

July 12, 2007

VIA PERSONAL DELIVERY

The Honorable Edmund G. Brown, Jr.  
Attorney General  
1300 I Street  
Sacramento, CA 95814

**RECEIVED**

**JUL 13 2007**

**INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE**

Attention: Patricia Galvan, Initiative Coordinator

Re: Request for Title and Summary- Initiative Statutory Amendment

Dear Mr. Brown:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative statutory amendment. Enclosed is a check for \$200.00. My residence address is attached.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Steve Lucas (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,

Allan Zaremborg, *W*oponent

Enclosure: Proposed Initiative

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Thank you for your assistance.

Sincerely,

John  Sullivan, Proponent

Enclosure: Proposed Initiative

# CALIFORNIA CLASS ACTION LAWSUIT FAIRNESS ACT

## SECTION 1. Findings and Declarations of Purpose.

The People of the State of California find and declare that:

(a) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm. It is the intention of California voters in enacting this act that legitimate class actions, meeting clear standards and guidelines, be allowed to proceed. Furthermore, it is the intent of California voters that nothing in this measure restricts the right to file an individual lawsuit for harm or damage.

(b) The lack of clear standards and guidelines for judges for the certification and management of class action lawsuits in California has led to abuses that have benefited plaintiff attorneys at the expense of consumers and taxpayers and delayed justice for those truly harmed or damaged. These abuses have undermined public respect for our judicial system. In repeated instances, plaintiff lawyers have been granted millions of dollars in fees while the general public has received no benefit and consumers ended up with a few dollars or coupons.

(c) It is the intent of California voters in enacting this act to provide judges with clear guidelines and tools for the fair and efficient oversight of class action lawsuits by implementing a uniform set of standards for the certification and management of all class actions in California.

(d) Prosecutors have investigated, filed indictments, and obtained at least one guilty plea from a plaintiff attorney who has abused the class action process by recruiting and illegally paying plaintiffs to facilitate class action lawsuits. It is the intent of California voters in enacting this act to give judges strong authority to ensure that plaintiff lawyers are legitimate representatives of class members and have not engaged in collusion with hand-picked, paid plaintiffs in filing a class action lawsuit.

(e) It is the intent of California voters in enacting this act to bring balance and fairness to class action law by eliminating any presumption or policy in favor of class certification and to allow class certification only when all requirements set forth in this act are satisfied.

(f) It is the intent of California voters in enacting this act that all prior case law in conflict with this act shall be of no further force or effect after the effective date of this act.

## SECTION 2. Section 1781 of the Civil Code is repealed.

~~1781. (a) Any consumer entitled to bring an action under Section 1780 may, if the unlawful method, act, or practice has caused damage to other consumers similarly situated, bring an action on behalf of himself and such other consumers to recover damages or obtain other relief as provided for in Section 1780.~~

~~(b) The court shall permit the suit to be maintained on behalf of all members of the represented class if all of the following conditions exist:~~

~~(1) It is impracticable to bring all members of the class before the court.~~

~~(2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members.~~

~~(3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class.~~

~~(4) The representative plaintiffs will fairly and adequately protect the interests of the class.~~

~~(c) If notice of the time and place of the hearing is served upon the other parties at least 10 days prior thereto, the court shall hold a hearing, upon motion of any party to the action which is supported by affidavit of any person or persons having knowledge of the facts, to determine if any of the following apply to the action:~~

~~(1) A class action pursuant to subdivision (b) is proper.~~

~~(2) Published notice pursuant to subdivision (d) is necessary to adjudicate the claims of the class.~~

~~(3) The action is without merit or there is no defense to the action. A motion based upon Section 437c of the Code of Civil Procedure shall not be granted in any action commenced as a class action pursuant to subdivision (a).~~

~~(d) If the action is permitted as a class action, the court may direct either party to notify each member of the class of the action. The party required to serve notice may, with the consent of the court, if personal notification is unreasonably expensive or it appears that all members of the class cannot be notified personally, give notice as prescribed herein by publication in accordance with Section 6064 of the Government Code in a newspaper of general circulation in the county in which the transaction occurred.~~

~~(e) The notice required by subdivision (d) shall include the following:~~

~~(1) The court will exclude the member notified from the class if he so requests by a specified date.~~

~~(2) The judgment, whether favorable or not, will include all members who do not request exclusion.~~

~~(3) Any member who does not request exclusion, may, if he desires, enter an appearance through counsel.~~

~~(f) A class action shall not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given in such manner as the court directs to each member who was given notice pursuant to subdivision (d) and did not request exclusion.~~

~~(g) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds to be members of the class. The best possible notice of the judgment shall be given in such manner as the court directs to each member who was personally served with notice pursuant to subdivision (d) and did not request exclusion.~~

SECTION 3. Section 1781 is added to the Civil Code, to read:

1781. Any consumer entitled to bring an action under Section 1780 may, if the unlawful method, act, or practice has caused damage to other consumers similarly situated, bring an action on behalf of himself or herself and the other consumers to recover damages or obtain other relief as provided for in Section 1780. These class actions shall be subject to the requirements and provisions set forth in Section 382 of the Code of Civil Procedure.

SECTION 4. Section 382 of the Code of Civil Procedure is repealed.

~~382. If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.~~

SECTION 5. Section 382 is added to the Code of Civil Procedure, to read:

§ 382. Class actions

(a) Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all members of the class only if all of the following are true:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of law or fact common to the class.
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class.
- (4) The representative parties will fairly and adequately protect the interests of the class.

(b) Class actions maintainable. An action may be maintained as a class action only if the prerequisites of subdivision (a) are satisfied, and any of the following are true:

- (1) The prosecution of separate actions by or against individual members of the class would create a risk of either of the following:
  - (A) Inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class.

- (B) Adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
  - (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. This provision shall not apply to actions that seek remedies beyond those making a declaration about or enjoining the defendants' actions affecting the class as a whole.
  - (3) The court finds (A) that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, (B) that the evidence likely to be admitted at trial regarding the elements of the claims for which certification is sought and of the defenses to them is substantially the same as to all class members, and (C) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to these findings include: (i) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (iv) the difficulties likely to be encountered in the management of a class action; and (v) the extent to which the allegations at issue are subject to the jurisdiction of federal or state regulatory agencies.
- (c) Determining by order whether to certify a class action; appointing class counsel; notice and membership in class; judgment; multiple classes and subclasses.
- (1)(A) When a person sues or is sued as a representative of a class, the court shall, at an early practicable time, determine by order whether to certify the action as a class action.
  - (B) An order certifying a class action shall define the class and the class claims, issues, or defenses, and shall appoint class counsel under subdivision (g).
  - (C) An order under this subdivision may be altered or amended before final judgment.
  - (2) A court shall not certify that an action may be maintained as a class action unless, on the basis of a full record on the relevant issues, it determines that the action complies with all requirements for certification set forth in subdivisions (a) and (b). In making such determinations, a court may consider the substantive elements of the plaintiff's case as well as any defenses, and the fact that a merits issue overlaps with or is identical to a subdivision (a) or (b) requirement shall not relieve the court of its obligation to make such determinations.

- (3)(A) For any class certified under paragraph(1) or (2) of subdivision (b), the court may direct appropriate notice to the class.
- (B) For any class certified under paragraph (3) of subdivision (b), the court shall direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall concisely and clearly state the following in plain, easily understood language:
- (i) the nature of the action.
  - (ii) the definition of the class certified.
  - (iii) the class claims, issues, or defenses.
  - (iv) that a class member may enter an appearance through counsel if the member desires.
  - (v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded.
  - (vi) the binding effect of a class judgment on class members under paragraph (4).
- (C) For any class certified, unless the parties agree or justice requires otherwise, the proponents of the class shall bear the expense of notification required by the foregoing paragraph (3). The court may require other parties to the litigation to reasonably cooperate in securing the names and addresses of the persons within the class for the purpose of providing individual notice, but any costs incurred in providing such cooperation shall be paid initially by the party claiming the class action. Upon termination of the action, the court may allow as recoverable costs all or part of the expenses incurred by the prevailing party.
- (4) The judgment in an action maintained as a class action under paragraphs (1) or (2) of subdivision (b), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph (3) of subdivision (b), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in paragraph (3) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.
- (5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, but no class may be certified as to a particular issue unless the case as a whole satisfies the requirements of subdivisions (a) and (b); or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.
- (d) Orders in conduct of actions. In the conduct of actions to which this section applies, the court may make appropriate orders:

- (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument.
- (2) Requiring, for the protection of members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any of the following:
  - (A) Any step in the action or of the proposed extent of the judgment.
  - (B) The opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action.
- (3) Imposing conditions on the representative parties or on intervenors.
- (4) Requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly.
- (5) Staying all discovery directed solely to the merits of the claims or defenses in the action until the court has issued its decision regarding certification of the class.
- (6) Permitting, in an action in which no class has yet been certified, a motion to dismiss for lack of subject matter jurisdiction based on the plaintiff's lack of standing. The court may permit discovery limited to the named plaintiff's standing to assert the claim, but in no event may plaintiff seek discovery of the identity of potential substitute plaintiffs or other potential class members until the court has ruled that plaintiff has standing to assert the claim. If the court determines that the plaintiff lacks standing, the court shall dismiss the action without leave to amend, but without prejudice to the filing of a subsequent action asserting the same cause of action by a plaintiff with standing.
- (7) Dealing with similar procedural matters.

The orders may be altered or amended as may be desirable from time to time.

- (e) Settlement, voluntary dismissal, or compromise.
  - (1)(A) Any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class shall be submitted to the court for approval.
  - (B) The court shall direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.
  - (C) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.



- (2) The parties seeking approval of a settlement, voluntary dismissal, or compromise under paragraph (1) shall file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.
  - (3) In an action previously certified as a class action under paragraph (3) of subdivision (b), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
  - (4)(A) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under paragraph (1)(A).
  - (B) An objection made under this paragraph may be withdrawn only with the court's approval.
- (f) **Appeals.** An order granting or denying class certification shall be an appealable order pursuant to Section 904.1.
- (g) **Class counsel.**
- (1) **Appointing class counsel.**
    - (A) The court that certifies a class shall appoint class counsel.
    - (B) An attorney appointed to serve as class counsel shall fairly and adequately represent the interests of the class.
    - (C)(i) In appointing class counsel, the court shall consider:
      - (I) The work counsel has done in identifying or investigating potential claims in the action.
      - (II) Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action.
      - (III) Counsel's knowledge of the applicable law.
      - (IV) The resources counsel will commit to representing the class.
    - (ii) In appointing class counsel, the court may:
      - (I) Consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class.
      - (II) Direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and recoverable costs.
      - (III) Make further orders in connection with the appointment.

(2) Appointment procedure.

(A) The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.

(B) When there is one applicant for appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under subparagraphs (B) and (C) of paragraph (1). If more than one adequate applicant seeks appointment as class counsel, the court shall appoint the applicant best able to represent the interests of the class.

(C) The order appointing class counsel may include provisions about the award of attorney fees or recoverable costs under subdivision (h).

(h) Attorney fees award. In an action certified as a class action, the court may award reasonable attorney fees and recoverable costs authorized by law or by agreement of the parties as follows:

- (1) Motion for award of attorney fees. A claim for an award of attorney fees and recoverable costs shall be made by motion, subject to the provisions of this subdivision, at a time set by the court. Notice of the motion shall be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.
- (2) Objections to motion. A class member, or a party from whom payment is sought, may object to the motion.
- (3) Hearing and findings. The court may hold a hearing and shall find the facts and state its conclusions of law on the motion.
- (4) Reference to special master or magistrate judge. The court may refer issues related to the amount of the award to a special master or to a magistrate judge.
- (5) Consideration of settlement offers. In determining an award of reasonable attorney fees and recoverable costs, the court may consider settlement offers rejected by plaintiff(s) during the course of the litigation.
- (6) No award for litigating fees. Reasonable attorney fees and recoverable costs shall not include fees and costs incurred litigating entitlement to attorney fees and costs, including motions brought under this provision.

SECTION 6. Section 383 is added to the Code of Civil Procedure as follows:

§ 383. Nonconsent to joinder as plaintiff. If the consent of any one who should have been joined as plaintiff cannot be obtained, he or she may be made a defendant, the reason being stated in the complaint.

SECTION 7. Section 904.1 of the Code of Civil Procedure is amended as follows:

§ 904.1. Appealable judgments and orders.

(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt that is made final and conclusive by Section 1222, or (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court or the judge or judges thereof that relates to a matter pending in the municipal or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the provisions of the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(13) From an order granting or denying a special motion to strike under Section 425.16.

(14) *From an order granting or denying class certification under Section 382.*

(b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

SECTION 8. This act shall apply to all cases pending as of the effective date of this act, except those cases in which the trial court already has entered a final judgment, unless such case is reversed and remanded after an appeal, in which case this act shall apply to any further proceedings in the trial court on remand.

SECTION 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 10. In the event that this measure appears on the same statewide election ballot as another initiative measure or measures that seek to establish procedures or standards for class action lawsuits, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and each and every provision of the other measure shall be deemed null and void.