

EDMUND G. BROWN, JR.
Attorney General of California
By and Through: Benjamin Diehl, CA Bar #192984
Deputy Attorney General
Office of the Attorney General
300 South Spring Street, #1702
Los Angeles, California 90013
(213) 897-5548 / (213) 897-4951 (fax)
benjamin.diehl@doj.ca.gov

ROBERT E. COOPER, JR.
Attorney General and Reporter of Tennessee
By and Through: Brant Harrell, TN B.P.R. No.
024470 (*pro hac vice* application forthcoming)
Assistant Attorney General
Office of the Attorney General and Reporter
425 Fifth Avenue North, 2nd Floor CHB
Nashville, Tennessee 37243
(615) 741-3549 / (615) 532-2910 (fax)
brant.harrell@ag.tn.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION - RIVERSIDE**

**JOHN TRUE, individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**AMERICAN HONDA MOTOR CO.,
INC.,**

Defendant.

CASE NO. 5:07-cv-00287-VAP-OP

**BRIEF *AMICUS CURIAE* OF THE ATTORNEYS GENERAL OF
CALIFORNIA, TENNESSEE, TEXAS, ALABAMA, ALASKA, ARIZONA,
COLORADO, FLORIDA, GEORGIA, IDAHO, ILLINOIS, IOWA, MAINE,
MICHIGAN, MISSISSIPPI, NEVADA, NEW HAMPSHIRE, NEW JERSEY,
NEW MEXICO, OHIO, OKLAHOMA, OREGON, SOUTH CAROLINA,
SOUTH DAKOTA, VERMONT, AND WEST VIRGINIA IN OPPOSITION
TO THE PROPOSED SETTLEMENT AGREEMENT**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
STATEMENT OF FACTS	3
I. THE PROPOSED SETTLEMENT IS SUBJECT TO AND DOES NOT SURVIVE HEIGHTENED SCRUTINY	5
A. THE PROPOSED SETTLEMENT IS, IN ESSENCE, A COUPON SETTLEMENT	6
B. THIS SETTLEMENT IS SUBJECT TO HEIGHTENED SCRUTINY.	9
C. THE PROPOSED SETTLEMENT DOES NOT SURVIVE HEIGHTENED SCRUTINY	14
II. THE SETTLEMENT IS NOT FAIR, ADEQUATE, OR REASONABLE UNDER UNDER TRADITIONAL FEDERAL RULE OF CIVIL PROCEDURE 23 (E) ANALYSIS	21
A. THE STRENGTH OF THE PLAINTIFF’S CASE AND THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER LITIGATION THROUGHOUT THE TRIAL.	22
B. THE PRESENCE OF GOVERNMENTAL PARTICIPANTS AND THE REACTION OF CLASS MEMBERS TO THE SETTLEMENT	25
CONCLUSION.....	28

TABLE OF AUTHORITIES

Page

CASES

<i>Figueroa v. Sharper Image Corp.</i> 517 F.Supp.2d 1292 (S.D. Fla. 2007).....	10, 26
<i>Fleury v. Richemont North Am., Inc.</i> No. C-05-4525 EMC, 2008 WL 3287154 (N.D. Cal. Aug. 2, 2008).....	6
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9th Cir. 1998).....	5, 13
<i>Heaton v. Monogram Credit Card Bank of Georgia</i> 297 F.3d 416 (5th Cir. 2002).....	26
<i>In re Mego Fin. Corp. Sec. Litigation</i> 213 F.3d 454 (9th Cir. 2000).....	13
<i>In re Prudential Ins. Co. of America Sales Practices Litigation</i> 148 F.3d 283 (3d Cir. 1998).....	26
<i>In re Tobacco II Cases</i> 46 Cal. 4th 298 (Cal. 2009).....	1, 23, 24
<i>Kearns v. Ford Motor Co.</i> No. CV 05-5644, 2005 WL 3967998 (N.D. Cal. Nov. 21, 2005).....	12
<i>Milkman v. American Travelers Life Ins. Co.</i> No. 03775 (Penn. Ct. Common Pleas 2001).....	26
<i>Officers for Justice v. Civil Serv. Comm’n of San Francisco</i> 688 F.2d 615 (9th Cir. 1982).....	21, 22
<i>Roller-Edelstein v. Wyndham International, Inc.</i> Case No. 02-04946-A (Cir. Ct. - Dallas 2006).....	26
<i>Synfuel Technologies, Inc. v. DHL Express, Inc.</i> 463 F.3d 646 (7th Cir. 2006).....	12

TABLE OF AUTHORITIES
(continued)

Page

<i>Texas v American Tobacco Co.</i> , 14 F. Supp. 2d 956 (E. D. Tex. 1997)	26
<i>Torrisi v. Tucson Elec. Power Co.</i> 8 F.3d 1370 (9th Cir. 1993)	22

STATUTES

28 U.S.C. § 1712	10
28 U.S.C. § 1712(a) and (2)	13
28 U.S.C. § 1712(b)	13
28 U.S.C. § 1712(e)	11, 12

CALIFORNIA STATUTES

Bus. & Prof. Code § 17200	22
Civ. Code § 1750	22

COURT RULES

Fed. Rules of Civ. Proc. 23(e)	9, 13, 21
--------------------------------------	-----------

OTHER AUTHORITIES

Catherine M. Sharkley, <i>CAFA Settlement Notice Provision: Optimal Regulatory Policy?</i> 156 U. PA. L. REV. 1971 (2008)	26
Edward Brunet, <i>Class Action Objectors: Extortionist Free Riders or Fairness Guarantors</i> , 2003 U. CHI. LEGAL F. 403	26
GEO. J. LEGAL Ethics, 1395 (2005)	14

TABLE OF AUTHORITIES
(continued)

	Page
<i>Improving Class Action Efficiency by Expanded Use of Parens Patriae Suits and Intervention</i> , 74 TULANE L. REV.	26
S. Rep. 109-14	18
S. Rep. 109-14 (2005).....	10, 14
<i>The Need to Study Coupon Settlements in Class Action Litigation</i> , 18 GEO. J. LEGAL Ethics, 1395, 1396-97 (2005)	14, 16, 17, 21

INTRODUCTION

The Attorneys General of the States of California, Tennessee, Texas, Alabama, Alaska, Arizona, Colorado, Florida, Georgia,¹ Idaho, Illinois, Iowa, Maine, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Vermont and West Virginia in their capacity as *amici curiae*, make a special appearance² to urge this Honorable Court to reject the proposed settlement. The Attorneys General, who have no financial stake in the litigation, submit this brief to protect residents who stand to be adversely affected by the approval of the proposed settlement.

The proposed settlement does not survive the heightened scrutiny for coupon settlements under the Class Action Fairness Act or for settlements filed prior to class certification. Unnamed class members stand to receive only a nominal benefit under the proposed settlement, which is disproportionate to the strength of the asserted causes of action following the California Supreme Court's decision in *In re Tobacco II Cases*, 46 Cal. 4th 298 (Cal. 2009).

As proposed, all unnamed class members stand to receive a DVD, which will only be developed following entry of final judgment, containing tips on improving fuel economy, many of which are presumably already available for free via the

¹ The State of Georgia supports this brief through the Governor's Office of Consumer Affairs.

² The Attorneys General are not submitting to the Court's jurisdiction except as *amici* and the submission of this brief is without prejudice to the States' ability to enforce and investigate claims related to the issues under dispute.

1 Internet, including those specifically relating to improvement of the fuel economy
2 of the Honda Civic Hybrid. Select unnamed class members who trade in their
3 Honda Civic Hybrid for certain Honda or Acura vehicles — excluding those
4 vehicles class members would most likely choose to buy — could receive a time-
5 limited, non-transferrable \$1,000 rebate. Other unnamed class members who elect
6 to purchase certain Honda or Acura vehicles — again excluding those vehicles
7 class members would most likely choose to buy — could receive a \$500 rebate.
8 Only those unnamed class members who have previously made a documented
9 complaint to the Defendant, an authorized Honda or Acura dealership who kept the
10 complaint in the normal course of business, or to Plaintiffs' counsel are eligible to
11 receive a cash payment of \$100. Even the Plaintiffs' own expert has conceded that
12 it is likely that only 580 consumers of the 158,639 member class estimated by
13 Plaintiffs' counsel would receive any cash benefit. *See* Doc. 104-2, at 44 and 50.

14
15
16
17
18 The receipt of coupons with strict limitations on transferability, duration, and
19 use, coupled with a DVD containing information on how to improve fuel economy
20 that is likely already available for free on the Internet, does not amount to
21 meaningful relief for unnamed class members. Other components of the settlement,
22 namely the release and injunctive relief, are equally meager. Despite identifying
23 numerous alleged misrepresentations in their Complaint, the proposed settlement
24 only alters Honda's advertising on one specific statement, sunsets after two years,
25 and allows Honda to continue for an unspecified time with advertising for which it
26
27
28

1 has already contracted. More troubling is the release, which by its express terms,
2 seeks to restrict consumer participation of any kind in enforcement actions brought
3 by regulatory agencies.
4

5 This lack of benefit to unnamed class members stands in stark contrast to the
6 \$22,500 in incentive cash payments to the named plaintiffs and the \$2,950,000 in
7 attorneys' fees to class counsel provided under the proposed settlement, which the
8 Named Plaintiffs and Class Counsel will receive well before finalization of the fuel
9 economy DVD.
10

11 STATEMENT OF FACTS

12
13 1. Under the terms of the settlement, which was reduced to writing and
14 filed on March 2, 2009, all persons who purchased or leased a new 2003 through
15 2008 Honda Civic Hybrid in the United States, excluding those who opt-out among
16 others, who access the HCH Fuel Economy Website, enter their vehicle's VIN
17 number, view the Fuel Economy Video, obtain a pre-assigned claim number, and
18 timely submit a claim form, will receive an instructional fuel economy DVD and
19 may choose, if eligible, among three exclusive options: a \$1,000 "cash" rebate, a
20 \$500 "cash" rebate, or a \$100 cash payment (Doc. 91, at 10-14).
21
22

23
24 2. Only Settlement Class Members who comply with the above and
25 made a complaint concerning fuel economy of their vehicles by March 2, 2009 to:
26 (1) the Defendant, who had to have then written down the complaint in a record
27
28

1 created in the ordinary course of business, (2) an authorized dealer, who likewise
2 had to have then written down the complaint in a record created in the ordinary
3 course of business, or (3) Class Counsel as a result of contact from a class member
4 with respect to filing a claim, are eligible to receive a \$100 cash payment (Doc. 91,
5 at 3-4, 13).
6

7
8 3. Class members who file a timely claim and sell or trade in their Class
9 Vehicle can obtain a \$1,000 non-transferable rebate for purchasing a new, model
10 year 2009, 2010, or 2011 Honda or Acura, excluding the Honda Fit, Honda Insight,
11 Honda Civic Hybrid, the Honda CRZ, or any Honda Certified Used Car or Acura
12 Certified Pre-Owned Vehicle. Doc. 91, at 4, 11-12; Doc. 112-2, at 8. A class
13 member who files a timely claim and does not trade in or sell their Class Vehicle,
14 but purchases a new, model year 2009, 2010, or 2011 Honda or Acura, excluding
15 the Honda Fit, Honda Insight, Honda Civic Hybrid, Honda CRZ, or any Honda
16 used car, or Acura Certified Pre-Owned Vehicle is eligible to receive a \$500 rebate
17 on their purchase. Doc. 91, at 4, 12-13; Doc. 112-2, at 8.
18
19

20
21 4. On March 25, 2009, this Court entered an Order Denying Preliminary
22 Approval With Leave to Submit Additional Materials No Later than April 24, 2009
23 (Doc. 100).
24

25 5. After receiving leave to submit additional materials after April 24,
26 2009, the Plaintiffs submitted a Supplemental Motion In Support of Preliminary
27
28

1 Approval Order on May 4, 2009 (Doc. 104).

2
3 6. Following a status conference on June 29, 2009, in which the parties
4 were asked to be prepared to discuss the value of the proposed settlement,
5 including anticipated fuel savings gained from viewing the DVDs to be provided to
6 each class member, Doc. 107, the Plaintiffs, with consent from the Defendant,
7 submitted a Second Renewed Motion for Settlement. Doc. 111. Under the Second
8 Renewed Motion for Settlement, the parties have agreed to change the definition of
9 “Eligible Honda Vehicle” to select 2011 model year cars, moved the claims
10 deadline back four months, included registered domestic partners or members of
11 civil unions within the limited number of individuals to whom the coupons under
12 Option B can be transferred, and expressly excluded the *Paduano v. American*
13 *Honda Motor Co., Inc.* case proceeding in California state court from the reach of
14 the injunction.
15

16
17
18 7. On August 27, 2009, this Court preliminarily approved the proposed
19 settlement.
20

21
22 **I. THE PROPOSED SETTLEMENT IS SUBJECT TO AND DOES**
23 **NOT SURVIVE HEIGHTENED SCRUTINY.**

24 This proposed class action settlement is subject to heightened scrutiny both
25 because it was negotiated prior to class certification, *See Hanlon v. Chrysler Corp.*,
26 150 F.3d 1011, 1026 (9th Cir. 1998), and is, in essence, a coupon settlement. See
27 *infra* I.B.
28

A. The Proposed Settlement Is, In Essence, A Coupon Settlement

“While CAFA does not expressly define what a coupon is, the legislative history suggests that a coupon is a discount on another product or service offered by the defendant in a lawsuit.” *Fleury v. Richemont North Am., Inc.* No. C-05-4525 EMC, 2008 WL 3287154, at *2 (N.D. Cal. Aug. 2, 2008). In *Fleury*, the district court went so far as to suggest that even discounts covering the entire costs of a product can be characterized as a coupon for purposes of CAFA. *Id.*

Here, the proposed settlement is, in essence, a coupon settlement. By the Plaintiff’s own expert, 99.5% of unnamed class members will likely not receive a cash-benefit at all. *See* Doc. 104-2, at 44. Even if *all* 2,671 class members who are eligible for the \$100 payment were to submit claims, which is highly unlikely, this would only amount to approximately 1.7% of the total number of unnamed class members, which is estimated to be 158,639 consumers. *See* Doc. 104-2, at 59. The parties contend that the proposed settlement cannot be characterized as a coupon settlement because of the purported value of the fuel economy DVD, which will be finalized and distributed to all unnamed class members, only following entry of a final judgment. Doc. 105, at 17 (stating “This DVD provides a real benefit to Class Members that can translate into cash even though the DVD itself is not cash.”).

The value of the DVD component of the settlement to unnamed class

1 members is highly questionable. While the information may help some consumers
2 to improve their fuel economy, this information, which requires a release of claims
3 for those who do not timely opt-out, has little benefit to the class and should be
4 viewed skeptically by this Court.
5

6 At the outset, the parties make the untenable logical leap that the *cost* of
7 producing and sending the DVD, which the Plaintiffs claim is comparable to
8 DVDs currently on the market, translates into *value* for unnamed consumers (“As
9 discussed above, the cost of providing the “Smith System” video (which is not
10 specific to HCH or hybrids) to each member of the Class would be \$99 per HCH
11 owner, or over \$15,000,000 in the aggregate.”). Doc. 104-2, at 44. This logical
12 fallacy is echoed in the settlement itself. The parties agree to post the Fuel
13 Economy Video online, but, in effect, seek to claim the cost of producing and
14 sending the DVDs to all class members, whether filing a claim or not, as a benefit
15 of the settlement. Doc. 91, at 12; Doc. 104-2, at 15.
16

17 To “conceptualize” the purported value of the DVD, the Plaintiffs provide
18 calculation of fuel savings based on assumptions taken Federal Highway
19 Administration data. *See* Doc. 105, at 12 (chart ranging from \$7,427,477.98 for 5%
20 improvement to \$29,709,911.92 for 20% improvement classwide). Any value of
21 the DVD to unnamed class members originates from the information it contains
22 and the manner in which that information is communicated – not on costs
23
24
25
26
27
28

1 associated with production, shipping, or formatting.

2 While the unfinished status of the DVD leaves many open questions such as
3 its ultimate content and the number of viewers, what remains clear is: (1) that there
4 is a wealth of material already available online for free on how to improve one's
5 fuel economy, (2) that Honda had every incentive, given the defining nature of
6 their hybrid vehicle, to place any Honda-Civic-Hybrid-specific information on
7 improving fuel economy in its Honda Civic Hybrid owner's manual, (3) that there
8 are a finite number of ways to improve vehicle fuel economy, and (4) that the
9 Plaintiffs' incentive to affect the content of the information on the DVD would be
10 greatly reduced given the timing set forth in the proposed settlement.
11

12 The States do not dispute that some tips on improving fuel economy may
13 result in savings on fuel costs for some consumers if followed, but submit that such
14 information should not be found to be a benefit to the class because of its current
15 free accessibility. Comprehensive tips on how to improve fuel economy can be
16 found for free, by selecting from the Google or YouTube search results page using
17 the identifiers: "Honda Civic Hybrid improving gas mileage" or similar terms.
18 Information on improving one's fuel economy is already available for free online
19 at the following websites:
20

21 [www.hybridcars.com/gas-saving-tips/maximizing-mileage-honda-civic-](http://www.hybridcars.com/gas-saving-tips/maximizing-mileage-honda-civic-hybrid.html)
22 [hybrid.html](http://www.hybridcars.com/gas-saving-tips/maximizing-mileage-honda-civic-hybrid.html)

23 [www.hybridcars.com/gas-saving-tips/maximizing-mileage-honda-civic-](http://www.hybridcars.com/gas-saving-tips/maximizing-mileage-honda-civic-hybrid.html)
24 [hybrid.html](http://www.hybridcars.com/gas-saving-tips/maximizing-mileage-honda-civic-hybrid.html)

25 [http://www.youtube.com/watch?v=6V3s4rQnjmM&feature=Playlist&p=4F](http://www.youtube.com/watch?v=6V3s4rQnjmM&feature=Playlist&p=4FE0CB4E782A708F&index=0&playnext=1)
26 [E0CB4E782A708F&index=0&playnext=1](http://www.youtube.com/watch?v=6V3s4rQnjmM&feature=Playlist&p=4FE0CB4E782A708F&index=0&playnext=1) (demonstration of low assist glide
27
28

1 feature of Honda Civic Hybrid)
2 www.fueleconomy.gov/feg/driveHabits.shtml
3 www.fueleconomy.gov/feg/maintain.shtml
4 www.fueleconomy.gov/feg/planning.shtml

5 The timing of the finalization of the DVD is also highly suspect. The Fuel
6 Economy Video contained in the DVD is only to be finalized within 45 days *after*
7 entry of the final judgment – *after* Class Counsel has already been paid their fees,
8 *after* the Named Plaintiffs have likely received their incentive award, and *after*
9 expiration of any appeal deadline for any objectors. Doc. 91, at 14, 21, and 32. In
10 essence, the first time that Class Counsel is entitled to see the DVD, which is 45
11 days after entry of final judgment, they have a greatly reduced incentive to spend a
12 substantial amount of time arguing with the Defendant about the contents of the
13 DVD.
14

15
16 Given the suspect value of the DVD and the highly limited nature of the
17 cash component of the settlement by the Plaintiff's own admission, the settlement
18 can best be seen for what it substantially is – a coupon-based settlement.
19

20
21 **B. This Settlement Is Subject to Heightened Scrutiny.**

22 While the fair, adequate, and reasonable language in CAFA mirrors the
23 language of Federal Rule of Civil Procedure 23(e), it is clear that Congress
24 envisioned subjecting coupon settlements to a higher level of scrutiny than
25 previously employed in pre-CAFA decisions interpreting Rule 23(e). The Senate
26 Judiciary Committee Report on the CAFA legislation expressly sets forth the intent
27
28

1 to subject coupon settlements to heightened scrutiny.

2 [W]here [coupon] settlements are used, the fairness of the settlement
3 *should be seriously questioned* by the reviewing court where the
4 attorneys' fees demand is disproportionate to the level of tangible,
5 non-speculative benefit to the class members. In adopting [Section
6 1712(e) requirement of a written determination that the settlement is
7 fair, reasonable and adequate], *it is the intent of the Committee to
incorporate that line of recent federal court precedents in which
proposed settlements have been wholly or partially rejected because
the compensation proposed to be paid to the class counsel was
disproportionate to the real benefits to be provided to class members.*

8 S. Rep. 109-14, at 31 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 32

9 (emphasis added). Other federal district courts have recognized that coupon-

10 based settlements are subject to heightened scrutiny. *See, e.g., Figueroa v.*

11 *Sharper Image Corp.*, 517 F.Supp.2d 1292, 1321 (S.D. Fla. 2007).

12 The rationale for this heightened scrutiny is set out in the Senate Report, in
13 which the Judiciary Committee noted that over the past several years it had become
14 aware of:

15 numerous class action settlements approved by state courts in which
16 most—if not all—of the monetary benefits went to the class counsel,
17 rather than the class members those attorneys were supposed to be
18 representing. These settlements include many so-called “coupon
19 settlements” in which class members receive nothing more than
20 promotional coupons to purchase more products from the defendants.
21

22 *Id.* at 16.

23 Thus, the coupon-settlement section of CAFA, 28 U.S.C. § 1712, is “aimed
24 at situations in which plaintiffs’ lawyers negotiate settlements under which class
25 members receive nothing but essentially valueless coupons, while the class counsel
26 receive substantial attorneys’ fees.” *Id.* at 30. The Judiciary Committee described
27
28

1 the abusive potential of coupon settlements in this way:

2 [A]busive class action settlements in which plaintiffs receive
3 promotional coupons or other nominal damages while class counsel
4 receive large fees are all too commonplace. The risk of such abusive
5 practices is particularly pronounced in the class action context
6 because these suits often involve numerous plaintiffs, each of whom
7 has only a small financial stake in the litigation. As a result, few (if
8 any) plaintiffs closely monitor the progress of the case or settlement
9 negotiations, and these cases become “clientless litigation,” in which
10 the plaintiff attorneys and the defendants have “powerful financial
11 incentives” to settle the “litigation as early and as cheaply as possible,
12 with the least publicity.” These financial incentives create
13 inequitable outcomes. For class counsel, the rewards are fees
14 disproportionate to the effort they actually invested in the case. . . .
15 For society, however, there are substantial costs: lost opportunities
16 for deterrence (if class counsel settled too quickly and too cheaply),
17 wasted resources (if defendants settled simply to get rid of the lawsuit
18 at an attractive price, rather than because the case was meritorious),
19 and—over the long run—increasing amounts of frivolous litigation as
20 the attraction of such lawsuits becomes apparent to an ever-increasing
21 number of plaintiff lawyers.

22 *Id.* at 32 (footnotes omitted).

23 Accordingly, in considering, as § 1712(e) requires, whether a proposed
24 coupon settlement is fair, reasonable, and adequate for class members — a
25 determination that must include written findings — “the judge should consider,
26 among other things, the real monetary value and likely utilization rate of the
27 coupons provided by the settlement.” *Id.* at 31. To address coupon-settlement
28 abuse, this requirement is bolstered by the provisions for alternative distribution of
the value of unclaimed coupons, the availability of expert testimony to help
determine value, and the prohibition on using unredeemed coupons as any part of

1 the basis for an attorney's fee. *See also Synfuel Technologies, Inc. v. DHL Express,*
2 *Inc.*, 463 F.3d 646, 654 (7th Cir. 2006) ("... we note that in [CAFA] ... Congress
3 required heightened judicial scrutiny of coupon-based settlements based on its
4 concern that in many cases 'counsel are awarded large fees, while leaving class
5 members with coupons or other awards of little or no value.'" (quoting Pub. L. 109-
6 2, § 2(a)(3)(A)); and *Kearns v. Ford Motor Co.*, No. CV 05-5644, 2005 WL
7 3967998, at *1 (N.D. Cal. Nov. 21, 2005) (In CAFA, "Congress put significant
8 limits on so-called 'coupon settlements' which produce hardly any tangible benefits
9 for the members of the plaintiff class, but generate huge fees for the class
10 attorneys.") (attached as Ex. A).

11
12 Coupon settlements are subject to heightened scrutiny under CAFA in
13 several other respects. First, 28 U.S.C. § 1712(e) requires not only a fairness
14 hearing for any coupon settlement, but also a written finding on fairness; it also
15 authorizes the court to direct an alternative distribution of a portion of the value of
16 unclaimed coupons:

17
18 In a proposed settlement under which class members would be
19 awarded coupons, the court may approve the proposed settlement only
20 after a hearing to determine whether, and making a written finding that,
21 the settlement is fair, reasonable, and adequate for class members. The
22 court, in its discretion, may also require that a proposed settlement
23 agreement provide for the distribution of a portion of the value of
24 unclaimed coupons to 1 or more charitable or governmental
25 organizations, as agreed to by the parties. The distribution and
26 redemption of any proceeds under this subsection shall not be used to
27 calculate attorneys' fees under this section.

28 *Id.*

1 Second, § 1712(d) permits the court, in its discretion upon the motion of a
2 party, to “receive expert testimony from a witness qualified to provide information
3 on the actual value to the class members of the coupons that are redeemed.”
4

5 Third, §§ 1712(a)-(c) regulate the calculation and award of attorneys’ fees to
6 class counsel in coupon settlements by providing (1) that the portion of any
7 attorney’s fee award attributable to the award of the coupons be based on the value
8 to class members of the coupons that are actually redeemed, *see* 28 U.S.C. §
9 1712(a) and (2) that any portion of such award that is not based on the recovery of
10 coupons be calculated with reference to the amount of time class counsel
11 reasonably expended working on the action, including, if appropriate, the
12 application of a “lodestar” and multiplier. 28 U.S.C. § 1712(b). *See also* §
13 1712(c) (“mixed” awards based in part on coupons to be treated similarly).
14
15
16

17 Even if one were to ignore the above, the proposed settlement is still subject
18 to heightened scrutiny because it was achieved prior to class certification. *See*
19 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). In *Chrysler*, the
20 Ninth Circuit explicitly adopted the “heightened scrutiny” standard for settlements
21 achieved prior to class certification and cited “the need for additional protections
22 when the settlement is not negotiated by a court designated representative” as a
23 consideration “weigh[ing] in favor of a more probing inquiry than may normally be
24 required under Rule 23(e).” *Id.*; *See also, In re Mego Fin. Corp. Sec. Litigation*,
25
26
27
28

1 213 F.3d 454, 458 (9th Cir. 2000) (“Settlements that take place prior to formal class
2 certification require a higher standard of fairness.”).

3
4 **C. The Proposed Settlement Does Not Survive Heightened Scrutiny**

5
6 In analyzing coupon settlements, Congress and legal scholars have identified
7 several major problems with coupon settlements, including that: (1) they often do
8 not provide meaningful compensation to class members; (2) they “often fail to
9 disgorge ill-gotten gains from the defendant,” and (3) they often require the class
10 members to do future business with the defendant in order to receive compensation.
11
12 *See* Christopher R. Leslie, *The Need to Study Coupon Settlements in Class Action*
13 *Litigation*, 18 GEO. J. LEGAL ETHICS, 1395, 1396-97 (2005); S. Rep. 109-14, at 31
14 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 32. Regrettably, all these problems
15 occur in the settlement proposed here.
16

17
18 First, there is the issue of meaningful compensation to class members. Aside
19 from the DVD and the \$100 cash payment, which is available to only 1.6% class
20 members, the settlement proposal in this case provides for two exclusive remedies:
21 (1) a \$1,000 non-transferable rebate to trade-in the class member’s Honda Civic
22 Hybrid for a limited range of 2009, 2010, or 2011 model year cars, or (2) a \$500
23 limited transferable rebate to purchase among the same limited models. The
24
25 Plaintiffs have estimated that the likely value to the class of Option A and B is
26 \$16,125,199. *See* Doc. 104-2, at 59. However, there are good reasons to suggest
27
28

1 that the true value of this aspect of the settlement is only a fraction of that figure.

2 The Plaintiffs assume that every rebate dollar will result in a corresponding
3 dollar of value to the class. *See* Doc. 104-2, at 59 (e.g. 11,339 projected claimants
4 for \$1,000 rebate in Option A, resulting in total value of \$11,339,264). This
5 assumption is undermined by the text of the settlement itself. *See* Doc. 91, at 13
6 (“The parties acknowledge, however, that AHM has no control over any offers,
7 credits, purchase discounts, financing discounts or premiums offered by dealers.”).
8 Unlike most goods, the sales price of cars at the vast majority of dealers is
9 negotiable. *Id.* As an example, Mr. Paduano, the named plaintiff in the parallel
10 state court action, was able to secure a \$2,200 and \$2,415 discount off the market
11 suggested retail price of Hondas. Doc. 108-3. Dealers routinely make discounts
12 “off” the MSRP. In response, the parties will presumably argue that because the
13 settlement does not require the consumer to present the coupon upon purchase, the
14 amount of each rebate dollar does in fact translate into a dollar of value as a result
15 of the settlement. This, however, ignores the fact that the dealers will be aware of
16 the coupon and that consumers have been conditioned to present coupons at the
17 point of sale. This also ignores any dealer premiums over the vehicle invoice price.
18 Notably, the class notice contains no statement indicating that the consumer does
19 not have to inform the dealer of the coupon upon purchase.
20
21
22
23
24
25
26

27 A related inquiry to the actual value of each rebate dollar is the likely
28 redemption rate. Here, the Plaintiffs have estimated that approximately 14% of the

1 class would exercise Option A or B. There are good reasons to believe that the
2 redemption rate would be low.

3
4 Generally speaking, “[m]any, if not most, coupon settlements have been
5 marked by low participation rates by class members.” *See The Need to Study* at
6 1396. The anecdotal evidence from class action litigation involving coupon
7 settlements as a whole shows redemption rates as low as 3% or less. *The Need to*
8 *Study* at 1397 (citing *Buchet v. ITT Consumer Fin. Corp.*, 845 F. Supp. 684, 695
9 (D. Minn. 1994), and Brian Wolfman & Alan B. Morrison, *Representing the*
10 *Unrepresented in Class Actions Seeking Monetary Relief*, 71 N.Y.U. L. REV. 439,
11 474 (1996)).

12
13
14 Initially, because of the high cost and the “shelf life” of cars, the average
15 consumer does not make new car purchases routinely. Besides buying a house,
16 buying a new car is typically the largest purchase most consumers make. Valuation
17 issues aside, it would be economically irrational for a consumer to choose to spend
18 \$20,000 or more on a purchase of an unneeded car to receive a \$1,000 or \$500
19 rebate.

20
21
22 The redemption rate is affected not only by the frequency of the product’s
23 purchase rate and the absolute value of the coupons in question, but also by
24 conditions imposed on redemption, such as restrictions on transfer, duration,
25 aggregation, redemption process, and product selection. *The Need to Study* at 1403-
26 08. Most of these impediments have been built into the proposed settlement here.

1 Under the proposal, only the specific class member is eligible for Option A. Doc.
2 91, at 12. Lessees are ineligible to exercise this option. Doc. 91 at 14. Under Option
3 B, class members may only transfer a rebate to a spouse, registered domestic
4 partner or civil union member, a sibling, a child, a grandparent, or a grandchild.
5 Doc. 91, at 12-13; Doc. 112-2. The 98.4% of class members who are ineligible for
6 Option C, must submit a claim and choose between Option A or B, by October 31,
7 2011. Class members who select Option A and B cannot use their rebates to
8 purchase the Honda Fit, Honda Insight, HCH, Honda CRZ or any Honda Certified
9 Used Car or Acura Certified Pre-Owned Vehicle. Doc. 91, at 4; 112-2, at 2.
10 Valuation concerns aside, it remains puzzling why the relief for a class consisting
11 solely of Honda hybrid purchasers (or lessees) excludes purchases on any Honda
12 hybrid. As noted by this Court in the Order Denying Preliminary Approval, Doc.
13 100, at 20, the restrictions make the rebate less like cash and consequently less
14 desirable – particularly for those who cannot afford or who otherwise do not wish
15 to purchase one of the limited models of cars within the claims period. In short, the
16 restrictions placed on the redemption of the proposed rebates are significant and
17 would likely depress the rate of redemption even lower than the low rate that could
18 ordinarily be expected.

19
20 The other two drawbacks to coupons settlements are present under this
21 settlement scheme. Under the proposal, Honda would likely experience
22 disgorgement of only a fraction of its alleged wrongful gain, with any such
23
24
25
26
27
28

1 disgorgement offset by class members' forced purchases of eligible cars. In
2 addition, consumers would be compelled to do business with the very company
3 whose conduct was claimed, by their representatives and counsel, to be deceptive.
4

5 Coupons are particularly ineffective at disgorging ill-gotten gains from car
6 manufacturers because consumers do not purchase cars often and the sellers can
7 easily build a larger profit margin into their dealer invoice. Here, there is nothing in
8 the proposed settlement that prohibits Honda from increasing its dealer invoice to
9 offset all or a portion of the cost of the expected rebate. Further, there is no
10 provision in the settlement requiring the Defendant to pay the monetary value of the
11 unredeemed coupons to a *cy pres* fund.
12
13

14 In its Report in support of passage of CAFA, the Senate Judiciary Committee
15 identified many examples of abusive coupon settlements in state court class actions
16 that are no more egregious than the proposed settlement here. In one case involving
17 allegations that a company was selling cribs that were unsafe for use by infants,
18 class members received either a crib repair kit or a coupon for \$55.00, which could
19 be used toward the future purchase of the company's product. S. Rep. 109-14, at
20 16. In another case cited in the Senate Report, KB Toys, in a settlement to resolve
21 alleged deceptive pricing practices, agreed to hold a 30% discount on selected
22 products for less than one week. *Id.* at 16-17. An independent analyst stated that
23 "KB Toys will benefit from the settlement," as a result of "driving traffic" to its
24 stores. *Id.* at 17. The coupon settlement proposed in this case presents all of the
25
26
27
28

1 shortcomings that have given coupon settlements a bad name, that have
2 disadvantaged consumer classes, and that have led to the enhanced scrutiny set out
3 in CAFA.
4

5 The examples cited by the Senate Judiciary Committee in its Report look
6 good by comparison with the proposed settlement in this case. As with the KB
7 Toys settlement, the Defendant stands to benefit from the settlement as a result of
8 both the required expenditure and consumers' need to purchase a car in order to
9 receive the rebate.
10

11
12 On the other side of the scale are major concessions that would be made by
13 the class with respect to changes in advertising. In the settlement, the *only* change
14 to prospective advertising is that Honda agrees to change the wording of its
15 advertising from "actual mileage may vary" to "actual mileage will vary." Doc. 91,
16 at 14. Curiously, this change is only agreed to for twenty-four months and does not
17 require Honda to alter future advertising for which they have contracted. Doc. 91,
18 at 14. None of the other alleged misrepresentations set forth in the Plaintiff's
19 Complaint are addressed at all in the proposed settlement. *Cf.* Doc. 91 and Doc. 1-
20 2.
21
22
23

24 In addition, the proposed settlement would require the class to waive all
25 claims that could have arisen out of or been related in any way to Defendant's
26 advertising, manufacture, design, or sale of its Honda Civic Hybrid. Yet at least
27 some of these claims appear to have merit, as discussed in Part II of this Brief.
28

1 More troubling is the fact that the parties have negotiated language that could be
2 interpreted to bar cooperation from consumers in an enforcement action.³ With the
3 increase in gasoline prices and an increasingly environmentally-conscious public,
4 companies have sought to capitalize by making fuel economy claims and “green”
5 claims with greater frequency. As with all advertising, but particularly with
6 significant purchases such as cars, the States closely scrutinize advertising for
7 substantiation and accuracy and act where appropriate. While the States contend
8 that such release language is unenforceable, attempting to hinder enforcement
9 actions collaterally through settlement releases violates basic public policy in that it
10 seeks to undermine the States’ ability to ensure the integrity of claims made in the
11 marketplace.
12

13
14
15
16 Finally, the proposed settlement would result in an award of \$2.95 million to
17 class counsel, a tremendous amount of money given the paucity of relief to
18 members of the class and the concessions to be made on their behalf. While class
19 counsel has engaged in motion practice, discovery, and several mediation rounds,
20 the adequacy of attorney’s fees should be measured against the relief obtained for
21 class members, which the States contend is nominal.
22
23

24
25 ³ The release language, “[b]ars and permanently enjoins all members of the
26 Settlement Class who have not been excluded from the Settlement Class from (i)
27 filing, commencing, intervening in *or participating (as class member or otherwise)*
28 in any other lawsuit or administrative, *regulatory . . . proceeding . . .* arising out of
the claims and causes of action or the facts and circumstances giving rise to this
Lawsuit or the Released Claims.” Doc. 91, at 28 (emphasis added).

1 Lastly, the Attorneys General respectfully urge the Court, in reviewing this
 2 proposed settlement, to be mindful of some of the pitfalls to settlement review
 3 identified by Professor Leslie. One of those is the patent interest on the part of
 4 class counsel in a high fee award. *See The Need to Study*, at 1398 (“Although class
 5 counsel are the guardians of the class, when the interests of the class and its counsel
 6 diverge, plaintiffs’ attorneys may pursue their own interests. When they are not
 7 properly monitored, the ‘plaintiff’s attorney [may] trade . . . a high fee award for a
 8 low recovery.’” (Emphasis added.) This is particularly true in coupon settlements,
 9 where class counsel may be tempted to present the value of the settlement as higher
 10 than it actually is. The other pitfall is the set of difficulties that coupon settlements
 11 present to the courts themselves: the “systemic pressure to approve settlements, the
 12 common deference to class counsel, and the difficulty of determining the actual
 13 value of settlement coupons.” *Id.* at 1399.

14 **II. THE SETTLEMENT IS NOT FAIR, ADEQUATE, OR** 15 **REASONABLE UNDER UNDER TRADITIONAL FEDERAL** 16 **RULE OF CIVIL PROCEDURE 23 (E) ANALYSIS**

17 In *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615,
 18 625 (9th Cir. 1982), twenty-three years before the passage of CAFA, the Court of
 19 Appeals for the Ninth Circuit identified factors for trial courts to use in assessing
 20 class action settlements. These include: (1) the strength of the plaintiff’s case, (2)
 21 the risk, expense, complexity, and likely duration of further litigation throughout
 22 the trial, (3) the amount offered in the settlement, (4) the extent of discovery

1 completed and the stage of the proceedings, (5) the experience and views of
2 counsel, (6) the presence of a governmental participant, and (7) the reaction of the
3 class members to the proposed settlements. *Id.*

4
5 The proposed settlement in this case fails to pass muster even under this
6 more traditional test. Indeed, many of these factors warrant rejection of the
7 proposed settlement in and of themselves. The Attorneys General have chosen to
8 focus on factors (1), (2), (6), and (7). The factor assessing the amount offered in
9 the settlement is addressed in Part I. The reason for this is that the list “is not
10 exclusive and different factors may predominate in different factual contexts.”
11
12 *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).
13

14
15 **A. The Strength of the Plaintiff’s Case and the Risk, Expense,**
16 **Complexity, and Likely Duration of Further Litigation**
Throughout the Trial.

17 Generally speaking, the Plaintiff asserts injuries to the class based on
18 allegedly false and deceptive advertisements by Honda regarding the fuel efficiency
19 and cost savings of its Honda Civic Hybrid automobile. *See generally*, Doc. 1-2.
20 The Plaintiff asserts four claims based on state law, including: (1) violation of
21 California Business & Professions Code § 17200 (“Unfair Competition Law” or
22 “UCL”); (2) violation of B&P § 17500 (“False Advertising Law” or “FAL”); (3)
23 unjust enrichment as a result of violation of B&P 17200 and 17500; and (4)
24 violation of California Civil Code § 1750 (“California Legal Remedies Act” or
25 “CLRA”). Doc. 1-2.
26
27
28

1 As a consideration for the strength of their case, the Plaintiffs submit that the
2 landscape in consumer cases following the passage of Proposition 64 is uncertain.
3
4 Doc. 105. In essence, prior to the entry of the *Tobacco II* decision by the California
5 Supreme Court, which addressed Proposition 64's impact on consumer class
6 actions, the Plaintiffs asserted that a holding that strict reliance is required for
7 standing purposes may impact the relief that they would be able to obtain on behalf
8 of the class. *See* Doc. 105. Proposition 64's changes are entirely procedural in
9 nature and "left entirely unchanged the substantive rules governing business and
10 competitive conduct. Nothing a business might lawfully do before Proposition 64
11 is unlawful now, and nothing earlier forbidden is now permitted." *In re Tobacco II*
12 *Cases*, 46 Cal. 4th 298, 314 (Cal. 2009) (internal citations omitted).

13
14
15
16 *Tobacco II* stands for the proposition that the class representative, as opposed
17 to all unnamed class members, must have relied on the alleged misrepresentation as
18 a condition of standing to bring a UCL claim. 46 Cal. 4th at 321. Here, if there is a
19 weakness in the Plaintiffs' case as a result of *Tobacco II*, it stems from the proposed
20 class representatives' unique situations and not the strength of the merits of the
21 underlying causes of action that could be asserted by another class representative
22 who does have standing. The Plaintiffs should not be able to justify a weak
23 settlement proposal that will be held against nearly 160,000 other class members
24 based upon any weaknesses unique to the proposed class representatives.
25
26
27

28 Further, it is doubtful that *Tobacco II* has any impact on this case given the

1 way the California Supreme Court defined reliance. Notably, the court stated, “[A]
2 presumption, or at least an inference, of reliance arises wherever there is a showing
3 that a misrepresentation was material.” *In re Tobacco II Cases*, 46 Cal. 4th at 326.

4 The Court went on to state that:

5
6 [A] misrepresentation is judged to be ‘material’ if ‘a reasonable man
7 would attach importance to its existence or nonexistence in
8 determining his choice of action in the transaction in question’, and as
9 such materiality is generally a question of fact unless the ‘fact
10 misrepresented is so obviously unimportant that the jury could not
reasonably find that a reasonable man would have been influenced by
it. Nor does a plaintiff need to demonstrate individualized reliance on
specific misrepresentations to satisfy the reliance requirement.

11 *Id.*

12 Here, there is good reason to believe that Honda’s statements
13 concerning fuel efficiency were material. As the Plaintiffs state in their
14 Complaint, “During the Class Period, the HCH is and was in all respects
15 identical to the standard engine Honda Civic *except* for its hybrid engine, but
16 an HCH will typically sell at a premium of nearly \$7,000 over a standard
17 engine Honda Civic similarly equipped.” Doc. 1-2, at 4 (emphasis in
18 original). Given that the only distinction between the regular Civic and
19 hybrid model is the hybrid engine, the reasonable person would most likely
20 attach importance to statements about fuel economy – otherwise it would be
21 likely that the rationale consumer would opt for the regular Civic, which
22 costs much less. Indeed, for relief purposes, the fact that the Civic Hybrid is
23 functionally the same as the regular Civic save for the hybrid engine, would
24
25
26
27
28

1 help the Plaintiffs establish a baseline for relief based on the average fuel
2 efficiency of the regular Civic.

3
4 **B. The Presence of Governmental Participants and the Reaction of**
5 **Class Members to the Settlement.**

6 Twenty six States have signed this brief to urge this Court to reject the
7 proposed settlement. The States believe that the large number of states and
8 substance of their objections to the settlement warrant a finding against approval of
9 the proposed settlement.
10

11 Even without class notice, Mr. Paduano and the State of Texas filed
12 objections to the proposed settlement. Even if the number of objectors did not rise
13 above this number, the Court should find that these factors weigh against approval
14 of the settlement based on the known opposition at this point.
15

16 While the presence of governmental entities is a stand-alone factor in the
17 Ninth Circuit, other federal district courts in interpreting similar tests concerning
18 the number of objections from class members have recognized that the objections
19 of the Attorneys General made in the interest of protecting their residents should
20 weigh in favor of rejection of the settlement.
21
22

23 As an example, the Southern District of Florida stated the following:

24 Few class members have expressed interest in the parties' proposed
25 settlement, and few have objected. Those who have objected,
26 however, have done so most strenuously and with valuable insights.
27 Indeed many of the revisions to the initial terms of the proposed
28 settlement result from the salient points brought out by the objectors
and their counsel. What distinguishes this case from other class
actions, however, is the singular appearance of the Attorneys General
of thirty-five states and the District of Columbia, representing

1 hundreds of thousands, if not millions, of eligible class members.
 2 Appearing as *amicus curiae* on behalf of their citizens, the Attorneys
 3 General have objected at every turn to each version of the parties'
 4 proposed coupon settlement. . . . The vigor and substance of the
 5 objections presented counsels against a finding favorable to the parties
 6 on this [Fed. R. Civ. P. 23(e)] factor.

7 *Figueroa v. Sharper Image Corp.*, 517 F.Supp.2d 1292, 1328 (S.D. Fla.
 8 2007).

9 Attorneys General are increasingly participating in class actions. *See*
 10 Catherine M. Sharkley, *CAFA Settlement Notice Provision: Optimal Regulatory*
 11 *Policy?* 156 U. PA. L. REV. 1971, 1988-1990 (2008) (describing both formal and
 12 informal actions taken by state attorneys general). Attorneys General generally
 13 participate either by filing a *parens patriae* suit, by intervening in a class action, or,
 14 as here, by filing an *amicus curiae* brief in a pending class action.⁴ *See* Edward
 15 Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*,
 16 2003 U. CHI. LEGAL F. 403, 453 ("*Class Action Objectors*").⁵ Brunet notes that
 17 government attorneys generally possess the substantive expertise required to

18 ⁴ For example, in September 2001 the Texas Attorney General objected to a
 19 proposed settlement of a Pennsylvania class action against Conesco, Inc., regarding
 20 whether nursing home policies misled elderly insureds. *See Milkman v. American*
 21 *Travelers Life Ins. Co.*, No. 03775 (Penn. Ct. Common Pleas 2001); *see also*
 22 *Roller-Edelstein v. Wyndham International, Inc.*, Case No. 02-04946-A, (Cir. Ct. -
 23 Dallas 2006) (Florida Attorney General objected to proposed class action settlement
 24 concerning disclosure of prices at hotel chain).

25 ⁵ *See, e.g., Heaton v. Monogram Credit Card Bank of Georgia*, 297 F.3d 416, 426-
 26 27 (5th Cir. 2002) (allowing intervention by FDIC into class action alleging credit
 27 card fees to be illegal); *In re Prudential Ins. Co. of America Sales Practices*
 28 *Litigation*, 148 F.3d 283, 298 (3d Cir. 1998) (illustrating the intervention by the
 Massachusetts Insurance Commissioner, the Attorney General, and the Texas
 Insurance Commission into a class action litigation brought by life insurance
 policyholders alleging fraudulent sales practices); *Texas v. American Tobacco Co.*,
 14 F. Supp. 2d 956, 962 (E. D. Tex. 1997) (approving a state *parens patriae* action
 seeking recovery of Medicaid losses against the tobacco industry); Edward Brunet,
Improving Class Action Efficiency by Expanded Use of Parens Patriae Suits and
Intervention, 74 TULANE L. REV. 1919, 1932-34 (2000) (concluding that the state
 can be an effective monitor of class action settlements).

1 evaluate a class action settlement:

2 First, counsel for the state agency may provide considerable
3 substantive expertise. A lack of procedural class action
4 experience should not doom the state agency's ability to evaluate
5 a settlement's adequacy. Much of our present thinking about the
6 adequacy of a settlement focuses upon substance—whether the
7 settlement approximates a probable trial result. The proposed
8 settlement will be negotiated in the shadow of the substantive
9 law. The attorney for an agency will likely be strong on
10 substance, if not as strong on procedure.

11 *Class Action Objectors*, at 451.

12 Here, the objections raised by the Attorneys General go to the heart of the
13 settlement. As argued in Part I, courts should embark upon enhanced scrutiny of
14 coupon settlements such as this one. Additionally, the absence of objections does
15 not necessarily indicate that the settlement is acceptable. Filing an objection to the
16 settlement invokes substantial transaction costs involving an investment of time,
17 money, and other resources.

18 In the case at bar, the settlement does not withstand such scrutiny. The
19 coupons offered to consumers are of limited value: they are worth only a fraction
20 of the price of the original car, are valid only on select cars, and have other
21 limitations. Aside from a modest change to advertising, which does not require
22 Honda to make any changes to advertising already contracted for or currently being
23 aired, there is no injunctive relief provided to rein in future deceptive or harmful
24 representations. Finally, the proposed release is striking in its breadth, seeking to
25 prohibit class members from participating in subsequent regulatory actions. All of
26 these limitations call into serious question the fundamental fairness, adequacy, and
27
28

1 reasonably of the settlement.

2
3
4 **CONCLUSION**

5
6 For the reasons stated, the proposed settlement should be rejected.

7
8
9
10 Respectfully submitted,⁶

11 **EDMUND G. BROWN, JR.**
12 Attorney General of California

13 By and Through:

14 /s BENJAMIN DIEHL

15 Benjamin Diehl, CA Bar #192984
16 Deputy Attorney General
17 Office of the Attorney General
18 300 South Spring Street, #1702
19 Los Angeles, California 90013
20 (213) 897-55458 / (213) 897-49521 (fax)
21 benjamin.diehl@doj.ca.gov

22
23 ⁶ This brief is supported by Attorneys General Greg Abbott of Texas, Troy
24 King of Alabama, Daniel S. Sullivan of Alaska, Terry Goddard of Arizona, John
25 Suthers of Colorado, Bill McCollum of Florida, Lawrence Wasden of Idaho, Lisa
26 Madigan of Illinois, Tom Miller of Iowa, Janet T. Mills of Maine, Mike Cox of
27 Michigan, Jim Hood of Mississippi, Catherine Cortez Masto of Nevada, Michael
28 Delaney of New Hampshire, Anne Milgram of New Jersey, Gary King of New
Mexico, Richard Cordray of Ohio, W.A. Drew Edmondson of Oklahoma, John
Kroger of Oregon, Henry McMaster of South Carolina, Marty J. Jackley of South
Dakota, William H. Sorrell of Vermont, and Darrell V. McGraw, Jr. of West
Virginia. The brief is also supported by the Georgia Governor's Office of
Consumer Affairs.

ROBERT E. COOPER, JR.
Attorney General and Reporter of Tennessee

By and Through:

/s BRANT HARRELL*

Brant Harrell, TN B.P.R. No. 024470
(**pro hac vice* application forthcoming)
Assistant Attorney General
Office of the Attorney General and Reporter
425 Fifth Avenue North, 2nd Floor CHB
Nashville, Tennessee 37243
(615) 741-3549 / (615) 532-2910 (fax)
brant.harrell@ag.tn.gov

LA2007601306
Doc No. 60502004