

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

GOOGLE LLC AND YOUTUBE, LLC
PETITIONERS,
v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA CLARA
RESPONDENT,

RICHARD HAYNIE and CONSTANCE ADLER GALLOWAY,
Individually and on Behalf of All Others Similarly Situated
REAL PARTIES IN INTEREST.

From an Order of the Superior Court of Santa Clara County
Case No. 24CV446330
The Honorable Beth McGowen
Department 22, (408) 882-2340

**APPLICATION FOR PERMISSION TO FILE BRIEF OF
INTERACTIVE ADVERTISING BUREAU, INC. AND
NETWORK ADVERTISING INITIATIVE AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS AND PROPOSED BRIEF
OF *AMICI CURIAE***

ORRICK HERRINGTON &
SUTCLIFFE LLP
Jacob M. Heath, SBN 238959
1000 Marsh Road
Menlo Park, CA 94025-1015
(650) 614-7400
jheath@orrick.com

Attorneys for Amici Curiae

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Attorneys for *amici curiae* Interactive Advertising Bureau, Inc. and Network Advertising Initiative certify that there are no interested entities or persons that must be listed in this certificate under Cal. R. Ct. 8.208.

Dated: August 18, 2026

ORRICK HERRINGTON &
SUTCLIFFE LLP

/s/ Jacob M. Heath

Jacob M. Heath, SBN 238959
1000 Marsh Road
Menlo Park, CA 94025-1015
(650) 614-7400
jheath@orrick.com

Document received by the CA 6th District Court of Appeal.

**To the Presiding Justice of the Sixth District Court of
Appeal:**

Pursuant to Rule 8.200 of the California Rules of Court, proposed *amici* the Interactive Advertising Bureau, Inc. (“IAB”) and the Network Advertising Initiative (“NAI”) respectfully request leave to file the attached *amici curiae* brief in support of petitioners Google LLC and YouTube, LLC (collectively, “Google”).

**APPLICATION FOR LEAVE TO FILE BRIEF OF *AMICI
CURIAE*¹**

In the attached proposed brief, IAB and the NAI leverage their expertise in advertising-related research, scholarship, and regulation to explain how demographic targeting in advertising, including on the basis of age, ***enhances*** consumer welfare. In so doing, the brief seeks to illuminate why the mere fact that a tool enables advertisers to target specific demographics is ***not*** a plausible basis for inferring arbitrary, invidious, or unreasonable discrimination in violation of the Unruh Civil Rights Act, Cal. Civil Code § 51 (“Unruh Act”). The brief then demonstrates how endorsing such an inference at the pleading stage, as the Superior Court did here regarding Google’s advertising tools, threatens to diminish consumer welfare in ways the Unruh Act does not support.

¹ No individual or entity other than *amici curiae* monetarily contributed to the preparation or submission of this brief.

INTERESTS OF *AMICI CURIAE*

IAB is a leading trade association for the digital advertising industry in the United States. IAB's membership includes media companies, brands, agencies, and technology firms that collectively depend on industry-standard digital advertising tools and strategies—including the use of audience segments—to deliver, optimize, and measure digital advertising campaigns and improve user experiences. The outcome of this case will directly affect IAB's members and their consumers.

The NAI is a non-profit organization that is the leading self-regulatory association dedicated to responsible data collection and its use for digital advertising. Since 2000, the NAI has been working with leaders in online advertising to craft policies and standards that help ensure responsible data collection and use practices. The outcome of this case will directly affect the NAI's members and their consumers.

CONCLUSION

Given the nature of the *amici* organizations and the work they do, *amici* are uniquely situated to assist this Court in resolving the issues presented.

Dated: August 18, 2026

ORRICK HERRINGTON &
SUTCLIFFE LLP

/s/ Jacob M. Heath

Jacob M. Heath, SBN 238959
1000 Marsh Road
Menlo Park, CA 94025-1015
(650) 614-7400
jheath@orrick.com

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PROPOSED BRIEF OF IAB AND THE NAI IN SUPPORT OF PETITIONERS

INTRODUCTION

Plaintiffs allege that Google LLC and YouTube, LLC (collectively, “Google”) violated the Unruh Civil Rights Act’s prohibition of arbitrary, invidious, or unreasonable discrimination merely by offering a tool that enabled companies to target online advertisements to particular age groups. The Superior Court’s June 11, 2026 decision overruled Google’s demurrer and permitted Plaintiffs’ claims to proceed, holding that the mere facilitation of age-based demographic targeting plausibly demonstrates unlawful discrimination.

The Superior Court’s decision defies empirical research and expert analysis confirming that demographic targeting in advertising, including based on age, *enhances* consumer welfare. Use of tools like Google’s should be embraced because of that consumer benefit, not chilled because of the theoretical possibility they might be misused. To be sure, a particular company could choose to deploy age-based advertising in an arbitrarily, invidiously, or unreasonably discriminatory way that would run afoul of the Unruh Act. But Plaintiffs allege no facts along those lines here, which means their complaint falls far short of establishing unlawful discrimination. Google’s demurrer should be sustained on that ground. Absent immediate correction from this Court, the Superior Court’s erroneous order will invite copycat litigation and discourage demographic targeting across all sectors,

profoundly diminishing consumer welfare in ways that are inconsistent with the Unruh Act's text and purpose.

DISCUSSION

The Superior Court concluded that bare allegations of age-based demographic targeting in advertising, without further elaboration, plausibly established unlawful discrimination against consumers. But that leap is far from plausible. Empirical research and expert analysis demonstrate that demographic targeting, including age-based digital advertising, enhances consumer welfare. Plaintiffs should not be able to state an Unruh Act claim on the theory that helping advertisers deliver ads to their intended audience, such as ads for products more relevant to certain age groups, *per se* plausibly establishes discrimination. That is precisely the sort of conclusory assertion that fails to satisfy California's pleading standard.

I. Demographic Targeting Enhances Consumer Welfare.

Demographic targeting is the “communication with consumers” based on a shared “trait,” such as age. Benjamin E. Borenstein & Charles R. Taylor, *The effects of targeted digital advertising on consumer welfare*, Journal of Strategic Marketing, Vol. 32, No. 3, 317, 319 (2024), available at <https://doi.org/10.1080/0965254X.2023.2218865>. The purpose is to deliver relevant advertising efficiently by sending communications only to those segments of the public most likely to value them. For example, a financial institution might target younger consumers when advertising a checking account designed for students, *see*

<https://tinyurl.com/bdzw48jv> (PNC Bank’s “Student Checking Account”), but target older consumers when advertising a checking account for seniors, *see* <https://tinyurl.com/2dvxujat> (KeyBank’s “senior checking accounts”). Studies have confirmed that demographic targeting enhances consumer welfare in several ways.

First, demographic targeting “provides a benefit to consumers” by increasing the “relevance” of the advertisements they see. Borenstein & Taylor, *supra*, at 319. Consumers “are more attentive to” and derive more value from “messages they are interested in.” *Id.* Conversely, consumers “can become annoyed by irrelevant messages.” *Id.* (citation omitted). Demographic targeting boosts the relevance of advertisements by enabling companies to “recommend purchases, discounts and/or rewards that appeal to a demographic,” like the banking products mentioned above. *Id.* (citation omitted). Nothing about that sort of tailoring denies anyone “full and equal accommodations, advantages, facilities, privileges, or services”—the Unruh Act’s animating concern. Cal. Civil Code § 51(a). It simply helps consumers find the services they value most.

Second, demographic targeting delivers lower prices and higher quality to consumers. For the most part, advertising funds the modern internet and many of the small businesses that operate there. *See* IAB, *Measuring the Digital Economy* 21, available at <https://www.iab.com/insights/deighton-study-2025> (online advertising “continues to sustain and power job creation in both the legacy and emerging sectors of the digital economy”). Advertising

revenue is the reason most websites are freely available. Consumers recognize the value of this arrangement. “Four-fifths of consumers understand that the free and open internet plays an important role in society, to democracy and free speech (80%), and that it would be unfair to people with less money if website/apps were not free (79%).” IAB, *The Free and Open Ad-Supported Internet* 7 (Jan. 2024), available at <https://www.iab.com/insights/consumer-privacy-research>. “Consumers also understand that the free and open internet is crucial for businesses as nearly three-in-four (73%) acknowledge that online-only companies could not exist without it.” *Id.*

Demographic targeting enhances those social goods by making online advertising even more effective for advertisers, a benefit that translates to lower prices and higher quality for consumers while allowing a wider range of small businesses to flourish. When companies tailor their marketing to relevant demographic groups, including based on age, they raise the “average value of advertising revenue per consumer.” Henk Kox et al., *Targeted advertising, platform competition, and privacy*, *Journal of Economics & Management Strategy*, Vol. 25, 557, 563 (2017), available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/jems.12200>. Consumers then “benefit ... via pass-through of higher advertising surplus.” *Id.* In the aggregate, moreover, demographic targeting also yields “more intense competition between web sites,” *id.*, in part by enabling smaller companies to advertise effectively even with relatively limited marketing budgets. Competition further benefits consumers through “lower

subscription prices (if present) or higher quality to attract more visitors.” *Id.*

Third, demographic targeting offers those benefits while respecting consumers’ privacy. When assessing advertising, there is always a “trade-off between relevancy and privacy” for consumers. Borenstein & Taylor, *supra*, at 326. Demographic targeting strikes a uniquely pro-consumer balance. In many cases, companies can effectively target their products or services using only minimal information about a consumer—say, their age or their general area of residence. That means consumers can enjoy the benefits of tailored marketing without “sharing” particularly “sensitive” information about themselves. *Id.*

Health-related advertising provides an example of this benefit in action. Many state privacy statutes (including the California Consumer Privacy Act) classify an individual’s health status as sensitive data subject to heightened restrictions. On the other hand, basic demographic facts like age, education level, and general geographic region are not sensitive by themselves. *See* Cal. Civ. Code § 1798.140(ae)(2)(B) (sensitive personal information includes personal information collected and analyzed concerning health); *id.* § 1798.121 (consumer right to limit use and disclosure of sensitive personal information); Colo. Rev. Stat. § 6-1-1303(24)(a) (definition of sensitive data); 4 Colo. Code Regs. 904-3, Rule 2.02 (inferences indicating a consumer’s health condition or diagnosis “reveal” health status and are sensitive data); Va. Code Ann. § 59.1-575 (sensitive data includes personal data revealing mental or physical health diagnosis). Demographic targeting

enables health care providers to reach the relevant populations without compromising sensitive consumer information.

Industry guidance for health-related advertising already reflects that distinction. It recommends that health-related advertising be developed from broad demographic attributes rather than from an individual's health-related browsing, purchases, or precise location. *See* NAI, *2023 Demographic Health Advertising Best Practices* §§ I.A.1-I.A.2 (Nov. 2023), available at <https://thenai.org/wp-content/uploads/2023/11/NAI-Health-Targeting-Best-Practices-Document-Final.pdf>. The same guidance is sensitive to the risk of unlawful discrimination using demographic attributes, as it withholds race and ethnicity from demographic audience-building absent opt-in consent, and recommends that advertisers prevent demographic segments from being used to direct fraudulent or predatory offers at older consumers. *Id.* § I.B (race and ethnicity require opt-in consent); § II.B and cmt. (members should employ due diligence against misuse, should not allow demographic segments to be used to target elderly consumers with fraudulent offers, counterfeit prescription drugs, or investment schemes, and should contractually prohibit such uses).

II. The Superior Court's Ruling That Demographic Targeting Plausibly Establishes Unlawful Discrimination Is Without Basis and Threatens To Diminish Consumer Welfare.

In light of those well-established consumer benefits and industry guardrails, the notion that demographic targeting alone plausibly establishes unlawful discrimination is without basis. If

the Superior Court's contrary decision stands, it will yield a range of harms that are inconsistent with the Unruh Act's consumer protection role.

To begin with, the Superior Court's decision would invite meritless copycat litigation against all sorts of advertisers that deploy common-sense demographic targeting. And that litigation would not be limited to age-based targeting, as the Unruh Act polices discrimination based on a range of additional factors. To take just one example, the statute also bans arbitrary, invidious, or unreasonable discrimination on the basis of "primary language." Cal. Civil Code § 51(b). Companies that offer English lessons for Spanish speakers could thus face lawsuits merely for targeting their advertisements at consumers whose primary language is Spanish.

Advertisers would have to cease essentially all forms of demographic targeting to avoid such meritless litigation. That would increase marketing costs to reach relevant consumers as ad budgets would be wasted on irrelevant audiences—costs that would disproportionately harm smaller businesses, diminish competition, and leave consumers with more expensive and lower quality goods and services. Consumers would also be inundated by irrelevant advertisements. Meanwhile, relevant and beneficial information (including regarding matters as essential as health care) would become harder to find in all the noise—if advertisers had the budget to convey such information in the first place. In short, everyone loses.

This Court should preempt those harmful consequences by granting immediate appeal, reversing the Superior Court's decision, and sustaining Google's demurrer. Alleging the existence of demographic targeting, without more, should not suffice to state an Unruh Act claim. To survive demurrer, plaintiffs should have to plead specific facts showing that a particular advertiser deployed demographic targeting tools in a manner that constitutes arbitrary, invidious, or unreasonable discrimination. That sensible pleading standard would ensure that the Unruh Act effectively polices indefensible discrimination without unduly chilling advertising practices that benefit consumers and advertisers alike.

CONCLUSION

This Court should grant immediate review to reverse the Superior Court's decision, sustain Google's demurrer, and clarify that allegations of demographic targeting alone do not suffice to plead unlawful discrimination in violation of the Unruh Act.

ORRICK HERRINGTON &
SUTCLIFFE LLP

/s/ Jacob M. Heath

Jacob M. Heath, SBN 238959
1000 Marsh Road
Menlo Park, CA 94025-1015
(650) 614-7400
jheath@orrick.com

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

The undersigned counsel for *Amici Curiae*, pursuant to Rule 8.204 of the California Rules of Court, certifies that the foregoing is proportionally spaced and contains 1614 words, as counted by the word count of the computer program used to prepare the brief.

Dated: August 18, 2026

ORRICK, HERRINGTON &
SUTCLIFFE LLP

/s/ Jacob M. Heath

Jacob M. Heath

Attorney for Amici Curiae

Document received by the CA 6th District Court of Appeal.

PROOF OF SERVICE

I am a citizen of the United States, over eighteen years old, and not a party to this action. My place of employment and business address is Orrick, Herrington & Sutcliffe LLP, 609 Main Street 40th Floor, Houston, TX 77002-3106.

On August 18, 2026, I served true copies of the within Amicus Curiae Brief on the trial court and on the parties interested in this proceeding as follows:

On the Superior Court clerk for delivery to the trial judge, by directing preparation of a printed copy for mailing to:

Hon. Beth McGowen
c/o Clerk/Superior Court
191 N. First Street
San Jose, CA 95113

By U.S. Mail, First-Class Postage Prepaid: I am readily familiar with the firm's practice in this office of processing correspondence for mailing. Under that practice, such correspondence is placed in a sealed envelope and deposited with the U.S. Postal Service on that same day with first-class postage thereon fully prepaid in the ordinary course of business.

On counsel for each party, via electronic service through TrueFiling. I am e-filing this document through the Court of Appeal's TrueFiling service. I am designating that electronic copies be served through a link provided by email from TrueFiling to the attorneys who are registered with TrueFiling for this case.

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

Executed by me on August 18, 2026, at Houston, Texas.

/s/ Mallory McCarty
Mallory McCarty