

CAUSE NO. CV-96-423

RONNIE AND NANCY HAESE, ET AL.,)	IN THE DISTRICT COURT FOR
)	
PLAINTIFFS,)	KLEBERG COUNTY, TEXAS
)	
vs.)	
)	105 TH JUDICIAL DISTRICT
H&R BLOCK, INC., ET AL.,)	
)	
DEFENDANTS.)	

MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE REQUEST OF THE FEDERAL TRADE COMMISSION TO APPEAR AS AMICUS CURIAE REGARDING THE PROPOSED CLASS ACTION SETTLEMENT AND PETITION FOR AN AWARD OF ATTORNEYS' FEES

The Federal Trade Commission (“Commission”) respectfully moves this Court for leave to file a memorandum of law as *amicus curiae* regarding the proposed class action coupon settlement and plaintiffs’ counsel’s request for attorneys’ fees in this case. This Court has discretion to consider the arguments of *amici curiae*, whose function is described by the Texas Supreme Court in *Burger v. Burger*, 298 S.W.2d 119, 120-21 (Tex. 1957) as follows:

A true *amicus curiae* is without interest in the litigation in which he appears. He is a ‘bystander’ whose mission is to aid the court, to act only for the personal benefits of the court. There are many authorities, but we deem it adequate to cite only a few. *See Thomas v. Driver*, 55 S.W.2d 187, *Broome v. Smith*, 265 S.W.2d 897, *Walker County Lbr. Co. v. Edmonds*, 298 S.W. 610, *Jackson v. Birk*, 84 S.W. 2d 332, *Olcott v. Reese*, 291 S.W. 261, and *The State of Texas v. Jefferson Iron Co.*, 60 Texas 312; Amer. Jur. Vol 2, p.679, sec.2.

See also, Allison v. The Honorable Al Walvoord, Judge of the County Court At Law Midland

County, 819 S.W.2d 624, 627 (Civ. App. El Paso 1991)(Woodard concurring)(recognized the trial court's ability to make use of amicus curiae in a mandamus petition involving the construction of Section 130A of the Texas Probate Code). For the reasons set forth below, the Commission believes the Court may benefit from its views in this matter.

The Commission is an independent law enforcement agency whose mission is to promote the efficient functioning of the marketplace by protecting consumers from unfair or deceptive acts or practices and to increase consumer choice by promoting vigorous competition. The FTC's primary legislative mandate is to enforce the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.* ("FTC Act"), which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.¹

Pursuant to this authority, the Commission routinely brings enforcement actions to further both its consumer protection and competition (antitrust) missions. Commission enforcement actions routinely seek monetary relief, including refunds for consumers. In fiscal year 2002, for example, the Commission obtained 73 administrative orders and federal district court judgments ordering the payment of over \$155 million in redress programs, including the drafting and mailing of notices, the processing of consumer claims, and the payment of cash refunds to consumers. The FTC typically dispenses millions of dollars in redress to consumers each year.

The Commission also has experience with non-pecuniary and other redress programs, including programs involving product discounts, computer upgrades and other forms of relief.

¹ The FTC Act provides the Commission with broad enforcement authority and jurisdiction over most of the economy. Certain entities, such as depository institutions and common carriers are wholly or partially exempt from FTC jurisdiction, as is the business of insurance. In addition to the FTC Act, the Commission has enforcement responsibilities under more than 40 statutes, including the Truth-in-Lending Act.

See, e.g., American Body Armor and Equipment, Inc., 118 F.T.C. 982 (1994) (respondent ordered to provide a 40% discount on replacement body armor); *Apple Computer, Inc.*, 124 F.T.C. 184 (1997) (respondent ordered to provide personal computer upgrade kits at less than half the original list price); *Sharp Electronic Corp.*, Docket No. C-4002 (Order Mar. 7, 2001) (respondent ordered to upgrade handheld personal computers for a shipping and handling fee of \$10); *FTC v. Access Resource Services, Inc.*, No. 02-60226 (S.D. Fl. Nov. 4, 2002) (respondent ordered to stop collection on and forgive an estimated \$500 million in outstanding consumer charges, return to consumers all uncashed checks and pay the FTC \$5 million); and *United States v. Mercantile Mortgage Co., Inc.*, No. 02C 5079 (N.D. Ill. Aug. 23, 2002) (respondent ordered to refinance loans of certain borrowers on favorable terms and pay \$250,000 to the FTC).

Finally, the Commission has been granted *amicus* status by other courts to comment on whether proposed consumer class action settlements were fair, reasonable or adequate and requested attorneys' fees should be approved. *See Erikson v. Ameritech Corp.*, No. CH 18873 (Cir. Ct. Cook County, Ill. Sept. 18, 2002); *Carter v. ICR Serv. Inc.*, No. 00-C-2666-W (N.D. Ala. Sept. 6, 2002).

Class action coupon settlements, which are often hard to value, require rigorous scrutiny, particularly when coupled with agreements by defendants to pay high attorneys fees to class counsel. Based on its responsibilities and experience in this area, the Commission respectfully suggests that the Court may benefit from having its views on the proposed class action coupon settlement and the request for attorneys' fees in this case. The Commission's Memorandum of Points and Authorities as Amicus Curiae Regarding the Proposed Class Action Coupon

Settlement and Petition for an Award of Attorneys' Fees is attached hereto for the Court's consideration.

Dated: June 4, 2003

Respectfully submitted,

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