clarifying that CIPA does not extend to routine, disclosure-supported use of website technologies integral to modern privacy compliance.

Dated: April 8, 2026

FISHER & PHILLIPS LLP

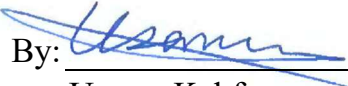
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**CERTIFICATE OF COMPLIANCE WITH RULE 8.204(c)(1)**

This brief complies with the length limitation of California Rule of Court 8.204(c)(1) because this brief contains 4,549 words, excluding the parts of the brief exempted by California Rule of Court 8.204(c)(3).

Dated: April 8, 2026

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## CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. I am employed with the law offices of Fisher & Phillips LLP and its business address is 2050 Main Street, Suite 1000, Irvine, California 92614.

On April 8, 2026, I served the following document entitled **APPLICATION FOR PERMISSION TO FILE AMICI CURIAE LETTER BRIEF; AMICI CURIAE BRIEF OF ASSOCIATION OF CORPORATE COUNSEL AND ITS CALIFORNIA CHAPTERS IN SUPPORT OF PETITIONER** on all the appearing and/or interested parties in this action as follows:

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312 North Spring Street  
Los Angeles, CA 90012

- [by ELECTRONIC SUBMISSION]** - I caused such document(s) to be electronically transmitted at the following e-mail address through the Court's e-filing system via the TrueFiling portal operated by ImageSoft, Inc.
- [by PERSONAL SERVICE]** – I caused the enclosed document(s) to be delivered by messenger by hand to the office(s) of the person(s) whose addressee(s) are listed above. The messenger, employed by First Legal at [                    ], is over the age of 18 years and not a party to this action.

I declare that I am employed in the office of a member of the State of California at whose direction the service was made.

Executed on April 8, 2026, at Irvine, California.

  
Stephanie A. Crisp