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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION

13
 14 **THE STATE OF CALIFORNIA,**

15 Plaintiff,

16 v.

17 **EBAY INC.,**

18 Defendant.

CASE NO. CV 12-5874-EJD-PSG

**NOTICE OF MOTION AND MOTION
 FOR PRELIMINARY APPROVAL OF
 SETTLEMENT; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT**

Date: August 29, 2014
 Time: 9:00 am
 Dept: Courtroom 4, 5th Floor
 Judge: Edward J. Davila

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NOTICE OF MOTION AND MOTION**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

PLEASE TAKE NOTICE that on August 29, 2014, at 9:00 am or as soon thereafter as may be heard, in Courtroom 3 on the 5th Floor of the United States District Court for the Northern District of California, San Jose Division, located at 280 South 1st Street, San Jose, California 95113, Plaintiff the State of California (“California”) will move for an order granting preliminary approval of the proposed settlement (the “Settlement”) between California and Defendant eBay Inc. (“eBay”). Pursuant to Sections 4C and 16 of the Clayton Act, 15 U.S.C. §§ 15c and 26, and the Cartwright Act, Cal. Bus. & Prof. Code § 16760, *et seq.*, California requests that the Court grant preliminary approval to (1) the proposed Settlement and (2) the Notice and Opt-Out Procedures. California also requests that the Court order that notification to eligible individuals begin within thirty (30) days of the Court’s Preliminary Approval and that a schedule for publication be established in accordance with the dates in the attached proposed Preliminary Approval Order. California also requests that the Court schedule a fairness hearing to determine whether the Settlement should be granted final approval in three hundred (300) days, after Notice has been completed and claims have been received.

This motion is based on this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities, the accompanying Declarations of Nicole Gordon, Jon M. Riddle, Ph.D., and Alan Vasquez, any further papers filed in support of this motion, any argument by the Attorney General, and any and all pleadings and records on file in this matter.

Dated: May 1, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California

/s/ Nicole S. Gordon
NICOLE S. GORDON
Deputy Attorney General
Attorneys for Plaintiffs

ISSUES TO BE DECIDED**(Local Rule 7-4(a)(3))**

1. Whether the Court should preliminarily approve the Settlement Agreement.
2. Whether the Court should approve the form and content of the proposed notice to be sent to natural persons who resided in, or have resided in, California since January 1, 2005 and were employed by either eBay or Intuit between 2005 and 2009.

I. INTRODUCTION

The California Attorney General, pursuant to Sections 4C and 16 of the Clayton Act, 15 U.S.C. §§ 15c and 26, and the Cartwright Act, Cal. Bus. & Prof. Code § 16760, *et seq.*, respectfully moves this Court to grant preliminary approval of the proposed Settlement Agreement with eBay Inc. in this action (the "Settlement"). The proposed Settlement grants California injunctive relief and requires eBay to pay a total \$3.75 million to resolve claims brought by California alleging that eBay entered into an unlawful agreement to restrict employment with Intuit, Inc. in violation of state and federal antitrust laws. Of the \$3.75 million, \$2.375 million will be set aside to be distributed to the employees and prospective employees of eBay and Intuit that were affected by the alleged unlawful agreement.

California respectfully requests that the Court preliminarily approve (1) the proposed Settlement and (2) the Notice and Opt-Out Procedures. Preliminary approval of the Settlement would allow California to begin the process under which affected employees may file claims to receive their share of the settlement funds.

II. PROCEDURAL HISTORY

The California Attorney General filed the instant matter, *The State of California v. eBay Inc.*, on November 16, 2012, alleging that eBay agreed to enter into a no-solicitation and no-hiring agreement in violation of Section 1 of the Sherman Act, the Cartwright Act, and the California Unfair Competition Law. California alleged that eBay and co-conspirator Intuit, Inc. ("Intuit"), pursuant to their agreement, agreed not to recruit each other's employees and eBay agreed not to hire any Intuit employees, even those that approached eBay for a job. This agreement harmed employees by lowering the salaries and benefits they might otherwise have

1 commanded, and deprived these employees of better job opportunities at the other company. A
2 related case, *U.S. Department of Justice v. eBay Inc.* (Case No. CV12-5869-EJD), was filed the
3 same day, and California has coordinated with the U.S. Department of Justice throughout the
4 course of this litigation.

5 eBay moved to dismiss the Complaint on January 22, 2013. California responded to eBay's
6 motion on February 26, 2013, and eBay replied on March 19, 2013. A motion to dismiss hearing
7 was held for both California's case and the United States' case on April 26, 2013. On September
8 27, 2013, this Court issued an order granting eBay's motion to dismiss California's case, but gave
9 California leave to amend its complaint. California filed its Second Amended Complaint on
10 October 11, 2013, and eBay filed another motion to dismiss on November 22, 2013. California
11 filed an opposition to eBay's second motion to dismiss on December 6, 2013.

12 On January 21, 2014 California and eBay jointly stipulated to a stay of the case. On March
13 21, 2014, in light of the stay, the Court terminated eBay's November 22, 2013 Motion to Dismiss
14 without prejudice.

15 The Settlement negotiations were conducted on an arm's length and non-collusive basis
16 among counsel who are experienced in antitrust law. Plaintiffs are the State of California and the
17 Attorney General acting as *parens patriae* on behalf of natural persons residing in the State. The
18 Settlement contemplates the filing of a third amended complaint.

19 **III. THE PROPOSED SETTLEMENT**

20 The Settlement between California and eBay is comprised of four components: (A)
21 monetary payments from eBay totaling \$3.75 million, (B) injunctive relief for California, (C)
22 eBay's cooperation with California, and (D) release of claims against eBay.

23 **A. Monetary Payments**

24 **1. *Payments to Natural Persons***

25 Of the \$3.75 million, \$2.375 million will be set aside as restitution for employees or
26 prospective employees at eBay and Intuit who were affected by the agreement. The proposed
27 Settlement provides for restitution to three groups of natural persons who are residing in or have
28 resided in California since January 1, 2005 (the "Settlement Period"), and who were employed by

1 eBay or Intuit over the Settlement Period (each, a “Claimant”). Restitution payments will be
 2 made to three distinct pools described below (each, a “Claimant Pool”), and a Claimant can only
 3 recover as a member of one of the three pools, even if the Claimant may meet the criteria for
 4 more than one of the Claimant Pools.

5 Claimant Pool One is comprised of the approximately forty persons: (a) who, during the
 6 Settlement Period, were employed by Intuit and considered for but not offered a position at eBay,
 7 and (b) whom eBay has identified from documents in its possession, and (c) who is named on a
 8 list derived by eBay from its records that eBay will provide to California.

9 Claimant Pool Two is comprised of the approximately nine hundred fifty persons: (a) who,
 10 during the Settlement Period, were employed by Intuit, and (b) applied for but were not offered a
 11 position at eBay, and (c) are not a member of Claimant Pool One or Claimant Pool Three, and (d)
 12 who are named on a list derived by eBay from its records that eBay will provide to California.

13 Claimant Pool Three is comprised of anyone: (a) who was employed by either eBay or
 14 Intuit during the Settlement Period, and (b) who is not a member of either Claimant Pool One or
 15 Claimant Pool Two, and (c) whose employment by either eBay or Intuit during the Settlement
 16 Period can be reasonably confirmed.

17 Below are the total amount of funds allocated to each pool, the estimated number of
 18 claimants for Pool One and Two, and the minimum and maximum recovery per claimant:

Claimant Pool	Total Funds Allocated to Pool	Estimated Number of Claimants	Minimum Recovery per Claimant	Maximum Recovery per Claimant
One	\$200,000	40	\$5,000	\$10,000
Two	\$950,000	950	\$1,000	\$1,500
Three	\$1,225,000	13,000	None	\$150

23 Any amount remaining in the Settlement Fund Account after the claims of the Claimants
 24 are redeemed within the time period approved by the Court will be distributed by the State for *cy*
 25 *pres* purposes to one or more charitable organizations, pursuant to California Business and
 26 Professions Code Section 16760(e)(1) (each, a “*Cy Pres* Recipient”). As a condition to receiving
 27 any payment under this section, each *Cy Pres* Recipient must agree to use the funds for public
 28 education and/or to support research, development, and initiatives related to promoting

1 employment mobility in the high-tech industry. A list of proposed *Cy Pres* Recipients will be
2 presented to the Court at the final approval hearing, and the Court must approve the proposed
3 Recipients before funds will be disbursed.

4 **2. *Payments to California***

5 The remaining \$1.375 million of the \$3.75 million monetary payment from eBay will be
6 paid to California to satisfy eBay's liabilities to the State and for attorney's fees and claims
7 administration costs. No part of the funds designated for payment to natural person Claimants
8 will be used for reimbursement of California's costs, penalties, or other fees or expenses.

9 a. Civil Penalties

10 eBay will pay \$250,000 to satisfy Civil Penalties claimed by California.

11 b. Harm to the California Economy

12 eBay will pay \$300,000 to satisfy claims by California that alleged eBay's agreement has
13 harmed the California economy, including deadweight loss.

14 c. Attorney's Fees and Costs

15 eBay will pay \$675,000 to compensate California for attorney's fees and costs, including
16 reimbursements for the costs of investigation and litigation expenses incurred in obtaining
17 approval of the settlement.

18 d. Claims Administration Costs

19 eBay will pay \$150,000 which represents the reasonable costs associated with
20 administering the Settlement, including expert costs and the proposed Notice and Opt-out
21 Procedures.

22 **B. Injunctive Relief**

23 In addition to the monetary terms of the Settlement, eBay has agreed to an injunction with
24 both California and the United States Department of Justice.

25 Under the proposed Settlement, eBay would be enjoined from entering into an agreement
26 with another entity to refrain from recruiting or competing for employees of another company,
27 except for agreements that are not prohibited by existing law. The injunction precludes further
28 conspiratorial conduct and requires that existing no-direct-solicitation provisions not be enforced.

1 These requirements are intended to ensure that competition for talent is restored in the high-tech
2 sector in California.

3 **C. Cooperation**

4 As part of the proposed Settlement, eBay agrees to provide documents and information
5 relevant to the litigation or settlement, including identifying individuals, such as current or former
6 employees, who may provide relevant information necessary to implement the terms and
7 conditions of this proposed Settlement.

8 **D. Release**

9 In consideration of the monetary and injunctive provisions contained in the proposed
10 Settlement, the State of California, the Attorney General, and any California natural person (1)
11 whose claims are represented by the California Attorney General acting in her capacity as *parens*
12 *patriae* powers under Sections 4C and 16 of the Clayton Act, 15 U.S.C. §§ 15c and 26, and the
13 Cartwright Act, Cal. Bus. & Prof. Code § 16760, and (2) who did not timely file an opt-out as set
14 forth in the proposed Notice and Opt-Out Procedures, release all claims that were or could have
15 been asserted against eBay in connection with the facts and events alleged in the Complaints filed
16 by California in this matter.

17 **IV. THE PROPOSED SETTLEMENT MEETS THE STANDARD FOR** 18 **PRELIMINARY APPROVAL**

19 **A. The Standard for Preliminary Approval**

20 This case has been brought by the California Attorney General on behalf of both the State
21 of California and as *parens patriae* on behalf of natural persons in California pursuant to Sections
22 4C and 16 of the Clayton Act, 15 U.S.C. §§ 15c and 26, and the Cartwright Act, Cal. Bus. & Prof.
23 Code § 16760. Both the Clayton Act and the Cartwright Act provide that the Attorney General
24 may bring antitrust claims for damages on behalf of natural person residents of the State.
25 Because neither statute sets forth a standard by which proposed *parens patriae* settlements are
26 approved, federal courts—including the Northern District of California in *In Re TFT-LCDs*—
27 have adopted the approval procedure and standards used for preliminary approval in class action
28 settlements under Federal Rule of Civil Procedure Rule 23. *In re TFT-LCD (Flat Panel) Antitrust*

1 *Litig.*, M 07-1827 SI, 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013) (granting final approval to a
2 combined class and *parens* settlement after preliminary approvals in 2012). Other jurisdictions
3 also follow this approach: “[w]hile the statute does not state the standard to use in approving a
4 *parens patriae* settlement, courts have adopted the standard used in class actions.” *States of N.Y.*
5 *& Md. et al. v. Nintendo of Am., Inc.*, 775 F. Supp. 676, 680 (S.D.N.Y. 1991) (granting final
6 approval of a nationwide *parens* settlement over the objections of certain plaintiffs because
7 sufficient notice was provided pursuant to the preliminary approval order). “Under this standard,
8 the Court will approve the Settlement Agreements if they are fair, reasonable and adequate.” *Id.*;
9 *see also In re Toys “R” Us Antitrust Litig.*, 191 F.R.D. 347, 351 (E.D.N.Y. 2000); *New York v.*
10 *Salton, Inc.*, 265 F. Supp. 2d 310, 313 (S.D.N.Y. 2003) (noting that “[a]lthough [15 U.S.C.]
11 section 15c(c) does not specify the legal standard for approval [of *parens patriae* settlements],
12 courts look generally to the standard applied in approving class action settlements under Federal
13 Rule of Civil Procedure 23(e).”).

14 Federal Rules of Civil Procedure Rule 23(e) requires a district court, when considering
15 whether to give approval to a proposed class action (and, in this case, *parens*) settlement, to
16 determine whether a proposed settlement is “fundamentally fair, adequate, and reasonable.” *In re*
17 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). Final court approval of these
18 settlements is a two-step process. In the first step, the court makes a preliminary evaluation of the
19 fairness of the settlement. *Id.* In the Northern District of California, preliminary approval of a
20 class action (and, in this case, *parens*) settlement may be granted if it “appears to be the product
21 of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
22 grant preferential treatment to class representatives or segments of the class, and falls within the
23 range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D.
24 Cal. 2007) (citation and internal quotation marks omitted) (emphasis added).

25 If the district court grants preliminary approval, the second step of approval occurs. Notice
26 is given to the class members (or affected natural persons) of a hearing when affected entities and
27 the settling parties may be heard with respect to final approval of the settlement. The goal of the
28 final fairness hearing is to provide all information necessary for the judge to rule intelligently on

1 whether the proposed settlement is “fair, reasonable, and adequate.” *In re Mego Fin Corp. Sec*
2 *Litig.*, 213 F.3d at 458. At both the preliminary approval and the final approval stages, the factors
3 considered are similar; the difference is that at the preliminary approval stage, the proposed
4 settlement must fall within the “range of reasonableness,” while at the final approval hearing, the
5 proposed settlement must be found to be actually reasonable. *In re Tableware*, 484 F. Supp. 2d at
6 1079; *In re Mego*, 213 F.3d at 458-60.

7 The Ninth Circuit has identified several factors used to assess whether a settlement proposal
8 is fair, adequate and reasonable, and they include: (1) the strength of the Plaintiffs’ case and the
9 risk, expense, complexity, and likely duration of further litigation; (2) the amount offered in
10 settlement; (3) the extent of discovery completed and the stage of the proceedings; and (4) the
11 experience and views of counsel and the absence of collusion between the parties. *In re Mego*,
12 213 F.3d at 458-60. Here, each relevant factor supports the conclusion that the proposed
13 settlement is within the range of fairness, adequacy, and reasonableness for preliminary approval.

14 **B. Preliminary Approval Should be Granted because the Settlement is Fair,
Reasonable, Adequate, and within the Range of Possible Approval**

15 **1. *The Strength of California’s Case in Light of the Risk, Expense,
Complexity, and Likely Duration of Further Litigation Favors
Settlement***

17 California alleges that eBay violated the Sherman Act, the Cartwright Act, and the Unfair
18 Competition Law through its illegal agreement with Intuit. In comparison to the expense and
19 uncertainty of continued litigation, this Settlement provides definite, rapid recovery for affected
20 individuals. This suggests that the proposed Settlement Agreement is fair, adequate, and
21 reasonable, and within the range of possible approval.

22 While California believes it has strong liability claims against eBay, it was clear that eBay
23 would mount a vigorous defense. eBay succeeded in its first motion to dismiss California’s case.
24 California promptly amended its complaint, but recognizes the inherent risk in litigation.
25 Moreover, any recovery would be delayed by years.

26 **2. *The Amount Offered in Settlement is Significant and Favors Settlement***

27 For affected employees of eBay and Intuit, the benefits of this Settlement are numerous.
28 The bulk of the \$3.75 million settlement would support the *parens patriae* release and provide

1 restitution to injured employees. The \$2.375 million restitution fund that will be created provides
2 ample, definite recovery for individuals affected by the agreement between eBay and Intuit.
3 \$2.375 million is also comparable to the \$4.5 million settlements (\$3.15 million after an expected
4 30% deduction for attorney's fees) reached with Lucasfilms and Pixar in the private no poach
5 class action, *In re High-Tech Employee Antitrust Litigation*, Case No. 11-CV-2509-LHK (N.D.
6 Cal. filed May 4, 2011). In the absence of a class action, this Settlement represents the only
7 practical means for eBay employees to recover on an individual basis, especially eBay employees
8 whose private rights of action may already be time-barred due to the four-year statute of
9 limitations in antitrust matters. 15 U.S.C. § 15b.

10 **3. *The Extent of Discovery Completed and the Stage of Proceedings***
11 ***Indicate Settlement May be Appropriate***

12 The parties have reached settlement relatively early in the litigation, obviating the need for
13 a continuation of expensive and time-consuming fact and expert discovery. Nonetheless, the
14 Attorney General has conducted an extensive investigation to evaluate the factual and legal
15 strengths and weaknesses of this case. California has had access to discovery conducted by the
16 U.S. Department of Justice, and Deputy Attorneys General have reviewed thousands of pages of
17 documents, including emails directly linking eBay's senior management to the agreement and
18 emails showing that the agreement had a direct negative impact on prospective employees.

19 Based on the information available, the Attorney General is sufficiently informed of the
20 nature of the claims and defenses to this action, and as a result is in a good position to evaluate
21 the settlement for its fairness, adequacy, and reasonableness.

22 **4. *The Experience and Views of Counsel and the Absence of Collusion***
23 ***Between the Parties Further Supports Settlement***

24 The proposed settlement was reached through arms length negotiation between experienced
25 lawyers in the Attorney General's antitrust section and counsel for eBay, who have considerable
26 experience in antitrust, complex, and class action litigation. Gordon Decl. ¶1. Settlement
27 negotiations involved numerous telephone conferences, a face-to-face meeting, and exchanges of
28 written communications. *Id.* at ¶3-4. The process was contested and conducted in good faith. *Id.*

Experienced counsel's judgment that the settlement is fair, reasonable, and adequate is
entitled to great weight. See *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.Cal. 1980),

1 aff'd, 661 F.2d 939 (9th Cir. 1981) ("The fact that experienced counsel involved in the case
2 approved the settlement after hard-fought negotiations is entitled to considerable weight.").
3 Indeed, there is generally "an initial presumption of fairness when a proposed class settlement,
4 which was negotiated at arms' length by counsel for the class, is presented for court approval."
5 *Newberg on Class Actions* at 11.41 (4th ed. 2002). Further, this Court should accord additional
6 weight to this presumption here as the Attorney General, who is charged with the trust of
7 protecting the state and its citizens, negotiated the settlement. *In re Lorazepam & Clorazepate*
8 *Antitrust Litigation*, 205 F.R.D. 369, 380 (D.D.C. 2002) (settlement negotiated by government
9 attorneys committed to protecting public interest entitled to greater weight); see also *Dunk v.*
10 *Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (Cal. App. 1996) (presence of governmental
11 participant is a relevant factor in determining whether a settlement is fair).

12 **V. THE CY PRES PLAN FOR DISTRIBUTION OF REMAINDER FUNDS AND**
13 **THE AMOUNT OF ATTORNEYS' FEES REQUESTED ARE REASONABLE**

14 **A. California's Cy Pres Distribution of Any Remainder Funds is Reasonable**

15 In a number of multistate cases involving the nationwide settlement of primarily federal
16 antitrust claims, state attorneys general received the approval of the federal courts for a *cy pres*
17 distribution of the whole or a substantial part of a settlement fund, especially when distribution of
18 settlement proceeds to individuals was not feasible. See, e.g., *In re Music Compact Disc*
19 *Minimum Advertised Price Litigation*, 216 F.R.D. 197, 208-210, 214 (D. Maine 2003); *In re*
20 *Toys-R-Us Litig.*, *supra*, 191 F.R.D. at 355. The Ninth Circuit has observed that any *cy pres*
21 award must (1) address the underlying objectives of the statutes involved, (2) target the interests
22 of the plaintiff class, (3) provide reasonable certainty that members of the settling class will
23 benefit, and (4) account for the broad geographic distribution of the class. *Nachshin v. AOL*, 663
24 F.3d 1034, 1040 (9th Cir. 2011).

25 In this Settlement, each proposed *Cy Pres* Recipient must agree to use the funds for public
26 education and/or to support research, development, and initiatives related to promoting
27 employment mobility in the high-tech industry. Plaintiff will strive to select local non-profit
28 organizations that work directly to advance the causes of employment mobility and employee
rights, which address the underlying objectives of the antitrust statutes and target the interest of

1 the natural persons affected by eBay's agreement. These organizations should work mainly within
2 the San Francisco Bay Area, which corresponds well with the geographic distribution of the
3 affected natural persons and thus provides reasonable certainty that those affected will benefit.

4 **B. California's Request for Attorney's Fees and Costs is Reasonable**

5 The Attorney General is requesting \$675,000, which is 18% of eBay's \$3.75 million
6 monetary payment, for attorneys' fees and costs. The amount requested is well below a typical
7 25% benchmark for reasonable common fund attorneys' fees, and is only slightly higher than the
8 statutory minimum of 10%, even including costs. Cal. Bus. & Prof. Code § 16750, subd. (c); *see*,
9 *e.g.*, *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

10
11 **VI. THE PROPOSED NOTICE AND OPT-OUT PROCEDURES SHOULD BE APPROVED**

12 California seeks this Court's approval of the proposed Notice and Opt-Out Procedures.
13 Draft notices are attached as Exhibit C to the Gordon Declaration.

14 **A. Notice and Opt-Out Procedures**

15 The Notice and Opt-Out Procedures developed for this Settlement envision a process
16 featuring direct, targeted notice to as many of the affected individuals as possible.

17 Within 90 days of Preliminary Approval, direct and publication notices will inform
18 potential Claimants of the proposed Settlement and provide instructions on how a Claimant can
19 file a Claim, request to be excluded from the settlement, and/or object to the settlement. Potential
20 Claimants shall have 180 days after Preliminary Approval (90 days after completion of Notice) to
21 submit claims, request to be excluded, or object to the settlement. ("Response Period") To
22 facilitate Notice, within 30 days of the Court's preliminary approval of this Settlement, eBay will
23 provide California with a list of possible Claimants and associated information derived from
24 eBay's internal databases.

25 Direct notice will be provided to each potential Claimant via both a postcard and an email
26 (if that potential Claimant's email address is available) directing potential Claimants to a
27 Settlement Website that includes all relevant documents with the ability to file claims, request
28 exclusion, or file objections online. Claimants can also send an email or mail a letter to the

1 claims administrator to file a claim, request an exclusion, or file an objection.

2 Publication notice will be provided as follows: First, one time publication of a 1/6 page
3 summary Notice in the San Jose Mercury News positioned next to articles relating to consumer
4 electronics (if possible) as the default notice by publication. Next, a supplemental notice by
5 publication via Sponsored Links advertising on major search engines, display advertising through
6 the Google Display network, direct notice through e-mail of all those natural persons resident in
7 this State who can be identified through reasonable efforts, and a party-neutral press release that
8 would be issued by the Attorney General. All of these notices will direct potential Claimants to
9 the Settlement Website. The Settlement Website will also be linked from the Attorney General's
10 website (<http://oag.ca.gov>).

11 Within 120 days after the end of the Response Period, California or its designated
12 settlement administrator will prepare a Report for the Court that lists eligible Claimants, provides
13 information on objections and exclusions, confirms that Notice has been completed, and includes
14 a plan of distribution to each Claimant Pool as well as distribution to *Cy Pres* Recipients if
15 applicable. Payment to all eligible Claimants will be made no later than 60 days after the Court
16 gives its Final Approval to this Settlement.

17 **B. The Notice and Opt-Out Procedures Meet the Requirements of Due
18 Process**

18 Affected natural persons are entitled to due process: persons must be given notice of the
19 proposed settlements and their rights, including the right to exclude themselves and the
20 opportunity to be heard. 15 U.S.C. § 15c(b)-(c); Cal. Bus. & Prof. Code § 16760(b); *Phillips*
21 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). However, the details of the notice process are
22 within the discretion of the Court, and notice is satisfactory as long as it “generally describes the
23 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate
24 and to come forward and be heard.” *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th
25 Cir. 2004) (quoting *Mendoza v. United States*, 623 F.2d 1338, 1352 (9th Cir. 1980)); *see also In*
26 *re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1390 (Cal. App. 2010) (finding it
27 well-established that “[t]he trial court has virtually complete discretion as to the manner of giving
28 notice to class members”). California’s Notice Plan ensures that the majority of potential

1 Claimants are directly informed of the Settlement through multiple methods and provided an easy
2 way to file claims; this Plan fully comports with the requirements of due process. Vasquez Decl.
3 ¶25.

4 In addition to direct email and postcard notice, California will give notice by publication to
5 reach the few individuals without an ascertainable email or mail address. This will ensure due
6 process for all affected natural persons and satisfy the statutory requirement that the notice in
7 *parens* settlements be published. 15 U.S.C. § 15c(b)(1); Cal. Bus. & Prof. Code § 16760(b)(1));
8 *see Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950) (suggesting that, for due process
9 purposes, the default standard for settlements with absent parties whose whereabouts cannot be
10 ascertained is notice by publication in which minimal notice may suffice). Since California has
11 developed detailed, direct, and publication notice procedures that fully comply with due process
12 requirements, the Court should preliminarily approve the proposed Notice Plan, and order that the
13 first round of notice begin as soon as possible and be completed within 90 days after the entry of
14 the Preliminary Approval Order.

15 **VII. CONCLUSION**

16 For the foregoing reasons, California respectfully requests that the Court grant preliminary
17 approval to (1) the Proposed Settlement and (2) the Notice and Opt-Out Procedures. California
18 also requests that the Court order that notification to eligible individuals begin within thirty (30)
19 days of the Court's Preliminary Approval and that a schedule for publication be established in
20 accordance with the dates in the attached proposed Preliminary Approval Order. California also
21 requests that the Court schedule a hearing to determine whether the Settlement should be granted
22 final approval in three hundred (300) days, after all Notice has been completed and all claims

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1 have been received.

2 Dated: May 1, 2014

Respectfully Submitted,

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Attorney General of California

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/s/ Nicole S. Gordon
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE STATE OF CALIFORNIA,

Plaintiff,

Case No. CV12-5874-EJD-PSG

v.

EBAY INC.,

Defendant.

Action Filed: October 11, 2013

Expert Report of Jon M. Riddle

I. Qualifications

I am an economist and an expert on antitrust issues and the determination of economic damages. I am submitting this report on behalf of the Attorney General of the State of California.

I received my Ph.D. in Economics from the University of California, Santa Barbara in 1998. My fields of specialization were industrial organization and finance. At ECONOMIC ASSOCIATES, I work in association with other economists and associates on a wide range of economic projects related to antitrust, competition, competitive effects, causation, and the measurement of economic damages. I have been doing this type of work for more than twenty years.

I was an Adjunct Assistant Professor at the University of California Los Angeles for over 10 years where I taught courses in health economics and empirical methods. I have also taught courses in finance and industrial economics at the University of California Santa Barbara. A copy of my resume is attached as Appendix A.

I have testified as an expert on various matters related to the economic issues in this case in State and Federal courts. A listing of the cases in which I testified

as an expert at trial or at deposition is also included with my resume in APPENDIX A. ECONOMIC ASSOCIATES is compensated for both my analysis and testimony in this matter at the rate of \$300 per hour.

In conducting my analysis and in forming my opinions, I examined various materials provided to me by the Attorney General of the State of California. A list of these documents can be found in APPENDIX B. I relied on additional publicly available materials and published research also referenced throughout this report. The facts and data obtained from these sources are of the type customarily relied upon by experts in my field in forming opinions or in drawing inferences and in offering testimony about economic damages.

II. Assignment

I have been asked by attorneys for the Attorney General of the State of California to determine the economic damages arising from the restrictive hiring practices implemented by eBay and its co-conspirator Intuit beginning in 2006. This report has been prepared before the conclusion of discovery, so I reserve the right to revise my analysis, conclusions and opinions when additional

information, especially from the Defendant and con-
spirator, becomes available.

III. Background

A. eBay

During the years at issue, circa 2006 to the present, eBay, headquartered in San Jose, California, provided on-line, international marketplaces, payment services and communications, consisting principally of its eBay auction websites, Pay-Pal payment processing and money transfer services, and SKYPE, a voice over Internet telephone service. eBay acquired PayPal in 2002 and SKYPE in October 2005.¹ eBay also acquired GSI Commerce, a global e-commerce services company, in June 2011.²

Employees were, and continue to be, central to eBay's business and its future success. In its 2006 Annual Report, eBay explained the vital role of its personnel in the Company's future:

¹ eBay Inc., Annual Report 1 (Form 10-K) (Feb. 23, 2006) *available at* <http://www.sec.gov/Archives/edgar/data/1065088/000095013406003678/f17187e10vk.htm> (last visited April 29, 2014). Ebay disposed of SKYPE on November 19, 2009. *Id.*

² GSI Commerce's headcount, as of January 17, 2011, was 5,304 worldwide, of which 4,890 were located in the United States. *See* GSI Commerce, Annual Report 4 (Form 10-K) (March 1, 2011) *available at* <http://www.sec.gov/Archives/edgar/data/828750/000095012311020704/w81774e10vk.htm> (last visited April 29, 2014).

We are currently expanding our headcount, facilities, and infrastructure in the U.S. and internationally ... We must constantly add new hardware, update software and add new engineering personnel to accommodate the increased use of our and our subsidiaries' websites and the new products and features we regularly introduce... Failure to upgrade our technology, features, transaction processing systems, security infrastructure, or network infrastructure to accommodate increased traffic or transaction volume could harm our business... Any failure to accommodate transaction growth could impair customer satisfaction, lead to a loss of customers, impair our ability to add customers, or increase our costs, all of which would harm our business ... We are expanding our customer support operations to accommodate the increased number of users and transactions on our websites and the increased level of user protection activity we provide worldwide... If our new hires perform poorly, if we are unsuccessful in hiring, training, managing, and integrating these new employees, or if we are not successful in retaining our existing employees, our business may be harmed.³

As shown in Table 1, eBay's headcount⁴ in California increased substantially during the years at issue. Between 2005 and 2010, it added more than 1,200 persons to its labor force there, an increase of 39 percent during those five years.

B. Intuit, Inc.

The co-conspirator Intuit, headquartered in Mountain View, California, is a leading provider of financial management, payroll solutions, accounting and tax preparation software for individuals, business, financial

³ eBay Inc., Annual Report 25 (Form 10-K) (Feb. 28, 2007) *available at* <http://www.sec.gov/Archives/edgar/data/1065088/000095013407004291/f27529e10vk.htm> (last visited April 29, 2014).

⁴ The international and US employment figures in Table 1 exclude temporary staff which are not at issue in this litigation.

institutions, accountants, and tax preparation professionals.⁵

Employees were, and continue to be, central to Intuit's business and its future success as well. In its 2006 Annual Report, Intuit explained the vital role of its personnel in the Company's future:

Much of our future success depends on the continued service and availability of skilled personnel, including members of our executive team, and those in technical, marketing and staff positions. Experienced personnel in the software and services industries are in high demand and competition for their talents is intense, especially in Silicon Valley and San Diego, California, where the majority of our employees are located. Although we strive to be an employer of choice, we may not be able to continue to successfully attract and retain key personnel which would cause our business to suffer.⁶

As shown in Table 2, Intuit's worldwide headcount⁷ increased by 8 percent during five year period between 2005 and 2010. More importantly, during the same time, Intuit's California labor force increased much more dramatically, growing by 30 percent during those five years.

C. The Bay Area Labor Market

The Defendant and Co-conspirator are key firms in the technology sector of the Silicon Valley and California

⁵ Intuit Inc., Annual Report 3 (Form 10-K) (Sept. 15, 2006) available at <http://www.sec.gov/Archives/edgar/data/896878/000095013406017817/f23541e10vk.htm> (last visited April 29, 2014).

⁶ *Id.* at 24.

⁷ The employment information reported in the 10-Ks includes headcounts located in the United States, Canada, the United Kingdom, and other international locations.

economies. One of the important features shared by these firms is that human capital ranks as their most important asset. Thus, as eBay and Intuit explain in each company's statements cited above, hiring and retention of employees is central to each firm's future innovation strategies and success.

As I also describe above, eBay's and Intuit's headcounts in California increased by approximately 39 percent and 30 percent, respectively, during the five years during which the alleged conduct occurred. In contrast, as shown in Table 3, the Bay Area region's labor force increased by only 5.8 percent during the same time period.⁸ These contrasting growth rates highlight the likely motivation underlying the hiring practices at issue. Some technology companies, such as eBay and Intuit, were growing much more rapidly than the region's labor force. Furthermore, these two firms were competing for workers in similar occupations, such as software programmers, web developers, and engineers. Therefore, to sustain growth, eBay and Intuit had to recruit from other firms.

⁸ I define the Bay Area region to encompass Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, and Santa Cruz counties. The Bureau of Labor Statistics uses this geographic area to describe the Silicon Valley. See Amar Mann & Tian Luo, *Crash and Reboot: Silicon Valley High-Tech Employment and Wages, 2000-08*, MONTHLY LABOR REVIEW 59 (2010) available at <http://www.bls.gov/opub/mlr/2010/01/art3full.pdf> (last visited April 29, 2014). The BLS defines labor force to include all persons classified as employed or unemployed within a particular geographic area. See www.bls.gov/bls/glossary.htm#L. The underlying data are from the Federal Reserve Bank of St. Louis. These data measure growth in the region's entire labor force, not the more relevant "knowledge worker" base. Shortages may be even more pronounced in that segment of the labor market.

D. The Conduct at Issue

The conduct at issue is certain hiring practices (hereafter I refer to the practices at issue as the "restrictive hiring practices") of eBay and Intuit. Specifically, the two companies entered into an agreement no later than 2006 whereby each firm agreed not to solicit, cold call or recruit the other's employees. Furthermore, eBay agreed not to hire Intuit employees, even those who independently approached it in search of better employment.⁹ Some have referred to these restrictive hiring practices as no poach policies.

IV. The Economics of the Restrictive Hiring Practices

A. Worker Mobility

The high-tech labor market is characterized by, among other traits, high mobility. Alan Hyde, in his book titled *Working In Silicon Valley: Economic and Legal Analysis of a High-Velocity Labor Market*, reports that employee turnover rates averaged 19 percent nationwide in the 1995 to 1997 era. He also noted that turnover in Silicon Valley was

⁹ Compl. 1-2.

somewhat higher at 25 percent.¹⁰ The two companies at issue here experienced turnover rates in line with these industry patterns. Intuit experienced voluntary turnover in the range of 6 percent to 12 percent annually, with an average turnover rate of 10 percent per year from 2006 to 2010.¹¹ Comparable information on eBay's staff turnover is available for only 2007 and 2008, in which its voluntary turnover was 29 percent and 12 percent, respectively.¹² Intuit and eBay were no different than other tech companies in that its employees routinely left for other employment opportunities.

The restrictive hiring practices agreed to by eBay and Intuit reduced employee mobility between the two firms by reducing the information that employees had on possible alternative employment opportunities and levels of compensation available at the other firm.¹³ The agreement went even further than recruitment, also restricting eBay's

¹⁰ ALAN HYDE, *WORKING IN SILICON VALLEY: ECONOMIC AND LEGAL ANALYSIS OF A HIGH-TECHNOLOGY LABOR MARKET* 15-16 (2003).

¹¹ Voluntary turnover rate data are from *Fortune Magazine*, "Best Companies to Work For" annual surveys from 2006 to 2012. In 2009, Intuit's voluntary turnover rate was only 6 percent, which was much lower than other years. See *Best Companies to Work For 2012*, <http://money.cnn.com/magazines/fortune/best-companies/2012/>; *Best Companies to Work For 2011*, <http://money.cnn.com/magazines/fortune/best-companies/2011/>; *Best Companies to Work For 2010*, <http://money.cnn.com/magazines/fortune/best-companies/2010/>; *Best Companies to Work For 2009*, <http://money.cnn.com/magazines/fortune/best-companies/2009/>; *Best Companies to Work For 2008*, <http://money.cnn.com/magazines/fortune/best-companies/2008/>; *Best Companies to Work For 2007*, <http://money.cnn.com/magazines/fortune/best-companies/2007/>; *Best Companies to Work For 2006*, <http://money.cnn.com/magazines/fortune/best-companies/2006/> (last visited April 29, 2014).

¹² *Best Companies to Work For*, *supra* note 11.

¹³ As a rationing mechanism, compensation indicates where scarce labor resources are relatively more valuable.

hiring outright, even if an Intuit employee applied directly to eBay. Even if such an employee at one firm was aware of better opportunities available at eBay, these practices prevented hiring and reduced competition for the services of eBay's and Intuit's workers.

An important outcome of the competition for workers and resulting mobility is a more efficient matching of an employee's human capital (i.e., his or her skills, talent, and creativity) to a firm's specific resources (i.e., its intellectual, intangible capital, and physical capital) and requirements. Workers gain from better matching by receiving higher compensation. Economists such as Peticara have estimated the compensation effects of job mobility, finding that voluntary job changes led to wage gains of 7 percent on average.¹⁴ Smeets estimated similar results, finding that between-firm job changes increased wages by 6.1 percent to 13.0 percent.¹⁵ Finally, in a study published in the Bureau of Labor Statistics' *Monthly Labor Review*,

¹⁴ See Marcela C. Peticara, *Wage Mobility Through Job Mobility* (Ilades-Georgetown University, Universidad Alberto Hurtado, Working Paper No. inv141, 2002) available at <http://ideas.repec.org/p/ila/ilades/inv141.html> (last visited April 29, 2014). Peticara also notes that other authors have found wage gains from mobility in the 10 to 20 percent range.

¹⁵ See Valerie Smeets, *Job Mobility and Wage Dynamics* (Aarhus School of Business, Working Paper No. 06-9, 2006) available at http://swopec.hhs.se/aareco/abs/aareco2006_009.htm (last visited April 29, 2014). Different wage effects from mobility result from including slightly different control variables in the estimation procedures.

Light reports that voluntary job moves increased wages by a similar magnitude, 6.8 percent on average.¹⁶

B. Property Rights Justifications Are Not Supported

As discussed above, the restrictive hiring practices limited labor mobility and reduced the number of employment opportunities available to eBay and Intuit workers, and thereby reduced compensation and employment levels. In this respect, these restrictive hiring practices are similar to non-compete agreements ("NCA") in economic effects. In NCAs, employees are contractually bound not to work for a former employer's competitors for a period of time, typically one or two years.¹⁷ Such agreements are generally void in California.

NCAs are justified as a means of maximizing the returns on firm investments in human capital or to prevent spillovers of competitively sensitive knowledge to a rival or rivals. Absent such agreements, firms and employees would tend to under invest in human capital and/or innovation. In those instances, NCA protections promote

¹⁶ See Audrey Light, *Job Mobility and Wage Growth: Evidence from the NLSY79*, MONTHLY LABOR REVIEW 38 (2005).

¹⁷ Ronald J. Gibson, *The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 138 [SIC], and Covenants not to Compete*, NEW YORK UNIVERSITY LAW REVIEW 35 (1999). Non-compete agreements are sometimes referred to as covenants not to compete.

more efficient outcomes. In other words, these agreements are means of protecting an employer's property rights.

Such a justification in the present case would rest on the proposition that eBay or Intuit and their employees would develop human capital that would then be valuable to the other party to the restrictive hiring practices agreement should an employee move from one company to the other. Thus, for example, eBay would seek to hire an Intuit employee because that person would bring valuable information that would allow eBay to have a competitive advantage over Intuit in output markets. However, this justification is not borne out by the evidence. As I discuss above, eBay provides on-line marketplaces and payment services that facilitate the trade of merchandise and services between its customers. In contrast, Intuit publishes payroll, tax, and accounting software. While the two firms do compete for the same labor resources, they do not appear to be competitors in output markets.¹⁸ Thus, this essential requirement necessary for there to be an efficiency-enhancing justification for NCAs and by economic analogy, these restrictive hiring practices, does not appear to have arisen between eBay and Intuit.

¹⁸ For example, eBay nor Intuit identify the other as one of its competitors in the markets in which they sell products or services in the "competitors" sections of annual reports filed with the Securities and Exchange Commission.

C. Impact

eBay produced 31 spreadsheet tables from its Brass Ring recruitment software/database. These files report applicants' most recent employers, date hired by eBay, and other recruiting information. I have analyzed these data and present preliminary evidence on eBay's hiring of former Intuit employees in Table 4.¹⁹ As these data show, eBay's agreement not to hire from Intuit's workforce was effective, reducing the average annual hiring of former Intuit staff by 35 percent after 2006.²⁰ This analysis shows that the no-poach agreement was effective in reducing workers' mobility between Intuit and eBay.

IV. Damages

A. Overview

I follow a standard approach to determining damages by quantifying the "difference between the plaintiff's economic position if the harmful event had not occurred and

¹⁹ A PowerPoint presentation prepared by eBay shows a similar pattern of its hiring of former Intuit staff for 2004 to 2009. See eBay, *Hiring Practices Investigation: California Department of Justice*, October 12, 2012.

²⁰ I used a linear regression of annual average hiring counts in Table 4, explained by a conduct indicator variable (1 if hiring occurred in 2006 to 2010 and 0 in other years) to determine if eBay's hiring of former Intuit employees was different after 2006. The hiring rate was lower after 2006 at the 10 percent level of statistical significance.

the plaintiff's actual economic position."²¹ The first scenario is routinely called the "but for" scenario and reflects the compensation levels absent these restrictive hiring practices. The second is routinely referred to as the actual case and is determined to be the actual compensation levels based on observable data. In this matter, I follow this guidance to determine under-compensation (per employee) as the difference between these alternative compensation rates. Damages then equal the difference between but for and actual compensation levels, multiplied by the number of workers actually hired.²² I have not yet been provided company-level actual compensation data, so to determine damages, I estimate both but for and actual compensation levels using publicly available data.

B. Damages Period

The restrictive hiring practices agreed to by eBay and Intuit commenced in 2006. In a related restrictive hiring practices case involving other high technology firms, Intuit entered into a consent decree with the United States in 2010 whereby it agreed to cease enforcing a similar

²¹ Mark A. Allen, Robert E. Hall, & Victoria A. Lazear, *Reference Guide on Estimation of Damages*, in REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 432 (3d ed. 2011).

²² See Christina DePasquale, *Collusive Monopsony and Antitrust Damages*, 54 THE ANTITRUST BULLETIN 907 (2009).

restrictive hiring agreement with Google, Inc.²³ eBay, which was not a Defendant in the *United States v. Adobe, et al.* matter, may have continued to uphold its side of the agreement at issue in this matter, though it would seem that eBay's incentives may have changed after Intuit entered into the consent decree. Incentives provided by the bilateral agreement were in the form of *quid pro quos*. eBay would not recruit and hire from Intuit and Intuit would not recruit from eBay. Once Intuit was enjoined from these practices, eBay may no longer have had incentives not to recruit and hire from Intuit. For this reason, I make the assumption here that the damages period is 2006 to 2010.

C. Affected Headcounts

Intuit's and eBay's hiring practices affected two groups of employees: new hires and those who continued to be employed by the firms. I term the latter group tenured employees. Furthermore, the number of new hires each year arose from company growth and from the replacement of workers who left. Since the restrictive hiring policies could have affected each group differentially, I

²³ See Competitive Impact Statement, *U.S. v. Adobe Systems, Inc.* No. 10-1629 (D.D.C. Sept. 24, 2010) available at <http://www.justice.gov/atr/cases/f262600/262650.htm> (last visited April 29, 2014). The specific language outlined in this document is that the Final Judgment would "enjoin Defendants from enforcing any such agreements currently in effect." Intuit was one of the Defendants.

disaggregate the companies' headcounts²⁴ into new hires and tenured headcounts.

eBay provided information on the its headcounts in California, which I report in the first column of Table 5.²⁵ Intuit also provided data on its headcounts in California, which I report in the first column of Table 6.²⁶

Information on voluntary turnover rates are available from various editions of *Fortune Magazine's* "Best Companies to Work for" surveys.²⁷ Since Intuit appeared in each survey published during the relevant period, I have year-by-year voluntary turnover rates for it. eBay appeared in only two surveys published in 2008 and 2009. So, for eBay, I use the reported 12 percent turnover rate from 2009 Survey as an estimate of its average turnover in all other years.²⁸ Beginning of the year staffing levels, end of the year headcounts, and voluntary turnover data allow me to

²⁴ I use the terms employees and headcount interchangeably.

²⁵ Year-end headcounts were provided to me in a spreadsheet named CA_employees.xlsx. I have excluded personnel employed by subsidiaries that eBay sold, such as Rent.com and SKYPE.

²⁶ Intuit provided California headcount data for 2006 to 2012 in a spreadsheet titled Yearly_Intuit_Employee_Headcounts_by_Job_Title.xlsx. For 2006, the headcount data are from July 31st. All other data are from January 31st of the relevant year. To estimate Intuit's headcount in 2005, I used the ratio of California to worldwide headcounts in 2006 and then applied that ratio to the 2005 worldwide headcount as reported by the Securities and Exchange Commission. The employment data reported to the Securities and Exchange Commission pertain to the end of its fiscal years, either August 31st (2004 to 2006) or July 31st (2007-2013). eBay's headcounts are as of its fiscal year end, which is December 31st. To allow for comparisons between companies and to make the damages calculations consistent, I use a midpoint formula to estimate Intuit's headcounts for calendar year ends, as shown in Table 2.

²⁷ Results of the surveys, published early in January or February of the following year. *See Fortune Magazine Best Companies to Work For*, supra note 13.

²⁸ The 2007 "Best Companies to Work for" survey reports a 29 percent voluntary turnover rate for eBay.

estimate new hires and tenured headcounts for eBay in Table 5 and for Intuit in Table 6.²⁹

D. Alternative Compensation Levels

The conceptual framework on the estimation of damages requires information on the compensation levels that these firms actually paid and on compensation that workers would have received absent these restrictive hiring practices.

I have not yet been provided with information on the two firms' compensation structures before, throughout, and after the damages period from which to estimate actual compensation levels and the effects that the restrictive hiring practices had on compensation. However, other sources provide information that can be used to estimate actual employee earnings and these effects. The United States Department of Labor, Bureau of Labor Statistics, through its Occupational Employment Statistics (OES) surveys, reports average compensation, by occupation and metropolitan area, annually for the years at issue here. As shown in Table 7, workers in computer and mathematical

²⁹ Voluntary turnover equals the beginning of the year headcount times the turnover rate. Tenured headcount equals beginning of the year headcount, minus voluntary turnover. New hires equal end of the year headcount minus tenured headcount.

occupations³⁰ in the San Jose-Sunnyvale-Santa Clara area earned from \$94,590 to \$109,280 per year, on average, from 2006 to 2010. These wages³¹ are indicative of the compensation levels that these firms paid because the occupations in this group, such as software engineers and web developers, include those professions at issue. Furthermore, the San Jose-Sunnyvale-Santa Clara area is relevant as both eBay and Intuit are located there.

Turning to the impact that the restrictive hiring policies had on competition, I conclude that their economic impact was likely very similar to those of non-compete agreements (NCA) in that they decreased the mobility of workers. In an investigation of the relative levels of enforcement of NCAs across states and executive compensation levels, Garmaise found that, "for a given executive, a shift to a tougher enforcement regime reduces compensation growth by 12.8 percent, which is 39.1 percent of the mean growth rate."³² These results suggest that imposing the restrictive hiring policies, that is, changing from a condition of mobility between eBay and Intuit to a

³⁰ Occupations in this category include computer systems analysts, programmers, software developers, database administrators, web developers, network and systems administrators, user support specialists, mathematicians, operations research analysts, and statisticians. See *U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Emp't Statistics*, <http://www.bls.gov/oes/> (last visited April 29, 2014).

³¹ *Occupational Emp't Statistics: Definitions, Concepts and Classifications*, http://www.bls.gov/oes/oes_ques.htm#def (last visited April 29, 2014).

³² See Mark J. Garmaise, *Ties that Truly Bind: Non-competition Agreements, Executive Compensation and Firm Investment*, 27 J. OF L., ECON., AND ORG. 376 (2011) available at http://econpapers.repec.org/article/oupjleorg/v_3a27_3ay_3a_3ai_3a2_3ap_3a376-425.htm (last visited April 29, 2014).

condition in which mobility is prevented, would have had a similar effect.

In terms of new hires, the above referenced empirical results show that new hires typically experienced a 7 percent increase in compensation. In this case, I would expect that the restrictive hiring practices would have reduced this hiring compensation increase by approximately the same rate as indicated by the Garmaise study. Thus, instead of a 7 percent increase, new hires actually received a 4.3 percent increase with the restrictive hiring practices in affect.³³ In the alternative but for scenario absent these practices, new hires would have received the 7 percent average increase. The difference between these alternatives is equal to the under-compensation per new hire, as shown in Table 8A for eBay and Table 9A for Intuit. Annual under-compensation damages are then the number of new hires times the average amount of under-compensation.

The restrictive recruiting and hiring practices also affected the compensation levels of the employees who remained with each company. An important conclusion of the Garmaise study is that growth rates in compensation declined as enforcement of NCAs increased. Since the hiring

³³ This new hire compensation increase of 4.3 percent equals 7 percent times $(1-0.391)$.

practices agreed to by eBay and Intuit have the same economic effect, I would expect that growth rates in compensation would likewise be lower. To estimate the impact of these policies on tenured employees, I assume that absent this conduct, which would be equivalent to the absence of enforcement of NCAs, compensation would have increased at the same rates observed in compensation paid to computer and mathematics occupations in the San Jose-Sunnyvale-Santa Clara metropolitan area. Alternatively, as indicated by the Garmaise study, restrictive hiring practices would have reduced compensation growth rates to 60.9 percent of rates at which compensation would have increased absent them. Under-compensation and annual damages accruing to eBay's tenured headcounts are shown in Table 8B and for Intuit's tenured headcounts in Table 9B.

There is one additional refinement applicable to both companies' under-compensation of tenured headcounts, based on their likely compensation-setting routines. I assume that there are no damages in 2006 because compensation is generally determined in an earlier period (e.g., at an employee's anniversary with the company) and there would be a lag between the effects of the agreement between Intuit and eBay reducing competition for labor and the impact on tenured headcount compensation.

The restrictive hiring practices agreement between eBay and Intuit suppressed competition for labor in Silicon Valley and California. As documented above, this collusive conduct reduced the compensation that employees at these firms would have earned otherwise. As shown in Tables 8 and 9, under-compensation damages total \$30.8 million to eBay's tenured and newly hired employees. For Intuit, under-compensation totals \$26.1 million.

V. Deadweight Losses

The damage figures given above represent the under-compensation paid to eBay's and Intuit's employees. They reflect compensation received for the actual number of workers hired by the two firms. However, those levels of employment were themselves affected by the bilateral agreement not to compete for each other's workers. Absent this agreement, compensation would have been higher, and the firms would have recruited and hired additional employees. In this section, I estimate the extent to which the number of employees hired was reduced specifically on account of the lower compensation levels that resulted from the restrictive hiring agreement, and then determine the added damages that would flow to these additional

employees. These added damages are traditionally described as "deadweight losses."

For this segment of damages, increased employment at higher, non-collusive compensation levels imposed losses on some workers who would have been willing to work for these firms at higher compensation levels, but who did not because of suppressed compensation levels. Those workers who were foreclosed from employment at eBay and Intuit on account of lower wages suffered damages as a result, which damages are considered the deadweight losses of this interference in the competitive functioning of the relevant labor market. In contrast to the predominant segment of damages, which pertains to people who continued to work and to be hired at lower collusive compensation levels, this segment includes workers who did not offer to work specifically because of the resulting lower compensation levels.

Deadweight losses in an imperfectly competitive labor market is a concept of mainstream economics and is routinely taught in courses in economics. It is also described and explained in most textbooks in economics.³⁴ eBay and Intuit were striving to affect hiring and

³⁴ See e.g., ROBERT S. PINDYCK & DANIEL L. RUBINFELD, MICROECONOMICS (8th ed. 2013); see also DENNIS W. CARLTON & JEFFREY M. PERLOFF, MODERN INDUSTRIAL ORGANIZATION (4th ed. 2005).

compensation levels through non-competitive means, so deadweight losses arise.

To determine deadweight loss damages, I first require estimates of the number of additional workers who would have been employed at higher compensation levels. For this purpose, I rely on the fundamental economic principle of the Law of Supply, which dictates that more of a product or resource would be supplied when prices or wages are higher. Accordingly, in the absence of this collusive conduct, wages would have been higher and more of the resource, in this instance labor, would have been supplied.

The magnitude of the wage effects on employment can be measured by the relevant elasticity of labor supply. This parameter indicates the percentage change in the number of workers seeking employment, resulting from a given percentage change in wages. The estimates of under-compensation that I use in the damages analysis above indicate that, absent the collusive agreement, compensation paid to new hires would have been 2.6 percent higher.³⁵ The associated change in quantity of labor supplied can,

³⁵ This increase is computed as the ratio of but for new hire compensation to actual new hire compensation from Tables 8A and 9A.

therefore, be determined for particular values of the elasticity of labor supply.³⁶

While there are no specific estimates of the wage elasticity of labor supply for the occupations at issue and for the Silicon Valley or California, there are relevant estimates available in the economic literature. In a working paper written by economists at the Congressional Budget Office (CBO) summarizing the measures of labor supply elasticities used by the CBO in assessing possible impacts of federal tax policy changes, the authors report that the CBO uses estimates of the labor supply "elasticity that ranges from 0.27 to 0.53, with a central estimate of 0.40."³⁷ Blundell, *et al.*, in a study of wages and working hours in the United States, the United Kingdom, and France conclude that the median elasticity of labor supply is 0.30.³⁸ Finally, Chetty finds that the elasticity of labor supply is 0.25³⁹

Under these circumstances, I assume that the elasticity of labor supply pertaining to occupations at issue in this case was equal to 0.40, which is the estimate used by the CBO

³⁶ Economists distinguish between labor supply elasticity at the intensive margin or at the extensive margin. Elasticity at the extensive margin measures the extent to which the number of workers change when wages change. The extensive elasticity of labor supply is correct in the present application.

³⁷ Felix Reishling & Charles Whalen, *Review of Estimates of the Frisch Elasticity of Labor Supply* 8 (Congressional Budget Office, Working Paper No. 2012-13, 2012), available at <http://www.cbo.gov/publication/43676> (last visited April 29, 2014).

³⁸ Richard Blundell, Antoine Bozio, & Guy Laroque, *Extensive and Intensive Margins of Labour Supply: Working Hours in the US, UK and France* 38 (Institute of Fiscal Studies, Working Paper No. 11/01, 2011) available at <http://ideas.repec.org/p/ifs/ifsewp/11-01.html> (last visited April 29, 2014).

³⁹ See Raj Chetty, *Bounds on Elasticities with Optimization Frictions: A Synthesis of Micro and Macro Evidence on Labor Supply*, 80 *ECONOMETRICA* 969 (2012).

for purposes of evaluating policies. Accordingly, with that elasticity of labor supply, a 2.6 percent higher average compensation level that would have prevailed absent the collusive hiring agreement implies that 1.04 percent more workers would have been hired.⁴⁰

One further assumption is needed to estimate the deadweight losses arising from this collusive conduct. I need also to assume that a reasonable estimate of the slope of the labor supply curve between the two compensation levels and the corresponding employment levels is linear. This assumption is reasonable so long as the two points on the labor supply curve are not too far apart. I assume that condition is met in this case.⁴¹

The specific computations used to estimate the deadweight loss amounts are shown in Table 10. Here, I assume at higher compensation levels, eBay and Intuit would have increased headcounts by 1.04 percent, though certainly at higher non-collusive compensation levels. Between the two firms, deadweight losses amounted to approximately \$530,100 over five years.

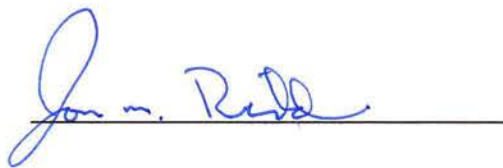
⁴⁰ Specifically, $0.40 = \text{percent change in the supply of labor} / \text{percent change in compensation}$. If the increase in compensation that would arise absent these collusive recruiting and hiring policies is 0.026 (2.6 percent), then percent change in the supply of labor = $0.40 \times 0.026 = 0.0104$ or 1.04 percent.

⁴¹ A linear approximation of the unknown slope of the supply curve is acceptable when the relevant compensation and employment levels are not too far apart. In this case, I believe that the 2.6 percent underpayment and the corresponding 1.04 percent increase in employment satisfy the “not too far apart” requirement.

VI. Conclusions

These restrictive hiring practices agreed-to and implemented by eBay and Intuit limited worker mobility, thereby reducing the number of alternative employment options available to Intuit's and eBay's employees. By limiting options, these policies increased Intuit's and eBay's power to influence labor market outcomes. Fewer workers were hired, and those that were hired, earned less. Absent these restrictions, employment would have increased and higher compensation would have been paid. As a result, I conclude that eBay's workers were harmed in the amount of \$30.8 million and Intuit's employees were harmed in the amount of \$26.1 million. Additional deadweight losses total \$530,000.

Respectfully submitted on this 30th day of April 2014.

A handwritten signature in blue ink, reading "Jon M. Riddle", is written over a horizontal line.

Jon M. Riddle

Table 1
eBay's Headcounts in California
2005 to 2013

Calendar Year End	California Headcount
2005	3,301
2006	3,657
2007	4,370
2008	4,117
2009	4,064
2010	4,584
2011 (†)	5,760
2012	6,411
2013	6,816
Percent change: 2005 to 2010	39%

†. Ebay acquired GSI Commerce in 2011, which accounts for part of the headcount increase in that year.

Source:
eBay Inc.

Table 2
 Intuit's Headcounts Worldwide and in California
 2005 to 2013

Fiscal Year End	Worldwide Headcount Fiscal Year End	Calendar Year End	Worldwide Headcount Calendar Year End	California Headcount
8/31/05	7,000			
		2005	7,250	2,438
8/31/06	7,500			
		2006	7,850	2,640
7/31/07	8,200			
		2007	8,200	2,769
7/31/08	8,200			
		2008	8,000	3,363
7/31/09	7,800			
		2009	7,750	3,407
7/31/10	7,700			
		2010	7,850	3,163
7/31/11	8,000			
		2011	8,250	3,208
7/31/12	8,500			
		2012	8,250	3,352
7/31/13	8,000			
Percent change: 2005 to 2010			8%	30%

Sources:

Intuit, Inc., Annual Report to the Securities and Exchange Commission on Form 10-K, various years, section titled Employees and Intuit, Inc.

Table 3
 Bay Area Civilian Labor Force
 2005 and 2010
 thousands

County	2005 (†)	2010 (†)
Alameda	738.3	764.9
Contra Costa	512.2	524.8
San Francisco	415.6	460.6
San Mateo	362.4	379.0
Santa Clara	822.6	885.6
Santa Cruz	145.4	155.3
5 County total:	2,996.6	3,170.1
Percent change: 2005 to 2010		5.8%

†. mid-year (July 1)

Source:
 Federal Reserve Bank of St. Louis

Table 4
eBay's Hiring of Intuit Employees
2003 to 2012

year	Intuit Applicants	Former Intuit Hired	Average Annual eBay Hiring
2003 (†)	122	10	
2004	120	9	
2005	89	6	8.3
2006	64	2	
2007	62	7	
2008	62	3	
2009	109	6	
2010	82	9	5.4
2011	113	9	
2012	171	7	8.0

†. Brass Ring data were produced for the second half of 2003. I annualized those data to estimate full year 2003 hiring of former Intuit staff

Source:
eBay Inc. Brass Ring data

Table 5
 eBay's New Hires and Tenured Headcounts in California
 2006 to 2010

Year (†)	Turnover Rate	Headcount Beginning of Year	Voluntary turnover	Tenured Headcount	New Hires	Headcount End of Year
2006	12%	3,301	396	2,905	752	3,657
2007	12%	3,657	439	3,218	1,152	4,370
2008	12%	4,370	524	3,846	271	4,117
2009	12%	4,117	494	3,623	441	4,064
2010	12%	4,064	488	3,576	1,008	4,584

†. Years ended December 31st

Sources:

eBay Inc. and Fortune Magazine, "Best Companies to Work For," various years

Table 6
 Intuit's New Hires and Tenured Headcounts in California
 2006 to 2010

Year (†)	Turnover Rate	Headcount Beginning of Year	Voluntary turnover	Tenured Headcount	New Hires	Headcount End of Year
2006	12%	2,438	293	2,146	494	2,640
2007	11%	2,640	290	2,350	419	2,769
2008	10%	2,769	277	2,492	871	3,363
2009	6%	3,363	202	3,161	246	3,407
2010	9%	3,407	307	3,100	63	3,163

†. Years ended December 31st

Sources:

Intuit, Inc. and Fortune Magazine, "Best Companies to Work For," various years

Table 7
 Annual Mean (Average) Wage: Computer and Mathematical Occupations
 San Jose-Sunnyvale-Santa Clara Metropolitan Area
 2005 to 2013

year (†)	San Jose-Sunnyvale-Santa Clara Annual Mean Wage	% change
2005	\$92,700	
2006	\$94,590	2.04%
2007	\$98,160	3.77%
2008	\$102,480	4.40%
2009	\$109,130	6.49%
2010	\$109,280	0.14%
2011	\$110,780	1.37%
2012	\$108,610	-1.96%
2013	\$115,870	6.68%

†. Survey results are based on data collected in May of each year

Source:

Bureau of Labor Statistics, Occupational Employment Statistics available
 at <http://www.bls.gov/oes/>

Table 8A
Underpayment of eBay's New Hires
2006 to 2010

Year (t)	Regional Average Compensation (a)	Actual New Hire Compensation (b)	But For New Hire Compensation (c)	Under Compensation	New Hires	Annual Damages
2006	\$94,590	\$98,622	\$101,211	\$2,589	752	\$1,947,185
2007	\$98,160	\$102,345	\$105,031	\$2,687	1,152	\$3,094,578
2008	\$102,480	\$106,849	\$109,654	\$2,805	271	\$761,244
2009	\$109,130	\$113,782	\$116,769	\$2,987	441	\$1,317,337
2010	\$109,280	\$113,939	\$116,930	\$2,991	1,008	<u>\$3,013,964</u>
total						<u><u>\$10,134,309</u></u>

t. Years ended December 31st

Notes:

- a. Average annual wage paid to computer and mathematical occupations in San Jose-Sunnyvale-Santa Clara MSA
- b. Average regional compensation plus hiring premium of 4.3 percent
- c. Average regional compensation plus hiring premium of 7.0 percent

Sources:

eBay Inc. and Bureau of Labor Statistics

Table 8B
Underpayment of eBay's Tenured Headcounts
2006 to 2010

Year (t)	Regional Average Compensation (a)	Actual Tenured Headcount Compensation (b)	But For Tenured Headcount Compensation (c)	Under Compensation	Tenured Headcount	Annual Damages
2006	\$94,590	\$94,590	\$94,590	\$0	2,905	\$0
2007	\$98,160	\$96,764	\$98,160	\$1,396	3,218	\$4,492,133
2008	\$102,480	\$100,791	\$102,480	\$1,689	3,846	\$6,495,680
2009	\$109,130	\$106,530	\$109,130	\$2,600	3,623	\$9,420,239
2010	\$109,280	\$109,221	\$109,280	\$59	3,576	<u>\$209,751</u>
total						<u><u>\$20,617,803</u></u>

t. Years ended December 31st

Notes:

- a. Average annual wage paid to computer and mathematical occupations in San Jose-Sunnyvale-Santa Clara MSA
- b. prior year's regional compensation, plus 60.9 percent of its increase
- c. prior year's regional compensation, plus 100 percent of its increase

Sources:

eBay Inc. and Bureau of Labor Statistics

Table 9A
Underpayment of Intuit's New Hires
2006 to 2010

Year (t)	Regional Average Compensation (a)	Actual New Hire Compensation (b)	But For New Hire Compensation (c)	Under Compensation	New Hires	Annual Damages
2006	\$94,590	\$98,622	\$101,211	\$2,589	494	\$1,279,887
2007	\$98,160	\$102,345	\$105,031	\$2,687	419	\$1,126,776
2008	\$102,480	\$106,849	\$109,654	\$2,805	871	\$2,442,768
2009	\$109,130	\$113,782	\$116,769	\$2,987	246	\$734,117
2010	\$109,280	\$113,939	\$116,930	\$2,991	63	<u>\$187,326</u>
total						<u><u>\$5,770,875</u></u>

t. Years ended December 31st

Notes:

- a. Average annual wage paid to computer and mathematical occupations in San Jose-Sunnyvale-Santa Clara MSA
- b. Average regional compensation plus hiring premium of 4.3 percent
- c. Average regional compensation plus hiring premium of 7.0 percent

Sources:

Intuit, Inc. and Bureau of Labor Statistics

Table 9B
Underpayment of Intuit's Tenured Headcounts
2006 to 2010

Year (t)	Regional Average Compensation (a)	Actual Tenured Headcount Compensation (b)	But For Tenured Headcount Compensation (c)	Under Compensation	Tenured Headcount	Annual Damages
2006	\$94,590	\$94,590	\$94,590	\$0	2,146	\$0
2007	\$98,160	\$96,375	\$98,160	\$1,785	2,350	\$4,194,036
2008	\$102,480	\$100,320	\$102,480	\$2,160	2,492	\$5,382,936
2009	\$109,130	\$105,805	\$109,130	\$3,325	3,161	\$10,511,057
2010	\$109,280	\$109,205	\$109,280	\$75	3,100	<u>\$232,528</u>
total						<u>\$20,320,556</u>

t. Years ended December 31st

- a. Average annual wage paid to computer and mathematical occupations in San Jose-Sunnyvale-Santa Clara MSA
- b. prior year's regional compensation, plus 60.9 percent of its increase
- c. prior year's regional compensation, plus 100 percent of its increase

Sources:

Intuit, Inc. and Bureau of Labor Statistics

Table 10
 Deadweight Losses
 2006 to 2010

Year (†)	eBay CA Headcount	Intuit CA Headcount	Increase in CA Headcount	New Hire Under-compensation	Estimated Deadweight Losses
2006	3,657	2,640	65	\$2,589	\$84,773
2007	4,370	2,769	74	\$2,687	\$99,736
2008	4,117	3,363	78	\$2,805	\$109,099
2009	4,064	3,407	78	\$2,987	\$116,038
2010	4,584	3,163	81	\$2,991	<u>\$120,490</u>
total					<u><u>\$530,136</u></u>

†. Years ended December 31st

Sources:
 Tables 8 and 9

APPENDIX A
C. V. of Dr. Jon M. Riddle

Jon M. Riddle
Curriculum Vitae – April 30, 2014

4125 La Salle Avenue
Culver City, California 90232

Voice: 310.559.0479
Cell: 310.739.4976

E-mail: jonriddle@aol.com

Education

Ph. D. in Economics, University of California, Santa Barbara, June 1998
Bachelor of Science in Economics, California State Polytechnic University, Pomona, 1985

Research and Professional Experience

Since 1993 Economist: ECONOMIC ASSOCIATES

Responsible for the completion of all aspects of a wide range of economic consulting, antitrust and litigation support cases, including defining the relevant market, developing the appropriate theories of damages, estimating damages and testifying as an expert witness. Tasks involve organizing, analyzing and presenting findings from a wide range of information sources including depositions, trial transcripts, government documents, financial statements and other expert's reports.

2006-2007 Senior Fellow: Milken Institute

Conduct research on the economic burden of chronic disease, including the impact of innovations in diagnosis, treatment and prevention processes on the incidence and prevalence of diseases, the costs of treatment and the indirect costs in terms of lost income and productivity. Developed indicators of innovation based on branded and generic drug introduction patterns and clinical trials data.

2005 - 2006 Principal Investigator: Long Beach Alliance for Children with Asthma - Economic Analysis

Conducted a cost-effectiveness analysis of a community health worker and physician education intervention to improve outcomes among children living with asthma in the community of Long Beach, California.

2001 - 2006 Principal Investigator: California Asthma Among the School-Aged - Economic Analysis

Conduct a cost-effectiveness analysis of a best practices and continuous quality improvement intervention targeting asthma treatment among

school-aged children at eight community clinics throughout California. Tasks include assisting with designing the data capture procedures and instruments, preparing annual cost-effectiveness analyses for each clinic and preparing a final program-level cost-effectiveness analysis when the intervention is completed in 2004.

2001 Project Director: Health Care Options Project, Part 1
UCLA Center for Health Policy Research

This two-part project, funded by the California Health and Human Services Agency, implemented a micro-simulation of the California health care sector. I participated in planning meetings and telephone conference calls, working to integrate health policy reform proposals with a micro-simulation model of health care in California. I also assisted in writing a proposal for Part 2 of the Health Care Options Project.

1991 - 1993 Research Assistant: Professor Linda Tesar, UCSB

Assisted in collecting and analyzing data on international securities transactions and on the policies regulating cross-border stock and bond transactions.

1987 - 1989 Senior Consultant: Deloitte Haskins & Sells

Worked as part of a management consulting team on numerous consulting engagements related to business strategy, market definition, competitive assessment, project valuation and financial analysis.

1985 - 1987 Consultant: Roulac & Company

Provided research support to project managers. Tasks included financial analysis and the researching and writing of a number of market feasibility studies.

Teaching Experience

2009 Adjunct Assistant Professor of Economics
University of California Santa Barbara

Undergraduate and Masters Degree courses in financial management, investments and Industrial Organization

- 1999-2006 Adjunct Assistant Professor: Empirical Methods for Health Care Management
UCLA School of Public Health
MPH for Health and Allied Professionals Program
- Masters Degree-level quantitative methods courses designed to satisfy the increasing need for health services managers skilled in evidence-based decision making. Students use large public use data sets and statistical methods to describe and analyze current issues, problems and policy questions in health care markets in California.
- 1996-2006 Adjunct Assistant Professor: Microeconomic Theory of the Health Sector
UCLA School of Public Health
MPH for Health and Allied Professionals Program
- Masters Degree-level microeconomic theory course in an executive program in health services management. Topics include consumers' health care choices, insurance and the provision of health care products and services.
- 1998 Lecturer: Economic Decisions
UCSB Department of Economics
- Master Degree-level microeconomic theory and applications.
- 1996 - 1998 Lecturer: Business Finance
International Professional Programs, University of California Santa Barbara Extended Learning
- Principles-level course in financial management and decision-making. Advanced course in investment strategy, investment selection and portfolio management. Both courses taught to international students from Asia, Europe and South America.
- 1995 - 1996 Academic Coordinator: Business Foundations Course
International Professional Programs, University of California Santa Barbara Extended Learning
- Assisted the program director in organizing a five-week business foundations course as part of a certificate program on business and management. Responsibilities included developing and coordinating course content among four other instructors; preparing a pre-arrival student assessment; and contributing to the writing of the program evaluation.

- 1993 Lecturer: Macroeconomics
Department of Economics, University of California Santa Barbara
- Intermediate macroeconomics and policy.
- 1989 - 1996 Teaching Assistant: Department of Economics, UCSB
- Courses included: Graduate Microeconomic Theory, Financial Management, Intermediate Macroeconomics, Principles of Microeconomics, and Principles of Macroeconomics and Statistics.

Publications

“The Costs of Regulation: Branded Open Supply and Uniform Pricing of Gasoline,” with W. S. Comanor in *International Journal of the Economics of Business*, vol. 10, no. 2 (2003), pp.135-155.

“Geographic Market Limits for Yellow Pages Advertising in California,” with W. S. Comanor, in *Contributions to Economic Analysis: Measuring Market Power*, edited by Daniel Slottje. Amsterdam: North-Holland (2002), pp.295-307.

“The Bell System Divestiture and the Efficiency of the Operating Companies,” with co-authors, *Journal of Law and Economics* Spring 1999.

“Controls on International Securities Transactions,” manuscript, 1993.

“Speculation and the Pricing of New Equity Issues,” manuscript, 1992.

Applying Principles of Macroeconomics: A Handbook, 1991. Study guide and problem sets used in principles of macroeconomics courses taught at University of California, Santa Barbara.

Memberships and Professional Activities

Referee: *The Journal of the Economics of Business*

Member: American Economic Association

Cases at Which Jon M. Riddle Has Provided Testimony

1999

Baja v. Century Medicorp, Superior Court of the State of California, County of Los Angeles, testimony at trial.

2000

Morgan Phillips, Inc. et al. v. Chittenden Eastman, et al., Superior Court of the State of California, County of Los Angeles, testimony at deposition.

2001

Orange Line Oil Company v. Graymills Corporation, Superior Court of the State of California, County of Los Angeles, testimony at deposition.

2002

Bebop, Inc. v. Speedplay, Inc., et al., United States District Court for the Southern District of California, testimony at deposition.

Newport Corporation v. WareNet, Inc., Superior Court of the State of California, County of Orange, testimony at deposition.

2003

Robinson Golf Design, Inc. v. The Retreat Golf & Country Club, LLC, et al., Superior Court of the State of California, County of Riverside, testimony at arbitration.

Bradley Fischl v. New Horizons Computer Learning Center of Southern California, Scott Hardin and Jamie Fieley, Superior Court of the State of California, County of Los Angeles, testimony at deposition.

2004

Arleen Freeman, et al. v. San Diego Association of Realtors, et al., United States District Court for the Southern District of California, testimony at deposition.

Consolidated Credit Agency v. Equifax, Inc., United States District Court for the Central District of California, testimony at deposition.

2005

Buyer's Corner Realty, Inc., Sherry Edwards v. Northern Kentucky Association of Realtors, Inc., Northern Kentucky Multiple Listing Service, United States District Court for the Eastern District of Kentucky, Covington Division, testimony at deposition.

A & P Trading, Inc. v. David Nemani, Bella Findings and Bella Findings House, United States District Court, Central District of California, testimony at deposition.

Jay Reifert v. South Central Wisconsin MLS, et al., United States District Court, Western District of Wisconsin, testimony at deposition.

2006

Morgan Phillips, Inc. et al. v. Chittenden Eastman, et al., Superior Court of the State of California, County of Los Angeles, testimony at trial.

Budget Pest Prevention, Inc. v. Bayer Corporation, Bayer Cropscience and BASF Corporation, United States District Court, Western District of North Carolina Asheville Division, testimony at deposition.

HiRel Connectors, Inc. vs. United States of America, et al., United States District Court, Central District of California – Western Division, testimony at deposition.

Breakdown Services, Ltd. vs. Now Casting, Inc., United States District Court, Central District of California, testimony at deposition.

2008

Consortium Information Services v. Equifax, Inc., et al., United States District Court, Central District of California, testimony at deposition and at trial.

2009

Daniel Duchardt v. Midland National Life Insurance Co., United States District Court, Southern District of Iowa, Central Division, testimony at deposition.

George S. Cohlma, Jr., M. D., and Cardiovascular Surgical Specialists Corporation v. Ardent Health Services, LLC, United States District Court, Northern District of Oklahoma, testimony at deposition.

2013

Le Kun Wu et al. v. Magnus Sunhill Group, LLC, et al., Superior Court for the State of California for the County of Los Angeles, testimony at deposition and at trial.

Ron Levy v. Washington Mutual Bank, et al., Superior Court for the State of California for the County of Los Angeles—West District, testimony at deposition and at trial.

Regents of the University of California v. Blue Shield of California, testimony at arbitration.

2014

Gnanh Nora Krouch vs. Wal-Mart Stores, Inc., United States District Court, Northern District of California, testimony at deposition.

APPENDIX B
Materials Provided by Plaintiff's Counsel

Pleadings

The State of California v. eBay, Inc., *Second Amended Complaint* (Case No. CV12-5874-EJD-PSG)

Unites States v. Adobe Systems, Inc., et al., *Competitive Impact Statement*

Data Files and Related Documents

eBay Brass Ring files (31 files: 2003-2012)

Candidate Data.xlsx

Application Data.xlsx

Req and Status Data.xlsx

Report Field Definitions.xlsx

CA_Employees.xlsx

eBay, Hiring Practices Investigation: California Department of Justice, October 12, 2012.

Cover Letter Defendant Production (1/23/2014)

Paul Hastings e-Bay Materials Cover Letter (3/27/2014)

Email from Tom Brown of Paul Hastings to Nicole Gordon, April 25, 2014.

Yearly_Intuit_Employee_Headcounts_by_Job_Title.xlsx

Publicly Available Documents

eBay Incorporated, Annual Report to the Securities and Exchange Commission on Form 10-K (available at www.sec.gov).

Intuit, Incorporated, Annual Report to the Securities and Exchange Commission on Form 10-K (available at www.sec.gov).

Fortune Magazine, "Best Companies to Work For" annual surveys (available at money.cnn.com/magazines/fortune/best-companies).

Mark A. Allen, Robert E. Hall, and Victoria A. Lazear, "Reference Guide on Estimation of Damages," in *Reference Manual on Scientific Evidence*, 3rd ed., Federal Judicial Center (2011).

Richard Blundell, Antoine Bozio, and Guy Laroque, "Extensive and Intensive Margins of Labour Supply: Working Hours in the US, UK and France," Institute of Fiscal Studies Working Paper 01/11 (2011).

Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization*, 4th ed. (2005).

Raj Chetty, "Bounds on elasticities with optimization frictions: A synthesis of micro and macro evidence on labor supply," *Econometrica* (2012).

Christina DePasquale, "Collusive Monopsony and Antitrust Damages," *The Antitrust Bulletin* (Winter 2009).

Mark J. Garmaise, "Ties that Truly Bind: Non-competition Agreements, Executive Compensation and Firm Investment," *Journal of Law, Economics, and Organization* (2011).

Ronald J. Gibson, "The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 138 [SIC]," and Covenants not to Compete, *New York University Law Review* (1999).

Alan Hyde, *Working in Silicon Valley: Economic and Legal Analysis of a High-Technology Labor Market* (2003).

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10
 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

15 **THE STATE OF CALIFORNIA,**
 16
 Plaintiff,
 17
 v.
 18
EBAY, INC. ,
 19
 Defendant.
 20

Case No. CV12-5874-EJD-PSG

**DECLARATION OF NOTICE
 ADMINISTRATOR REGARDING
 DISSEMINATION OF NOTICE**

1 I, ALAN VASQUEZ, declare and state as follows:

2 **INTRODUCTION AND QUALIFICATIONS**

3 1. I am the Director of the Larkspur Design Group (“LDG”), which is located at
4 3301 Kerner Blvd., San Rafael, California. LDG is Gilardi & Co. LLC’s in-house
5 advertising agency specializing in notice plan design and implementation. Gilardi & Co.
6 LLC (“Gilardi”) was established in 1984 and is one of the largest full service class action
7 notice and claims administrators in the United States. In this matter, LDG will oversee the
8 manner of dissemination of notice, while Gilardi will provide administration services,
9 including any printing and mailing services necessary to the notice program.

10 2. In my role, I oversee all of LDG’s activities as it relates to these notice services.

11 3. LDG has specialized in designing, developing and implementing legal
12 notification plans for more than 25 years. As such, LDG is familiar with, and guided by,
13 Constitutional due process provisions, rules of states and local jurisdictions, and the relevant
14 case law relating to legal notification. Media plans designed and implemented by LDG
15 have included both domestic and international newspapers and magazines, Internet-based
16 banners, notices and websites, wire service, radio, television, point of purchase displays and
17 direct mail.

18 4. I have been involved in the development and implementation of media plans for
19 notification regarding litigation for more than 10 years. Prior to my engagement with Gilardi
20 and LDG, I spent 5 years with another nationally recognized claims administrator serving in
21 a similar capacity. I have also spoken as faculty on CLE panels related to trends in Class
22 Action Notice dissemination. This matter is not a class action, but the notification plan
23 contemplated by the parties follows traditional class action notice procedures.

24 5. For several years, courts have accepted my expert testimony regarding our
25 firm’s quantitative and qualitative evaluation of judicially approved notice plans. Media
26 campaigns for which I have been directly responsible include but are not limited to *Mattel,*
27 *Inc., Toy Lead Paint Products Liability Litigation, No. 07-ML-01897 (S.D. Cal.), Pecover et*
28 *al. v. Electronic Arts Inc., No. 08-cv-02820 (N.D. Cal.), New Motor Vehicles Canadian*

1 *Export Antitrust Litigation, No. MDL 03-1532 (D. Me.), and SRAM Antitrust Litigation, No.*
2 *07-MD-01819 (N.D. Cal).* A more comprehensive list of notable matters for which I have
3 been personally responsible for the notice planning and implementation services is attached
4 as Exhibit 1. I have testified in person and was acknowledged as an expert in *Larson v.*
5 *Sprint Nextel Corporation, Civil Action No. 07-5325 (JLL) (D. N.J.).*

6 6. I submit this declaration at the request of the Attorney General to provide the
7 Court and parties in *The State of California v. eBay Inc.*, Case No. CV12-5874-EJD-PSG
8 information regarding Gilardi's claims administration qualifications and LDG's professional
9 opinion regarding the manner of giving notice to the potential claimants. I have personal
10 knowledge of the matters set forth in this declaration and, if called as a witness, could and
11 would testify competently thereto.

12 **POTENTIAL CLAIMANTS**

13 7. LDG will ensure that the reasonable notice of the settlement of this *parens*
14 *patriae* action is provided to the potential claimants.

15 **OBJECTIVE**

16 8. Gilardi and LDG have one objective in this matter: to provide reasonable and
17 flexible notice, consistent with applicable State laws and constitutional requirements, to
18 reach a large percentage of the potential claimants during the relevant notice period in this
19 case.

20 **NOTICE PLAN OVERVIEW**

21 9. The plan for dissemination of notice contemplates direct notice via postcard and
22 email notice to all potential claimants for whom contact information is available. Based on
23 information received from counsel, LDG understands that contact information is available
24 for the entire population of potential claimants.

25 10. The direct notice efforts will be supplemented by a publication notice campaign
26 that consists of publication in the print edition of the *San Jose Mercury News*, sponsored
27 link advertising on major search engines, and display advertising through the Google
28 Display network. LDG is informed the Attorney General's office will also release a party-

1 neutral press release.

2 11. To provide further information on the matter, Gilardi will also implement a
3 case-dedicated website. The Summary Notice will direct potential claimants to the case-
4 dedicated website, where the Long-Form Notice (“Full Notice”) and other relevant case
5 information will be available for review and download.

6 12. Gilardi will also provide live telephone support to potential claimants through a
7 toll-free phone line.

8 DIRECT NOTICE

9 13. Where possible and practicable, direct notice is the preferred form of legal
10 notification.¹ In this case, LDG will cause the Summary Notice to be sent via USPS First
11 Class mail to the list of individuals provided by the parties. LDG is informed that this list
12 will include all individuals identified as potential claimants and all those natural persons
13 resident in this State who can be identified through reasonable efforts.

14 14. Before mailing, claimant addresses will be updated using the United States
15 Postal Service’s National Change of Address system (“NCOA”). The NCOA system
16 provides updated addresses for all individuals who have filed a change of address with the
17 post office within the past four years. The NCOA system helps to ensure that we have the
18 most current address on file with the USPS in order to minimize returned undeliverable mail
19 (“RUM”).

20 15. All RUM will be sorted and scanned. For RUM returned without a forwarding
21 address, Gilardi uses Accurint (a division of Lexis-Nexis) to perform a basic “skip trace”
22 search in order to retrieve the most accurate and updated information. We will update our
23 database with the new addresses found and re-mail the Summary Notice to those potential
24 claimants.

25 16. LDG will also cause the Summary Notice to be sent via email to a list provided
26 by the Attorney General’s office. LDG is informed this list will include all those natural

27
28 ¹ The U.S. Supreme Court has ruled that the express language and intent of the “best notice practicable under the circumstances” requirement of Rule 23(c)(2) mandates that individual notice be provided to those class members who are identifiable by reasonable efforts. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974).

1 persons resident in this State who can be identified through reasonable efforts.

2 **PRINT PUBLICATION**

3 17. LDG is informed the Summary Notice will be published in a 1/6 page size unit
4 or the closest equivalent of a 5 ¼ inches wide by 7 inches deep placement in the print
5 edition of the *San Jose Mercury News*. The placement will be positioned next to articles
6 relating to consumer electronics if possible.

7 **ONLINE CAMPAIGN**

8 18. Given that potential claimants worked in the tech industry, the demographics of
9 California residents in general, and the fact that internet usage and availability is pervasive
10 throughout this state, the best Notice practicable for this matter should include an online
11 component.

12 19. For those natural persons who do not receive direct notice or see the newspaper
13 insertion, sponsored search advertising will provide additional channels for them to be
14 directed to the case website and review the long-form notice in detail. By bidding on
15 keywords and keyword phrases related to the settlement, any natural persons who have
16 heard about the settlement through the newspaper or word of mouth can go to one of the
17 major search engines to find the case. LDG and Gilardi will work to ensure the case website
18 will be positioned within the top 5 search results for the keywords we select.

19 20. The Google Display Network will provide case website text links on other
20 website pages of Google partners. The links will be placed near content relevant to the case.
21 This can be a highly effective way to generate interest from those individuals who may not
22 be looking for the case website, but who may be potential claimants nonetheless. This is
23 analogous to placing fractional print ads near relevant content in a print publication, such as
24 a newspaper or magazine. LDG utilizes Google's Display Network and managed placement
25 tool to develop a list of appropriate sites to target potential claimants.

26 **PRESS RELEASE**

27 21. LDG and Gilardi understand that the California Attorney General will distribute
28 a party-neutral informational press release, as it remains one of the most cost effective and

1 efficient methods of notice. A press release focused to media outlets that write about the
2 tech industry will generate significant earned media coverage. Dissemination of the press
3 release can be further specified to target specific areas of interest such as government
4 litigation, antitrust litigation, and various news blogs.

5 **CASE WEBSITE**

6 22. Gilardi will implement and maintain a matter-specific website where the Notice
7 and other relevant court documents will be posted and available for download. Claimants
8 and natural persons who are currently residents in California and/or were residents in
9 California during the relevant period will be able to request further information.

10 **TELEPHONE SUPPORT**

11 23. Gilardi will provide live operator support through a toll-free telephone number
12 which claimants can call for additional case information.

13 **NOTICE CONTENT**

14 24. Prior to dissemination, LDG will review and determine whether the long-form
15 Notice of Proposed Settlement and Final Settlement Approval Hearing meets the guidelines
16 outlined on the Federal Judicial Center's Class Action Notice website. Although not
17 applicable in this matter, these guidelines are useful in evaluating whether all appropriate
18 information is being included in the Notice design so that the California Attorney General
19 can comply with all relevant statutory and constitutional requirements. Specifically, LDG
20 will review whether the Notice addresses the following plain language requirements:

- 21 i. The nature of the action, including claims, issues, and defenses;
- 22 ii. An explanation that the action involves only natural persons on whose behalf
23 the California Attorney General brought and is settling her *parens patriae*
24 claims as well as state and local government entities who will be notified
25 separately as to this settlement;
- 26 iii. The explanation of the nature of *parens patriae* claims being settled;
- 27 iv. The method by which one may exclude oneself or opt-out of this *parens patriae*
28 settlement;

- v. The timing for requesting exclusion if applicable;
- vi. The timing for objection if applicable;
- vii. The manner by which to contact counsel for the California Attorney General;
and
- viii. The manner by which to obtain copies of relevant documents.

SUMMARY

25. LDG believes this Notice Plan is reasonable, flexible and complies with applicable state statutory provisions and constitutional due process provisions regarding notice. It has four primary components: a) direct notice; b) an insertion in the *San Jose Mercury News*; c) a sponsored search links and content advertising campaign (Google Display Network); and d) a targeted press release. When implemented, it is both Gilardi's and LDG's opinion that this Notice Plan will be within the applicable notice requirement standard pursuant to statutory and constitutional requirements. The Notice Plan is the most reasonable and flexible given the case parameters at this time, providing adequate notice to a large percentage of the claimants, and providing them with information about their due process rights.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th the day of April 2014, at San Rafael, California.

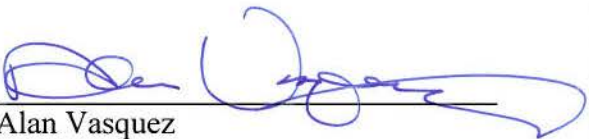

Alan Vasquez

EXHIBIT - 1

LARKSPUR DESIGN GROUP

Notice Plans Designed and Implemented by Alan Vasquez

Automotive

Automobile Antitrust Cases I and II, No. JCCP 4298 and 4303 (San Francisco Sup. Ct., CA)

New Motor Vehicles Canadian Export Antitrust Litigation, No. MDL 03-1532 (Dist. Court of Maine) & *New Motor Vehicles Canadian Export Antitrust Litigation*, No. 2:03-MD-1532-DBH (Dist. Court of Maine)

Entertainment

Herbert et al. v. Endemol USA, Inc. et al., Case No. 2:07-cv-03537-JHN-VBKx (C.D. Cal.)

Couch v. Telescope Inc., et al, Case No. 2:07-cv-03916-JHN-VBKx

McDonald v. RealNetworks, Inc., No. 816666 (Orange County Sup. Ct., CA)

Pecover et al. v. Electronic Arts Inc., No. 08-cv-02820 CW (N.D. Cal.)

Environment

Koepf et al. v. Hanjin Shipping, Co. et al., No. CGC-07-469379 (San Francisco County Sup. Ct., CA)

Loretz et al. v. Regal Stone Limited et al., No. 07-5800-SC (N.D. Cal.)

Tarantino et al. v. Regal Stone et al., No. CGC-07-469379 (San Francisco County Sup. Ct., CA)

Government

McKesson Governmental Entities Average Wholesale Price Litigation, No. 1:08-cv-10843-PBS (D. Mass.)

Product Liability

Mattel, Inc., Toy Lead Paint Products Liability Litigation, No. 2:07-ML-01897-DSF-AJW (S.D. Cal.)

Technology

SRAM Antitrust Litigation, No. 4:07-MD-01819-CW (N.D. Cal) & *SRAM Antitrust Litigation*, No. 4:07-md-1819 CW, MDL No. 1819 (N.D. Cal)

Telecommunications

White v. Cellco Partnership, No. RG04-137699 (Alameda County Sup. Ct., CA)

In re Universal Service Fund Telephone Billing Practices Litig., MDL No. 1468 (D. Kan.)

Consumer Products

Gallucci v. Boiron, Inc. et al., No. 11-cv-2039-JAH (NLSx)

Nigh v. Humphreys Pharmacal, Incorporated et al., Case No. 3:12-cv-02714-MMA-DHB

In re: Bayer Corp. Combination Aspirin Products Marketing and Sales Practices Litigation, No. 09-MD-2023

In Re: Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation, Civil Litigation No. 4:08-md-01907-ERW

Eliason v. Gentek Building Products, Inc., and Associated Materials, Inc., No. 1:10-cv-02093 (N.D. Ohio)

Hart v. Louisiana-Pacific Corporation, No. 2:08-cv-00047 (E.D.N.C.)

Debt Collection Practices

Adams, et al., v. AllianceOne Receivables Management, Inc. (Case No. 08-CV-0248)

Pepper v. Midland Credit Management, Inc. and Encore Capital Group, Inc., No. 37-2011-00088752 (Cal. Super. Ct. San Diego County)

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 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14
 15 **THE STATE OF CALIFORNIA,**

16 Plaintiff,

17 v.

18 **EBAY INC.,**

19 Defendant.

CASE NO. CV 12-5874-EJD-PSG

**DECLARATION OF NICOLE GORDON
 IN SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL**

Date: August 29, 2014
 Time: 9:00 a.m.
 Dept: Courtroom 4, 5th Floor
 Judge: Edward J. Davila

20
 21
 22 I, Nicole Gordon, do declare as follows:

23 1. I have been a Deputy Attorney General in the Antitrust Law Section of the Office of
 24 the California Attorney General for seven years. During that time I worked on a number of
 25 investigations and complex, class action matters. I am one of the deputy attorneys representing
 26 the People of the State of California in the instant case.
 27
 28

1 2. I submit this declaration in support of the underlying Motion for Preliminary
2 Approval. I have knowledge of, and can testify competently to, the facts set out in this
3 supplemental declaration.

4 3. The Attorney General opened a formal investigation into allegations of no-solicit and
5 no-hire agreements. She investigated the factual and legal strengths and weaknesses of this case.
6 California has had access to discovery conducted by the United States Department of Justice.
7 Deputy Attorneys General reviewed thousands of pages of documents, including emails directly
8 linking eBay's senior management to the agreement and emails showing that the agreement had a
9 direct negative impact on prospective employees. Based on the information available, the
10 Attorney General is sufficiently informed of the nature of the claims and defenses to this action,
11 and as a result is in a good position to evaluate the settlement for its fairness, adequacy, and
12 reasonableness.

13 4. I was personally involved in the negotiations with eBay. These negotiations were
14 conducted on an arm's length and non-collusive basis among counsel who are experienced in
15 antitrust law and complex litigation.

16 5. Exhibit A is a true and correct copy of the Settlement Agreement. A true and correct
17 copy of the Proposed Final Judgment is attached to the Settlement Agreement as Attachment A.

18 6. Exhibit B is a true and correct copy of the Third Amended Complaint. The
19 Settlement negotiations contemplated the filing of a Third Amended Complaint along with the
20 Settlement Agreement. The Third Amended Complaint adds *parens patriae* claims and
21 restitution for natural persons.

22 7. The California Attorney General believes that the monetary relief obtained from eBay
23 is significant. Of the \$3.75 Million recovery, \$2.375 Million will be made available to three
24 Claimant Pools of individuals harmed by the alleged agreement.

25 8. A list of potential members of the Claimant Pools was developed with information
26 from eBay and Intuit. The list includes approximately 14,000 current and former residents of
27 California.
28

1 9. The Settlement Agreement provides that any unclaimed funds will be used for a *cy*
2 *pres* distribution to one or more charities, for purposes relating to employment in the technology
3 industry in California. In making these grants, the California Attorney General will follow her
4 “best practices” as established by prior settlements, including:

- 5 • Nexus with the interests of the purpose of the litigation;
- 6 • Accountability of grant recipients to the court to ensure monies are being spent
7 appropriately;
- 8 • An overall *cy pres* plan that identifies goals, standards, and process;
- 9 • Incorporation of the plan into the fairness proceedings to the extent feasible;
- 10 • Written proposals documenting the competence of recipients, work required,
11 timetable, and benefit to the class;
- 12 • Safeguards against favoritism or self-interest in recipient selection; and
- 13 • Monitoring of recipients to insure use of funds in accordance with the court order.

14 10. The Settlement Agreement grants the California Attorney General 18% (\$675,000) of
15 the settlement funds as attorneys’ fees and expert costs. The amount is below the expenses
16 incurred by the Attorney General in the investigation and prosecution of this matter.

17 11. The Court may consider the California Attorney General’s assessment of the scope of
18 relief obtained in preventing future violations of law, and thus future injury to California
19 government entities and natural persons, through both the injunction and the reporting
20 requirements. eBay will be enjoined from entering into agreements like the one at issue in this
21 matter for five years.

22 12. Exhibit C is a true and correct copy of the Proposed Settlement Notices. In addition
23 to the notice plan set out in the Declaration of Alan Vasquez, a copy of this Notice and other
24 relevant documents will appear on the web site of the Attorney General, <http://oag.ca.gov>. eBay
25 has approved the proposed notices as to form.

26 13. The long form Settlement Notice for the *parens patriae* claims will include: (1) a
27 brief explanation of the case, (2) a statement that the Court will exclude natural persons from
28

1 these settlements if any of them so request; (3) a procedure for requesting exclusion; (4) a
2 statement indicating the judge will bind all non-excluded natural persons insofar as their *parens*
3 *patriae* claims are concerned; and (5) a statement that any non-excluded natural persons may
4 enter an appearance by counsel. In addition to the notice plan set out in the Vasquez Declaration,
5 a copy of this Notice and other relevant documents will appear on the web site of the Attorney
6 General, <http://oag.ca.gov>. Chunghwa and Philips have each approved this proposed notice as to
7 form.

8 14. The total cost of the proposed *parens* notice process set out here and in the Burke
9 Declaration is \$150,000.

10 15. 26. The Attorney General recommends that a 180 day period be set for a response
11 period that would include 90 days for issuing notice and an additional 90 days for natural persons
12 to submit a claim for eligibility for distribution or exclusion from the Settlement.

13 16. Exhibit D is a true and correct copy of a Proposed Order approving the Motion for
14 Preliminary Approval.

15
16
17 I declare under penalty of perjury under the laws of the United States and the State of
18 California that the foregoing is true and correct to the best of my knowledge and that this
19 declaration was executed in San Francisco, California on May 1, 2014.

20
21 Dated: May 1, 2014

22
23 /s/ Nicole Gordon
24 NICOLE GORDON

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 1st day of May, 2014 (the “Effective Date”) by and between eBay Inc. (“eBay”) and the Attorney General of California (“Attorney General”), on behalf of the State of California and as *parens patriae* on behalf of natural persons who are residing in or have resided in California since January 1, 2005 (collectively, the “State”).

WHEREAS, the State is prosecuting *The State of California v. eBay Inc.*, Case No. CV12-5874-EJD-PSG (N.D. Cal.) (the “Action”) alleging that eBay participated in an Agreement in violation of Section One of the Sherman Act, the Cartwright Act, and California’s Unfair Competition Law, and the State of California and eBay, by their respective attorneys, have consented to this Settlement Agreement without trial or adjudication of any additional issues of fact or law;

AND WHEREAS, in 2012 the State initiated an investigation into certain recruiting and hiring practices of eBay and, as part of that investigation, obtained access to documents previously provided by eBay to the United States Department of Justice Antitrust Division;

AND WHEREAS, by stipulation of the Settling Parties, the State filed the Third Amended Complaint (“Complaint”) on May 1, 2014, bringing claims in the name of the people of the State of California, as *parens patriae* to obtain restitution on behalf of natural persons who are residing in or have resided in California since January 1, 2005, for any harms suffered by those individuals as a result of the conduct that is alleged or could have been alleged in the Complaint, pursuant to the authority granted to it under 15 U.S.C. § 15c(a)(1) and Cal. Bus. & Prof. Code § 16760(a)(1);

AND WHEREAS, the State through the Attorney General has authority to settle this *parens patriae* action on behalf of all natural persons who are residing in or have resided in California since January 1, 2005, pursuant to the authority granted to it under 15 U.S.C. § 15c(c) and Cal. Bus. & Prof. Code § 16760(c);

AND WHEREAS, the Settling Parties have engaged in good faith, arms-length negotiations to reach the terms contained in this Settlement Agreement;

AND WHEREAS this Settlement Agreement does not constitute any admission by the Defendant that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

AND WHEREAS, the Settling Parties agree to be bound by the provisions of this Settlement Agreement pending its approval by the Court;

NOW THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the relevant claims be settled, compromised, and dismissed on the merits with prejudice as to eBay and except as hereinafter provided, subject to the approval of the Court, on the following terms and conditions, and incorporating the following clauses:

I. Definitions

A. “eBay” or “Defendant” means eBay Inc., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees.

B. “Agreement” means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more Persons.

C. “Released Claims” means all claims, demands, rights, liabilities, and causes of action, that were or could have been asserted against eBay by the Releasing Parties in connection with the facts, transactions, or events alleged in the Complaint.

D. “Releasing Parties” means the State of California, the Attorney General, and the Attorney General acting as *parens patriae* on behalf of all natural persons who resided in California at any point from January 1, 2005 through the Effective Date and who did not opt out of the settlement during the Response Period.

E. “Response Period” means 180 days after Preliminary Approval. Or, 90 days after the last day to issue Notice. The Response Period includes the Claims Period and Exclusion Period. During this time, a member of the claimant pool may submit a claim for (1) eligibility for distribution (“Claims Period”) or (2) exclusion from the Settlement (“Exclusion Period”).

F. “Settlement” means the settlement contemplated by this Settlement Agreement.

G. “Settling Parties” means the State and eBay.

II. Agreement

A. Subject to the approval of the Court, the Settling Parties agree to compromise, settle, and resolve fully and finally on the terms set forth herein, all Released Claims.

III. Approval of this Settlement Agreement and Dismissal of Claims Against eBay

A. To the extent that judicial approval is required, the Settling Parties shall recommend approval of this Settlement Agreement by The United States District Court for the Northern District of California. The Settling Parties shall use their best efforts to effectuate this Settlement Agreement and its purpose, including cooperating in seeking any necessary court approvals.

B. The Settling Parties shall jointly seek any orders and final judgment necessary to effectuate this Settlement Agreement, the text of which the Settling Parties shall agree upon.

C. This Settlement Agreement shall become final when (i) the Court has entered an order and final judgment that dismisses as to eBay the Complaint with prejudice against the State, and (ii) the time for appeal or to seek permission to appeal has expired, or (iii) if appealed, approval of this Settlement Agreement and the order and final judgment dismissing as to eBay

with prejudice have been resolved. The Settlement Agreement shall be deemed executed as of the later date of signature by either party.

IV. [Proposed] Final Judgment

A. As part of this Settlement Agreement, the State and eBay have agreed to the entry of the [Proposed] Final Judgment attached as Attachment A, the terms and conditions of which are incorporated in this Settlement Agreement in full. The terms set forth in the [Proposed] Final Judgment, once entered by the Court, shall govern the enforcement of this section.

V. Payment of Settlement Funds

A. eBay has agreed to pay the total amount of three million seven hundred fifty thousand dollars (\$3.75 million USD) under this Settlement Agreement. None of the money paid into the Settlement Fund will revert to eBay under any circumstances. eBay will distribute the funds in two payments, according to the following schedule:

1. Within 30 days following the Court's preliminary approval of this Settlement Agreement, eBay will pay two hundred fifty thousand dollars (\$250,000 USD) to the State, by wire transfer or such other method as the Settling Parties may agree, to satisfy civil penalties claimed by the State.

2. Within 30 days following the Court's preliminary approval of this Settlement Agreement, eBay will pay one hundred fifty thousand dollars (\$150,000 USD) into the Settlement Fund, to be held in an interest-bearing account at such financial institution as the State shall designate (the "Settlement Fund Account"). The payment shall be made by wire transfer or such other method as the Settling Parties may agree, and will be used for costs of notice and fund administration, including the cost of a *cy pres* consultant.

3. Upon the Court's approval of the Distribution Proposal, eBay will pay three million three hundred fifty thousand dollars (\$3.35 million USD) into the Settlement Fund Account.

B. The Settlement Fund will be used to pay the reasonable costs and expenses associated with the administration of the Settlement (the "Settlement Fund Administration Costs"), as well as the payments outlined in Section VI, below.

C. The Settling Parties agree that the Settlement Fund shall be transferred to the Attorney General for distribution in accordance with this Settlement Agreement. The Settlement Fund is intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1 and any analogous local, state, and/or foreign statute, law, regulation, or rule. All taxes with respect to the earnings on the funds in the Settlement Fund Account shall be the responsibility of the Settlement Fund Account. The State shall administer the Settlement Fund Account or may designate a third party, after consultation with eBay, to administer the Settlement Fund Account. If necessary, it shall be the responsibility of the State or its designee,

to establish and maintain the Settlement Fund Account as a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1.

D. Payments from the Settlement Fund shall be made after final approval of the Court (which may include approval of payments consistent with proposed budgets and expenses). In no event shall eBay have any obligation, responsibility, or liability arising from or relating to the administration, maintenance, preservation, investment, use, allocation, adjustment, distribution, or disposition of any funds in the Settlement Fund.

VI. Plan of Allocation of Settlement Funds

A. Restitution. This Settlement Agreement provides for restitution to three groups of natural persons who are residing in or have resided in California since January 1, 2005 (the “Settlement Period”), and who were employed by eBay or Intuit over the Settlement Period (each, a “Claimant”). Restitution payments will be made from the Settlement Fund. Restitution payments will be made to three distinct pools described below (each a “Claimant Pool”), and a Claimant can only recover as a member of one of the three pools, notwithstanding the fact that the Claimant may meet the criteria for more than one of the Claimant Pools. The Claimant Pools are as follows:

1. Claimant Pool One: Each Claimant who was one of the approximately forty people who, during the Settlement Period, was employed by Intuit, and was considered for but not offered a position at eBay, whom eBay has identified from documents in its possession, and who is named on a list eBay has provided to the State and/or the State’s designated claims administrator will receive a prorated distribution from a pool of two hundred thousand dollars (\$200,000 USD). Each Claimant who meets the criteria for Claimant Pool One will receive a maximum of ten thousand dollars (\$10,000 USD) and a minimum of five thousand dollars (\$5,000 USD).

2. Claimant Pool Two: Each Claimant of the approximately nine hundred fifty people who, during the Settlement Period, was employed by Intuit, applied for but was not offered a position at eBay, and is not a member of Claimant Pool One, and who is named on a list derived by eBay from its records, which list eBay has provided to the State and/or the State’s designated claims administrator, will receive a prorated distribution from a pool of nine hundred fifty thousand dollars (\$950,000 USD). Each Claimant who meets the criteria for Claimant Pool Two will receive a maximum of one thousand five hundred dollars (\$1,500 USD) and a minimum of one thousand dollars (\$1000 USD).

3. Claimant Pool Three: Each Claimant who was employed by either eBay or Intuit during the Period and who is not a member of either Claimant Pool One or Claimant Pool Two and whose employment by either eBay or Intuit during the Period can be reasonably confirmed shall receive a prorated distribution from a pool of one million two hundred twenty five thousand dollars (\$1,225,000 USD) plus, if necessary, any funds that are not distributed to Claimants belonging to Claimant Pool One or Claimant Pool Two. Each Claimant who meets the criteria identified above will receive a maximum of one hundred fifty dollars (\$150 USD).

B. Harm to the California Economy. This settlement agreement provides for three hundred thousand dollars (\$300,000 USD) for harm to the California economy, including deadweight loss, resulting from the conduct alleged in the Complaint which shall be recovered from the Settlement Fund for deposit into a state antitrust or consumer protection account.

C. Attorneys' Fees and Costs. The State has incurred at least six hundred seventy five thousand dollars (\$675,000 USD) in attorneys' fees and costs, which amount shall be recovered from the Settlement Fund.

D. Cy Pres.

1. Any amount remaining in the Settlement Fund after the claims of natural persons are redeemed within the time period approved by the Court, will be distributed by the State for *cy pres* purposes to one or more charitable organizations, pursuant to California Business and Professions Code Section 16760(e)(1), for purposes relating to employment in the technology industry in California (each, a "*Cy Pres* Recipient"). As a condition to receiving any payment under this section, each *Cy Pres* Recipient shall agree to devote the funds to promote public awareness and education, or other similar initiatives related to employment. If any *Cy Pres* Recipient does not agree to these conditions, then its portion will be distributed *pro rata* to the other identified Recipients; if no Recipient agrees to the conditions, or if the Court so requires, the Parties shall meet and confer to identify other recipients.

2. The State shall coordinate with the Fund Administrator to identify *Cy Pres* Recipients within ninety days after the final payments out of the Settlement Fund as described in Sections VI.A-C, above, plus the Settlement Fund Administration Costs. The State may employ a *cy pres* consultant to be paid out of the *cy pres* funds.

E. If this Settlement Agreement is not approved or terminated, canceled, voided, or fails to become effective, the State shall retain full rights to assert any and all causes of action against eBay.

VII. Notice and Opt-Out Procedures

A. The State may employ a claims administrator in order to facilitate the provision of notice and to distribute and/or administer the distribution of funds to natural persons, who will be paid out of the Settlement Fund.

B. Commencing immediately and in no event later than thirty days following the Court's preliminary approval of this Settlement Agreement, eBay shall provide to the State or its designated claims administrator information from its internal hiring database sufficient to allow the State or its designated claims administrator to confirm whether a Claimant belongs to one of the Claimant Pools. eBay shall also provide reasonable cooperation and assistance to the State in understanding and utilizing such information for purposes of effectuating the notice and opt-out procedures and distribution plan outlined in this Settlement Agreement.

C. Within ninety days following the Court's preliminary approval of this Settlement Agreement, the State or its designated claims administrator shall complete a direct notice via postcard and email, and publication notice, to potential members of Claimant Pools One, Two,

and Three using the Notice, Claim, and Opt-Out forms contained in Appendix A hereto, or as otherwise ordered by the Court.

D. As explained in the email notice and publication notice contained in Appendix B hereto, any member of Claimant Pools One, Two, or Three that does not wish to participate in Claimant Pools One, Two or Three shall have until one hundred eighty days after the Court's preliminary approval of this Settlement Agreement – *i.e.*, ninety days after the last date for completion of the email and publication notice (the "Exclusion Period") – to exclude himself or herself from the Claimant Pools pursuant to 15 U.S.C. § 15c(b)(2).

E. A Claimant may effect such an exclusion by responding on the settlement website, sending email, or sending a written notification to the State or its designated claims administrator.

F. So-called "mass" or "class" opt-outs purporting to be made on behalf of multiple persons or classes of persons shall not be allowed and shall be deemed invalid.

G. As explained in the email and publication notice contained in Appendix B hereto, a Claimant who wishes to receive a distribution from one of the Claimant Pools shall have until one hundred eighty days after preliminary Approval (the "Claims Period") – to submit a claim for eligibility for distribution from one of the Claimant Pools.

H. A Claimant may effect such a claim for distribution by responding on the settlement website, sending email, or sending a written request to the State or its designated claims administrator within the Response Period.

I. The State or its claims administrator shall take commercially reasonable efforts to confirm that each claim for distribution or request for exclusion is submitted by a Claimant.

J. Within one hundred twenty days after the conclusion of the Response Period, the State or its designated claims administrator shall prepare and file with the Court for its approval, and provide to a designee of counsel for eBay, a report (the "Distribution Proposal") that:

1. Lists the number of Claimants that sought to receive a distribution from one of the Claimant Pools, and states whether the claims for distribution was timely and properly made.

2. Lists each Claimant that submitted a request for exclusion that the State or its designated claims administrator received, with any confidential information filed under seal with the Court.

3. Confirms that the notice plan described herein was carried out and that the website notice, mail notice, publication notice, and any other notice to members of the Claimant Pools was provided in the manner directed by the Court.

4. Attaches a plan of distribution consistent with Section VI, above, including the amount proposed to be distributed to each Claimant Pool and the amount proposed to be distributed to each *Cy Pres* Recipient.

K. No later than sixty days following approval of the Distribution Proposal, the State or its designated claims administrator shall effect the distribution of funds from the Settlement Fund Account according to the Distribution Proposal, including any modifications made by the Court.

VIII. Released Claims

A. In consideration of the monetary and injunctive provisions contained in this Settlement Agreement the State of California, the Attorney General, and the Attorney General acting on behalf of the people of California as *parens patriae* on behalf of all natural persons who currently reside in California as of the Effective Date or who resided in California at any point from January 1, 2005 through the Effective Date and who did not timely file with the Court a valid request for exclusion from the settlement fully, finally, and forever release eBay from all Released Claims.

B. In further consideration of the monetary and injunctive provision contained in this Settlement Agreement, the Final Judgment shall be deemed *res judicata* as to any Released Claim.

C. To the fullest extent permitted by law, the Attorney General waives any right or benefit available to them under Section of the California Civil Code, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor” and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to Section 1542 of the California Civil Code.

IX. Cooperation and Implementation

A. The Settling Parties agree to cooperate fully to implement the terms and conditions of this Settlement Agreement.

B. The Settling Parties agree that a Final Judgment in a form substantially similar to Attachment A may be entered by the Court.

C. eBay agrees to provide documents and information relevant to the litigation or settlement, including identifying individuals, such as current or former employees, who may provide relevant information necessary to implement the terms and conditions of this Settlement Agreement.

X. Retention of Jurisdiction

A. This Court retains jurisdiction to enable any party to this Settlement Agreement to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Settlement Agreement, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

B. If the State successfully brings an action to enforce the provisions of this Settlement Agreement, eBay shall reimburse the State for all reasonable costs and attorneys' fees associated with bringing such enforcement action.

C. In the event that the provisions of this Settlement Agreement are asserted by eBay as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any other suit, action or proceeding by a plaintiff, the Attorney General, in her capacity as *parens patriae*, will not object to a motion for a stay of that suit, action or proceeding until the United States District Court for the Northern District of California has entered an order or judgment determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action or proceeding, to the fullest extent they may effectively do so under applicable law, the Settling Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of such court, or that such court is, in any way, an improper venue or an inconvenient forum.

XI. Tax Treatment

The Settling Parties agree to treat the Settlement Fund Account as being at all times a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 and Section 468B of the Internal Revenue Code, and any analogous local, state, and/or foreign statute, law, regulation, or rule, as amended, for the taxable years of the Settlement Fund Account, beginning with the date it is created. In addition, the Fund Administrator and, if required, eBay, shall jointly and timely make such elections as are necessary or advisable to carry out the provisions of this Section, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Fund Administrator to timely and properly prepare, and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

A. For purposes of Section 468B of the Internal Revenue Code, as amended, and the regulations promulgated thereunder, the Fund Administrator shall be the State or any person or entity that the State may designate. The Fund Administrator shall timely and properly file or cause to be filed all tax returns necessary or advisable with respect to the Settlement Fund Account, and make or cause to be made all required tax payments, including deposits of estimated tax payments in accordance with Treas. Reg. § 1.468B-2(k). Such returns (as well as the election described in paragraph 44 hereof) shall be consistent with this paragraph and reflect that all taxes (including any interest or penalties) on the income earned by the Settlement Fund Account shall be paid out of the Settlement Fund Account. eBay further agrees to file and furnish all statements and take all actions required of a transferor by section 1.468B-3(e) of the

Treasury Regulations. All expenses and costs incurred in connection with the operation and implementation of this paragraph (including without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section) (“Tax Expenses”), shall be paid out of the Settlement Fund Account.

B. All (i) taxes (including any interest or penalties) arising with respect to the income earned by the Settlement Fund (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of this paragraph (including without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph) (“Tax Expenses”), shall be paid out of the Settlement Fund Account; in all events eBay shall have no liability for Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid out of the Settlement Fund Account without prior order from the Court. The Fund Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Claimants any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). eBay is not responsible and shall have no liability therefor. The Settling Parties agree to cooperate with the Fund Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

XII. Notice

A. For purposes of this Settlement Agreement, any notice or other communication shall be given to the persons at the addresses set forth below (or such other addresses as they may specify in writing to eBay):

For the State:

Senior Assistant Attorney General
Antitrust Section, Public Rights Division
Office of the Attorney General of California
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

For eBay:

Thomas P. Brown
Paul Hastings LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105


Dated: May 1, 2014

KAMALA D. HARRIS
ATTORNEY GENERAL OF CALIFORNIA

By: 
Nicole S. Gordon
Attorneys for Plaintiff

Dated: May 1, 2014

THOMAS P. BROWN
ANGELA J. MARKLE
PAUL HASTINGS LLP

By: 
Thomas P. Brown
Attorney for Defendant eBay Inc.

Attachment A

Proposed Final Judgment

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

THE STATE OF CALIFORNIA,

Plaintiff,

Case No. CV12-5874-EJD-PSG

v.

[PROPOSED] FINAL JUDGMENT

EBAY INC.,

Defendant.

WHEREAS, the People of the State of California filed its Third Amended Complaint (“Complaint”) on April 30, 2014, alleging that eBay Inc. (“eBay”) participated in an agreement in violation of Section One of the Sherman Act, the Cartwright Act, and California’s Unfair Competition Law, and the State of California and the Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any additional issues of fact or law;

AND WHEREAS this Final Judgment does not constitute any admission by the Defendant that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

AND WHEREAS, the Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by this Court;

NOW THEREFORE, before any testimony is taken, without trial, and upon consent of the Defendant, it is ORDERED, ADJUDGED, AND DECREED.

I. JURISDICTION

This Court has jurisdiction over the subject matter and both of the parties to this action. The Complaint states a claim upon which relief may be granted against eBay under Section One of the Sherman Act, as amended, 15 U.S.C. § 1. This Court also has supplemental jurisdiction over the

1 Complaint’s Cartwright Act, Cal. Bus. & Prof. Code § 16720, *et seq.*, and Unfair Competition
2 Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, claims.

3
4 **II. DEFINITIONS**

5 As used in this Final Judgment:

6 A. “eBay” or “Defendant” means eBay Inc., its (i) successors and assigns, (ii) controlled
7 subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors,
8 officers, managers, agents acting within the scope of their agency, and employees.

9 B. “Agreement” means any contract, arrangement, or understanding, formal or informal,
10 oral or written, between two or more persons.

11 C. “Effective Date” shall have the same meaning as in the Settlement Agreement.

12 D. “No direct solicitation provision” means any agreement, or part of an agreement,
13 among two or more persons that restrains any person from cold calling, soliciting, recruiting, or
14 otherwise competing for employees of another person.

15 E. “Person” means any natural person, corporation, company, partnership, joint venture,
16 firm, association, proprietorship, agency, board, authority, commission, office, or other business
17 or legal entity, whether private or governmental.

18 D. “Releasing Parties” means the State of California, the Attorney General, and the
19 Attorney General acting as *parens patriae* on behalf of all natural persons who resided in
20 California at any point from January 1, 2005 through the Effective Date and who did not opt out
21 of the settlement during the Response Period.

22 F. “Released Claims” means all claims, demands, rights, liabilities, and causes of action,
23 that were or could have been asserted against eBay in connection with the facts, transactions, or
24 events alleged in the Complaint.

25 G. “Senior manager” means any company officer or employee above the level of vice
26 president.

III. APPLICABILITY

1 This Final Judgment applies to eBay, as defined in Section II, and to all other persons in
2 active concert or participation with eBay who receive actual notice of this Final Judgment by
3 personal service or otherwise. It is entered into jointly with the Settlement Agreement between
4 the parties.

IV. PROHIBITED CONDUCT

5
6 eBay is enjoined from attempting to enter into, entering into, maintaining or enforcing any
7 agreement with any other person to in any way refrain from, requesting that any person in any
8 way refrain from, or pressuring any person in any way to refrain from soliciting, cold calling,
9 recruiting, or otherwise competing for employees of the other person.

V. CONDUCT NOT PROHIBITED

10
11 A. Nothing in Section IV shall prohibit eBay from unilaterally attempting to enter into,
12 entering into, maintaining, or enforcing a no direct solicitation provision that is otherwise not
13 prohibited by federal and state statutory and case law.

14 B. eBay shall not be required to modify or conform, but shall not enforce, any no direct
15 solicitation provision to the extent it violates this Final Judgment if the no direct solicitation
16 provision appears in eBay’s consulting or services agreements in effect as of the date of this Final
17 Judgment (or in effect as of the time Intuit acquires a company that is a party to such an
18 agreement).

VI. REQUIRED CONDUCT

19
20 A. eBay shall:

21 1. furnish a copy of this Final Judgment within sixty days of entry of the Final
22 Judgment to each of its officers, directors, human resources managers, and senior managers who
23 supervise employee recruiting, solicitation, or hiring efforts;

24 2. furnish a copy of this Final Judgment to any person who succeeds to a position
25 described in Section VI.A.1 within thirty days of that succession;

26 3. annually brief each person designated in Sections VI.A.1 and VI.A.2 on the
27 meaning and requirements of this Final Judgment and the antitrust laws; and
28

1 4. obtain from each person designated in Sections VI.A.1 and VI.A.2, within 60
 2 days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and,
 3 to the best of his or her ability, understands and agrees to abide by the terms of this Final
 4 Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to
 5 eBay; and (iii) understands that any person's failure to comply with this Final Judgment may
 6 result in an enforcement action for civil or criminal contempt of court against Intuit and/or any
 7 person who violates this Final Judgment.

8 B. For five (5) years after the date of entry of the Final Judgment on or before its
 9 anniversary date, eBay shall file with the State of California an annual statement identifying and
 10 providing copies of any agreement and any modifications thereto covered by Section V.A.5. of
 11 the Final Judgment in *United States v. Adobe Systems, et al.* as well as describing any violation or
 12 potential violation of this Final Judgment known to any officer, director, human resources
 13 manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts.
 14 Descriptions of violations or potential violations of this Final Judgment shall include, to the
 15 extent practicable, a description of any communications constituting the violation or potential
 16 violation, including the date and place of the communication, the persons involved, and the
 17 subject matter of the communication.

18 C. If any officer, director, human resources manager, or senior manager who supervises
 19 employee recruiting, solicitation, or hiring efforts of eBay learns of any violation or potential
 20 violation of any of the terms and conditions contained in this Final Judgment, eBay shall
 21 promptly take appropriate action to terminate or modify the activity so as to comply with this
 22 Final Judgment and maintain all documents related to any violation or potential violation of this
 23 Final Judgment.

24 **VII. ENFORCEMENT**

25 A. For the purposes of determining or securing compliance with this Final Judgment, or
 26 of determining whether the Final Judgment should be modified or vacated, from time to time
 27 authorized representatives of the California Department of Justice, including consultants and
 28

1 other persons retained by the State of California, shall, upon the written request of an authorized
2 representative of the Chief Assistant Attorney General in charge of the Public Rights Division,
3 and on reasonable notice to eBay, subject to any legally recognized privilege, be permitted:

4 1. access during eBay's regular office hours to inspect and copy, or at the option
5 of the State of California, to require eBay to provide electronic or hard copies of, all books,
6 ledgers, accounts, records, data, and documents in the possession, custody, or control of the
7 Defendant, relating to any matters contained in this Final Judgment, including, but not limited to,
8 all documents identified, provided, maintained, or created pursuant to any related cases; and

9 2. to interview, either informally or on the record, eBay's officers, employees, or
10 agents, who may have their counsel, including any individual counsel, present, regarding such
11 matters. The interviews shall be subject to the reasonable convenience of the interviewee and
12 without restraint or interference by eBay.

13 B. Upon the written request of an authorized representative of the Chief Assistant
14 Attorney General in charge of the Public Rights Division, eBay shall submit written reports or
15 responses to written interrogatories, under oath if requested, relating to any of the matters
16 contained in this Final Judgment as may be requested.

17 C. No information or documents obtained by the means provided in this section shall be
18 divulged by the State of California to any person other than an authorized representative of the
19 State of California, except in the course of legal proceedings to which the State of California is a
20 party (including grand jury proceedings), or for the purpose of securing compliance with this
21 Final Judgment, or as otherwise required by law.

22 D. If at the time information or documents are furnished by eBay to the State of
23 California, eBay represents and identifies in writing the material in any such information or
24 documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal
25 Rules of Civil Procedure or Section 2025.420(b)(13) of the California Code of Civil Procedure,
26 and eBay marks each pertinent page of such material, "Subject to claim of protection under Rule
27 26(c)(1)(G) of the Federal Rules of Civil Procedure or Section 2025.420(b)(13) of the California
28

1 Code of Civil Procedure,” then the State of California shall give eBay ten (10) calendar days
2 notice prior to divulging such material in any legal proceeding (other than a grand jury
3 proceeding).

4 **VIII. RETENTION OF JURISDICTION**

5 A. This Court retains jurisdiction to enable any party to this Final Judgment to apply to
6 this Court at any time for further orders and directions as may be necessary or appropriate to carry
7 out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to
8 punish violations of its provisions.

9 B. In the event that the provisions of the Settlement Agreement or this Final Judgment
10 are asserted by eBay as a defense in whole or in part to any claim or cause of action or otherwise
11 raised as an objection in any other suit, action or proceeding by a plaintiff, the Attorney General
12 shall not object to a motion by eBay for a stay of that suit, action or proceeding until this Court
13 has entered an order or judgment determining any issues relating to the defense or objection based
14 on such provisions.

15 **IX. EXPIRATION OF FINAL JUDGMENT**

16 Unless this court grants an extension, this Final Judgment shall expire five (5) years from
17 the date of the entry of the Final Judgment.

18 **X. NOTICE**

19 For purposes of this Final Judgment, any notice or other communication shall be given to
20 the persons at the addresses set forth below (or such other addresses as they may specify in
21 writing to eBay):

22 Senior Assistant Attorney General
23 Antitrust Section, Public Rights Division
24 Office of the Attorney General of California
25 455 Golden Gate Avenue, Suite 11000
26 San Francisco, CA 94102
27
28

XI. SETTLEMENT PAYMENT

1 The Court approves the Settlement Agreement between the Settling Parties, including but
2 not limited to Sections V (“Payment of Settlement Funds”), VI (“Plan of Allocation of Settlement
3 Funds”), and VII (“Notice and Opt-Out Procedures”). The Settling Parties are to proceed as
4 outlined in those Sections of the Settlement Agreement.

XII. RELEASED CLAIMS

6 A. The State of California, the Attorney General, and the Attorney General acting on
7 behalf of the people of California as *parens patriae* on behalf of all natural persons who currently
8 reside in California as of the Effective Date or who resided in California at any point from
9 January 1, 2005 through the Effective Date and who did not timely file with the Court a valid
10 request for exclusion from the settlement fully, finally, and forever releases eBay from all
11 Released Claims.

12 B. This Final Judgment shall be deemed *res judicata* as to any Released Claim.

13 C. To the fullest extent permitted by law, the Attorney General waives any right or
14 benefit available to them under Section of the California Civil Code, which provides as follows:
15 “A general release does not extend to claims which the creditor does not know or suspect to exist
16 in his favor at the time of executing the release, which if known by him must have materially
17 affected his settlement with the debtor” and all provisions, rights and benefits conferred by any
18 law of any state or territory of the United States, or principle of common law or foreign law, that
19 is similar, comparable or equivalent in effect to Section 1542 of the California Civil Code.
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XII. ATTORNEY’S FEES AND COSTS

24 A. Plaintiff is awarded its attorneys’ fees and costs in the amount of \$675,000, which
25 amount shall be recovered from the settlement payment described in Section XI, above. eBay
26 shall pay this sum as outlined in the Settlement Agreement within 30 business days following the
27 date of entry of this Final Judgment.
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B. If Plaintiff successfully brings an action to enforce the provisions of this Final Judgment, eBay shall reimburse Plaintiff for all reasonable costs and attorneys' fees associated with bringing such enforcement action.

Date: _____

HON. EDWARD J. DAVILA
United States District Judge

1 KAMALA D. HARRIS
 Attorney General of California
 2 MARK J. BRECKLER
 Chief Assistant Attorney General
 3 KATHLEEN E. FOOTE
 Senior Assistant Attorney General
 4 PAUL A. MOORE III (SBN 241157)
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 8 E-mail: Nicole.Gordon@doj.ca.gov
Attorneys for Plaintiff

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION

13
 14 **THE STATE OF CALIFORNIA,**

Plaintiff,

15
 16 v.

17 **EBAY INC. ,**

18 Defendant.
 19

Case No. CV12-5874-EJD-PSG

**THIRD AMENDED COMPLAINT FOR
 VIOLATIONS OF THE SHERMAN ACT,
 CARTWRIGHT ACT, AND UNFAIR
 COMPETITION LAW FOR INJUNCTIVE
 RELIEF AND CIVIL PENALTIES**

20 COMES NOW, Kamala D. Harris, Attorney General for the State of California, and alleges
 21 the following:

22 **INTRODUCTION**

23 1. Kamala D. Harris, Attorney General, State of California, brings this action in her
 24 official capacity as the chief law enforcement officer of the State of California against eBay, Inc.
 25 (“eBay”) for entering into a no-solicitation and no-hiring agreement in violation of Section 1 of
 26 the Sherman Act, the Cartwright Act, and the California Unfair Competition Law. Pursuant to
 27 the agreement, eBay and co-conspirator Intuit, Inc. (“Intuit”) agreed not to recruit each other’s
 28 employees and eBay agreed not to hire any Intuit employees, even those that approached eBay for

1 a job. This agreement harmed employees by lowering the salaries and benefits they might
2 otherwise have commanded, and deprived these employees of better job opportunities at the other
3 company.

4 2. Senior executives at eBay and Intuit entered into an evolving “handshake” agreement
5 to restrict their ability to recruit and hire employees of the other company. The agreement, which
6 was entered into no later than 2006, prohibited either company from soliciting the other’s
7 employees for job opportunities, and for over a year prevented at least eBay from hiring any
8 employees from Intuit at all. The agreement was enforced at the highest levels of each company.

9 3. The agreement reduced eBay’s and Intuit’s incentives and ability to compete for
10 employees and restricted employees’ mobility. This agreement thus harmed employees and the
11 public by lowering the salaries and benefits they otherwise would have commanded, and deprived
12 these employees of better job opportunities at the other company.

13 4. eBay continued to enforce the agreement even though it was on notice that it was
14 potentially illegal, both from a federal consent decree in 2010 which directly addressed such no-
15 poach agreements and from California state law. There is no reason to believe that eBay has
16 ceased or would not resume such actions.

17 5. This agreement between eBay and Intuit is a naked restraint of trade that is *per se*
18 unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, that eBay adopts or abandons at
19 will. It also violates the Cartwright Act and California’s Unfair Competition Law. Under the
20 Cartwright Act and Unfair Competition Law, the Attorney General does not need to show
21 irreparable injury before obtaining injunctions. Cal. Bus. & Prof. Code §§ 16754-54.5. The State
22 of California seeks an order prohibiting any such agreement and other relief to prevent eBay from
23 engaging in further employment-related anticompetitive activities.

24 **JURISDICTION AND VENUE**

25 6. This complaint alleges violations of the Sherman Act, 15 U.S.C. § 1. It is filed under,
26 and jurisdiction is conferred upon this Court by, Sections 4, 4C, 12, and 16 of the Clayton Act, 15
27 U.S.C. §§ 15, 15c, 22, and 26. The Plaintiff also alleges violations of State antitrust, consumer
28 protection, and/or unfair competition and related laws, and seeks civil penalties, and/or other

1 equitable relief under those State laws. All claims under federal and state law are based upon a
2 common nucleus of operative facts, and the entire action commenced by this Complaint
3 constitutes a single case that would ordinarily be tried in one judicial proceeding.

4 7. The Court has jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1337.
5 The Court has jurisdiction over the state claims under 28 U.S.C. § 1367 under the Court's
6 supplemental jurisdiction because those claims are so related to the federal claims that they form
7 part of the same case or controversy.

8 8. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391 because
9 eBay transacts business, committed an illegal or tortious act, and is found in this District, within
10 the meaning and scope of 15 U.S.C. § 22, Cal. Bus. & Prof. Code § 1672 and 28 U.S.C. § 1391(b)
11 and (c), and a substantial part of the events giving rise to the claims arose in this District.

12 9. The activities of eBay, as described herein, were within the flow of, were intended to,
13 and did have a substantial effect on the foreign and interstate commerce of the United States.

14 **PLAINTIFF**

15 10. Plaintiff is the Attorney General, in the name of the people of the State of California,
16 as *parens patriae* on behalf of natural persons residing in the state and who were employed at
17 eBay or Intuit since January 1, 2005.

18 11. The Attorney General is the state's chief law officer and is charged with enforcing the
19 state's antitrust laws, including the Cartwright Act. Cal. Bus. & Prof. Code §§ 16700 - 16770.
20 The Attorney General has a continuing interest in applications of the Cartwright Act because she
21 "may bring an action on behalf of the state or of any of its political subdivisions or public
22 agencies to recover the damages provided for by this section, or by any comparable provision of
23 federal law," subject to certain notification provisions. Cal. Bus. & Prof. Code § 16750(c).
24 Moreover, under the Cartwright Act, except as provided in the act, "every trust is unlawful,
25 against public policy and void." Cal. Bus. & Prof. Code § 16726.

26 12. The Attorney General is specifically authorized under the Unfair Competition Law,
27 Business and Professions Code Section 17200 to bring actions in the name of the People of the
28 State of California to obtain injunctive and other equitable relief, restitution, and civil penalties to

1 redress unfair, unlawful, and fraudulent business practices. *See* Bus. & Prof. Code §§ 17203,
2 17204, 17206.

3 **DEFENDANT**

4 13. eBay is a Delaware corporation with its principal place of business in San Jose,
5 California.

6 **CO-CONSPIRATORS**

7 14. Intuit is a Delaware corporation with its principal place of business in Mountain
8 View, California.

9 15. Various other persons and corporations not made defendants in this complaint,
10 including senior executives at Intuit and eBay, participated as co-conspirators in the violation
11 alleged and performed acts and made statements in furtherance of the violation alleged.

12 **TRADE AND COMMERCE**

13 16. The information technology industry in Silicon Valley and the San Francisco Bay
14 Area is a critical part of California's overall economy. In 2012 the Bay Area's total economic
15 product was \$535 billion, and tech companies represented about 30% of the regional economy.
16 California's gross state product last year was \$1.9 trillion, which means more than 8% — 1 of
17 every 12 dollars — of economic activity produced by the entire state was produced by technology
18 companies in Silicon Valley.

19 17. Most of eBay's employees reside in California, and California has a strong, clear,
20 often-articulated public policy in favor of employee mobility.

21 18. Skilled employees are one reason for the success of technology companies. Firms in
22 the same or similar industries often compete to hire and retain talented employees. This is
23 especially true in technology industries because particular expertise and highly specialized skills
24 sought by one firm often can be found at another firm. Solicitation of skilled employees at other
25 companies is an effective method of competing for needed employees. eBay officials understood
26 that recruitment is very important. Beth Axelrod, eBay's Senior Vice President for Human
27 Resources at the time the agreement with Intuit was in effect, emphasized the importance of
28 "cold-calling" as a recruitment tool: "The recruiting game is changing for yet another reason:

1 It's no longer sufficient to target your efforts to people looking for a job; you have to reach
2 people who aren't looking."

3 19. Constant solicitation of skilled employees from other companies is also critical for the
4 continued success of technology companies. Silicon Valley's dominance as the world leader in
5 technology results from "knowledge spillovers"— transfers of ideas and know-how from one
6 organization to another. It is commonly understood and widely discussed in Silicon Valley that
7 knowledge spillovers facilitated by the mobility of employees and the resulting bias against
8 vertical integration turn the entire industrial district into an engine of continuous innovation,
9 thereby transcending the life cycle of any single product.

10 20. California's long standing public policy in favor of employee mobility is an essential
11 element to that continuous innovation.

12 21. eBay's agreement with Intuit eliminated competition for employees. The agreement
13 harmed employees by reducing the salaries, benefits, and employment opportunities they might
14 otherwise have earned if competition had not been eliminated. The agreement also misallocated
15 labor between eBay and Intuit — companies that drove innovation based in part on the talent of
16 their employees. In a well-functioning labor market, employers compete to attract the most
17 valuable talent for their needs. Competition among employers for skilled employees may
18 improve employees' salaries and benefits and facilitate employee mobility. The no-solicitation
19 and no-hiring agreement between Intuit and eBay distorted this competitive process and likely
20 resulted in some of eBay's and Intuit's employees remaining in jobs that did not fully use their
21 unique skills. Ms. Axelrod stated that "structural forces fueling the war for talent" have resulted
22 in power "shift[ing] from the corporation to the individual," giving "talented individuals . . . the
23 negotiating leverage to ratchet up their expectation for their careers."

24 22. Instead of working harder to acquire this "critical and scarce" talent, eBay and Intuit
25 called a truce in the "war for talent" to protect their own interests at the expense of their
26 employees. eBay initially sought a limited no-solicitation agreement aimed at high-level
27 executives, but ultimately agreed to an expansive no-solicitation and no-hire agreement. eBay
28

1 valued its relationship with Intuit and the benefits eBay gained from restricting its own
2 employees' career mobility above the welfare of its employees.

3 23. Neither eBay nor Intuit took any steps to ensure that employees affected by the
4 agreement knew of its existence, or how it would impact them.

5 24. eBay knew that its agreement violated state law. It was aware that California law
6 provides that "every contract by which anyone is restrained from engaging in a lawful profession,
7 trade, or business of any kind is to that extent void." Cal. Bus. & Prof. Code § 16600. In 2008,
8 the California Supreme Court reaffirmed that prohibition, declaring that Business and Professions
9 Code §16600 "evinces a settled legislative policy in favor of open competition and employee
10 mobility." The Court stated that §16600 ensures "that every citizen shall retain the right to pursue
11 any lawful employment and enterprise of their choice," and protects "the important legal right of
12 persons to engage in businesses and occupations of their choosing." *Edwards v. Arthur Andersen*
13 *LLP*, 44 Cal. 4th 937, 946 (Cal. 2008).

14 **THE UNLAWFUL AGREEMENT**

15 25. Beginning no later than 2006, and lasting at least until 2009, eBay and Intuit
16 maintained an illegal agreement that restricted their ability to actively recruit employees from
17 each other, and for some part of that time further restricted at least eBay from hiring any
18 employees from Intuit. As alleged in more detail below, this agreement was entered into and
19 enforced at the most senior levels of these companies.

20 26. In November 2005, eBay's Chief Operating Officer, Maynard Webb, wrote to Scott
21 Cook, Intuit's Founder and Chairman of the Executive Committee, to "get [Mr. Cook's] advice
22 on a specific hiring situation and then see if we could establish some guidelines on an ongoing
23 basis." Mr. Webb asked Mr. Cook for "permission to proceed" with hiring an Intuit employee
24 who contacted eBay regarding a job, and then proposed a "structure" to Mr. Cook for future
25 situations, whereby eBay would "not actively recruit from Intuit." Under Mr. Webb's proposal,
26 for Intuit candidates "below Senior Director level" who contacted eBay regarding employment,
27 eBay would be permitted to hire them and would give Intuit "notice" only after a candidate
28 accepted a job offer. For Intuit candidates "at Senior Director level or above", eBay would not

1 make an offer unless Intuit was notified in advance. Mr. Cook rejected this proposal insofar as it
2 allowed hiring of any employees without prior notice to Intuit, saying that “we don’t recruit from
3 board companies, period” and “[w]e’re passionate on this.” Mr. Cook committed that Intuit
4 would not make an offer to anyone from eBay without first notifying eBay, and said “[w]e would
5 ask the same.”

6 27. A month later, in December 2005, Meg Whitman, the CEO of eBay at the time, and
7 Mr. Cook discussed the competition for two employees with an eye toward eliminating that
8 competition altogether. As Ms. Whitman told Ms. Axelrod, Mr. Cook was “slightly miffed by
9 our recent hire of two Intuit executives.”

10 28. No later than August 2006, the initial agreement between eBay and Intuit restricting
11 the hiring of each other’s employees was put into effect. In August 2006, when eBay considered
12 hiring an Intuit employee for an opening at its PayPal subsidiary, Ms. Axelrod said that while she
13 was “happy to have a word with Meg [Whitman] about it,” Ms. Axelrod was “quite confident she
14 will say hands off because Scott [Cook] insists on a no poach policy with Intuit.” When the
15 PayPal executive asked Ms. Axelrod to confer with Ms. Whitman, Ms. Axelrod reported back
16 that “I confirmed with Meg [Whitman] that we cannot proceed without notifying Scott Cook
17 first.” eBay does not appear to have pursued the potential candidate beyond this point as
18 everyone agreed “that it’s to[o] awkward to call Scott [Cook] when we don’t even know if the
19 candidate has interest,” demonstrating that the non-solicitation agreement had a distinct chilling
20 effect on recruitment and hiring between the two companies.

21 29. On or about April 2007, eBay’s commitment grew into a no-hire agreement. The
22 impetus was a complaint from Mr. Cook to Ms. Whitman that he was “quite unhappy” about a
23 potential offer that eBay was going to make to an Intuit employee who had approached eBay.
24 Ms. Axelrod spoke with Ms. Whitman regarding Mr. Cook’s concerns, and instructed David
25 Knight, then eBay’s Vice President, Internal Communications, to hold off on making the offer.
26 Mr. Knight urged Ms. Axelrod to find a way to make the offer happen, as the decision put the
27 applicant “in a tough position and us in a bad place with California law” and left eBay “another 6
28 months away from getting another candidate” for the position. A week later, Mr. Knight wrote to

1 Ms. Axelrod and Ms. Whitman pleading with them to at least “negotiate” any shift from a “no
2 poaching” agreement to a “no hiring” agreement after this particular applicant was hired, as eBay
3 “desperately need[ed] this position filled.”

4 30. While Ms. Axelrod ultimately authorized Mr. Knight to extend an offer to this Intuit
5 employee, eBay did expand the agreement to prohibit eBay from hiring any employee from Intuit,
6 regardless of how that employee applied for the job. A few months later, for example, an eBay
7 human resources manager alerted Ms. Axelrod to a potential “situation” and wanted to know if
8 eBay “continue[d] to be sensitive to Scott [Cook]’s request” or if there was “any flexibility on
9 hiring from Intuit.” The Intuit candidate was “getting a lot of responses from managers directly”
10 before the human resource manager’s team was involved as his “education is fantastic.” Ms.
11 Axelrod confirmed, however, that even when an Intuit employee was “dying” to work for eBay
12 and had proactively reached out to eBay, hiring managers had “no flexibility” and must keep their
13 “hands off” the potential applicant.

14 31. Two eBay staffers sought to clarify the situation with Ms. Axelrod shortly thereafter.
15 Ms. Axelrod said: “We have an explicit hands off[f] that we cannot violate with any Intuit
16 employee. There is no flexibility on this.” The staff asked for further clarification: “This applies
17 even if the Intuit employee has reached out and specifically asked? If so then I assume that
18 person could NEVER be hired by ebay unless they quit Intuit first.” Ms. Axelrod confirmed this
19 was “correct.” Ms. Axelrod similarly explained the impact of the agreement to Ms. Whitman: “I
20 keep getting inquiries from our folks to recruit from Intuit and I am firmly holding the line. No
21 exceptions even if the candidate proactively contacts us.” In another email exchange, Ms.
22 Axelrod explained that she was responding to all inquiries regarding hiring from Intuit by “firmly
23 holding the line and saying absolutely not (including to myself since their comp[ensation] and
24 ben[efits] person is supposed to be excellent!).”

25 32. Mr. Cook was a driving force behind eBay’s no-hire agreement with Intuit. In one
26 2007 e-mail, an eBay recruiter confirmed that the message to Intuit candidates should be that
27 eBay was “not allowed to hire from Intuit per Scott Cook regardless of whether the candidate
28 applies directly or if we reach out.” eBay recruiting personnel understood that “Meg [Whitman]

1 and Scott Cook entered into the agreement (handshake style, not written) that eBay would not
2 hire from Intuit, period.” Mr. Cook and Intuit, on the other hand, agreed that Intuit would not
3 recruit from eBay. Mr. Cook explained to one applicant who had decided to work for eBay but
4 expressed a future interest in joining Intuit, that “Intuit is precluded from recruiting you” unless
5 eBay has decided it does not need the employee or where the employee informs his management
6 and then proactively contacts Intuit.

7 33. eBay insisted that Intuit refrain from recruiting its employees in exchange for the
8 limitation on eBay’s ability to recruit and hire Intuit employees. On August 27, 2007, Ms.
9 Axelrod wrote Ms. Whitman to complain that while eBay was sticking to its agreement to not hire
10 Intuit employees, “it is hard to do this when Intuit recruits our folks.” Ms. Axelrod forwarded
11 Ms. Whitman a recruiting flyer that Intuit had sent to an eBay employee. Ms. Whitman forwarded
12 Ms. Axelrod’s e-mail to Mr. Cook the same day asking him to “remind your folks not to send this
13 stuff to eBay people.” Mr. Cook responded quickly: “#@!%\$#^&!!! Meg my apologies. I’ll
14 find out how this slip up occurred again....”

15 34. Throughout the course of the agreement, eBay repeatedly declined opportunities to
16 hire or even interview Intuit employees, even when eBay had open positions for “quite some
17 time,” when the potential employee “look[ed] great,” or when “the only guy who was good was
18 from [I]ntuit.” eBay employees were instructed to not pursue potential hires that came from
19 Intuit and to discard their resumes. When a candidate applied for a position and told eBay that
20 she had left Intuit, Ms. Axelrod went so far as to write Mr. Cook to confirm that the applicant
21 had, in fact, left the company.

22 35. The companies acknowledged that throughout the agreement, they “passed” on
23 “talented” applicants, consistent with their anticompetitive agreement. The repeated requests
24 from lower level employees at both companies to be allowed to recruit employees from the other
25 firm demonstrates that the agreement denied employees the opportunity to compete for better job
26 opportunities.

27 36. The agreement between eBay and Intuit remained in effect for at least some period of
28 time after a United States Department of Justice (“USDOJ”) investigation of agreements between

1 technology companies that restricted hiring practices became public. One eBay employee asked
2 another in June 2009 if she had been “able to connect with Beth [Axelrod] re our policies around
3 hiring from Intuit with respect to” a former employee at eBay’s PayPal division who “wishes to
4 return” and noted press reports of the USDOJ investigation. The employee responded back: “It’s
5 a no go....too complicated. We should move to plan b.” (Ellipses in original.)

6 37. Approximately nine hundred and ninety (990) prospective eBay employees were
7 directly affected by the agreement.

8 38. California’s Silicon Valley owes its unique success, in part, to the rapid dissemination
9 of knowledge facilitated by the mobility of employees that turns the entire industrial district into
10 an engine of continuous innovation. In addition to harming employees and the public, this
11 agreement also harmed California’s economy by depriving Silicon Valley of its usual pollinators
12 of ideas, hurting the overall competitiveness of the region.

13 39. eBay’s co-conspirator, Intuit, is prevented by consent decrees from entering into such
14 agreements in the future. eBay, however, is not covered by those consent decrees. It is possible
15 that eBay is party to no-hire or no-solicit agreements currently, or may enter them in the future,
16 pursuant to its interpretation of the antitrust laws.

17 40. In part because of the 2008 *Edwards* decision, eBay was on notice that no-poach or
18 non-solicit agreements between competing employers without business justification were contrary
19 to California law. Moreover, any employment contract provision is unenforceable to the extent
20 that the provision attempts to restrain a person from hiring his former colleagues after the
21 cessation of his employment with their employer.

22 41. eBay, however, did not end its anticompetitive and anti-employee activities after
23 *Edwards* in 2008 or after *US v. Adobe* in 2009. eBay continued to be concerned with employee
24 poaching at least through May 2011 when it filed a case against Google, Inc., claiming that
25 former eBay employee and current Google Senior Vice President Stephanie Tilenius violated her
26 agreement not to solicit any eBay or PayPal employees for a period of one year after her
27 departure from eBay. She had recruited another former eBay employee, Osama Bedier, to work
28

1 with her after her arrival at Google. *See* Complaint, PayPal, Inc. v. Google, Inc., No. 1-11-CV-
2 201863 (Cal. Sup. Ct. Santa Clara Co. May 26, 2011).

3 42. Absent injunctive relief, eBay is likely to continue this strategy of anticompetitive,
4 anti-employee behavior.

5 VIOLATIONS ALLEGED

6 I. (VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

7 43. The State of California hereby incorporates paragraphs 1 through 42.

8 44. eBay and Intuit are direct competitors for employees, including specialized computer
9 engineers and scientists, covered by the agreements at issue here. eBay and its co-conspirators
10 entered into a naked no-solicitation and no-hire agreement, thereby reducing their ability and
11 incentive to compete for employees. This agreement suppressed competition between eBay and
12 its co-conspirators, thereby limiting affected employees' ability to secure better compensation,
13 benefits, and working conditions.

14 45. eBay's agreement with Intuit is *per se* unlawful under Section 1 of the Sherman Act,
15 15 U.S.C. § 1. No elaborate industry analysis is required to demonstrate the anticompetitive
16 character of this agreement.

17 46. The no-solicitation and no-hire agreement between eBay and Intuit is also an
18 unreasonable restraint of trade that is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1
19 under an abbreviated or "quick look" rule of reason analysis. The principal tendency of the
20 agreement between eBay and Intuit is to restrain competition as the nature of the restraint is
21 obvious and the agreement has no legitimate pro-competitive justification. It is clear that the
22 agreement would have an anticompetitive effect on employees and harm the competitive process.

23 47. For the purpose of forming and effectuating the alleged agreement, understanding, or
24 conspiracy, eBay and its co-conspirators did those things that they combined and conspired to do,
25 including, but not limited to the acts, practices, and course of conduct described, and the
26 following, among others:

- 27 a. not actively recruit Intuit or eBay employees; and
- 28 b. not hire Intuit employees.

1 48. The combination and conspiracy has had, among other things, the following effects:
2 a. Suppressed competition between eBay, Intuit, and their co-conspirators for
3 employees;
4 b. Limited affected employees' ability to pursue and secure new employment, as
5 well as better compensation, benefits, and working conditions;
6 c. Injured, and continues to pose a risk of injury to, the general economy of the
7 State.

8 49. Natural persons employed in the high tech industry were injured, and will continue to
9 be injured, in their business and property by lower wages and benefits, and fewer opportunities, to
10 which they would have had access, as a direct and indirect result of the actions of eBay and its co-
11 conspirators. This includes the future deprivation of competition arising from the failure of eBay
12 to discontinue its wrongful conduct until at least the USDOJ investigation, and very likely
13 afterwards as well.

14 50. Plaintiff is entitled to an injunction against eBay, preventing and restraining the
15 violations alleged herein, as well as enjoining it from engaging in similar conduct in the future.
16 eBay has demonstrated, through its continuous attempts to restrict employee mobility, that it
17 remains a serious threat to the free movement of labor.

18 51. As a direct and proximate result of eBay's violations of Section 1 of the Sherman Act,
19 natural persons residing in the State of California were injured in their business and property in
20 that they were deprived of competition between companies for employees. As a result of eBay's
21 violation of Section 1 of the Sherman Act, the State of California, acting in a *parens patriae*
22 capacity, seeks treble damages and the costs of suit, including reasonable attorneys' fees,
23 pursuant to Section 4C of the Clayton Act. 15 U.S.C. §15c(a)(1).

24 **II. (VIOLATION OF THE CARTWRIGHT ACT, BUSINESS & PROFESSIONS CODE SECTION**
25 **16720)**

26 52. The State of California hereby incorporates paragraphs 1 through 51.
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28

1 53. eBay and its co-conspirators' contract, combination, trust, or conspiracy was
2 substantially carried out and effectuated within the State of California. This contract,
3 combination, trust, or conspiracy injured natural persons and the general economy of the State.

4 54. Beginning at least in or around January, 2006, and continuing thereafter at least up to
5 and including June, 2009, eBay and its co-conspirators entered into and engaged in a continuing
6 unlawful trust for the purpose of unreasonably restraining trade in violation of Section 16720 of
7 the California Business and Professions Code. eBay's policy of hindering employee mobility
8 threatens continued harm to the economy of the State.

9 55. These violations of Section 16720 of the California Business and Professions Code,
10 consisted, without limitation, of a continuing unlawful trust and concert of action among eBay
11 and Intuit, the substantial terms of which were to create and carry out restrictions on commerce in
12 the hiring of high tech employees.

13 56. For the purpose of forming and effectuating the unlawful trust, eBay conspired to:

- 14 a. refrain from recruiting Intuit or eBay employees.
- 15 b. refrain from hiring Intuit employees.

16 57. The combination and conspiracy had, among other things, the following effects:

- 17 a. Suppressed competition between eBay and Intuit for employees;
- 18 b. Limited affected employees' ability to secure employment, as well as better
19 compensation, benefits, and working conditions; and
- 20 c. Injured, and continues to pose a risk of injury to, the general economy of the
21 State.

22 58. California seeks an injunction in order to restore competition in the high tech
23 employee market.

24 59. As a direct and proximate result of eBay's violations of Section 16720 of the
25 California Business and Professions Code, natural persons residing in the State of California were
26 injured in their business and property in that they were deprived of competition between
27 companies for employees. As a result of eBay's violation of Section 16720 of the California
28 Business and Professions Code, the State of California, acting in a *parens patriae* capacity, seeks

1 treble damages and the costs of suit, including reasonable attorneys' fees, pursuant to Section
2 16750(a) of the California Business and Professions Code.

3 60. The State of California also brings this claim pursuant to California Business and
4 Professions Code Sections 16750, 16754, and 16754.5 to obtain injunctive relief and the costs of
5 suit, including reasonable attorneys' fees.

6 **III. (FOR VIOLATION OF THE UNFAIR COMPETITION LAW BUSINESS & PROFESSIONS**
7 **CODE SECTION 17200)**

8 61. The State of California hereby incorporates paragraphs 1 through 60.

9 62. Beginning at least in or around January, 2006, and continuing thereafter at least up to
10 and including June, 2009, Defendants committed acts of unfair competition, as defined by
11 Sections 17200, *et seq.* of the California Business and Professions Code.

12 63. Under Section 17200, *et seq.*, a business practice is *unfair* within the meaning for the
13 Unfair Competition Law if it violates established public policy. Under Section 17200, *et seq.*, a
14 business practice is *unlawful* and becomes independently actionable under the Unfair Competition
15 Law if the practice violates other laws. The State of California is entitled to recovery for each
16 violation of Section 17200 of the California Business and Professions Code.

17 64. The acts, omissions, misrepresentations, practices and non-disclosures of eBay, as
18 alleged herein, constituted unfair competition by means of unfair, unlawful and/or fraudulent
19 business acts or practices within the meaning of California Business and Professions Code,
20 Sections 17200, *et seq.*, including, but not limited to, the following:

21 a. The violations of Sections 16720, *et seq.*, of the California Business and
22 Professions Code, thus constituting unlawful acts within the meaning of Section 17200 of the
23 California Business and Professions Code;

24 b. The violation of the public policy of free competition and employee mobility
25 expressed by Section 16600 of the California Business and Professions Code, thus constituting
26 unfair acts within the meaning of Section 17200 of the California Business and Professions Code.

27 65. An injunction would ensure that such conduct has ended at eBay. eBay's actions
28 have harmed and risk continuing harm to the general economy of the State.

PRAYER FOR RELIEF

1 California requests that:

2 (A) the Court adjudge and decree that the agreement between eBay and Intuit not to
3 compete constitutes an illegal restraint of interstate trade and commerce in violation of Section 1
4 of the Sherman Act;

5 (B) the Court adjudge and decree that eBay 's contract, conspiracy, or combination
6 constitutes an illegal restraint of trade in violation of the Cartwright Act, Sections 16720, *et seq.*,
7 of the Business & Professions Code;

8 (C) the Court adjudge and decree that eBay's contract, conspiracy, or combination
9 violates the Unfair Competition Law, Sections 17200, *et seq.* of the Business & Professions
10 Code;

11 (D) that Defendant be permanently enjoined and restrained from establishing any
12 similar agreement unreasonably restricting competition for employees enforcing or adhering to
13 existing agreements that unreasonably restrict competition for employees except as prescribed by
14 the Court;

15 (E) that Plaintiff be awarded restitution, including disgorgement of profits obtained
16 by Defendant as a result of its acts of unfair competition and acts of unjust enrichment and/or any
17 acts in violation of the Cartwright Act, Sections 16720, *et seq.* of the Business & Professions
18 Code, and the maximum civil penalties be allowed.

19 (E) that Plaintiff be awarded civil penalties, pursuant to California Business and
20 Professions Code Section 17206 in the dollar amount of two thousand five hundred dollars and
21 zero cents, (\$2,500.00) for each violation of the Unfair Competition Law as set forth in this
22 Complaint;

23 (F) that Plaintiff be awarded the deadweight loss (i.e. the general damage to the
24 economy of the State of California) resulting from Defendant's illegal activities;

25 (G) that Plaintiff be awarded such other relief as the Court may deem just and
26 proper to redress and prevent recurrence of the alleged violations and to dissipate the
27 anticompetitive effects of the illegal agreement entered into by eBay; and
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(H) that Plaintiff be awarded the costs of this action and reasonable attorneys' fees.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury for all issues so triable.

Dated: May 1, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

/s/ Nicole S. Gordon
NICOLE S. GORDON
Deputy Attorney General
Attorneys for Plaintiff

NOTICE OF PROPOSED SETTLEMENT AND FINAL SETTLEMENT APPROVAL HEARING

The State of California v. eBay Inc., Case No. CV12-5874-EJD-PSG
 United States District Court, Northern District of California

THIS NOTICE MAY AFFECT YOUR RIGHTS -- PLEASE READ IT CAREFULLY.

If you reside in or have resided in California between January 1, 2005 and April 1, 2014 and were employed by eBay or Intuit during that time, you may be eligible for payment from a *parens patriae* settlement negotiated on your behalf by the Attorney General of California.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached between eBay Inc. (“eBay”) and the Attorney General of California on behalf of the State of California and as *parens patriae* on behalf of natural persons who are residing in or have resided in California since January 1, 2005 (collectively, the “State”).
- The underlying lawsuit, *The State of California v. eBay Inc.*, Case No. CV12-5874-EJD-PSG, concerns allegations that Defendant eBay participated in certain anticompetitive recruiting and hiring practices.
- Under the Settlement, eBay has agreed to pay the total amount of Three Million Seven Hundred Fifty Thousand Dollars (\$3.75 million) into a Settlement Fund to resolve these allegations.
- The Settlement Fund will provide Two Million Three Hundred Seventy-Five Thousand Dollars (\$2.375 million) to three groups of people who are residing in or have resided in California since January 1, 2005 and who were employed by eBay or Intuit over the Settlement Period. An additional Three Hundred Thousand Dollars (\$300,000) of the Settlement Fund will be deposited into a state antitrust or consumer protection account for alleged harm to the California economy, including deadweight loss.
- Your legal rights are affected whether you act or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to receive benefits.
EXCLUDE YOURSELF	Get no benefit. This is the only option that allows you to ever be part of any other lawsuit against eBay regarding the actions alleged in this settlement.
OBJECT	Write to the Court about why you don’t like the settlement, but remain as part of the California natural persons covered by this <i>parens patriae</i> settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no benefit. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

Basic Information	PAGE 2
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2. What is this lawsuit about?	
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Basic Information

1. Why did I get this notice?

You received this notice either because you requested it, or because you have been identified by eBay or Intuit as a California natural person who may be eligible for benefits from the settlement.

2. What is this lawsuit about?

The State of California alleges that eBay participated in certain recruiting and hiring practices in violation of Section One of the Sherman Act, the Cartwright Act, and California's Unfair Competition Law, and that these alleged violations harmed persons who are residing in or have resided in California since January 1, 2005. eBay's agreement to the terms of this settlement do not constitute any admission that the law has been violated.

3. Why is this a *parens patriae* lawsuit?

In a *parens patriae* lawsuit, the attorney general of a state litigates on behalf of the state's residents for violations of certain laws. The Attorney General is vested with this authority to safeguard the general and economic welfare of the state's residents and to assure that the benefits of these laws are not denied to the general population. In this lawsuit, the Attorney General of California represents all natural persons residing in the State of California. One court resolves the issues for all involved, except for those who exclude themselves from the matter. U.S. District Judge Edward J. Davila is in charge of this *parens patriae* lawsuit.

4. Why is there a settlement?

The Court did not decide in favor of the State or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The State, represented by the Attorney General for the State of California, and the Defendant think the settlement is best for everyone who was injured.

Who is in the Settlement

5. How do I know if I am part of the settlement?

If you are a natural person who resides or has resided in California since January 1, 2005, your rights are affected by this settlement. If you worked for eBay or Intuit during that period, you may be eligible for monetary benefits.

6. If I was employed by eBay or Intuit during the relevant period, but did not apply for a new position, am I included?

Yes. The parties have agreed to the following three (3) Claimant Pools:

Claimant Pool I: Each Claimant who was one of the approximately forty people who, during the Settlement Period, was employed by Intuit and considered for but not offered a position at eBay, whom eBay has identified from documents in its possession, and who is named on a list eBay has provided to the State and/or the State's designated Claims Administrator.

Claimant Pool II: Each Claimant of the approximately nine hundred fifty people who, during the Settlement Period, was employed by Intuit, applied for but was not offered a position at eBay, and is not a member of Claimant Pool I, and who is named on a list derived by eBay from its records, which list has provided to the State and/or the State's designated Claims Administrator.

Claimant Pool III: Each Claimant who was employed by either eBay or Intuit during the Settlement Period and who is not a member of either Claimant Pool I or Claimant Pool II and whose employment by either eBay or Intuit during the Period can be reasonably confirmed.

The Settlement Benefits—What You Get

7. What benefits are available to members of each Claimant Pool?

Claimant Pool I: Each Claimant will receive a prorated distribution from a pool of two hundred thousand dollars (\$200,000). Each Claimant who meets the criteria for Claimant Pool I will receive a maximum of ten thousand dollars (\$10,000) and a minimum of five thousand dollars (\$5,000).

Claimant Pool II: Each Claimant will receive a prorated distribution from a pool of nine hundred fifty thousand dollars (\$950,000). Each Claimant who meets the criteria for Claimant Pool II will receive a maximum of one thousand five hundred dollars (\$1,500) and a minimum of one thousand dollars (\$1,000).

Claimant Pool III: Each Claimant shall receive a prorated distribution from a pool of one million two hundred twenty five thousand dollars (\$1,225,000) plus, if necessary, any funds that are not distributed to Claimants belonging to Claimant Pool I or Claimant Pool II. Each Claimant who meets the criteria identified above will receive a maximum of one hundred fifty dollars (\$150).

Restitution for Harm to the California Economy: This settlement agreement provides for three hundred thousand (\$300,000) for harm to the California economy, including deadweight loss, resulting from the conduct alleged in the Complaint. This sum shall be recovered from the Settlement Fund for deposit into a state antitrust or consumer protection account.

8. What happens to any unclaimed funds?

Any amount remaining in the Settlement Fund after valid claims are redeemed and civil penalties, attorneys fees and costs, and settlement administration costs are paid will be distributed by the State for *cy pres* purposes to one or more charitable organizations, pursuant to California Business and Professions Code Section 16760(e)(1), whose purpose relates to employment or innovation in the high-tech industry. As a condition to receiving any payment under this section, each *cy pres* recipient must agree to devote the funds to promote public awareness and education, and/or to support research, development, and initiatives, related to employment in the high-tech industry.

How You Get a Payment—Submitting a Claim Form

9. How can I get a payment?

To qualify for payment, you must submit a claim. You can submit a claim online or download a claim form at [www. \[REDACTED\].com](http://www. [REDACTED].com), or you may request a claim form by contacting the Settlement Administrator at: 1-877-295-8830 or eBay Parens Patriae Settlement, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060. Read the instructions carefully, fill out the form, sign, and mail the claim in its entirety postmarked no later than **[CLAIMS FILING DEADLINE]**, or submit electronically no later than _____.

10. When would I get my payment?

The Court will hold a hearing on [REDACTED] to decide whether to approve the settlement. If Judge Davila approves the settlement there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

11. What am I giving up to get a payment or stay in the settlement?

Unless you exclude yourself, you are remaining in the settlement. All of the Court's orders will apply to you and bind you to the Court's decision.

Excluding Yourself From the Settlement

12. How do I get out of the settlement?

To exclude yourself from the settlement, you must respond with the exclusion form available on the settlement website or by letter saying that you want to be excluded from *The State of California v. eBay Inc.* Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than [REDACTED] to:

eBay Parens Patriae Exclusions
c/o Gilardi & Co. LLC
P.O. Box 8090
San Rafael, CA 94912-8090
[REDACTED]

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement benefit, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

13. If I do not exclude myself, can I sue eBay for the same thing later?

If you do not exclude yourself now, you may give up the right to sue eBay later for any claims this settlement resolves. If you have a pending lawsuit or are considering one, speak to your lawyer immediately.

14. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you are choosing not to be a part of this lawsuit and will not receive benefits from this settlement. However, you may sue, continue to sue, or be part of a different lawsuit against eBay.

The Lawyers Representing You

15. Who are the lawyers in this case?

Plaintiffs are represented by Kamala D. Harris, Attorney General of California. The Attorney General has brought this action on behalf of the State of California and as *parens patriae* on behalf of natural persons who are residing in or have resided in California since January 1, 2005 (collectively, the "State").

For purposes of this Settlement Agreement, any notice or other communication must be given to the persons at the addresses set forth below:

<i>For the State:</i>
Nicole S. Gordon Deputy Attorney General Antitrust Section, Public Rights Division Office of the Attorney General of California 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102

You will not be charged for this lawyer. If you want to be represented by your own lawyer, you may hire one at your own expense. Addresses for Defendant eBay's Counsel and the Court are as follows:

<i>For eBay</i>	<i>Clerk of the Court</i>
Thomas P. Brown Paul Hastings LLP 55 Second Street Twenty-Fourth Floor San Francisco, CA 94105	Clerk of the Court U.S. District Court for the Northern District of California Courtroom San Francisco, CA

16. How will the lawyers be paid?

The State has incurred at least \$675,000 in attorneys' fees and costs. The settlement provides that this amount is to be recovered from the Settlement Fund. [Optional: In addition, the State is assessing civil penalties of \$250,000 against eBay, and a further \$150,000 has been reserved for notice and claims administration expenses.]

Objecting to the Settlement

17. How do I tell the Court that I do not like the settlement?

If you are affected by the settlement, you can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying you object to the proposed settlement in *The State of California v. eBay Inc.* Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objection, postmarked no later than [OBJECTION DEADLINE], to the State, Defendant's Counsel, and the Clerk of the Court at the addresses listed in Section 15 and to the Claims Administrator at:

eBay Parens Patriae Objections
c/o Gilardi & Co. LLC
P.O. Box 8090
San Rafael, CA 94912-8090

18. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the settlement. By excluding yourself, you are telling the Court that you do not want to be a part of the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court's Fairness Hearing

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at [REDACTED] a.m., on [REDACTED], 2014 at the United States District Court for the Northern District of California, Courtroom [REDACTED], [REDACTED], CA [REDACTED]. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Davila will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

20. Do I have to come to the hearing?

No. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary to do so.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter stating in large bold letters at the top of the page that it is your "Notice of Intent to Appear in *The State of California v. eBay Inc.*" Be sure to include your name, address, telephone number, and your signature. Your Notice of Intent to Appear must be postmarked no later than [REDACTED], and be sent to the Clerk of the Court, the Attorney General of California, and Defense Counsel, at the three addresses in Section 15. You cannot speak at the hearing if you excluded yourself.

If You Do Nothing

22. What happens if I do nothing at all?

If you do nothing, you will receive no benefit from the settlement. Unless you exclude yourself, you may not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against eBay about the legal issues in this case ever again.

Getting More Information

23. Are there more details about the settlement?

This notice summarizes the proposed settlement. The Settlement Agreement and all court documents related to this matter are available on the settlement website at [REDACTED]. Please do not contact the Court with questions regarding this matter.

24. How do I get more information?

You can call 1-877-295-8830 toll free, write to eBay Parens Patriae Settlement c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA, 94912-8060, or visit the website at [REDACTED] where you will find answers to common questions about the settlement, a claim form, plus other information to help you determine your eligibility and options.

~~eBay v. Parens Patriae Settlement~~
Case 5:12-cv-05874-EJD Document 55-6 Filed 05/01/14 Page 5 of 9
c/o Gilardi & Co. LLC
P.O. Box 8060
San Rafael, CA 94912-8060

First-Class Mail
US Postage
PAID
Gilardi & Co

The State of California v. eBay Inc.
United States District Court, Northern District of
California

NOTICE OF PROPOSED SETTLEMENT AND FINAL
SETTLEMENT APPROVAL HEARING

If you reside in or have resided in California between January 1, 2005 and April 1, 2014 and were employed by eBay or Intuit during that time, you may be eligible for payment from a settlement negotiated on your behalf by the Attorney General of California.

A settlement has been reached between eBay Inc. ("eBay") and the Attorney General of California on behalf of the State of California and as *parens patriae* on behalf of natural persons who are residing in or have resided in California since January 1, 2005 (collectively, the "State") in the lawsuit *The State of California v. eBay Inc.* Read on for more information on how your legal rights may be affected.

This postcard is a summary notice only. Please visit www.██████████.com for the full notice and other relevant court documents.

2D



Postal Service: Please Do Not Mark Barcode

EBCA1-<<Claim7>>-<<CkDig>>

Access Code: <PinCode>

<<FName>> <<LName>>

<<Addr1>> <<Addr2>>

<<City>>, <<State>> <<Zip>>

EBCA1

The State has brought an action against eBay alleging that eBay participated in certain anticompetitive recruiting and hiring practices. Under the proposed Settlement, eBay has agreed to pay the total amount of Three Million Seven Hundred Fifty Thousand Dollars (\$3.75 million) into a Settlement Fund to resolve these allegations. eBay's agreement to the terms of this Settlement do not constitute any admission that the law has been violated.

WHO IS INCLUDED IN THE SETTLEMENT AND WHAT DOES IT PROVIDE?

If you are a natural person who resides or has resided in California since January 1, 2005, your rights are affected by this settlement.

If you worked for eBay or Intuit during that period, you may be eligible for monetary benefits. The parties have defined three (3) Claimant Pools of individuals who were employed by eBay or Intuit during the Settlement Period and designated monetary settlement benefits for each. For more detail and full definitions of these Claimant Pools, please visit the settlement website at [www. \[REDACTED\].com](http://www. [REDACTED].com).

WHAT ARE MY LEGAL RIGHTS?

You have a choice of whether to stay in the Settlement or not, and you must decide now.

Submit a Claim Form – The only way to receive benefits. You can submit a claim online or download a claim form at [www. \[REDACTED\].com](http://www. [REDACTED].com), or you may request a claim form by contacting the Settlement Administrator at 1-877-295-8830, or eBay *Parens Patriae* Settlement, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060. Valid claims must be postmarked no later than [CLAIMS FILING DEADLINE], or submitted electronically no later than [REDACTED].

Exclude Yourself – Get no benefit. This is the only option that ensures this *parens patriae* settlement by the State in this case will not limit your rights in another lawsuit. You must respond with the exclusion form available on the settlement website or send a letter with your name, address, telephone number, and signature, saying you want to be excluded from *The State of California v. eBay Inc.* Your exclusion request must be postmarked no later than [EXCLUSION DATE] and mailed to eBay *Parens Patriae* Exclusions, c/o Gilardi & Co. LLC, P.O. Box 8090, San Rafael, CA 94912-8090.

Object – Write to the Court about why you don't like the settlement, but remain as part of the California natural persons covered by this *parens patriae* settlement. Include your name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objection, postmarked no later than [OBJECTION DEADLINE], to the State, Defendant's Counsel, and the Clerk of the Court at the addresses listed in Section 15 of the full notice (found at [www. \[REDACTED\].com](http://www. [REDACTED].com)) and to the Claims Administrator at: eBay *Parens Patriae* Objections, c/o Gilardi & Co. LLC, P.O. Box 8090, San Rafael, CA 94912-8090.

Do Nothing – Get no benefit. Give up Rights.

FINAL APPROVAL HEARING

The Court will hold a Fairness Hearing at [REDACTED] a.m., on [REDACTED], 2014 at the United States District Court for the Northern District of California, Courtroom [REDACTED], [REDACTED], CA, [REDACTED]. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate, and it will decide whether to approve the settlement. If there are objections, the Court will consider them.

HOW CAN I GET MORE INFORMATION?

If you have questions, visit [www. \[REDACTED\].com](http://www. [REDACTED].com), call 1-877-295-8830 toll free, or write to eBay *Parens Patriae* Settlement, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA, 94912-8060.

Please provide the following dates, if applicable:

Dates of Employment with eBay: _____ to _____

Dates of Employment with Intuit: _____ to _____

Date(s) of Interview with eBay: _____

Please read the description of the Claimant Pools below.

Claimant Pool 1: Each affected California natural person who was one of the approximately forty people who, during the Settlement Period, was employed by Intuit and considered for but not offered a position at eBay, who eBay has identified from documents in its possession, and who is named on a list eBay has provided to the State and/or the State’s designated claims administrator will receive a prorated distribution from a pool of two hundred fifty thousand dollars (\$250,000 USD). Each Affected California natural person who meets the criteria for Claimant Pool One will receive a maximum of ten thousand dollars (\$10,000 USD) and a minimum of five thousand dollars (\$5,000 USD).

Claimant Pool 2: Each Affected California natural person of the approximately nine hundred fifty people who, during the Settlement Period, was employed by Intuit, applied for but was not offered a position at eBay, and is not a member of Claimant Pool One, and who is named on a list derived by eBay from its records, which list has provided to the State and/or the State’s designated claims administrator, will receive a prorated distribution from a pool of seven hundred seventy five thousand dollars (\$775,000 USD). Each Affected California natural person who meets the criteria for Claimant Pool Two will receive a maximum of one thousand dollars (\$1,000 USD) and a minimum of five hundred dollars (\$500 USD).

Claimant Pool 3: Each Affected California natural person who was employed by either eBay or Intuit during the Period and who is not a member of either Claimant Pool One or Claimant Pool Two and whose employment by either eBay or Intuit during the Period can be reasonably confirmed shall receive a prorated distribution from a pool of one million nine hundred fifty thousand dollars (\$1,950,000 USD) plus, if necessary, any funds that are not distributed to Class Members belonging to Claimant Pool One or Claimant Pool Two. Each Affected California natural person who meets the criteria identified above will receive a maximum of one hundred fifty dollars (\$150 USD).

Please note that while some affected California natural person may meet the criteria for more than one Claimant Pool, a affected California natural person may recover as a member of only one of the three pools.

DECLARATION UNDER PENALTY OF PERJURY

By submitting this Claim Form, I represent under penalty of perjury that to the best of my knowledge and belief:

- 1) I believe I am a affected California natural person belonging to one of the Claimant Pools; and
- 2) I am, or was, an employee at either eBay Inc. or Intuit Inc. during the Class Period.

I also attest that all of the information I have provided above is true and correct. I further represent that I am over the age of eighteen (18) and am of sound mind.

Signature: _____ Date: _____

NOTE: Do not call or write to eBay, eBay’s Customer Care, eBay’s lawyers, or the Court regarding the Settlement. Benefits or Claim Form Inquiries should be addressed to the Claims Administrator at info@_____ or 1-877-295-8830.



Exclusion Request Form

The State of California v. eBay Inc.
c/o Gilardi & Co. LLC
P.O. Box 8090
San Rafael, CA 94912-8090

Barcode EBCA1-<claim8>-<CD>
FName LName
Addr1 Addr2
City, St Zip-Zip4

Name / Mailing Address Changes:

Exclusion Request

I want to be excluded from *The State of California v. eBay Inc.* settlement. I understand that I will not be able to get any money or benefits if any become available from this case. However, I will not be bound by any Court orders, and I will keep any rights I have to sue about the claims in this case, as part of any other lawsuit (subject to any applicable statutes of limitations).

Name

Address

City State Zip

Telephone

Signed Date

If you want to be excluded, sign and mail this form, postmarked by _____, 2014 to:

eBay Parens Patriae Exclusions
c/o Gilardi & Co. LLC
P.O. Box 8090
San Rafael, CA 94912-8090

Or you may email the signed form as a PDF to www._____.com

DO NOT SEND THIS FORM IF YOU WANT TO STAY IN THE SETTLEMENT.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

THE STATE OF CALIFORNIA,

Plaintiff, Case No. CV12-5874-EJD-PSG

v.

EBAY INC.,

Defendant.

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
PROPOSED SETTLEMENT**

Plaintiff, the People of the State of California (“California”), and Defendant, eBay Inc. (“eBay”), entered into a Settlement Agreement dated May 1, 2014. This Settlement Agreement was presented to the Court for Preliminary Approval pursuant to Sections 4C and 16 of the Clayton Act, 15 U.S.C. §§ 15c and 26, and the Cartwright Act, Cal. Bus. & Prof. Code § 16760.

Upon review and consideration of this Settlement Agreement, the Plaintiff’s Notice of Motion and Motion, the supporting Memorandum of Points and Authorities, the accompanying Declarations of Nicole Gordon, Jon M. Riddle, Ph.D., and Alan Vasquez, any further papers filed in support of this motion and their attachments, any argument by the Attorney General, and any and all pleadings and records on file in this matter, and for good cause appearing therein;

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

I. GENERAL FINDINGS

1. This Court has jurisdiction over the subject matter and both of the parties to this action.
2. The Court, for purposes of this Order, adopts the definitions set forth in the Settlement Agreement.

1 3. The Court, for purposes of this Order, finds that the Attorney General of California is
2 the representative of all affected natural persons in the State of California and has authority to
3 settle and release the Claims of the affected natural persons.

4 4. The Court confirms the appointment of Gilardi & Co. LLC as the settlement
5 administrator for purposes of the implementation of the Settlement.

6 **II. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT**

7 5. The Court finds that the Settlement Agreement appears to be the product of serious,
8 informed, non-collusive negotiations, have no obvious deficiencies, and fall within the range of
9 possible approval.

10 6. The Court finds that the Settlement outlined by the Settlement Agreement, including
11 the proposed distribution and allocation of the Settlement Funds, is entitled to preliminary
12 approval.

13 7. The Court finds the Settlement fulfills the requirements of 15 U.S.C. §15c and Cal.
14 Bus. & Prof. Code § 16760, and satisfies due process.

15 8. The terms of the Settlement Agreement is hereby preliminarily approved and Notice
16 shall be given as provided in this Order.

17 **III. APPROVAL OF NOTICE AND OPT-OUT PROCEDURES**

18 9. The Court finds that the form and content of the proposed Notice and Opt-Out
19 Procedures, as described in Plaintiff’s Notice of Motion and Motion and attached to the
20 Declaration of Nicole Gordon as Exhibit C, (“Notice”) are in full compliance with the
21 requirements of 15 U.S.C. §15c and Cal. Bus. & Prof. Code § 16760, and satisfy due process. The
22 Court further finds that the Notice provides sufficient information that allows affected California
23 natural persons to make informed and meaningful decisions regarding their options in this
24 litigation and to understand the effect of this Settlement on their rights. The Court approves the
25 Notice and Opt-Out Procedures and approves the distribution of the Notice in substantially the
26 same forms as included in Exhibit C.

27 10. The Court finds that the proposed one hundred and eighty (180) day Response Period
28 is adequate for affected California natural persons to exercise their right to object to the proposed

1 Settlement, to exclude themselves from the proposed Settlement, or to submit electronic or paper
2 claims. The Response Period shall begin immediately after the entry of this Preliminary Approval
3 Order, and end one hundred and eighty (180) days thereafter.

4 11. As soon as practicable after entry of this Order, but no later than ninety (90) days
5 after the date of entry of this Order, California or its settlement administrator shall complete the
6 dissemination of Notice to the affected California natural persons in accordance with the Notice
7 and Opt-Out Procedures and the terms of this Order. Prior to the Final Approval Hearing,
8 California or its settlement administrator shall prepare a Report for the Court attesting to
9 compliance with the Notice Plan.

10 12. The Court approves the expenditure of notice and claims administration costs
11 reasonably incurred in the amount and manner and to the extent provided for in the Settlement
12 Agreement, for the purpose of providing Notice to affected California natural persons in
13 accordance with the Settlement.

14 **IV. REQUESTS FOR EXCLUSION**

15 13. All affected California natural persons who submit valid and timely requests for
16 exclusion from the Settlement during the Response Period pursuant to, and complying with,
17 instructions contained in the Notice, shall not have any rights under the Settlement Agreement
18 and shall not be bound by the Settlement Agreement or the final judgment.

19 14. All affected California natural persons who do not submit valid and timely requests
20 for exclusion from the Settlement during the Response Period pursuant to, and complying with,
21 instructions contained in the Notice shall be bound by the Settlement Agreement and by the final
22 judgment, in the event that the Settlement Agreement is finally approved by the Court.

23 **V. FINAL APPROVAL HEARING**

24 15. A hearing on final settlement approval is hereby scheduled to be held before the
25 undersigned on _____, 2014, at _____, in Courtroom 3 on the 5th Floor of the
26 United States District Court for the Northern District of California, San Jose Division, located at
27 280 South 1st Street, San Jose, California 95113, to consider the fairness, reasonableness and
28

1 adequacy of the Settlement, the dismissal with prejudice of this action as to the Defendant, and
2 the entry of final judgment in this action.

3 16. Any affected California natural person who has not previously filed a request for
4 exclusion from the Settlement may appear at the Fairness Hearing in person or by counsel and
5 may be heard, to the extent allowed by the Court, either in support of or in opposition to the
6 fairness, reasonableness and adequacy of the Settlement, the dismissal with prejudice of this
7 action as to the Defendants and/or the entry of final judgment. Provided, however, no person shall
8 be heard in opposition to the Settlements, dismissal and/or entry of final judgment and no papers
9 or briefs submitted by or on behalf of any such person shall be accepted or considered by the
10 Court, unless on or before _____ (180 days from today) such person: (a) files
11 with the Clerk of Court a notice of such person's intention to appear as well as a statement that
12 indicates the basis for such person's opposition to the Settlements, the dismissal of claims and/or
13 the entry of final judgment and any documentation in support of such opposition, and (b) serves a
14 copy of such notice, statement and documentation, as well as any other papers or briefs that such
15 person files with the Court, either in person or by mail, upon the settlement administrator at: eBay
16 Parens Patriae Objections, c/o Gilardi & Co. LLC, P.O. Box 8090, San Rafael, CA 94912-8090.

17 17. Any affected California natural person who does not file, and serve as required, an
18 objection within the Response Period in the manner provided in the Notice and this Order shall be
19 deemed to have waived any such objection by appeal, collateral attack or otherwise.

20 18. The date and time of the Final Approval Hearing shall be set forth in the Notice, but
21 shall be subject to adjournment by the Court without further notice to affected California natural
22 persons other than that which may be directed by the Court.

23 19. The Parties shall file with the Court any pleadings or memoranda in support of the
24 Settlements and Settlement Agreements at least _____ calendar days before the Final Approval
25 Hearing.

26 VI. CONFIDENTIALITY

27 20. No information received by California or the settlement administrator in connection
28 with the Settlement that pertains to a particular California natural person, other than information

1 contained in a request for exclusion or in an objection, shall be disclosed to any person or entity
2 other than as directed by the Court.

3 **VII. OTHER PROVISIONS**

4 21. The Settlement Agreement, subject to this Court's final approval, fully and finally
5 compromise, settle and resolve the Plaintiff's claims subject to the terms and conditions set forth
6 in the Settlement Agreement.

7
8 22. All discovery and other pretrial proceedings in this action are hereby stayed pending the
9 Effective Date of the Settlement as defined in the Settlement Agreement, except such proceedings
10 as may be necessary to implement the terms of the Settlement Agreement.

11 23. If the Settlement is terminated or otherwise does not become effective in accordance
12 with the provisions of the Settlement Agreement, the Settlement and all proceedings in
13 connection therewith shall be null and void, except insofar as expressly provided to the contrary
14 in the Settlement Agreement, and without prejudice to the status quo ante rights of the Plaintiff
15 and the Defendant.

16
17 24. Neither this Order nor the Settlement Agreement shall constitute any evidence or
18 admission of liability by Defendant nor shall they be offered in evidence in this or any other
19 proceeding except to consummate or enforce the Settlement Agreement or the terms of this Order.
20 Neither this order nor the Settlement Agreement may be used by Defendant in connection with
21 any action asserting claims that are released by the terms of the Settlement Agreement.

22
23 SO ORDERED.

24
25 Date: _____

26
27 _____
28 HON. EDWARD J. DAVILA
United States District Judge