

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DEMCHAK PARTNERS LIMITED	)	
PARTNERSHIP; JAMES P. BURGER, JR.	)	
and BARBARA H. BURGER; WILLIAM A.	)	
BURKE, II and CLARA BURKE; WILLIAM	)	
A. BURKE, III; EDWARD J. BURKE;	)	
DONALD G. FULLER and KAREN M.	)	
FULLER; RANDY K. HEMERLY; LAMAR	)	Case No. 3:13-cv-2289
R.KING; LINDA J. SCHLICK; AND JANET	)	
C. YOUNG, on Behalf of Themselves and All	)	(Hon. Malachy E. Mannion)
Others Similarly Situated,	)	
	)	
Plaintiffs,	)	
	)	
and	)	
	)	
RUSSELL E. BURKETT and GAYLE	)	
BURKETT,	)	
	)	
Plaintiffs-Intervenors,	)	
	)	
v.	)	
	)	
CHESAPEAKE APPALACHIA, L.L.C.,	)	
	)	
Defendant.	)	

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**AMICUS CURIAE BRIEF OF THE PENNSYLVANIA OFFICE OF  
ATTORNEY GENERAL IN OPPOSITION TO THE PROPOSED  
SETTLEMENT AGREEMENT**

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## **I. INTRODUCTION**

The Pennsylvania Office of Attorney General ("Commonwealth" or "Office") in its capacity as *amicus curiae*<sup>1</sup> files this objection and requests that this Honorable Court reject the proposed settlement in its current form. The parties to this action have negotiated a settlement agreement in which the parties attempt to release *parens patriae* claims and other claims for relief that can only be brought by the Commonwealth and are not available in a private class action either as a claim or as an element of a negotiated release.

Further, the Commonwealth has asserted claims involving natural gas leases in state court pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* that the named Plaintiffs and Settlement Class Members cannot individually bring due to lack of standing. As such, the Commonwealth is not precluded by the order granting class certification and preliminary approval of the proposed settlement to litigate the claims as *parens patriae*.

Accordingly, the Commonwealth requests that this Honorable Court modify, the proposed settlement, to provide for a carve-out of the Commonwealth's *parens patriae* claims from the language of the release appearing in Exhibit 1 to the Parties' Unopposed Motion for Preliminary

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<sup>1</sup> The Commonwealth is not submitting to this Court's jurisdiction except as amicus and the submission of this brief is without prejudice to the Commonwealth's ability to enforce and investigate claims related to the issues under dispute.

Approval of Amended Class Action Settlement, as set forth below. The Commonwealth submits this brief to protect the public which stands to be adversely affected by the approval of the proposed settlement. Although the Commonwealth is not a party to this suit, the outcome of the proposed settlement is of great interest, especially in light of the Commonwealth's pending litigation against the very same Defendant, Chesapeake Appalachia, L.L.C. as well as others ("Defendants"), that are seeking to be released in the above-captioned class action.

## **II. BACKGROUND**

The Commonwealth has a lawsuit pending against the Defendant, as well as others, regarding their involvement in acts and practices which allegedly deceived and misled Pennsylvania landowners, including senior citizens into signing oil and gas leases with Defendants. The deceptive acts and practices include, making representations to landowners about the amount of money they would receive in royalty payments when landowners signed their leases and then paying landowners something less in royalty payments when gas was later extracted and sold from their properties; that certain material lease provisions meant one thing when they signed leases, and later told they meant something different when they received royalty payments under their leases. As a result of the misrepresentations, Defendants took deductions and, in some cases,

retroactive deductions of post-production expenses from royalty checks for landowners who were told they would receive certain royalty payments, there would be no deductions and their leases contained the necessary language that prohibited deductions.

In the *parens* action brought in the Bradford County Court of Common Pleas, the Commonwealth alleged that the Defendants, in concert with others named in the state court action, conducted business in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTCPL"), 73 P.S. § 201-1, *et seq.* Among other things, the Commonwealth alleged that Pennsylvania landowners, including elderly Pennsylvanians, were persuaded by representatives of the Defendants, as well as others, to enter into natural gas leases with the Defendants, and were misled as to the terms of those leases. *See* Commonwealth's Complaint attached hereto as Exhibit "A".

The Commonwealth's Complaint alleges that Pennsylvania landowners relied to their detriment on the misrepresentations and omissions of the Defendants, and others, who acted individually or in concert collectively for the benefit of Defendants as their agents. The Complaint also alleges that the Defendants, as well as others, induced Pennsylvania landowners to enter into the aforementioned leases and, as a result, were able to collect deductions against royalties and profits as a result of their unfair business practices, including, but

not limited to, misrepresentations and material omissions made to Pennsylvania landowners.

Prior to filing the complaint, this Office had been conducting a non-public civil investigation since early 2014. This Office has expended considerable sweat equity in reviewing landowner complaints in determining whether there is sufficient evidence in support of finding a violation of law. Since commencing the investigation, this Office conducted field interviews in Scranton, Towanda and Williamsport with numerous landowners; reviewed reams of documents; interviewed scores of witnesses; and sought to achieve a resolution without resorting to litigation with certain defendants. However, the order granting class certification and preliminary approval has changed our approach.

### **III. PENNSYLVANIA UTPCPL**

In the state court action, the Commonwealth, pursuant to the UTPCPL, seeks injunctive relief, civil penalties, as well as restoration, along with such other relief as the court deems appropriate. Pennsylvania Courts have long held that the UTPCPL is to be broadly construed to effect its objective of preventing unfair and deceptive practices and protecting the public. *Commonwealth v. Monumental Properties*, 459 Pa. 450, 460, 329 A.2d 816 (1974).

The Commonwealth brings its state court action as *parens patriae* on behalf of its citizens and its general economy. See, *Commonwealth v. Foster*, 57



D. & C. 2d 203, 209-210 (Allegheny Co. 1972)(The Commonwealth, acting by the Office of Attorney General as *parens patriae*, under the UTPCPL, may enjoin unfair and deceptive acts or practices). An action such as this one brought by the Commonwealth under the UTPCPL is designed to protect "the individual citizens who are the prey of unscrupulous persons." *Commonwealth v. Ziomeck*, 352 A.2d 235, 238 (Pa. Cmwlth. 1976).

The UTPCPL grants a number of remedies to the Commonwealth including injunctive relief and civil penalties. *See* 73 P.S. § 201-4 and 201-8(b). Under the later section, the court is authorized to impose a civil penalty of not exceeding \$1,000.00 per violation or up to \$3,000.00 in the event the victim is 60 years of age or older.

In addition to civil penalties and injunctive relief, the Attorney General is authorized to seek restoration under the UTPCPL, which provides that whenever any court issues a permanent injunction to restrain and prevent violations of the UTPCPL, the court may in its discretion direct that the Defendant restore to any person in interest any monies which may have been acquired by means of any violation of the Act, under terms and conditions to be established by the court. 73 P.S. § 201-4.1. Pennsylvania case law recognizes that restoration, as an equitable remedy, is permissible under the UTPCPL. *Commonwealth v. Ted Sopko Auto Sales and Locator*, 719 A.2d 1111, 1114 (Pa. Cmwlth. 1988). *See*

also, *Commonwealth v. Flick*, 382 A.2d 762 (Pa. Cmwlth. 1978) (in addition to assessing civil penalties, a court in an appropriate case may require defendant to pay specific sums as compensation to individuals who have been harmed by defendants' illegal acts).

#### IV. TERMS OF RELEASE

The Commonwealth objects to the proposed release language, to the extent that it may be construed to strip from the Commonwealth the full panoply of equitable remedies available to it under the Commonwealth's UTPCPL. In pertinent part, the proposed class action release reads as follows:

As of the Effective Date, Plaintiffs and the Settlement Class Members, and each of them, for themselves and their respective heirs, agents, officers, directors, shareholders, employees, consultants, joint venturers, partners, members, legal representatives, successors and assigns, hereby expressly agree that they fully and forever release and discharge **Defendant, and its parents, present and former affiliates, and subsidiaries**, and their respective predecessors, successors, assigns, present, former and future officers, directors, employees, **agents**, any third party payment processors, **independent contractors**, successors, assigns, attorneys and legal representatives (collectively, "Defendant Releasees") from any and all of the **Settled Claims**, except for the rights and obligations created by this Settlement Agreement, and **covenant and agree that they will not commence, participate in, prosecute or cause to be commenced or prosecuted against the Defendant Releasees any action or other proceeding based upon any of the Settled Claims** released pursuant

to this Settlement Agreement. Plaintiffs and the Settlement Class Members hereby further agree that they fully and forever **release and discharge all working interest owners** on whose behalf Defendant has paid or will pay Royalties pursuant to Pennsylvania Leases from any and all of the Settled Claims, but do so only to the limited extent of Defendant's payments of Gas Royalties on behalf of such working interest owners.

The proposed release must be read with the settlement agreement definition of Settled Claims, which states that:

"Settled Claims" means **any and all claims and causes of action related to the calculation, amount, payment, and/or reporting of Royalty payments made by Chesapeake and/or its Affiliates** (as defined in paragraph 6.8), either on its own working interest share or on behalf of other working interests, on Gas produced pursuant to a Pennsylvania Lease, including any and all claims and causes of action that were alleged in Demchak or in the Burkett Arbitration related to the calculation, amount, payment, and/or reporting of such Gas Royalty payments. The Settled Claims **include, but are not limited to**, claims for breach of contract, fraud, conspiracy, breach of implied duties and covenants, unjust enrichment, accounting, **and injunctive relief**. The Settled Claims also include (i) challenges to the manner in which sales are made to an affiliated entity, if any, (ii) claims that formation, sale or disposition of assets or equity interests by Chesapeake and/or its Affiliates (as defined in paragraph 6.8) impacted Royalty payments, and (iii) any other challenges to the reasonableness of Post-Production Cost deductions. The Settled Claims do not include claims for royalties held in suspense, claims for the failure to pay royalties due at all, claims based on errors in determining ownership interests, or claims for mathematical or calculation errors in determining volumes, prices, values, or decimal

interests. The Settled Claims also do not include any claims or causes of action whatsoever that Plaintiffs and the Settlement Class Members have or may have against persons and entities other than the Defendant-Releasees, as defined in paragraph 12.

This definition of Settled Claims can be interpreted as releasing claims falling under Pennsylvania's UTPCPL, which the named Plaintiffs and Settlement Class Members neither asserted in their complaint, nor did they have standing to bring.

The Commonwealth objects to the extent that the release sweeps too broadly by including within its scope those parties sued by the Commonwealth and who may be considered "agents" of the named Defendant. The Commonwealth also objects to the highlighted language to the extent the release would appear to attempt to impede or impair the Commonwealth's statutory right to seek relief on behalf of affected Pennsylvanians or otherwise limit Settlement Class Members or Plaintiffs, or any other landowner for that matter, from "participating" in the Commonwealth's ongoing litigation including, without limitation, by witness testimony. The definition of Settled Claims already contains a section indicating what is not included within the definition, and this should be expanded to clarify the limitations of the scope of the release to be consistent with claims that the Settlement Class had standing to bring and/or the

ability to release; the Commonwealth's *parens* claims should be specifically carved out and not included in the release.

The proposed release sweeps too broadly and includes relief well beyond what is necessary to conclude a private class action. The Commonwealth must be free to vindicate the public interest by all means necessary in the ongoing litigation and to be assured that no future arguments will be made, based on the terms of this release, which would impact its litigation in an adverse way.

The language, as currently written in the proposed settlement, is unnecessary and only remains as a source of mischief in the event the Defendants, or others, would want to attach some sort of preclusive effect to this release in the ongoing state court litigation. Admittedly, the private agreement between these parties in the class action should, in theory, in no way impact public proceedings being brought by a non-party to that release. Support for this proposition can be found in the Supreme Court's decision in *Equal Employment Opportunity Commission v. Waffle House*, 534 U.S. 279 (2002), where the Equal Employment Opportunity Commission (EEOC) filed an enforcement action against an employer on behalf of a former employee for violations of the Americans with Disabilities Act. The Supreme Court held that a mandatory arbitration clause in the former employee's employment contract did not bar the EEOC from pursuing victim-specific judicial relief on behalf of the employee.

The Court reasoned that "[t]o hold otherwise would undermine the detailed enforcement scheme created by Congress simply to give greater effect to an agreement between private parties that does not even contemplate the EEOC's statutory function." *Id.* at 296.

Similarly, in *Commodity Futures Trading Commission v. Commercial Hedge Services, Inc.*, 422 F.Supp.2d 1057 (D. Neb. 2006), a federal district court held that a federal agency was not barred from seeking restitution from a company despite the fact that some of the private victims had entered into settlement agreements with the company and received money. The court found that when private parties settle their disputes without the consent of the government agency, those settlements cannot preclude the government agency from later seeking additional or more full restitution or any other remedy. *Id.* at 1061. See also, *Herman v. South Carolina National Bank*, 140 F.3d 1413 (11th Cir. 1998) (recognizing "well-established general principle that the government is not bound by private litigation when the government's action seeks to enforce a federal statute that implicates both public and private interests").

To be sure, neither the named Plaintiffs nor any Class Member has the authority to waive or release any right inherent and statutorily vested with the sovereign. As such, the language objected to lacks any legal authority and should be struck in order to wholly preserve the public function of the Office

which, as a law enforcement body, is guided by different considerations than private concerns in a class action settlement. See *Commonwealth v. Budget Fuel Co.*, 122 F.R.D. 184, 185-86 (E.D. Pa. 1988) (striking class allegations in private class action because overlapping *parens patriae* action, which had been simultaneously filed by Pennsylvania Attorney General, was preferable to the private action seeking the same relief).

## **V. STANDING TO BRING UTPCPL CLAIMS**

Pennsylvania's UTPCPL has several sections under which a claim may be brought, all of which are available to the Commonwealth. Conversely, the named Plaintiffs and Settlement Class Members have only one path to bring claims under Pennsylvania's UTPCPL, 73 P.S. § 201-9.2, for private actions. As discussed below, the named Plaintiffs and Settlement Class Members lack standing to bring their individual claims under the UTPCPL, and even if they had the standing to bring them, they could not do so as a class action.

### **A. Standing to Bring Claims Under the UTPCPL**

Pennsylvania's UTPCPL 73 P.S. § 201-9.2 entitled Private Actions provides for:

Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or

employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater.

Standing to bring a claim under the UTPCPL private right of action is therefore predicated on: 1) a person, 2) purchasing or leasing goods or services, 3) primarily for personal, family or household purposes, 4) sustaining an ascertainable loss, 5) as a result of an act or practice declared unlawful under section 3. The named Plaintiffs and Settlement Class Members would therefore lack standing to assert these claims as they cannot meet the second and third standing elements listed above.

The named Plaintiffs and Settlement Class Members need to show that they “purchase[d] or lease[d] goods or services primarily for personal, family or household purposes” in order to have standing to bring their claims under UTPCPL 73 P.S. § 201-9.2. This is unfortunate because the Pennsylvania Superior Court has ruled that landowners who contract with entities to extract natural resources from their property are generally not purchasers/consumers, who utilize economic goods, but are instead sellers of goods, such as timber, and therefore “cannot bring a private action under Section 201-9.2.” *DeFazio v. Gregory*, 836 A.2d 935, 939 (Pa. Super. 2003).



The Commonwealth, however, would have standing under Sections 201-4 and 4.1 of the UTPCPL to bring the action the named Plaintiffs and individual Settlement Class Members cannot. Sections 201-4 and 4.1 provide, that:

Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by Section 3 of this act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice. 73 P.S. § 201-4. Whenever any court issues a permanent injunction to restrain and prevent violations of this act as authorized in section 4 above, the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions to be established by the court. 73 P.S. § 201-4.1.

Therefore, the release in the proposed settlement should be amended to make clear that claims under the UTPCPL are expressly excluded from the release.

**B. Private Actions Under the UTPCPL and Class Actions**

If the named Plaintiffs and Settlement Class Members had standing to bring claims under the UTPCPL (which they do not), they would also need to show justifiable reliance that their loss was a result of the unlawful act or practice of the defendant as well as causation. *Toy v. Metro. Life Ins. Co.*, 593 Pa. 20, 44, 928 A.2d 186, 201 (2007). Furthermore, “[e]vidence of reliance must go beyond

simply a causal connection between the misrepresentation and the harm; a plaintiff must ‘show that he justifiably bought the product in the first place (or engaged in some other detrimental activity) because of the misrepresentation.’” *Slapikas v. First Am. Title Ins. Co.*, 298 F.R.D. 285, 292 (W.D. Pa. 2014) (citing *Slemmer v. McGlaughlin Spray Foam Insulation, Inc.*, No. 12–6542, 2013 WL 3380590, at \*6 (E.D. Pa. July 8, 2013) (citing *Hunt v. U.S. Tobacco Co.*, 538 F.3d 217, 222 (3d Cir. 2010))).

The Pennsylvania Superior Court noted that “an action under the UTPCPL may not be amenable to class certification due to discrepancies in the respective levels of reliance displayed by individual class members.” *Debbs v. Chrysler Corp.*, 810 A.2d 137, 156 (2002). Pennsylvania Rule of Civil Procedure Rule 1702 requires, for class certification, that “there are questions of law or fact common to the class.” Pa.R.C.P. 1702 (2). This section is textually the same as Fed. R. Civ. P. 23(a)(2). When determining whether a class action is a fair and efficient means of litigating the dispute, “one factor to consider is whether common questions of law or fact predominate over any question affecting only individual members.” Pa. R.C.P. 1708 (a) (1). A similar concern as that addressed in the federal rule. Fed. R. Civ. P. 23 (b) (3).

The Pennsylvania Supreme Court has weighed in on the issue of whether the UTPCPL is amenable to class treatment, and has stated that:

The statute clearly requires, in a private action, that a plaintiff suffer an ascertainable loss *as a result of* the defendant's prohibited action. That means... a plaintiff must allege reliance... In addition, the statute requires him to allege that he purchased... for personal or household purposes as opposed to business purposes... The questions of fact applicable to each individual private plaintiff would thus be numerous and extensive. It cannot be said that the trial court erred in concluding that individual questions of fact would predominate over common issues of fact and law and concluding that **the certification requirements of commonality and numerosity were not met.**

*Weinberg v. Sun Co.*, 565 Pa. 612, 618, 777 A.2d 442, 446 (2001) (emphasis added).

The named Plaintiffs must have individual standing to bring a claim on behalf of others. *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972). The named Plaintiffs must have suffered an injury-in-fact. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Standing cannot be obtained through the back door of a class action. *Allee v. Medrano*, 416 U.S. 802, 829 (1974). The named Plaintiffs have not alleged an injury-in-fact cognizable under the UTPCPL or state and federal antitrust laws. Consequently, there is no authority permitting a release of claims by way of a settlement that the named Plaintiffs and Settlement Class Members would have no standing to raise in any court.

As such, the legislative scheme in Pennsylvania renders a *parens* action as the only methodology to seek relief for numerous Pennsylvanians harmed by common acts or practices in violation of the UTPCPL. Therefore, the release in the proposed settlement should be amended to clarify that claims under the UTPCPL are expressly excluded from the release.

**VI. CHALLENGES TO CLASS ACTION SETTLEMENTS ON THIS BASIS ARE THE REASON CAFA NOTICE IS REQUIRED**

The proposed release language cannot withstand the kind of judicial scrutiny contemplated by the Class Action Fairness Act ("CAFA") which has, as among its stated purposes, to assure fair and prompt recoveries for class members with legitimate claims. *Figueroa v. Sharper Image Corp.*, 517 F. Supp.2d 1292, 1320 (S.D. Fla. 2007).

Among other things, CAFA provides for notice to an appropriate state official defined to mean the person in the state who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the state, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no such primary regulator, supervisor, or licensing authority, then the appropriate state official shall be the State Attorney General. 28 U.S.C. § 1715 (a) (2). This notice must include a reasonable estimate of the number of

Settlement Class Members residing in each state and the estimated proportionate share of the claims made of such member to the entire settlement to that State's appropriate state official. 28 U.S.C. § 1715 (b) (7) (B). Under CAFA, an order giving final approval of proposed settlement may not be issued earlier than 90 days after the later of the dates in which the appropriate state official, and appropriate federal official, are served with the notice required. 28 U.S.C. § 1715 (d).

Federal district courts have recognized that the objections of the Attorneys General made in the interest of protecting their residents should weigh in favor of rejection of the settlement. See, e.g., *Figueroa*, 517 F.Supp.2d at 1328. Attorneys General are increasingly participating in class actions. See, Catherine M. Sharkley, *CAFA Settlement Notice Provision: Optimal Regulatory Policy?* 156 U. Pa. L. Rev. 1971, 1988-1990 (2008) (describing both formal and informal actions taken by state attorneys general). Attorneys General generally participate either by filing a *parens patriae* suit, by intervening in a class action, or, as here, by filing an *amicus curiae* brief in a pending class action.<sup>2</sup> See,

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<sup>2</sup> For example, in September 2001 the Texas Attorney General objected to a proposed settlement of a Pennsylvania class action against Conseco, Inc., regarding whether nursing home policies misled elderly insureds. See, *Milkman v. American Travelers Life Ins. Co.*, 61 Pa. D. & C.4th 502 (Phila. C.P. March 28, 2002); see also, *Roller-Edelstein v. Wyndham International, Inc.*, Case No. 02-04946-A, (Cir. Ct -Dallas 2006) (Florida Attorney General objected to proposed class action settlement concerning disclosure of prices at hotel chain).

Edward Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. Chi. Legal F. 403, 449-450.<sup>3</sup>

Here, the objections raised by the Office go to the heart of the fairness of the settlement terms. The Commonwealth has focused its objections solely on the release language in the proposed settlement. The fact that the Commonwealth has not formally objected to any other terms in the proposed settlement, including but not limited to the relief provided to Settlement Class Members, should not be viewed as an endorsement by the Commonwealth of those terms. In the case at bar, the settlement does not withstand scrutiny on the basis of the release language alone.

## **VI. CONCLUSION**

The parties to this class action have negotiated a Settlement Agreement which purports to release *parens patriae* claims seeking various forms of relief in addition to claims for which the named Plaintiffs and individual Settlement Class Members lack standing to bring. *Parens patriae* claims belong uniquely and

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<sup>3</sup> See, e.g., *Heaton v. Monogram Credit Card Bank of Georgia*, 297 F.3d 416, 426-27 (5th Cir. 2002) (allowing intervention by FDIC into class action alleging credit card fees to be illegal); *In re Prudential Ins. Co. of America Sales Practices Litigation*, 148 F.3d 283 (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).

exclusively to the Commonwealth acting through its Office of Attorney General, and cannot be brought or released through private class actions. For these reasons, the Commonwealth urges this Court to reject the Settlement Agreement unless it is revised to prevent the overbroad release of the Commonwealth's claims. The Commonwealth respectfully requests this Court modify paragraph 1.38 of the Settlement Agreement to include the following:

The Settled Claims do not include claims the Commonwealth of Pennsylvania, through the Office of Attorney General, may bring as *parens patriae* on behalf of Pennsylvania citizens for violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1, *et seq.*, and state and federal antitrust laws to obtain the full range of remedies including, but not limited to, injunctive relief, civil penalties, damages and statutory restitution.

This modification would remove all doubt and ensure that the Commonwealth can bring its claims under the UTPCPL and state and federal antitrust laws. Moreover, when the Release is read together with the Settled Claims, as modified, the Commonwealth can freely communicate with and recover relief on behalf of the Settlement Class Members without any repercussion.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

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**CERTIFICATE OF WORD COUNT**

As required by the United States District Court for the Middle District of Pennsylvania Rules of Court Rule LR 7.8(b), I certify that this document contains 4,904 words.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 9, 2015.

s/ Norman W. Marden,  
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## **EXHIBIT "A"**