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September 30, 2025

**VIA EMAIL**

The Honorable Gavin Newsom
1021 O St., Suite 9000
Sacramento, CA

**Request for veto: SB 683 (Cortese)**

Dear Governor Newsom:

We respectfully request a veto of SB 683 due to the harmful impact it will have on freedom of speech and freedom of the press.

SB 683 would allow a plaintiff to seek a temporary restraining order or preliminary injunction to compel the takedown of a name, image, or likeness on the allegation that publication is for improper commercial use. The existing statute allows damages and exempts the "use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign." Civil Code § 3344(d). The exemption is necessary to protect First Amendment rights, but standing alone, it is of limited use without robust procedural protections.[1]

The right to prevent commercial misappropriation must be strictly limited to avoid unconstitutional censorship of protected speech. *See, e.g.*, *Comedy III Prods., Inc. v. Gary Saderup, Inc.*, 25 Cal. 4th 387, 398, 403 (2001), *cert. denied*, 534 U.S. 1078 (2002) ("Giving broad scope to the right of publicity has the potential of allowing a celebrity to accomplish through the vigorous exercise of that right the censorship of unflattering commentary that cannot be constitutionally accomplished through defamation actions. ... [T]he right of publicity cannot, consistent with the First Amendment, be a right to control the celebrity's image by censoring disagreeable portrayals.").

[1] SB 683 is not merely declaratory of existing law stated in Civil Code § 3344(g) ("The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law."). It would expressly create a new right to an immediate takedown of allegedly unprotected speech in advance of a full trial and final judgment. The existence of that right in current law cannot be assumed. If such a right existed, SB 683 would be unnecessary, which cannot be the case under settled principles of statutory interpretation.

SB 683 would make it easy for an aggrieved person who dislikes, for example, news coverage or commentary about them to file a SLAPP suit — Strategic Litigation Against Public Participation — and persuade a judge to issue a possibly unfounded prior restraint in the form of a temporary restraining order against a newsroom or journalist without notice. *Alexander v. United States*, 509 U.S. 544, 550 (1993) ("Temporary restraining orders and permanent injunctions — i.e., court orders that actually forbid speech activities — are classic examples of prior restraints.").

Given the fundamental rights at stake — freedom of speech, freedom of the press — judges should have the benefit of adversary presentation before issuing any order that could impact First Amendment rights. The emergency order might be dissolved later and the claim would ultimately be subject to dismissal or anti-SLAPP motion, but by then the damage of the prior restraint would be done. This problem is especially acute due to the enhanced risk of error in expedited or ex parte presentations in support of a temporary restraining order or preliminary injunction that do not allow complete adversary presentation or development of a full record.

A deep-pocketed plaintiff could afford to pay attorney fees as a cost of silencing and harassing critics in the media or elsewhere. And that's assuming the defendant can afford counsel to mount a legal defense. Celebrities have already attempted to prevent newspapers from using their name, image, and likeness for protected speech. *See, e.g., Montana v. San Jose Mercury News, Inc.*, 34 Cal. App. 4th 790 (1995). In that case, the newspaper prevailed after prolonged litigation, but it had funds to pay counsel to defend the case. The same cannot be said for all reporters or publications today.

Aside from those problems, a temporary restraining order or preliminary injunction against alleged commercial misappropriation may be unconstitutional because it is not based on a final judgment that the speech at issue is unprotected after a full and fair opportunity to litigate all relevant issues. By analogy, a preliminary injunction against alleged defamation "is an unconstitutional prior restraint." *Gilbert v. Nat'l Enquirer, Inc.*, 43 Cal. App. 4th 1135, 1144 (1996). The same might be true for alleged misappropriation of name, image, or likeness. While perhaps it wouldn't be unconstitutional for an injunction against commercial misappropriation to issue after final judgment, limited to the precise speech found to be unlawful, as the California Supreme Court has allowed in defamation cases, "'a preliminary injunction poses a danger that permanent injunctive relief does not: that potentially protected speech will be enjoined prior to an adjudication on the merits of the speaker's or publisher's First Amendment claims.'" *Balboa Island Vill. Inn, Inc. v. Lemen*, 40 Cal. 4th 1141, 1153 (2007) (quoting *DVD Copy Control Ass'n v. Bunner*, 31 Cal. 4th 864, 891–92 (2003) (Moreno, J., concurring)."

A court has suggested in dicta that a preliminary injunction would be justified to prevent disclosure of confidential "information [that] would jeopardize the personal safety" of the plaintiff

or plaintiff's family. *Evans v. Evans*, 162 Cal. App. 4th 1157, 1171 (2008). Assuming that is true, it doesn't apply to alleged commercial misappropriation of name, image, or likeness, which causes economic injury that can be redressed by awarding damages after final judgment, as the existing statute recognizes. *See Comedy III Prods.*, 25 Cal. 4th at 403 ("[T]he right of publicity is essentially an economic right. What the right of publicity holder possesses is not a right of censorship, but a right to prevent others from misappropriating the economic value generated by the celebrity's fame.").

For these reasons, we must respectfully request a veto of SB 683.

Very truly yours,

FIRST AMENDMENT COALITION

David Loy
Legal Director

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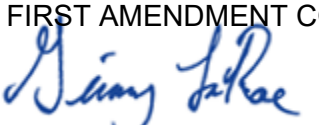

Ginny LaRoe
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cc. Senator Steve Cortese