

1 Plaintiff Lilia Perkins on behalf of herself and the Class hereby submits this brief in
2 Opposition to Truth In Advertising, Inc.'s ("TINA") Motion for Leave to File Brief as Amicus
3 Curiae in Opposition to Proposed Settlement.

4 **I. Class Counsel Joins Philips' Argument Regarding TINA's Lack of Standing and**
5 **TINA's Failure to meet basic requirements for an Amicus submission.**

6 Philips Oral Healthcare, Inc. and Philips Electronics North America Corporation
7 ("Defendants" or "Philips") filed their opposition October 31, 2013. *See generally* Philips
8 Opposition to Motion For Leave To File Brief as Amicus Curiae by Truth in Advertising, Inc.
9 ("Philips Opposition to Amicus"), Dkt. #35. Class Counsel believes that Defendants adequately
10 addressed the issue of standing in their brief. *See* Philips Opposition to Amicus, pp. 2-4. Further,
11 as discussed by Philips, TINA's filing fails as an Amicus brief. *See Id.* at pp 4 -5. Class Counsel
12 hereby joins Philips in those arguments.

13 **II. The Class will receive more value for the Voucher than TINA has lead this Court**
14 **to believe.**

15 Not all coupons are the same and not all coupons are bad. TINA's assertions that the Class
16 will receive nothing of value and Philips will actually benefit from the Class Settlement are false.
17 See TINA's Amicus Brief at p 4 (Dkt. # 32) ("These coupons do not provide the Class Members
18 with any meaningful or adequate compensation.") Further assertions by TINA that Class Members
19 "will not receive any compensation whatsoever from the settlement unless they purchase another
20 product from Philips" is deceptive at best. *See Id.* at p 5, Ins. 9-11.

21 First, it should be noted that Settlement Agreement provides for "Vouchers" for Class
22 Members and not "Coupons" as TINA asserts. There is a difference between a coupon and a
23 voucher. *See Foos v. Ann, Inc.*, 2013 U.S. Dist. LEXIS 136918, 5 (S.D. Cal. Sept. 23, 2013) ("The
24 distinction between a coupon and a voucher is that a coupon is a discount on merchandise or
25 services offered by the defendant and a voucher provides for free merchandise or services.") In
26 *Foos*, part of the settlement was for a \$15.00 voucher, which would enable customers to receive
27 free merchandise. *See Id.* at p. 6. In that case, the Court awarded attorney's fees based on a
28 loadstar method because the settlement was for a voucher and not a coupon. *Id.*

1 There are many products that Class Members can purchase with their Voucher without
 2 giving Philips another dime of their money. The Class members will receive a Voucher for
 3 \$33.00, \$23.00 or \$7.00. The following is a partial list of products that Class Members could
 4 purchase with their Vouchers and not have to pay Philips any money:

5 - \$33.00

- 6 ○ Xtreme Battery Operated Sonicare Toothbrush – 29.99 – Philips.com
- 7 ○ Philips Avent Pink Bottles (5 Pack) - \$23.99 – target.com
- 8 ○ Philips Norelco Replacement Head - \$24.49 – target.com
- 9 ○ Philips Lighting 2 Count 13 Watt Soft White Energy Saver - \$31.95 – walmart.com
- 10 ○ Philips Lighting 4 Count 40 Watt Bent Tip Decorative Bulb - \$32.98 –
- 11 walmart.com
- 12 ○ Philips In-Ear Headset - \$29.11 – walmart.com

13 - 23.00

- 14 ○ Battery Operated Sonicare Toothbrush - \$19.99 – Philips.com
- 15 ○ Philips Avent BPA Free Natural Bottles - \$10.69 – target.com
- 16 ○ Philips Norelco Multigroom - \$19.99 – target.com
- 17 ○ Philips Norelco Replacement Head - \$22.99 – target.com
- 18 ○ Sonicare Power-Up Sensitive Replacement Brush Heads (3 Pack) – 14.99 –
- 19 walmart.com
- 20 ○ Philips Over-the-Ear Earhook Headphones - \$8.97 – walmart.com
- 21 ○ Philips Norelco Precision Ear & Nose Trimmer Set - \$19.47 – walmart.com

22 - \$7.00

- 23 ○ Philips Avent BPA Free Soothie Pacifiers (Various), \$3.59- \$5.99 – target.com
- 24 ○ Philips Avent BPA free Natural 9 ounce bottle - \$6.19 – target.com
- 25 ○ Philips Avent Natural Drinking Cup - \$6.99 – target.com
- 26 ○ Philips Slimshell Sport for iPod nano G5 - \$4.52 – walmart.com

27 See Declaration of Eric M. Overholt Re: Online Products attached herewith and Attachments 1-3.

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1 The Class Action Settlement provides real and meaningful recovery for Class Members.
2 By no means are these ordinary coupons, which are only good for a percentage off of a product
3 and have heavy restrictions. This Voucher is designed to be as inclusive as possible: the Voucher
4 is good at a number of nationwide locations, is good for one year, is fully transferable, does not
5 require Class Members to spend any additional money, and can be combined with additional
6 promotions and discounts.

7 **CONCLUSION**

8 Plaintiff's respectfully request that this Court Deny TINA's Motion For Leave to File Brief
9 as *Amicus Curiae*.

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11 Respectfully Submitted,

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HIDEN, ROTT & OERTLE, LLP

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15 By: s/ERIC M. OVERHOLT
16 Michael Ian Rott, Esq.
17 Eric M. Overholt, Esq.
Attorneys for Plaintiff and the Class

HIDEN, ROTT & OERTLE, LLP

2635 Camino Del Rio South, Suite 306
San Diego, California 92108
TEL (619) 296-5884 FAX (619) 296-5171