

August 6, 2007

RECEIVED

AUG 13 2007

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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 2)

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
Fax: (510) 346-6201

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 treatment 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.

(n) Legislation recently sponsored by Sacramento special interests has been interpreted by the courts to restrict the right of consumer and taxpayer protection organizations to go to court to stop illegal and unfair practices. Law enforcement agencies do not have adequate resources to prosecute such cases. This law and the court decisions have made it more difficult to stop businesses from engaging in unfair or illegal practices. Amendments are necessary to permit legitimate non-profit organizations to protect and defend the public against such practices.

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 predominate over the questions affecting the individual members.

(A) Where the action seeks injunctive or corresponding declaratory relief, and monetary claims are not the predominant relief sought in the action, the party seeking class certification need only show that there are questions of law or fact common to the class. A class is appropriate under this subsection if the conduct to be enjoined has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class.

(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) Except for actions under section (a)(2)(A), published notice pursuant to subdivision (f) is necessary to adjudicate the claims of the class.

(c) In weighing whether subdivision (a) has been met and when common issues are shown, the court may order that multiple defendants be joined in a single class action and that adjudication of all of the class claims be made in such action.

(d) An action may be maintained as a class action limited to particular issues, including certification of a liability-only class which thereafter allows for the resolution of individual damage claims.

(e) In weighing whether subdivision (a) has been met and when common issues are shown, the court may order certification of a medical monitoring class if there is a reasonable showing that a common act, incident or occurrence has caused a risk of injury that has not yet manifested clinical symptoms.

(f) Except for actions under (a)(2)(A), 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.

(g) The notice required by subdivision (f) 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.

(h)(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 (f) 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.

(i) Except for actions under (a)(2)(A), 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 practicable 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 (f) and did not request exclusion.

(j) 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.

(k) An action brought as a class action but denied class treatment by the court shall, from the date of the filing of the complaint to and including the date of the denial of a motion to certify class action, toll any applicable statute of limitations period for all putative class members defined by or reasonably related to such action.

(l) Any non-profit organization that is (1) exempt from taxation as a charity pursuant to 26 U.S.C. section 501(c)(3), and (2) acting to protect the interests of its members or the general public, may bring a representative action pursuant to this section to enforce California's consumer protection, environmental, civil rights and other laws pursuant to Section 17200 et. seq. and 17500 et. seq. of the Business and Professions Code, regardless of whether any person, or the non-profit organization itself, has suffered injury in fact or lost money or property as a result of such unfair competition or violation of those laws, and notwithstanding any other provision of law, including sections 17204 and 17535 of the Business and Professions Code.

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.