



July 7, 2021

Chief Justice Tani Cantil Sakauye
Chair
Judicial Council of California
455 Golden Gate Ave.
San Francisco, CA 94102-3688

RE: ALL OF US OR NONE – RIVERSIDE CHAPTER VS W. SAMUEL HAMRICK, CLERK AND CHANGING RULE 2.507 OF THE CALIFORNIA RULES OF COURT

Dear Chief Justice Cantil-Sakauye,

On behalf of the national Professional Background Screening Association (PBSA), whose members include California residents and businesses, we write to you with comments on the decision in *All of Us or None – Riverside Chapter vs. Samuel Hamrick, Clerk* and requesting a change to Rule 2.507 of the California Rules of Court

As a nonprofit organization consisting of over 900 small and large companies engaged in the background screening profession, PBSA has been dedicated to providing the public with safe places to live and work since 2003. The PBSA member companies conduct millions of employment-related background checks each year, helping employers, staffing agencies, and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors and volunteers.

Disagreeing with All of Us or None – Riverside Chapter vs. Samuel Hamrick, Clerk. To start, we disagree with the Fourth Appellate District Court of Appeal's decision in *All of Us or None – Riverside Chapter vs. Samuel Hamrick, Clerk*. We do not think that Rule 2.507 prohibits the Riverside Superior Court from allowing searches of its electronic criminal index by use of an individual's date of birth (DOB) or driver's license number. We support Clerk Hamrick's claim that the rule does not prohibit the clerk from either limiting a search of records to criminal defendants with a specific combination of name and date of birth or from confirming whether the date of birth of a criminal defendant is a specific date of birth. In each of these cases, the public can ascertain a particular individual's DOB only by already knowing the date of birth. This is common practice in our industry as job candidates voluntarily provide us with their DOB so we can perform a requisite background check on them.

We also support Clerk Hamrick's assertion that the Riverside Superior Court and other California Superior courts can keep such records indices as they will ensure ready reference to any action or

proceeding filed in the court. And, the only information disclosed by the database is the individual's arrest or conviction, which is public record anyway. This is not a master record or summary of the individual's criminal history.

Requesting a Change to Rule 2.507. We have seen a number of California Superior courts take their electronic indexes down, some temporarily and some permanently, in the wake of *All of Us or None* decision. This is causing us a great deal of concern as the lack of personal identifiers—like full DOBs -- in court indices makes it extremely difficult, if not impossible, for PBSA members to provide complete, accurate, and thorough background screens for employers, landlords, and nonprofit organizations. This negatively impacts prospective employees, tenants, and volunteers.

Because of this, we are requesting a change in Rule 2.507 of the California Rules of Court to add a new subsection (d) to read as set out below. If the California Judicial Council takes this action, this will stop further litigation on this matter, affirm that the rule does not require clerks to change their long-standing practices, and give clarity to the ability to conduct background searches in the state of California.

(d) Permitted confirmation of criminal defendants' dates of birth

This rule does not prohibit a court from:

- (1) using a specific criminal defendant's date of birth to determine whether it matches a date of birth provided by a member of the public;
- (2) confirming to a member of the public whether a specific criminal defendant's date of birth matches a date of birth provided by that member of the public; or
- (3) permitting members of the public to search for information about criminal proceedings by the combination of name and date of birth of the criminal defendant.

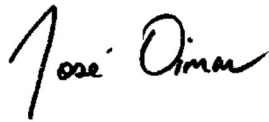
Millions of background screening reports are requested in California each year. Our members are hired to verify the education, employment, financial, and criminal histories of applicants. The main reason for these background checks is to protect the people that our clients serve – from customers of commercial organizations, to tenants in assisted living facilities, to vulnerable populations served by volunteers, to youths in sports leagues and other activities. Additional reasons include: (i) avoiding legal exposure for negligent hiring; (ii) ensuring a safe working environment by reducing the likelihood of workplace violence; (iii) reducing employee theft; (iv) reducing the hiring of individuals based on fraudulent credentials; (v) improving productivity and profits by making better hiring decisions; and (vi) meeting state law requirements designed to protect vulnerable populations like the elderly, disabled, and children.

While PBSA strongly supports efforts to protect consumers from identity theft and other privacy concerns, we believe that such measures must be balanced with the legitimate need of employers, landlords, and others to verify applicants' backgrounds. In weighing privacy concerns in that balance, DOB has significantly less weight than being able to perform background checks because DOB is much less private and less susceptible to abuse than information like social security number. Of the 48 states that have passed laws requiring notices to individuals affected by data breaches, 47 do not include date of birth in its listing of data that would require notice if breached. That is because of a simple fact: date

of birth is not a gateway to identity theft, and most people do not treat their date of birth as confidential. For example, many public figures have their dates of birth published on the Wikipedia pages about them. Finally, we are happy to share examples of state and local records portals that provide us name and confirm DOB that protect individual privacy.

PBSA and its members are available and prepared to discuss any questions regarding our industry or our aforementioned concerns. Thank you for taking the time to consider our comments and we look forward to working with you to improve job opportunities for the residents of California. Please feel free to contact me directly at 202-603-8950 or jose.dimas@thepbsa.org.

Sincerely,



Jose Dimas
Government Relations Director
of Public Records Access



cc: Members of the California Judicial Council
Martin Hoshino, Administrative Director