

SUPREME COURT
FILED

FEB 13 2019

Jorge Navarrete Clerk

No. S249248

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Deputy

ROBERT E. WHITE,
Plaintiff/Petitioner,

v.

SQUARE, INC.,
Defendant/Respondent,

On Certification from the U.S. Court of Appeals for the Ninth Circuit
No. 16-17137

U.S. District Court for the Northern District of California
No. 3:15-cv-04539 JST

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
AND
AMICUS CURIAE BRIEF OF INTERNET ASSOCIATION IN SUPPORT OF
DEFENDANT AND RESPONDENT SQUARE, INC.**

*KATHLEEN M. SULLIVAN (S.B. No. 242261)
DIANE M. DOOLITTLE (S.B. No. 142046)
BRETT J. ARNOLD (S.B. No. 266740)
QUINN EMANUEL URQUHART & SULLIVAN LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100
kathleensullivan@quinnemanuel.com
dianedoolittle@quinnemanuel.com
brettarnold@quinnemanuel.com

Attorneys for Amicus Curiae Internet Association

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ROBERT E. WHITE,
Plaintiff/Petitioner,

v.

SQUARE, INC.,
Defendant/Respondent,

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT
OF DEFENDANT AND RESPONDENT SQUARE, INC.**

Under California Rules of Court, rule 8.520(f), Internet Association respectfully requests permission to file the attached *amicus curiae* brief in support of defendant and respondent Square, Inc.¹

Internet Association (“IA”) represents over forty-five of the world’s leading internet companies. IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA’s

¹ No party or counsel for a party in the pending appeal authored this proposed brief in whole or in part, and no person or entity other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this proposed brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

mission is to foster innovation, promote economic growth, and empower people through the free and open internet.²

IA's members offer access to their products and services online, and to ensure that their online services are used in safe and appropriate ways, the members have each developed policies to govern them. IA members post their policies online so that prospective customers and partners can easily access and review those policies prior to signing up for the services.

In recent years, several IA members have been sued under the theory that, merely by posting their policies online, they have committed occupational discrimination under the Unruh Act. IA believes that these suits against its members are meritless, and has an interest in opposing the change in standing law sought by petitioner. IA believes that such a change is legally baseless, would subject its members — and similarly situated businesses online — to

² IA's members are Airbnb, Amazon, Coinbase, DoorDash, Dropbox, eBay, Eventbrite, Etsy, Expedia, Facebook, Google, Groupon, Handy, HomeAway, IAC, Intuit, Letgo, LinkedIn, Lyft, MatchGroup, Microsoft, Pandora, PayPal, Pinterest, Postmates, Quicken Loans, Rackspace, Rakuten, Reddit, Salesforce, Snap Inc., Spotify, Stripe, SurveyMonkey, Thumbtack, TransferWise, TripAdvisor, Turo, Twilio, Twitter, Uber, Upwork, VividSeats, Yelp, Zenefits, and Zillow Group.

groundless claims for substantial monetary damages and injunctive relief, and unjustly penalize them for providing open and transparent access online to their services and policies.

IA believes the U.S. District Court correctly interpreted and applied the Unruh Act in ruling that petitioner Robert White lacked standing to sue Square, Inc. for alleged occupational discrimination, both in his individual capacity and as a representative of a putative class. Accordingly, IA respectfully requests that this Court accept and file the attached *amicus curiae* brief.

Dated: February 4, 2019

Respectfully Submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: Kathleen M. Sullivan
Kathleen M. Sullivan
Diane M. Doolittle
Brett J. Arnold
*Counsel for Amicus Curiae Internet
Association*

AMICUS CURIAE BRIEF

INTRODUCTION

The Unruh Act is a pioneering and vital embodiment of California's policy against discrimination, but petitioner's lawsuit attempts to stretch the Unruh Act far beyond its intended or appropriate contours. Petitioner would have the Court abandon its settled framework and replace it with something new for internet businesses, asking in that context only whether the plaintiff accessed a website and then became aware of a policy the plaintiff believed was discriminatory. Petitioner's proposed standing rule thus would require a plaintiff to do nothing more than view a company's website and disagree with its posted policies in order to assert an Unruh Act claim.

There is no reason for the Court to now abandon an Unruh Act standing framework that has worked successfully in this State for 60 years, including through several *decades* of e-commerce. If successful, petitioner's novel litigation strategy would be duplicated by countless opportunistic litigants who need nothing more than an internet connection and an imagination to accuse businesses operating on the internet of discrimination.

This sea change in standing law would have gravely injurious consequences for the economy of California, which has been at the forefront of the development of e-commerce and internet technology since inception. Many businesses that operate on online platforms, both large and small, are based in California. And virtually all of those businesses maintain some type of written policy online for prospective customers and partners setting out the types of activities those businesses will and will not allow. Under petitioner's standing rule, a quick click on the policy is all that is needed to file a claim.

Such a rule would be ripe for abuse. Indeed, petitioner's own counsel has already threatened several IA members with multiple large class action lawsuits from members of groups that represent gun owners and the adult entertainment industry because the internet businesses have posted policies online restricting the sale or advertisement of guns and pornography through their services. The purported theory is that these restrictions unfairly discriminate against firearms dealers and adult film stars based on their occupations. The Unruh Act was never designed to cover ordinary business policies like these, much less to confer

standing on plaintiffs who did nothing more than read those policies online and dislike them.

Petitioner's proposed standing rule thus would be immediately detrimental to businesses operating in California and elsewhere, with no benefit to the public. This Court should reject that approach and adhere to the consistent application of the Act it has long and successfully maintained. IA agrees with and associates itself with all the legal arguments elaborating that point that are well made in Respondent's Answer Brief On The Merits (Nov. 18, 2018), and will not burden the Court by repeating those arguments here. IA instead seeks to assist the Court by informing it of the detrimental consequences that would follow for internet businesses and their customers if the Court were to adopt petitioner's radical new Unruh Act standing rule.

ARGUMENT

I. PETITIONER'S NEW STANDING RULE WOULD UNLEASH A FLOOD OF VEXATIOUS LITIGATION AGAINST NUMEROUS CALIFORNIA BUSINESSES THAT OPERATE ONLINE

California has been a major hub for online business since the earliest days of the commercial internet. It is home to some of the largest companies in the

world engaged in online commerce as well as numerous small businesses that would not exist but for the internet's vast reach. Countless other companies, despite being headquartered outside of California, do business in California through the internet. Many of these businesses post their policies online so they are readily accessible to anyone who wants to read them. Petitioner's proposed standing rule would subject such businesses to lawsuits for huge potential damages merely because their policies offend an opportunistic plaintiff who has no actual relationship with that business.

A. California Is Home To Numerous Online Businesses, Both Large And Small

Various IA members are based in California, including Google and Intuit (Mountain View), PayPal and eBay (San Jose), LinkedIn (Sunnyvale), Pandora (Oakland), Facebook (Menlo Park), and Airbnb, Dropbox, Pinterest, Stripe, Twilio, and Twitter (San Francisco), and they are just a few of the thousands of businesses based in California that focus on offering online services. Every one of these companies offer services upon which numerous small businesses and individuals operating online in California depend, either through their own

websites or by offering goods and services through websites operated by third parties.

Etsy, for example, is an online marketplace that allows users to market and sell their products, which are often homemade, to consumers and businesses. (See www.etsy.com.) The average Etsy seller is a solo individual working from home, and California has a larger share of Etsy sellers than any other state, with a reported economic impact of \$771,800,000 in 2018. (See ECONorthwest, *Economic Impact of U.S. Etsy Sellers: National Impact* (Nov. 8, 2018), available at <https://dashboards.mysidewalk.com/etsy-economic-impact-1532038450/national-impact>.)

Internet-related businesses like these employ an enormous number of Americans. A recent study found that around 23.9 million individuals hold an online income-producing position in the United States, which by way of comparison is larger than the healthcare, manufacturing, and telecommunications sectors (15.7 million, 12.4 million, and 0.8 million jobs, respectively). (Hooton, *America's Online 'Jobs': Conceptualizations, Measurements, and Influencing Factors* (2017) 52 Bus. Econ. 227.) California has the highest

number of these online jobs in the country with 5.8 million. (*Ibid.*) Not surprisingly, various cities in California have a relatively high percentage of employees working in internet-related jobs. In the Silicon Valley, 13.0% of jobs are in the internet sector, compared to 3.3% nationwide. (Hooton et al., Internet Association, *Here They Come: A Look At The Future Of Cities In The Internet Age* (2018) p.9, available at https://internetassociation.org/wp-content/uploads/2018/01/IA-NLC_Here-They-Come-The-Future-Of-Cities-In-The-Internet-Age.pdf.)

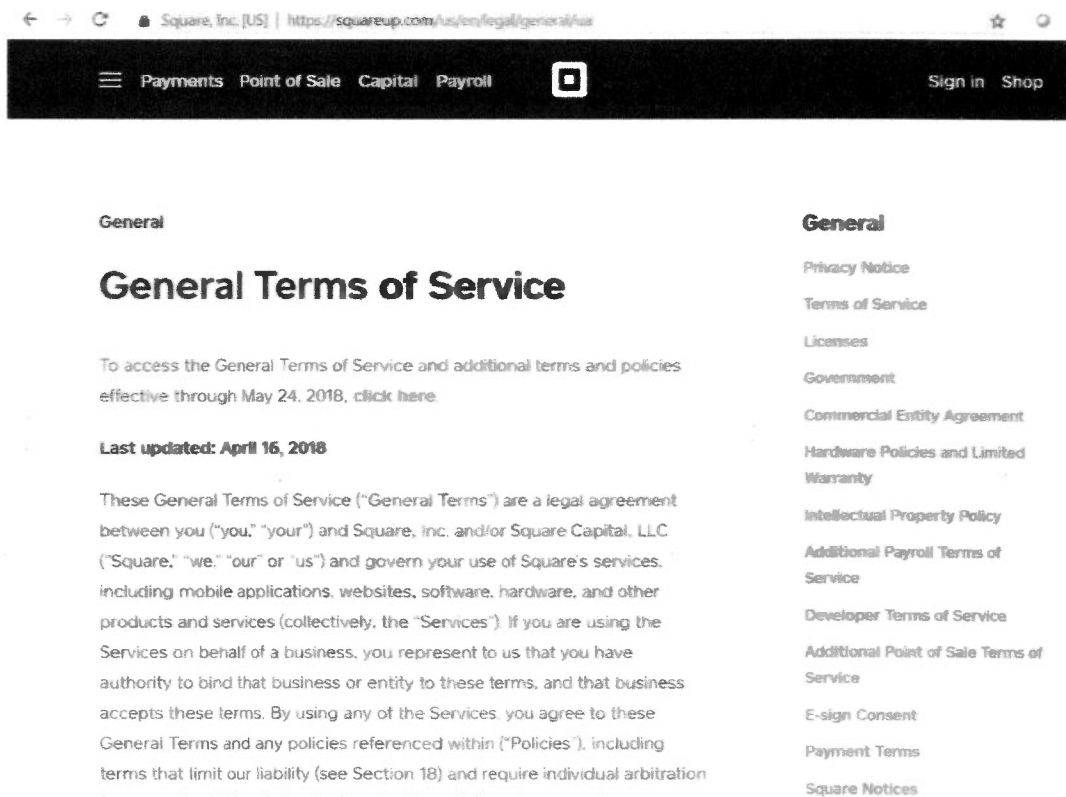
In addition to internet-focused companies, it has become commonplace for all types of businesses, including traditional “brick-and-mortar” ones, to rely on websites, social media accounts, and online marketing to support their activities and build their relationships with customers.

B. Online Businesses Routinely Post Their Policies Online

Businesses in the modern economy communicate to the world through their websites, which can be accessed around the globe. Online businesses regularly use their websites to publicly share important information about their products and services, including the policies that govern their use, promoting

transparency and reducing the cost and burden to users of having to locate or request that information.

Respondent Square, for example, currently includes a page on its publicly available website setting out its policies. Users can get there by visiting www.squareup.com and clicking on the “Terms of Service” link at the bottom, which leads to this page:



(Square, General Terms of Service, <https://squareup.com/us/en/legal/general/ua> [as of Feb. 4, 2019].)³

Anyone with an internet connection accessing Square’s website can read those policies, which include information about how to sign up for a Square account, Square’s privacy policy, respecting intellectual property, and so on. (*Ibid.*) The webpage also includes a section where Square explains what its services cannot be used for, such as “any illegal activity,” anything that “exposes [anyone] to harm,” and “the sale of firearms” (*ibid.*):

← → 🔄 Square, Inc. [US] | <https://squareup.com/us/en/legal/general/ua>

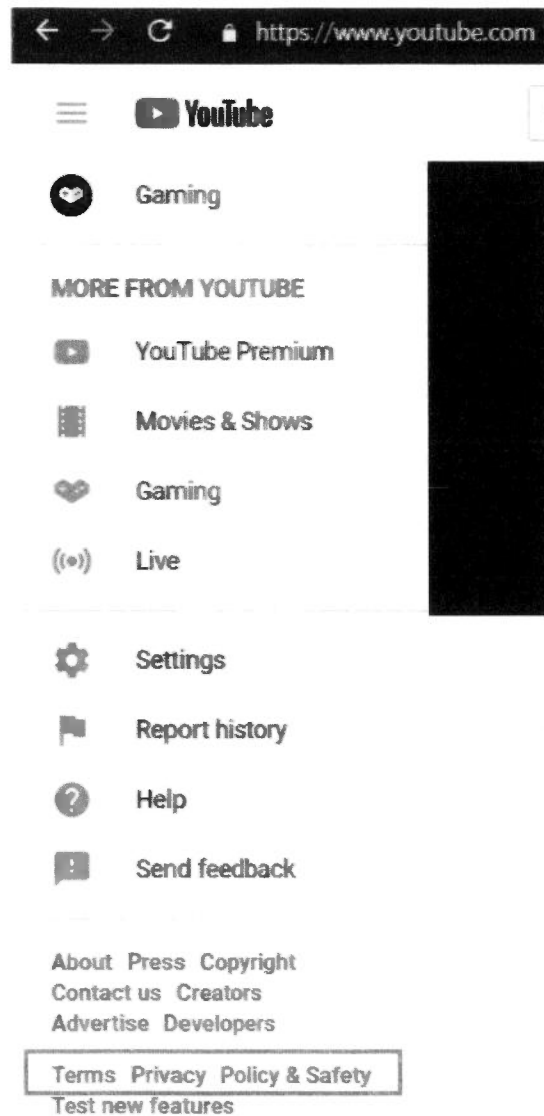
4. Restrictions

You may not, nor may you permit any third party, directly or indirectly, to:

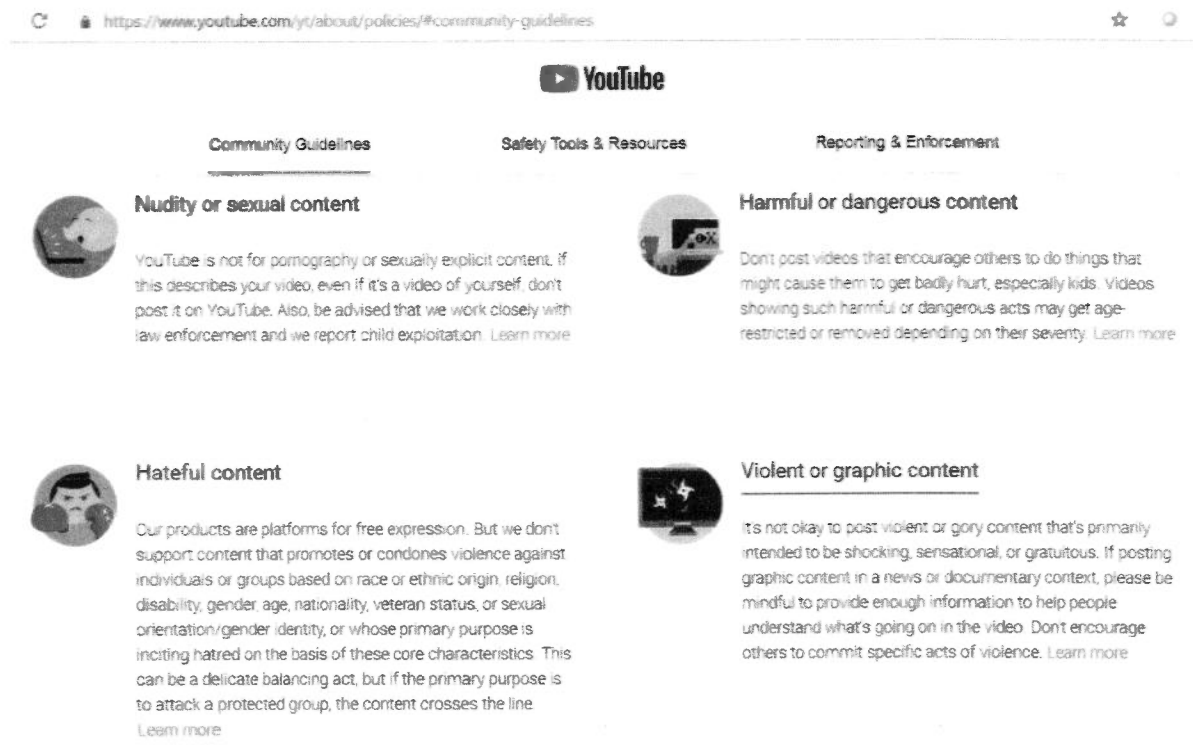
1. export the Services, which may be subject to export restrictions imposed by US law, including US Export Administration Regulations (15 C.F.R. Chapter VII);
2. access or monitor any material or information on any Square system using any manual process or robot, spider, scraper, or other automated means;
3. except to the extent that any restriction is expressly prohibited by law, violate the restrictions in any robot exclusion headers on any Service, work around, bypass, or circumvent any of the technical limitations of the Services, use any tool to enable features or functionalities that are otherwise disabled in the Services, or decompile, disassemble or otherwise reverse engineer the Services;

³ Although an older version of Square’s policy is at issue in this appeal, this example illustrates how such policies, and updates to them, are readily made available online to the public.

Another example is YouTube, a video-sharing website used by millions of individuals and businesses. On the main web page, www.youtube.com, a menu on the left of the screen provides links to the terms of service and the policy and safety statement (highlighted):



Among the policies are restrictions on using the service to post “pornography or sexually explicit content,” “videos that encourage others to do things that might cause them to get badly hurt, especially kids,” “violent or gory content,” or “content that promotes or condones violence against individuals or groups”:



(YouTube, Community Guidelines, <https://www.youtube.com/yt/about/policies/#community-guidelines> [as of Feb. 4, 2019].)

IA members all have similar policies posted on their websites to notify the public of the rules that govern the user of their services and products, as do

numerous other online companies.⁴ All these policies are a reflection of the company's offerings and the community each company intends to serve, and they typically include some restrictions, including, for example, those that restrict selling or advertising items such as firearms, pharmaceuticals, pornography, and human remains. Various IA members also have obligations to third parties, such as banks and credit card networks, that require them to prohibit transactions involving certain types of products or services. Many other online policies are required for compliance with other federal and state legal requirements.

C. Internet Association Members Have Already Been Targeted For Huge Damages On The Mere Basis Of Their Online Policy Postings

In the past three years, several IA members have been targeted by lawsuits, all led by petitioner White's own trial counsel, in which various plaintiffs have alleged occupational discrimination under the Unruh Act purely by virtue of the member companies' online policy statements.

⁴ A list of exemplary policy pages that can be found online is included in Addendum A.

In 2016, for example, IA members Google, Intuit, PayPal, and Stripe, along with respondent Square, were targeted by White's attorney in *Abu Maisa, Inc. v. Google, Inc. et al.* (N.D. Cal.) No. 3:15-cv-06338-JST, for maintaining policies restricting the use of their services for the sale of goods related to drug paraphernalia, adult entertainment, and gambling. The plaintiff in that case was a convenience store owner who allegedly wanted to use the companies' services to facilitate credit card sales for items like bong, pornography, and lottery tickets. (Amended Complaint at ¶ 16, *Abu Maisa, Inc. v. Google, Inc. et al.* (N.D. Cal. Sept. 20, 2016, No. 3:15-cv-06338) 2016 WL 11544998.) Like petitioner White in this case, the plaintiff in *Abu Maisa* had never signed up for any of the services, but had instead merely "visited the Credit Card Companies' websites on a daily basis" and allegedly been "deterred from attempting to become a customer" because the plaintiff believed that its business fell "within several categories of each Bad List." (*Id.* at ¶ 18.)

The same District Court as in this case (N.D. Cal., Tigar, J.) dismissed the *Abu Maisa* complaint for lack of standing. (Order, *Abu Maisa, Inc. v. Google, Inc., supra*, (N.D. Cal. Dec. 8, 2016, No. 15-cv-06338) 2016 WL 7178580.) The plaintiff

appealed to the Court of Appeals for the Ninth Circuit, but then withdrew the appeal. (See *Abu Maisa, Inc. v. Google, Inc.* (9th Cir. May 24, 2017, No. 17-15729) ECF 6 [granting motion for voluntary dismissal].) Petitioner's counsel continued to pursue the contemporaneous appeal in this case to test the standing question raised by his new litigation strategy.

In 2017, petitioner's attorney sued PayPal, Stripe, and Square again, this time in the Superior Court for the County of Merced. (See *Gladwin v. Square, Inc.* (Super. Ct. Merced County, filed June 16, 2017, No. 17CV-01981); *Gladwin v. Stripe, Inc.* (Super. Ct. Merced County, filed June 16, 2017, No. 17CV-01983); *Gladwin v. PayPal, Inc.* (Super. Ct. Merced County, filed June 16, 2017, No. 17CV-01984).) These cases involve the companies' various policies restricting the sale of firearms. The plaintiff in these *Gladwin* cases, a firearms dealer, alleged that he had his "outside legal counsel" "review [each company's] website" and then had his counsel "ma[k]e a formal demand on [each company] to voluntarily cease and desist from violating the Federal Firearms Licensees Unruh Act rights." (E.g., First Amended Complaint at ¶ 12, *Gladwin v. Stripe, supra.* (Oct. 19, 2017,

No. 17CV-01983.) When the companies did not change their policies, he filed suit without ever having signed up for their services. (*Ibid.*)

Like petitioner White here, the plaintiff in the *Gladwin* cases sued both in his individual capacity and as a putative class representative. In fact, he candidly alleged that, although he never signed up for any of the defendant companies' services, much less had an account terminated because of his occupation, he still sought to be the lead plaintiff for any class members who had. (E.g., First Amended Complaint at ¶¶ 15–17, *Gladwin v. Stripe, supra*, (Oct. 19, 2017, No. 17CV-01983).) The *Gladwin* plaintiff also pled a claim for statutory damages of “\$4,000 for each violation” for himself and class members, alleging a minimum of \$5,000,000 in statutory liability. (*Id.* at ¶¶ 19, 21.) PayPal, Stripe, and Square demurred, including on the basis of lack of standing. (E.g., Demurrer at pp. 6-11, *Gladwin v. Stripe, supra*, (Jan. 5, 2018, No. 17CV-01983).) The hearing on those demurrers is currently stayed pending this Court's ruling on Unruh Act standing. (E.g., Minute Order, *Gladwin v. Stripe, supra*, (Aug. 6, 2018, No. 17CV-01983).)

Most recently, on September 9, 2018, counsel for Stripe and PayPal received a letter from lead counsel for the plaintiffs in all of these cases. In it, plaintiffs' counsel clarified his theory in this appeal that "each time White goes to the Square website and encounters the no bankruptcy sign on the Square website, Square owes him another \$4,000." (See Addendum B.) Plaintiffs' counsel added that the "[s]ame thing goes for" the plaintiff in the *Gladwin* cases, such that "every time he visits the PayPal and Stripe websites and encounters a no gun dealers sign, PayPal and Stripe owe him another \$4,000." (*Ibid.*) And in case there were any doubt, plaintiffs' counsel noted that "[Plaintiff] Gladwin is in fact going daily to the PayPal and Stripe websites and there encountering a no gun dealers sign every time he does so. ... Meaning the cash register rings up another \$4,000 charge." (*Ibid.*)

Counsel for petitioner White and these other plaintiffs then gave Stripe and PayPal his so-called "punch line," revealing that he was already "in contact with various lawyers who represent the NRA" and that they "are about to initiate a widespread campaign here where many NRA members, acting either directly or, as in Gladwin's case, acting through counsel, will begin doing exactly what

Gladwin is doing, i.e., daily checking the PayPal and Stripe [websites].” (Addendum B.) And in doing so, he threatened to “turn[] the Unruh Act claims against PayPal and Stripe into a mass (if not a class) action by operation of law.” (*Ibid.*) He added that his team was also “considering initiating a similar strategy involving other unjustifiably persecuted groups such as those in the adult entertainment category.” (*Ibid.*)⁵

As these examples illustrate, petitioner White’s standing rule would, if adopted, become nothing more than a vehicle for attempting to extract huge settlements and damages from thousands of internet businesses whose services are used by Californians, regardless of where those businesses are based. Such a result would embolden future plaintiffs to distort the objectives of the Unruh Act, and use it not as a shield against actual discrimination, but as a vehicle for self-enrichment by mimicking the improper suggestion that “the cash register rings up another \$4,000 charge” every time an opportunistic plaintiff clicks on a

⁵ To avoid any confusion that the letter was meant to be a confidential settlement offer, plaintiff’s counsel ended with this: “This is not a settlement letter BTW [by the way]. It will be used in evidence in some future proceeding if necessary.” (Addendum B.)

terms-of-service policy posted on a website. This Court should reject any such limitless and dangerous rule.

II. PETITIONER'S NEW STANDING RULE WOULD PENALIZE ONLINE TRANSPARENCY THAT IS VITAL TO THE INTERNET

In addition to subjecting businesses to vexatious and unwarranted litigation, the change in Unruh Act standing law that petitioner proposes for the internet context will harm consumers and businesses that use the internet by penalizing businesses for being transparent online about their terms-of-service policies, which in many cases facilitate compliance with state and federal laws or regulations, and are designed to protect consumers from fraud and other types of harm. If anyone who merely views the policy online and disagrees with it can have standing to sue for an Unruh Act violation, any internet business that has openly disclosed its policies to the world will be at a greater risk than those that do not. This would improperly discourage the disclosure of useful information to consumers and those who use online services to run their businesses or sell their products. Transparency and the dissemination of information levels the playing field and reduces the costs of doing business. Such transparency encourages consistent application of those policies. Transparent, clear policies

also allow businesses to empower other users to report and flag violations of those policies and other abuses. Without transparency, internet users would have to guess at what a service provider's policies are, or simply forge ahead through trial and error, rather than knowing in advance what they are and are not allowed to do when they use a company's online services.

Petitioner's rule has equally adverse and absurd consequences for brick-and-mortar stores that also have websites. A potential plaintiff who would not have standing to sue because she had never interacted with the physical store or been turned away in person could bypass this problem by simply accessing the store's policy online from the laptop in her living room.

By contrast, maintaining the traditional standing rule, as respondent Square correctly advocates, will promote transparency online and does nothing to impede plaintiffs from filing lawsuits or establishing standing as long as they have had a discriminatory policy applied to them specifically. And as respondent Square notes (Br. at pp. 22-23), the statute already provides for state, county, and city attorneys to bring Unruh Act actions without showing individual harm. Promoting transparency online will therefore also enhance the

work of these public attorneys who *alone* are empowered by the Legislature to bring suits to challenge discriminatory policies on behalf of the public at large.

Simply put, White's new standing rule threatens detrimental consequences for California's citizens and its businesses, while offering them no added benefit. That result directly conflicts with both the letter and spirit of the Unruh Act and should be rejected.

CONCLUSION

The Court should answer *no* to the first Certified Question and *yes* to the second.

Dated: February 4, 2019

Respectfully Submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: Kathleen M. Sullivan

Kathleen M. Sullivan

Diane M. Doolittle

Brett J. Arnold

*Counsel for Amicus Curiae Internet
Association*

ADDENDUM A

Sample Acceptable Use Policies Online

| Company | Acceptable Use Policy |
|----------------|---|
| Amazon | https://sellercentral.amazon.com/gp/help/external/200164330?language=en_US&ref=efph_200164330_cont_521 |
| Apple | https://developer.apple.com/apple-pay/acceptable-use-guidelines-for-websites/ |
| Artfire | https://www.artfire.com/ext/help/page/TOU |
| Bolt | https://bolt.com/acceptable-use |
| Bonanza | https://www.bonanza.com/site_help/general_selling/prohibited_items |
| Coinbase | https://www.coinbase.com/legal/user_agreement |
| Craigslist | https://www.craigslist.org/about/prohibited |
| eBay | https://www.ebay.com/help/policies/default/ebays-rules-policies?id=4205 |
| eCrater | https://www.ecrater.com/terms.php |
| Etsy | https://www.etsy.com/legal/prohibited/?ref=list |
| Eventbrite | https://www.eventbrite.com/support/articles/en_US/Troubleshooting/community-guidelines?lg=en_US |
| Facebook | https://www.facebook.com/policies/commerce# |
| Instagram | https://help.instagram.com/477434105621119 |
| Letgo | https://us.letgo.com/en/community-guidelines |
| Newegg | https://promotions.newegg.com/marketplace/contentpolicy/ContentPolicy.html |
| Pandora | https://www.pandora.com/legal/community-content-policy/ |
| Pinterest | https://policy.pinterest.com/en/buyable-pins-guidelines |
| Pricefalls | https://pricefalls.zendesk.com/hc/en-us/articles/203736159-Restricted-and-Prohibited-Products-Policy |
| Reddit | https://www.redditinc.com/policies/content-policy |

| Company | Acceptable Use Policy |
|----------------|---|
| Sears | https://www.searscommerceservices.com/question/prohibited-merchandise/ |
| Shapeways | https://www.shapeways.com/legal/content_policy |
| Shopify | https://www.shopify.com/legal/aup |
| Snapchat | https://support.snapchat.com/en-US/a/guidelines |
| Spotify | https://developer.spotify.com/terms/ |
| Twitter | https://business.twitter.com/en/help/ads-policies/prohibited-content-policies.html |
| WalMart | https://help.walmart.com/app/answers/detail/a_id/841/~/prohibited-products-policy |
| Zibbet | http://support.zibbet.com/selling-on-zibbet/about-zibbet/what-cant-i-sell-on-zibbet |

ADDENDUM B

From: William McGrane [<mailto:william.mcgrane@mcgranepc.com>]

Sent: Sunday, September 09, 2018 11:21 AM

To: Diane Doolittle <dianedoolittle@quinnemanuel.com>

Cc: Frank Ubhaus <Frank.Ubhaus@berliner.com>; Michael Hassen <MJHassen@reallaw.us>; Bal, Colleen <cbal@wsgr.com>

Subject: Gladwin cases

Diane, just so you're not surprised in any way by this claim/situation down the road, the following:

1. As should be evident from our opening brief in *White* (attached), our fundamental theory is that each time *White* goes to the Square website and encounters the no bankruptcy sign on the Square website, Square owes him another \$4,000, the analogy being to Angelluci, who was held entitled to an Unruh penalty every time the race track wouldn't let him in despite his going to the track and presenting himself with a ticket in hand because they thought he might be a bookie.

2. Same thing goes for Blair Gladwin, we will argue, assuming the California Supreme Court accepts that every time he visits the PayPal and Stripe websites and encounters a no gun dealers sign, PayPal and Stripe owe him another \$4,000.

3. Now I know you know this but just for yucks anyway, Gladwin is in fact going daily to the PayPal and Stripe websites and there encountering a no gun dealers sign every time he does so. And this is no exercise in futility. Given PayPal and Stripe's increasingly obvious exposure to him on at least an individual basis, Gladwin has every reasonable basis for thinking management of those two companies will come to their senses without his having to wait for the California Supreme Court is bound to find the hard way, i.e., a visit to a website in cyberspace is the same thing as a visit to a brick and mortar store in ordinary space. Encountering a discriminatory bad list has the same effect in either case. Meaning the cash register rings up another \$4,000 charge.

4. Here is the punch line. I am in contact with various lawyers who represent the NRA. We are about to initiate a widespread campaign here where many NRA members, acting either directly or, as in Gladwin's case, acting through counsel, will begin doing exactly what Gladwin is doing, i.e., daily checking the PayPal and Stripe bad lists. Thus turning the Unruh Act claims against PayPal and Stripe into a mass (if not a class) action by operation of law.

5. We are also considering initiating a similar strategy involving other unjustifiably persecuted groups such as those in the adult entertainment category, but that strategy is not as far along as the one linked to the NRA.

I keep telling you it is very unwise of you not to read the handwriting on the wall and modify the whole approach to telling certain occupational groups to get lost when it comes to access to sub-merchant accounts. A stitch in time saves nine, so I suggest you anticipate the inevitable in cooperation with my office.

This is not a settlement letter BTW. It will be used in evidence in some future proceeding if necessary.

--

William McGrane
Attorney at Law
McGrane PC
Four Embarcadero Center, Suite 1400
San Francisco, CA 94111
415.292.4807 office
415.276.5762 fax
william.mcgrane@mcgranepc.com
www.mcgranepc.com

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.504, subd. (d)(1), I hereby certify that, according to the word count feature of the software used, this Amicus Curiae Brief contains 3,063 words, exclusive of materials not required to be counted under Rule 8.504, subd. (d)(3).

DATED: February 4, 2019


Kathleen M. Sullivan
Kathleen M. Sullivan

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN MATEO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Mateo, State of California. My business address is 555 Twin Dolphin Dr., 5th Fl., Redwood Shores, CA 94065.

On February 4, 2019, I served true copies of the following document described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF INTERNET ASSOCIATION IN SUPPORT OF DEFENDANT AND RESPONDENT SQUARE, INC.** on the interested parties in this action as follows:

Myron Moskowitz
Christopher Hu
Moskovitz Appellate Team
90 Crocker Avenue
Oakland, CA 94611

William N. McGrane
McGraneLLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

Michael J. Hassen
REALLAW, APC
1981 N. Broadway, Suite 280
Walnut Creek, CA 94596

*Attorneys for Petitioner Robert E.
White*

Fred Rowley
Jeffrey Wu
Munger Tolles & Olson LLP
350 South Grand Ave. 50th Fl.
Los Angeles, CA 90071-3426

Jonathan H. Blavin
J. Max Rosen
Munger Tolles & Olson LLP
560 Mission St., 27th Fl.
San Francisco, CA 94105

Attorneys for Respondent Square Inc.

Molly Dwyer
Clerk of Court
U.S. Court of Appeals for the
Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

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

Executed on February 4, 2019 at Redwood Shores, California.



Sha Londa Castanon