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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

August 6, 2007

**VIA MESSENGER**

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814

Attention: Patricia Galvan

Re: The Class Action Reform and Corporate Accountability Act (Version 1)

Dear Ms. Galvan:

Pursuant to Elections Code section 9002, we request that the Attorney General prepare a title and summary of a measure entitled as noted above. The text of the measure, a check for \$200.00, the address at which we are registered to vote and the signed statement certifying that we will not willfully allow initiative signatures to be used for purposes other than qualification of the measure are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison  
Margaret R. Prinzing  
Remcho, Johansen & Purcell, LLP  
201 Dolores Avenue  
San Leandro, CA 94577  
Phone: (510) 346-6200  
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Sincerely,

James C. Harrison

Margaret R. Prinzing

JCH:NL  
Enclosures  
(00038824)

## THE CLASS ACTION REFORM AND CORPORATE ACCOUNTABILITY ACT

### SECTION ONE. FINDINGS AND DECLARATIONS.

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

(a) Powerful corporate executives at companies like Enron and WorldCom have fraudulently lined their pockets at the expense of retirees, workers, consumers and shareholders while attempting to avoid being held accountable for their conduct.

(b) Uncaring companies like Wal-Mart have refused to pay their workers the wages they owe.

(c) Dishonest insurance companies cheated their policyholders and wrongly denied claims when Californians lost their homes in the Northridge earthquake and the San Diego and Oakland fires.

(d) Health insurance companies and HMOs are refusing to pay for medical treatments even when doctors say the treatments are necessary.

(e) Irresponsible corporations and insurance companies increasingly are cheating consumers, stealing from pensions and discriminating against workers, women and minorities.

(f) As courts and lawmakers have recognized, class action lawsuits protect consumers, investors and workers from such conduct by allowing people to band together in order to hold powerful corporate wrongdoers accountable for their misconduct and protect society from future harm.

(g) Class actions promote competition and help small businesses by preventing dishonest companies from getting an unfair advantage over those companies that compete fairly.

(h) Class actions save taxpayers money by allowing courts to combine many similar claims into one action. Class actions are an essential tool that help courts resolve disputes fairly and efficiently.

(i) Class actions assist government agencies in enforcing laws. Class actions are particularly important now, when dwindling public resources reduce the ability of state and local governments to enforce the laws that protect the health and safety of Californians. Class actions give private citizens an enforcement tool to safeguard their own rights and hold wrongdoers accountable.

(j) The People of California support reforming class action law in order to better protect Californians, establish strict standards to guide judges and lawyers, and reaffirm the policy underlying class actions in California.

(k) Class members should be notified in the most cost effective and efficient manner, including the use of the Internet. Innovative and inexpensive ways to communicate will better inform class members and save taxpayer money.

(l) Punitive damage awards in class actions should benefit all Californians, not just class members, by directing that 25% of those awards go to support police and fire protection, retirement fund and shareholder protection, protection from discrimination and protection from insurance company misconduct.

(m) Class action settlements should comply with strict standards in order to provide meaningful relief to the class, and not token gestures.

## **SECTION TWO. PURPOSE AND INTENT.**

In enacting this Act, it is the purpose and intent of the People of the State of California to:

(a) Preserve and protect the right to resolve common questions of fact and law and to redress common injuries through class actions;

(b) Promote judicial efficiency by making the rules for class actions clear and fair;

(c) Strengthen the policies favoring class actions by expressly adopting them in law and affirming existing case law that has developed to implement those policies;

(d) Ensure that all Californians share in punitive damages awarded in class actions by requiring that twenty-five percent of any such awards be paid directly to the State of California to support police and fire protection, retirement fund and shareholder protection, protection from discrimination and protection from insurance company misconduct;

(e) Ensure that class action settlements provide meaningful relief by establishing a presumption against settlements involving coupons unless the court determines that the settlement provides valuable relief to the class; and

(f) Preserve existing California Class Action case law and rules that do not directly conflict with this Act.

**SECTION THREE.** Section 382.5 is hereby added to Part 2, Title 3, Chapter 5 of the Code of Civil Procedure to read:

Section 382.5. It is the policy of the State of California to favor class actions as an efficient and effective means of resolving disputes. This section is not intended to affect existing case law relating to class actions and courts shall continue to rely upon such case law in applying this section, except where it is inconsistent with the terms of this section.

(a) One or more members of a class may sue or be sued as representative parties on behalf of all members of the 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.

(b) If notice of the time and place of the hearing is served upon the other parties at least 21 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 (a) is proper.
- (2) Published notice pursuant to subdivision (c) is necessary to adjudicate the claims of the class.

(c) 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 by the court. In making its determination, the court shall consider the most effective and least costly form of notice, including internet notice, e-mail notice, posting, or other forms of notice.

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

- (1) The court will exclude the member notified from the class if he or she 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 or she desires, enter an appearance through counsel.

(e)(1) 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 (c) and did not request exclusion.

(2) The court shall not approve any settlement that fails to provide meaningful relief to the class, or where the release of claims is broader than those claims certified for class treatment or any reasonable certification or modification of those claims or the class action. There shall be a presumption against approval of a coupon settlement, which presumption is rebuttable upon a showing that such relief is reasonable under the circumstances, and provides valuable relief to the class.

(A) A "coupon settlement" is a settlement of a class action where the primary relief provided to the class members is coupons.

(B) The term "coupon" means a coupon, certificate, or other form of scrip redeemable for a discount off of (1) a product sold, distributed or manufactured, or (2) a service provided or sold by a defendant or an affiliate of a defendant, that requires the user to make an out-of-pocket payment to use the coupon.

(f) 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 (c) and did not request exclusion.

(g) Twenty-five percent of damages awarded pursuant to subdivision (a) of section 3294 of the Civil Code in an action brought pursuant to this section shall be paid directly to the State of California. Any funds received pursuant to this subdivision shall be used to enforce laws promoting consumer protection, shareholder and pension protection, fire and police protection and protection from insurance companies and discrimination.

#### **SECTION FOUR. SEVERABILITY.**

If any provision of this act, or part of this act, is for any reason held to be invalid, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

#### **SECTION FIVE. EFFECTIVE DATE.**

The provisions of this act shall apply only to cases filed on or after the effective date of this act.

#### **SECTION SIX. CONFLICTING INITIATIVES.**

In the event that this measure and another initiative measure or measures concerning the procedures or standards for class action lawsuits shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be

deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.