

4-27-1995

## Attorneys' Fees. Shareholder Actions. Class Actions.

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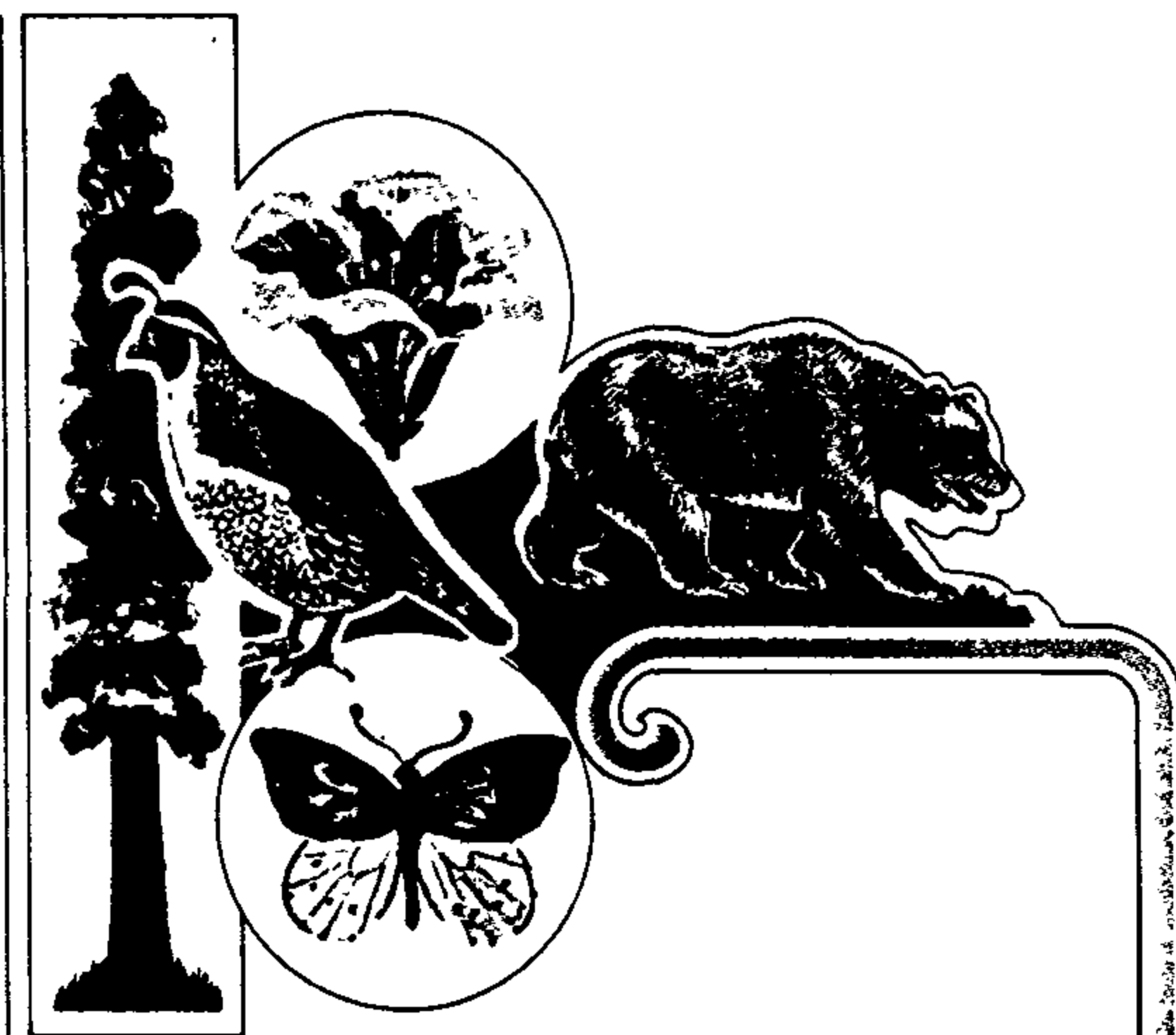
Attorneys' Fees. Shareholder Actions. Class Actions. California Initiative 659 (1995).  
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# State of California

OFFICE OF THE SECRETARY OF STATE

October 26, 1995



TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (95130)

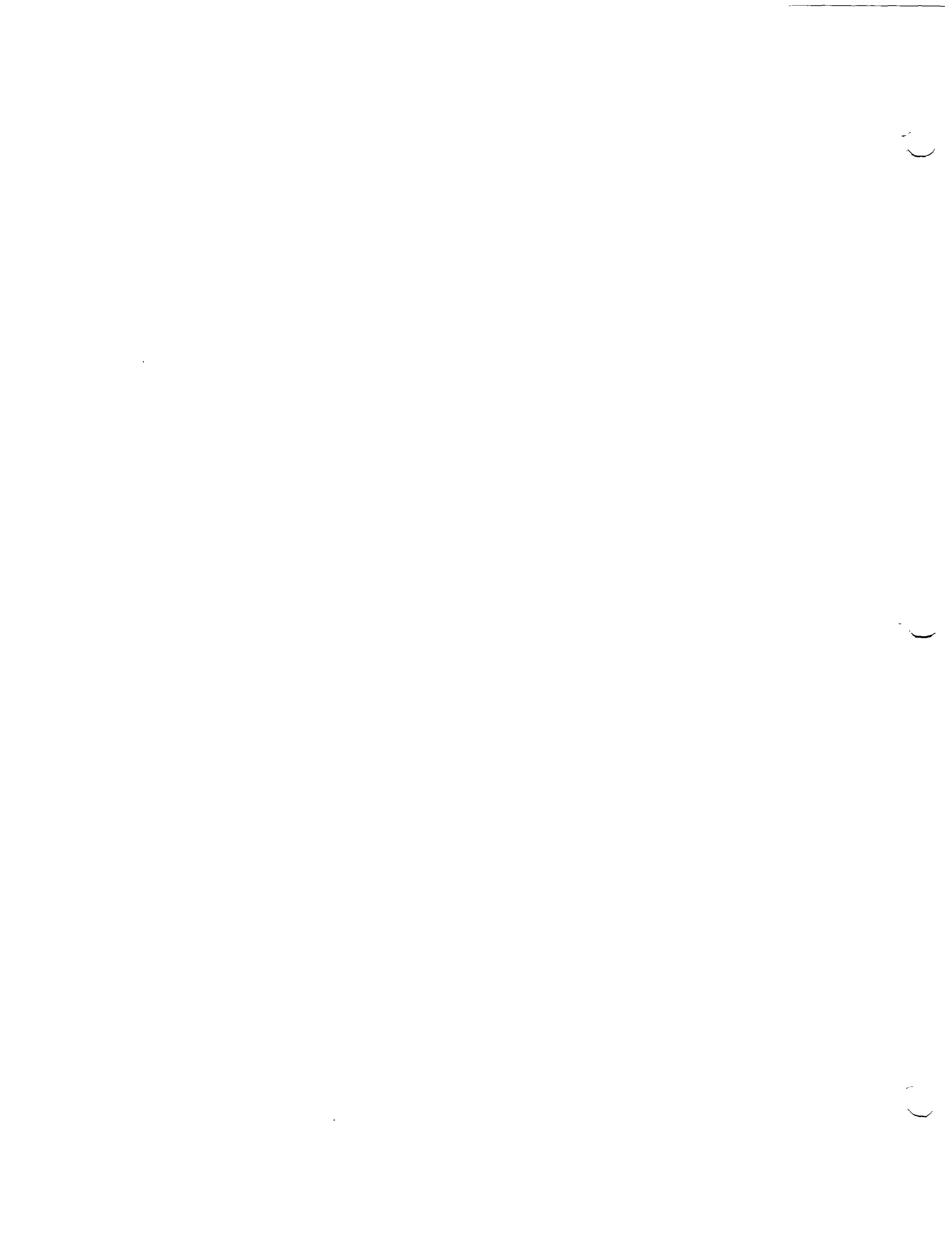
Pursuant to Section 9033 of the Elections Code, I hereby certify that on October 26, 1995 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the Initiative Statute, ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS. has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS. INITIATIVE STATUTE is, therefore, qualified for the March 26, 1996 Primary Election.

ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS. INITIATIVE STATUTE. Requires losing party to pay winning party's reasonable attorneys fees and expenses in shareholder actions against corporations and in class actions based on securities law violations. Payment by member of losing party not required if position was substantially justified and payment would be unjust. Court may require losing party's attorney to pay. After hearing, court may require plaintiff to furnish bond for defendant's estimated fees and expenses, unless plaintiff owns or traded at least 5% of shares. Plaintiff's attorney may agree to furnish bond and pay defendant's fees and expenses for plaintiff. Summary by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The fiscal impact of this measure on state and local governments is unknown. It could result in either net savings or costs, depending largely on how attorneys and their clients respond.

IN WITNESS WHEREOF, I hereunto  
set my hand and affix the Great  
Seal of the State of California this  
26th day of October, 1995.

  
BILL JONES  
Secretary of State







Bill Jones  
Secretary of State

1500 - 11th Street  
Sacramento, CA 95814

Elections Division  
(916) 657-2166  
For Hearing and Speech  
Impaired Only: (800) 833-8683

#659

April 27, 1995

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (95047)

Pursuant to Section 336 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS.  
INITIATIVE STATUTE.

Circulating and Filing Schedule

- 1. Minimum number of signatures required ..... 433,269  
Cal. Const., Art. II, Sec. 8(b).
- 2. Official Summary Date ..... Thursday, 04/27/95  
Elec. C., Sec. 336.
- 3. Petition Sections:
  - a. First day Proponent can circulate Sections for  
signatures ..... Thursday, 04/27/95  
Elec. C., Sec. 336.
  - b. Last day Proponent can circulate and file with  
the county. All sections are to be filed at  
the same time within each county ..... Monday, 09/25/95\*  
Elec. C., Secs. 336, 9030(a)
  - c. Last day for county to determine total number of  
signatures affixed to petition and to transmit total  
to the Secretary of State ..... Thursday, 10/05/95  
Elec. C., Sec. 9030(b)

(If the Proponents file the petition with the county on a date prior to 09/25/95, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 9030(b).

\* Date adjusted for official deadline which falls on Saturday. Elec. C., Sec. 15.

ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS.  
INITIATIVE STATUTE.

April 27, 1995

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d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties . . . . . Saturday, 10/14/95\*\*  
Elec., C., Sec. 9030(c)

e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Tuesday, 11/28/95  
Elec. C., Sec. 9030(b)

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 10/14/95, the last day is no later than the thirtieth day after the county's receipt of notification.)  
Elec. C., Sec. 9030(d), (e).

f. If the signature count is more than 476,596 or less than 411,606 then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 411,606 and 476,596 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures . . . . Friday, 12/08/95\*\*  
Elec. C., Sec. 9030(f), (g); 9031(a)

g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Wednesday, 01/24/96  
Elec. C., Sec. 9031(b), (c)

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 12/08/95, the last day is no later than the thirtieth working day after county's receipt of notification.)  
Elec. C., Sec. 9031(b), (c).

h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient . . . . . Sunday, 01/28/96\*\*  
Elec. C., Sec. 9031(d), 9033

\*\* Date varies based on receipt of county certification.

ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS.  
INITIATIVE STATUTE.

April 27, 1995

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4. The Proponents of the above-named measure are:

Thomas Proulx  
Alan Shugart  
Bill Westermeyer  
Alliance to Revitalize California  
1250 Sixth Street, Suite 202  
Santa Monica, CA 90401  
(310) 451-2522

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 18650; Bilofsky v. Deukmejian (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).
- (b) Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing, and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

**NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE MARCH 26, 1996 PRIMARY ELECTION:** This initiative must be certified for the ballot 131 days before the election (November 16, 1995). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions to county elections officials by September 8, 1995. If a 100% check of signatures is necessary, it is advised that the petitions be filed by July 19, 1995.

Sincerely,

  
DEIRDRE AVENT  
ELECTIONS ANALYST

Attachment: POLITICAL REFORM ACT OF 1974 REQUIREMENTS

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555  
(916) 324-5490

April 27, 1995

FILED  
If the office is not  
of the State State

APR 27 1995

Bill Jones  
Secretary of State  
1500 - 11th Street  
Sacramento, CA 95814

By *[Signature]*  
BIL JONES, Secretary of State  
Deputy Secretary of State

Re: Initiative Title and Summary  
Subject: ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS.  
INITIATIVE STATUTE.  
File No: SA 95 RF 0001

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and address of the proponents are as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

*[Signature]*

KATHLEEN F. DaROSA  
Initiative Coordinator

KFD:ms  
Enclosures

Date: April 27, 1995  
File No.: SA 95 RF 0001

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

ATTORNEYS' FEES. SHAREHOLDER ACTIONS. CLASS ACTIONS.

INITIATIVE STATUTE. Requires losing party to pay winning party's reasonable attorneys fees and expenses in shareholder actions against corporations and in class actions based on securities law violations. Payment by member of losing party not required if position was substantially justified and payment would be unjust. Court may require losing party's attorney to pay. After hearing, court may require plaintiff to furnish bond for defendant's estimated fees and expenses, unless plaintiff owns or traded at least 5% of shares. Plaintiff's attorney may agree to furnish bond and pay defendant's fees and expenses for plaintiff. Summary by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The fiscal impact of this measure on state and local governments is unknown. It could result in either net savings or costs, depending largely on how attorneys and their clients respond.



Alliance To Revitalize California

1250 Sixth Street  
Suite 202  
Santa Monica, California 90401  
(310) 451-2522

RECEIVED  
MAR 9 1995

March 7, 1995

Ms. Kathleen DaRosa  
Initiative Coordinator  
Office of the Attorney General  
1515 K Street, 6th floor  
Sacramento, CA 95814

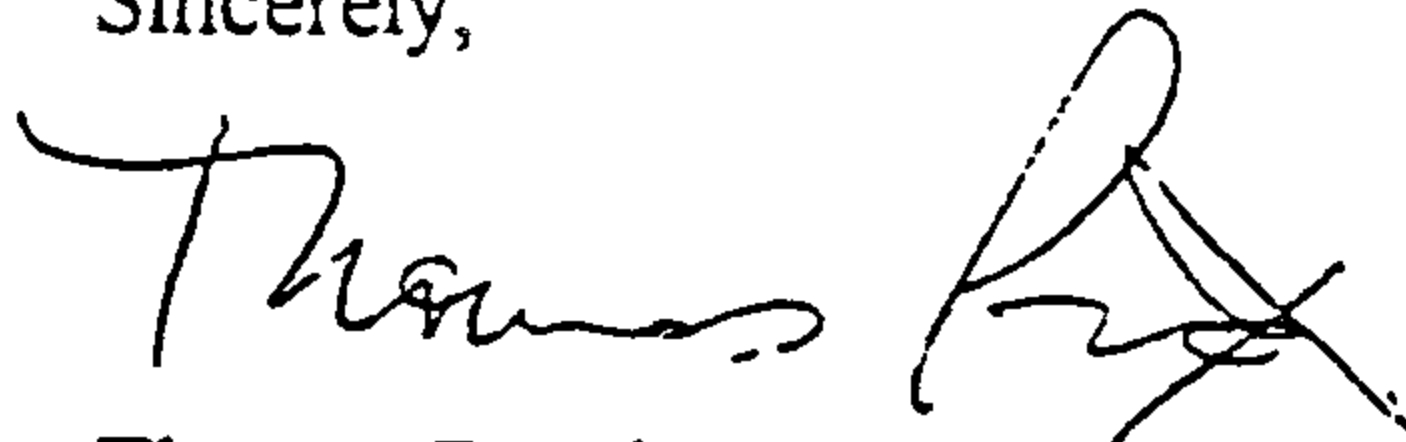
INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Dear Ms. DaRosa:

We are writing to request that the Attorney General prepare a title and summary of the chief purpose and points of the "Shareholder Litigation Reform Act," a copy of which is attached. Also enclosed is a check for \$200.00, as required.

We have also enclosed the statement required pursuant to Sections 3502 and 5358 of the Elections Code and a list of the addresses where we, the proponents of the measure, are registered to vote.

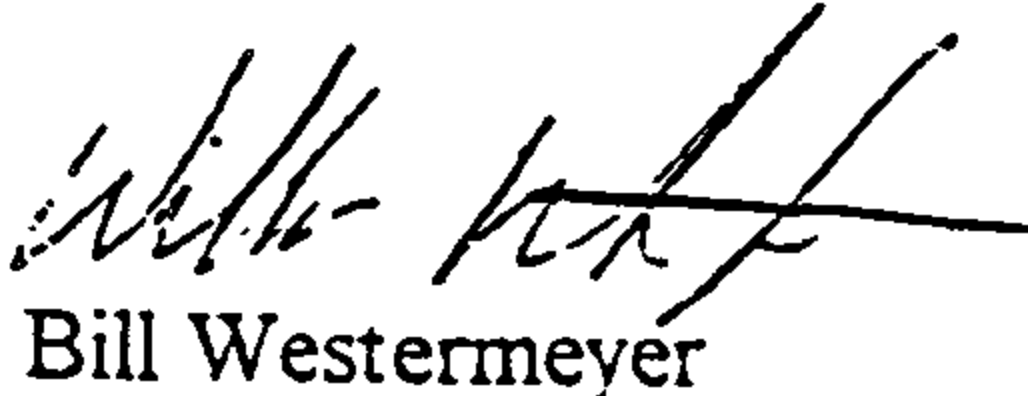
Sincerely,



Thomas Proulx



Alan Shugart



Bill Westermeyer

## Shareholder Litigation Reform Act

**SECTION ONE.** This Act shall be known and may be cited as the "Shareholder Litigation Reform Act."

**SECTION TWO.** The People of the State of California find and declare:

(a) Meritorious shareholder lawsuits play a critical role in deterring misconduct by corporate directors and officers and in maintaining the integrity of securities markets, which are a vital source of capital for California businesses. However, meritless shareholder lawsuits impose enormous costs on California businesses and shareholders. These costs deprive California of resources that could be used to make investments in new products and services, expand existing businesses, and create new jobs. Since the most common targets of these meritless shareholder lawsuits are innovative, entrepreneurial businesses, such as high-technology companies, these lawsuits pose an especially serious threat to California's economy and the state's ability to generate new jobs.

(b) The present legal system encourages the filing of such meritless shareholder lawsuits.

(c) Because the potential profit to lawyers filing such lawsuits is so great, the lawyers themselves often initiate these cases by recruiting potential plaintiffs to sue a company. And because the cost in time and money required to defend against such lawsuits is substantial, many companies innocent of wrongdoing are nonetheless forced to settle — encouraging lawyers to file still more such suits.

(d) Under the present legal system, shareholders who have been defrauded cannot obtain fair compensation for their losses since their recovery is typically reduced by as much as one-third to pay the contingent fees of attorneys who brought the case.

(e) Many of the meritless shareholder lawsuits filed today could be discouraged without discouraging lawsuits that do have merit. This could be accomplished by:

(1) Requiring the loser or the loser's attorney in a securities class action or shareholder derivative lawsuit to pay the winner's costs, including reasonable attorney's fees, unless the court determines that circumstances would make it unjust to do so; and

(2) Requiring the named plaintiffs in such a lawsuit to post a bond to secure their obligation to pay these costs if they lose, unless the named plaintiffs constitute 5% of the class.

(f) Imposing such a "loser-pays" rule on litigants in shareholder lawsuits would help to protect companies and their shareholders from the costs of meritless litigation, would encourage companies that were guilty of wrongdoing to make early settlement offers, and would allow shareholders who did have meritorious claims to recoup the legal costs of pursuing those claims.

**SECTION THREE.** Section 800.5 is added to the Corporations Code to read as follows:

800.5 (a) [APPLICATION] This section applies to any shareholder derivative action and any securities law class action based in whole or in part on California law, notwithstanding any other provision of law. All references in this section to "plaintiffs" or "defendants" refer also to the singular of those terms in cases involving a single defendant or plaintiff.

(b) [AWARD OF FEES AND EXPENSES] (1) In any shareholder derivative action or securities law class action, if a final judgment that is not appealed or is no longer subject to appeal is entered in favor of either the plaintiffs or the defendants (the "prevailing party"), the opposing party (the "losing party") shall be liable to the prevailing party for the reasonable fees and expenses incurred by the prevailing party in the prosecution or defense of the action, except as provided in paragraph (4) of this subdivision (b). However, if the defendants make an offer of judgment under Section 998 of the Code of Civil Procedure which is not accepted by the plaintiffs and the judgment is not greater than the amount of that offer, the defendants shall be considered the prevailing party.

(2) If judgment is entered in favor of the plaintiffs on some of the claims in the complaint and in favor of the defendants on others, the court shall allocate the liability for fees and expenses between the parties based upon the fees and expenses incurred with respect to each claim. The amounts for which each of the opposing parties is determined to be liable shall be off set against each other.

(3) In the case of multiple named plaintiffs, the proportion of the prevailing defendants' fees and expenses for which each named plaintiff is liable shall be equal to the proportion of the total claims of all named plaintiffs which that named plaintiff's claim represents. In the case of multiple defendants, the proportion of the prevailing plaintiffs' fees and expenses for which each defendant is liable shall be equal to the proportion of the total judgments against all defendants which the judgment against that defendant represents, unless otherwise determined by the court to prevent an injustice.

(4) If the losing party establishes that its position was substantially justified, the court shall waive the liability of any member of the losing party for fees and expenses if requiring that member of the losing party to pay its full share of such fees and expenses would be unjust. A losing party's position is substantially justified if it has a reasonable basis both in law and in fact. This provision shall not apply with respect to the liability of any plaintiff if an attorney has agreed to indemnify that plaintiff against such liability pursuant to subdivision (h).

(c) [APPLICATION FOR FEES AND EXPENSES] A party seeking an award of fees and expenses shall, within 30 days of a final judgment in the action that is not appealed or is no longer subject to appeal, submit to the court an application for fees and expenses that verifies that the party is entitled to such an award under subdivision (b) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and expenses are computed.

(d) [ALLOCATION AND SIZE OF AWARD] The court, in its discretion, may –

(1) determine whether the amount to be awarded pursuant to this section shall be awarded against the losing party, its attorney, or both; and

(2) reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

(e) [SECURITY FOR PAYMENT OF FEES AND EXPENSES] (1) In any shareholder derivative action or securities law class action, the named plaintiffs shall, upon motion duly made as provided in paragraph (3) of this subdivision (e) by any defendant (including the entity in a

shareholder derivative action) and granted by the court after notice and hearing, furnish a bond to secure the named plaintiffs' liability under subdivision (b) of this section for the defendants' estimated fees and expenses, as determined by the court, except as provided in paragraph (2) of this subdivision (e). All references in this subdivision (e) to a "motion for security" mean a motion made under this paragraph (1).

(2) No bond shall be required if the named plaintiffs show to the satisfaction of the court that in the case of a shareholder derivative action the named plaintiffs own at the time of the ruling on the motion 5% or more of the total outstanding common shares of the organization, or in the case of a securities law class action, the named plaintiffs traded 5% or more of the total number of shares traded during the class period, provided that in determining the total number of shares traded only 50% of the reported volume of trading on NASDAQ shall be included.

(3) The motion for security may be made at any time within 30 days after service of the summons in the case of a shareholder derivative action or any time within 30 days after conditional or final certification of the class in the case of a securities law class action and shall be heard by the court as expeditiously as possible. The court shall consider such evidence, written or oral, by witnesses or affidavit, as may be relevant to any ground for denial of the motion under paragraph (2) of this subdivision (e) and to a determination of the fees and expenses likely to be incurred by the moving party in the defense of the action. If the motion is granted, the order shall fix the amount of the bond in the amount of the estimated fees and expenses as determined by the court. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. The court may for good cause shown extend the time period specified in this paragraph (3) for an additional period not to exceed 60 days and may increase or decrease the amount of any security required on a showing of changed circumstances.

(4) If the court makes a determination that a bond shall be furnished by the named plaintiffs as to any one or more defendants and the bond is not furnished within such time as may be fixed by the court, the action shall be dismissed without prejudice to the individual plaintiffs' rights to pursue an action in their individual capacities.

(f) [STAY OF DISCOVERY] (1) Except as provided in paragraph (3) of this subdivision (f), all discovery in a shareholder derivative action shall be stayed for at least 30 days after the

service of the summons. If the court has extended the time allowed for making a motion for security, pursuant to subdivision (e), discovery shall be stayed until the expiration of such additional time allowed. If a motion for security is made, discovery shall be stayed until 10 days after the motion is disposed of.

(2) Except as provided in paragraph (3) of this subdivision (f), all discovery in a securities law class action shall be stayed until at least 30 days after the conditional or final certification of the class. If the court has extended the time allowed for making a motion for security, pursuant to subdivision (e), discovery shall be stayed until the expiration of such additional time allowed. If a motion for security is made, discovery shall be stayed until 10 days after the motion is disposed of.

(3) The stays of discovery provided for in this subdivision (f) do not apply to discovery with respect to any ground for denial of a motion for security or with respect to class certification.

(g) [NOTIFICATION OF SHAREHOLDERS] Upon motion of the named plaintiffs, the court may order that a notice be given to the shareholders or potential class members of the pendency of the action and of the fact that any shareholder or class member may join the action as a named plaintiff. That notice may be given by publication in such manner as may be directed by the court, unless the court rules that personal service by mail is feasible and necessary. The expense of such notice shall be borne by the named plaintiffs.

(h) [INDEMNIFICATION OF PLAINTIFFS BY ATTORNEY] The attorney for the plaintiffs in any shareholder derivative action or securities law class action may agree to indemnify any named plaintiffs or persons considering becoming a named plaintiff against any liability under this section and may furnish any security required under this section on behalf of the named plaintiffs, notwithstanding any provision of the State Bar Rules of Professional Conduct. An attorney who agrees to indemnify a plaintiff or plaintiffs under this provision shall be primarily liable. An offer to indemnify persons joining as named plaintiffs may be included in the notice referred to in subdivision (g).

(i) For the purposes of this section:

(1) A "shareholder derivative action" means any action instituted in the right of any corporation, domestic or foreign, partnership or any other organization (the "entity") with respect

to which such an action may be maintained by a shareholder or holder of a voting trust certificate or a partner or a member alleging a wrong to the entity. "Shareholder" as used in this section includes such holders, partners and members, and "shares" includes such certificates, partnership interests and memberships.

(2) A "securities law action" means an action alleging wrongful conduct by the defendant in connection with the purchase or sale of securities.

(3) A "class action" means an action sought to be maintained by the named plaintiffs on behalf of a class of persons with a common interest or involving common questions of law or fact, if the persons to be benefited are too numerous for the joinder of all in the action to be practicable.

(4) "Fees and expenses" means reasonable attorney's fees and other reasonable expenses incurred by a party in the prosecution or defense of an action covered by this section. Reasonable attorney's fees are the reasonable hourly charges multiplied by the reasonable number of hours spent on a case, as determined by the court. For purposes of determining the liability of the losing party, reasonable attorney's fees incurred by plaintiffs do not include any amounts allowed by the court (A) under any common fund or substantial benefit theory or (B) as a result of applying a "multiplier" to the reasonable hourly charges in order to compensate the attorney for the risk involved in representing the plaintiffs on a contingent-fee basis. However, nothing herein shall limit the authority of the court to award an attorney out of the damages awarded fees based on any common fund or substantial benefit theory or based on the application of such a "multiplier". Reasonable expenses other than attorney's fees include the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, costs allowable under Sections 1032 and 1033.5 of the Code of Civil Procedure, and attorney's expenses other than fees. However, reasonable expenses do not include overhead charges or employee salaries of the law firm representing a party.

**SECTION FOUR.** The State Bar shall, with the approval of the Supreme Court, amend the Rules of Professional Conduct of the State Bar, if necessary, in order to conform such Rules to subdivision (h) of Section 800.5 of the Corporations Code.

**SECTION FIVE.** Section 800 of the Corporations Code is amended to read as follows:

(a) As used in this section, "corporation" includes an unincorporated association; "board" includes the managing body of an unincorporated association; "shareholder" includes a member of an unincorporated association; and "shares" includes memberships in an unincorporated association.

(b) No action may be instituted or maintained in right of any domestic or foreign corporation by any holder of shares or of voting trust certificates of the corporation unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a shareholder, of record or beneficially, or the holder of voting trust certificates at the time of the transaction or any part thereof of which plaintiff complains or that plaintiff's shares or voting trust certificates thereafter devolved upon plaintiff by operation of law from a holder who was a holder at the time of the transaction or any part thereof complained of; provided, that any shareholder who does not meet these requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing, at which the court shall consider such evidence, by affidavit or testimony, as it deems material, that (i) there is a strong prima facie case in favor of the claim asserted on behalf of the corporation, (ii) no other similar action has been or is likely to be instituted, (iii) the plaintiff acquired the shares before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains, (iv) unless the action can be maintained the defendant may retain a gain derived from defendant's willful breach of a fiduciary duty, and (v) the requested relief will not result in unjust enrichment of the corporation or any shareholder of the corporation; and

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the board such action as plaintiff desires, or the reasons for not making such effort, and alleges



further that plaintiff has either informed the corporation or the board in writing of the ultimate facts of each cause of action against each defendant or delivered to the corporation or the board a true copy of the complaint which plaintiff proposes to file.

~~(c) In any action referred to in subdivision (b), at any time within 30 days after service of summons upon the corporation or upon any defendant who is an officer or director of the corporation, or held such office at the time of the acts complained of, the corporation or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish a bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:~~

~~———— (1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its shareholders.~~

~~———— (2) That the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.~~

~~———— The court on application of the corporation or any defendant may, for good cause shown, extend the 30 day period for an additional period or periods not exceeding 60 days.~~

~~———— (d) At the hearing upon any motion pursuant to subdivision (c), the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground or grounds upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the corporation and the moving party which will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the amount of the bond, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, which may be incurred by the moving party and the corporation in connection with the action, including expenses for which the corporation may become liable pursuant to Section 317. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon the motion, makes a determination that a bond shall be furnished by the plaintiff, as to any one or more defendants, the action shall be~~

~~dismissed as to the defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court.~~

~~(e) If the plaintiff shall, either before or after a motion is made pursuant to subdivision (c), or any order or determination pursuant to the motion, furnish a bond in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff has complied with the requirements of this section and with any order for a bond theretofore made, and any such motion then pending shall be dismissed and no further or additional bond shall be required.~~

~~(f) If a motion is filed pursuant to subdivision (c), no pleadings need be filed by the corporation or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.~~

SECTION SIX. Section 15702 of the Corporations Code is amended to read as follows:

15702 (a) No action may be instituted or maintained in right of any domestic or foreign limited partnership by any partner of the limited partnership unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a partner of record or beneficially, at the time of the transaction or any part thereof of which plaintiff complains or that plaintiff's interest thereafter devolved upon plaintiff by operation of law from a partner who was a partner at the time of the transaction or any part thereof complained of. Any partner who does not meet these requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing at which the court shall consider any evidence, by affidavit or testimony, as it deems material, that (A) there is a strong prima facie case in favor of the claim asserted on behalf of the limited partnership, (B) no other similar action has been or is likely to be instituted, (C) the plaintiff acquired the interest before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains, (D) unless the action can be maintained the defendant may retain a gain derived from defendant's willful breach of a fiduciary duty, and (E) the

requested relief will not result in unjust enrichment of the limited partnership or any partner of the limited partnership.

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the general partners such action as plaintiff desires or the reasons for not making that effort, and alleges further that plaintiff has either informed the limited partnership or the general partners in writing of the ultimate facts of each cause of action against each defendant or delivered to the limited partnership or the general partners a true copy of the complaint which plaintiff proposes to file.

~~\_\_\_\_\_ (b) In any action referred to in subdivision (a), at any time within 30 days after service of summons upon the limited partnership or upon any defendant who is a general partner of the limited partnership or held that position at the time of the acts complained of, the limited partnership or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish security as hereinafter provided. The motion shall be based upon one or both of the following grounds:~~

~~\_\_\_\_\_ (1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the limited partnership or its partners.~~

~~\_\_\_\_\_ (2) That the moving party, if other than the limited partnership, did not participate in the transaction complained of in any capacity. The court on application of the limited partnership or any defendant may, for good cause shown, extend the 30 day period for an additional period not exceeding 60 days.~~

~~\_\_\_\_\_ (c) At the hearing upon any motion pursuant to subdivision (b), the court shall consider evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the limited partnership and the moving party which will be incurred in the defense of the action. If the court determines after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including~~

~~attorneys' fees, which may be incurred by the moving party and the limited partnership in connection with the action. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. The amount of the security may thereafter be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or is excessive, but the court may not in any event increase the total amount of the security beyond fifty thousand dollars (\$50,000) in the aggregate for all defendants. If the court, upon any such motion, makes a determination that security shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to such defendant or defendants, unless the security required by the court shall have been furnished within any reasonable time as may be fixed by the court. The limited partnership and the moving party shall have recourse to the security in such amount as the court shall determine upon the termination of the action.~~

~~(d) If the plaintiff shall, either before or after a motion is made pursuant to subdivision (b), or any order or determination pursuant to such motion, post good and sufficient bond or bonds in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff has complied with the requirements of this section and with any order for security theretofore made pursuant hereto, and any such motion then pending shall be dismissed and no further or additional bond or other security shall be required.~~

~~(e) If a motion is filed pursuant to subdivision (b), no pleadings need be filed by the limited partnership or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.~~

**SECTION SEVEN.** Section 17501 of the Corporations Code is amended to read as follows:

17501 (a) No action shall be instituted or maintained in right of any domestic or foreign limited liability company by any member of the limited liability company unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a member of record, or beneficiary, at the time of the transaction or any part thereof of which plaintiff complains, or that

plaintiff's interest thereafter devolved upon plaintiff by operation of law from a member who was a member at the time of the transaction or any part thereof complained of. Any member who does not meet these requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing at which the court shall consider any evidence, by affidavit or testimony, as it deems material, of all of the following:

(A) There is a strong prima facie case in favor of the claim asserted on behalf of the limited liability company.

(B) No other similar action has been or is likely to be instituted.

(C) The plaintiff acquired the interest before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains.

(D) Unless the action can be maintained, the defendant may retain a gain derived from defendant's willful breach of a fiduciary duty.

(E) The requested relief will not result in unjust enrichment of the limited liability company or any member of the limited liability company.

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the managers the action plaintiff desires or the reasons for not making that effort, and alleges further that plaintiff has either informed the limited liability company or the managers in writing of the ultimate facts of each cause of action against each defendant or delivered to the limited liability company or the managers a true copy of the complaint that plaintiff proposes to file.

~~\_\_\_\_\_ (b) In any action referred to in subdivision (a), at any time within 30 days after service of summons upon the limited liability company or upon any defendant who is a manager of the limited liability company or held that position at the time of the acts complained of, the limited liability company or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish security as hereinafter provided. The motion shall be based upon one of both of the following grounds:~~

~~\_\_\_\_\_ (1) That there is no reasonable possibility that the prosecution of the cause of the action alleged in the complaint against the moving party will benefit the limited liability company or its members.~~

~~(2) That the moving party, if other than the limited liability company, did not participate in the transaction complained of in any capacity. The court, on application of the limited liability company or any defendant, may, for good cause shown, extend the 30 day period for an additional period not exceeding 60 days.~~

~~(c) At the hearing upon any motion pursuant to subdivision (b), the court shall consider evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the limited liability company and the moving party that will be incurred in the defense of the action.~~

~~If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, that may be incurred by the moving party and the limited liability company in connection with the action. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. The amount of the security may thereafter be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or is excessive, but the court may not in any event increase the total amount of the security beyond fifty thousand dollars (\$50,000) in the aggregate for all defendants. If the court, upon a motion, makes a determination that security shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to that defendant or defendants, unless the security required by the court has been furnished within any reasonable time as may be fixed by the court. The limited liability company and the moving party shall have recourse to the security in the amount that the court determines upon the termination of the action.~~

~~(d) If the plaintiff, either before or after a motion is made pursuant to subdivision (b), or any order or determination pursuant to that motion, posts good and sufficient bond or bonds in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff shall be deemed to have complied with the requirements of this section and with any order for security made pursuant to this section. Any~~

~~motion then pending shall be dismissed and no further or additional bond or other security shall be required.~~

~~(c) If a motion is filed pursuant to subdivision (b), no pleadings need be filed by the limited liability company or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.~~

**SECTION EIGHT.** (a) Except as provided in subdivision (b) of this section, the provisions of this initiative shall not be amended except by a statute that becomes effective only when approved by the electorate.

(b) The provisions of this initiative may be amended only to further its purposes, by a statute passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership of each house concurring. In any judicial action with respect to such amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subdivision.

**SECTION NINE.** If any provision of this act or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.