

August 17, 2007

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Toni Melton  
Initiative Secretary

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative, entitled the “California Class Action Lawsuit Fairness Act” (A.G. File No. 07-0030).

### **Background—Class Action Lawsuits**

Many lawsuits in California’s courts involve the filing of cases by attorneys on behalf of individuals against other parties. Other types of cases, known as class action lawsuits, are generally filed by attorneys on behalf of a group of plaintiffs to represent their common legal claims against one or more other parties. For example, in one California case, a class action lawsuit was filed on behalf of more than 1 million California residents (the “class” of parties filing suit) against a chain of gas stations alleging that customers who paid with a credit card were illegally overcharged for gasoline. A class of defendants—for example, all companies selling gasoline in the state—can also be represented in class action cases. Class action cases frequently involve legal issues relating to consumer protection, environmental protection, civil rights, violations of contracts, and the enforcement of minimum wage and overtime labor laws.

Class action lawsuits can be filed in either federal or state courts. Federal law determines which cases are to be decided in the federal courts rather than state courts (mainly those involving larger financial claims and cases with many plaintiffs in multiple states). The standards and procedures for the conduct of such cases are set forth in federal and state statutes, rules adopted by the courts, and legal opinions issued by judges.

### **Proposal**

*How This Measure Changes State Law.* This initiative repeals two existing state statutes relating to the filing and conduct of class action lawsuits and replaces them with revised and more detailed statutes for this same basic purpose. In so doing, this meas-

ure *reenacts* part of the two existing state statutes. It also *places into statute* some existing court rules and judicial rulings relating to the conduct of class action cases. While these parts of the initiative would probably not change the way class action cases are currently conducted, their enactment in an initiative would mean that they could not be changed in the future unless they were submitted to and approved by the voters in a statewide election.

In addition, this initiative *enacts other provisions that change* the way class action cases are currently conducted in state courts. It does so by adopting various new statutory provisions that differ from the existing statutes, court rules, and judicial rulings that now govern state class action cases. A number of these provisions are similar to court rules that now govern federal class action cases. However, some of the provisions in this initiative differ from those federal rules. This measure specifically states that its intention is to reverse all prior judicial rulings that are in conflict with the provisions of the measure. The measure generally applies to all pending class action lawsuits except those for which a trial court had already issued a final ruling.

Some of the most significant provisions of this measure are summarized below.

***State Policy on Class Action Cases Changed.*** Current state law has been interpreted by the courts as generally favoring class action lawsuits. This general state policy in favor of such cases has sometimes been cited by the courts in rulings on specific legal issues about whether such lawsuits should be allowed to proceed. This initiative provides that state law no longer favors having lawsuits proceed as class actions unless they meet the requirements established in this initiative (including those discussed below).

***Stricter Standards for Class Action Cases.*** This measure generally sets more difficult legal standards that would apply to the various types of class action cases that are filed in state courts. For example, in certain cases, judges would have to consider whether a federal or state regulatory agency has the authority to address a problem that resulted in the filing of a class action lawsuit.

***Earlier Consideration of the Merits of a Case.*** State courts must ordinarily consider the merits of the legal issues in a class action case *after* they have separately decided whether to allow a case to proceed as a class action. The initiative specifically authorizes a court to consider some issues relating to the merits of the case *at the same time* it is making the initial decision about whether a class action lawsuit can proceed. The initiative would also allow defendants to seek to dismiss the case (on the basis that the individual that filed the suit lacked legal standing to sue) *before* a judge has decided whether the lawsuit can proceed as a class action.

***Costs for Class Action Lawsuit Notices.*** This initiative requires that, in certain class action cases, notices be sent to members of the class informing them of a lawsuit affecting them. This measure also generally requires that the costs of providing this notice (such as through mailings or newspaper advertising) be initially paid for by the parties bringing a class action lawsuit. State court rules now allow a judge to order either side in a case to initially pay for such notices.

***Limits on Discovery.*** State court rules now permit parties to a class action lawsuit to obtain testimony and other information, such as documents related to the case, through discovery to support their case. This measure allows a judge assigned to such a case to prohibit discovery related only to the merits of the case until after the judge has decided whether the case could proceed as a class action.

***Financial Damages Prohibited in Some Class Action Cases.*** Under existing court rules, certain types of class action cases are permitted to seek court orders to halt illegal practices allegedly being committed by the party being sued (for example, race or sex discrimination). This measure would specify that these types of class action lawsuits can only seek such court orders and could not seek additional remedies, such as payment of financial damages.

***Defendants Allowed to Appeal Rulings.*** Currently, a party which files a lawsuit may appeal a judge's decision to refuse to allow such a case to move forward as a class action. However, a party defending against a class action lawsuit is not now allowed to appeal the decision of a judge to allow such a case to proceed as a class action. This measure allows such decisions against defendants to be appealed to a higher court.

***Some Attorney's Fees Prohibited.*** The initiative allows "reasonable" fees and reimbursement of costs to be awarded to attorneys participating in class action cases. However, the measure prohibits the awarding of fees or the recovery of costs incurred by attorneys for the legal work they have done relating to disputes over their fees and costs.

## **Fiscal Effects**

***Direct Fiscal Effects on State Court Operations.*** The combined effect of the various changes made by this measure could reduce the number of class action lawsuits in state courts. However, other changes made by this measure could increase court workload and costs. For example, some of the cases that would have otherwise been pursued as class action cases may instead, under this measure, be litigated as individual actions. The net effect of these and other possible responses on state revenues from court filing fees and court operating costs is unknown.

***Indirect Fiscal Effects.*** This measure may have various indirect fiscal effects. For example, to the extent that this measure reduces business costs associated with class ac-

tion lawsuits, it could increase firms' profitability, the level of economic activity, and thus, state and local revenues. On the other hand, state revenues could be reduced to the extent that this measure reduces payment of financial damages to individuals involved in class action cases that are subject to taxation. The net indirect fiscal effects of this measure are unknown.

**Summary of Fiscal Effects**

- Unknown fiscal impact on state revenues from court filing fees and the cost of court operations.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance