

# ConsumersUnion®

## POLICY & ACTION FROM CONSUMER REPORTS

June 13, 2017

Assemblymember Phil Ting, Chair  
Assembly Committee on Budget  
State Capitol, Room 6026  
Sacramento, CA 95814

### **RE: SB 87 – Budget Trailer Bill--Oppose**

Dear Assemblymember Ting,

Consumers Union, the nonprofit policy arm of Consumer Reports, strongly opposes SB 87 and its attempt to change long-held cy pres doctrine by redirecting remainder funds in class action suits to the court system--funds that are earmarked for nonprofits that work to ameliorate the problems that the class actions are about.

The term "cy pres" comes from the French phrase, "cy pres comme possible," or "as nearly as possible." It is a very old common law doctrine, going back to 6th century Rome, and has evolved over time via court precedent. The use of cy pres in class actions was sanctioned in 1974 (Miller v. Steinbach). More recent case law has modified the use of cy pres doctrine to make clear that cy pres recipients must "reasonably approximate" the interest of the class, and some jurisdictions (e.g., the 9th Circuit) require an analysis of whether there is a direct nexus between the recipient's activities and the laws or facts at issue in the underlying case. In 1993 and 1994, the California Legislature added further requirements in the California Code of Civil Procedure, Section 384: "It is the intent of the Legislature in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying cause of action, or to promote justice for all Californians." Further, the statute requires that the Court order payment of remainder funds "to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action."

SB 87 would take funds from nonprofit organizations that work to benefit the public in line with the class action's underlying cause of action and would give a sizable portion, if not all, of those funds to the court system. We fail to understand how the aggrieved class members are remedied if their funds go to the court system. Moreover, there are obvious conflict of interest issues when courts are deciding to give the class' remedy to itself. In fact, this could be an unconstitutional taking as there is no benefit to the victims if the courts self-deal in this way.

Finally, we strongly object to the way this bill proceeded without public knowledge or input, in a rushed manner that precludes the kind of serious scrutiny that it deserves. Most of us in the nonprofit sector heard about this bill only yesterday afternoon, and we are told that the vote is Thursday.

Much important work has been done by nonprofit recipients of cy pres funding--work that protects consumers and the public from illegal practices by corporations in the marketplace.

We strongly urge that this bill not go forward, upending as it would decades of settled law that provides funding for important work to protect and serve the public, where the direct nexus to the underlying class action is clear.

Sincerely yours,

A handwritten signature in black ink that reads "Elisa Odabashian". The signature is written in a cursive, flowing style.

Elisa Odabashian  
Director, State Campaigns and West Coast Office  
Consumers Union

cc: Assembly Committee on Budget