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Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

ARBITRON INC.

Defendant.

[EXEMPT FROM FILING FEES
UNDER GOV. CODE § 6103]

ENDORSED
FILED
San Francisco County Superior Court

MAR 26 2012

CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

Case No. 519349

**[PROPOSED] FINAL JUDGMENT
PURSUANT TO STIPULATION**

Date:
Time:
Dept:
Judge:
Trial Date:
Action Filed:

1 Plaintiff, the People of the State of California (“People”), through Attorney General
2 Kamala Harris Los Angeles City Attorney Carmen A. Trutanich and San Francisco City Attorney
3 Dennis J. Herrera, has commenced this action against Defendant Arbitron Inc. (“Arbitron”),
4 alleging violations of the California Unfair Competition Law (Business and Professions Code,
5 section 17200 *et seq.*), the California False Advertising Law (Business and Professions Code,
6 section 17500 *et seq.*) and the Unruh Civil Rights Act (Civil Code, section 51 *et seq.*) in
7 connection with Arbitron’s licensing of radio audience estimates. The parties have agreed to the
8 entry of this Final Judgment Pursuant to Stipulation (“Judgment”) to resolve all matters in dispute
9 in this action without the completion of trial or the adjudication of any issue of law or fact. This
10 Judgment shall not constitute evidence of admission of fault or concession of liability or
11 wrongdoing by Arbitron regarding any allegations of law or fact, alleged either expressly or
12 impliedly, in the Complaint.

13 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as
14 follows:

- 15 1. **Definitions.** Throughout this Judgment, the following definitions shall apply:
- 16 A. “Arbitron” shall mean defendant Arbitron Inc., its subsidiaries, successors,
17 assigns, and any other person acting on its behalf, under its direction, or in concert with it.
- 18 B. “Basic Households” shall mean those households selected as part of the
19 pre-designated sample and included in the calculation of SPI.
- 20 C. “California Markets” shall mean each geographic area within the state of
21 California in which the PPM service has been commercialized. As of the date of entry of this
22 Judgment, the California Markets include portions of the following counties in the Los Angeles,
23 Riverside-San Bernardino, San Diego, San Francisco and San Jose (which is a fully embedded
24 market within the San Francisco market), and Sacramento radio markets: Alameda County,
25 Contra Costa County, El Dorado County, Los Angeles County, Marin County, Napa County,
26 Nevada County, Orange County, Placer County, Riverside County, Sacramento County, San
27 Bernardino County, San Diego County, San Francisco County, San Mateo County, Santa Clara
28 County, Solano County, Sonoma County and Yolo County.

1 D. "Commercialized" or "commercialization" in relation to the PPM and
2 markets shall refer to those geographic areas where Arbitron relies on PPM data as the exclusive
3 measure of audience listenership for subscribing radio stations.

4 E. "CPO" shall refer to cell-phone-only households.

5 F. "Cell-Phone-Primary" shall refer to households which have both a cell
6 phone and a landline and where the landline is at most rarely answered by any member of the
7 household.

8 G. "Effective Date" shall mean the date this Judgment is entered by the Court.

9 H. "Future California Markets" shall mean California radio markets in which
10 the PPM service is commercialized after the effective date of this Judgment.

11 I. "Including" shall mean without limitation.

12 J. "Install" shall mean a household or person who has agreed to participate as
13 part of a sample panel, received PPM equipment to participate, and installed PPM in the
14 household.

15 K. "In-Tab Rates" shall refer to the percentage of installed persons who have
16 provided fault-free data and have 8 or more hours of motion (5 or more hours for Persons 6-17).

17 L. "MRC" shall refer to the Media Rating Council, Inc., an organization of
18 broadcasters and advertisers that accredits media measurement services.

19 M. "Panelists" shall refer to persons recruited by Arbitron to carry the PPM
20 that have met the minimum requirements to move to online status.

21 N. "Portable People Meter" and "PPM" shall refer to the electronic device
22 developed by Arbitron to identify and store information regarding radio broadcasts that track the
23 radio stations that individuals carrying the device are exposed to, and to transmit that information
24 to Arbitron.

25 O. "PPM methodology" shall refer to the policies, procedures, and practices
26 by which Arbitron recruits individuals to wear the PPM and obtains PPM data from a sample of
27 persons in households within a designated geographic region.

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1 P. "Recruitment efforts" shall mean the procedures used by Arbitron to select,
2 contact and recruit potential PPM Panelists.

3 Q. Sample Performance Indicator ("SPI") shall mean the percentage of the
4 pre-designated random-digit-dial ("RDD") sample that become Panelists and supply usable data
5 through October 31, 2012; since RDD sample is being replaced with address-based sample that
6 can be matched to landline telephone numbers, after October 31, 2012, SPI shall mean the
7 percentage of pre-designated households selected from the address-based frame and matched to a
8 landline telephone number (Matched AB Sample) that become panelists and supply usable data.

9 R. "Total Cell-Phone" is the sum of CPO and Cell-Phone-Primary.

10 S. "Race, ethnicity" and "racial and ethnic" as those phrases are used herein
11 means Arbitron's standard categories as currently surveyed by Arbitron in its PPM ratings
12 service.

INJUNCTIVE PROVISIONS

13 1. All injunctive relief under this Judgment, including all relief described in
14 paragraphs 2 A through 2 H of this Judgment, *infra*, is ordered under Business and Professions
15 Code sections 17203, 17204 and 17535 and the equitable powers of this Court.

16 2. The following requirements shall be placed upon Arbitron with respect to the use
17 of the PPM methodology and data in the California markets through December 31, 2014, or until
18 MRC accreditation is granted, whichever occurs first, (hereinafter "the Term" of this Judgment)
19 and must be complied with in each separate California Market independently.

20 A. **Address Based Recruitment:** Arbitron has historically recruited Panelists
21 in the California Markets using a combination of telephone and address based methodologies.
22 Arbitron is transitioning to a full address-based sample frame for all new sample selections. The
23 implementation of the address-based sample frame for new sample selections will be completed
24 by July 1, 2012, for all California Markets. Previously selected telephone sample that is within
25 the panel or within eligible recruitment pools will remain eligible until its expiration date. As a
26 result of this transition, an address-based methodology must be used in at least 20% of
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1 recruitment efforts in the California markets as of the Effective Date, and in 65% of recruitment
2 efforts by December 31, 2012.

3 **B. Cell Phone Sampling:** In the California Markets, Arbitron shall, within
4 120 days from the Effective Date, increase CPO sampling, based on all recruitment efforts, to
5 11%, and Total Cell-Phone sampling, based on all recruitment efforts, to 20%. As part of this
6 requirement, within 15 business days of the end of each quarter, Arbitron shall provide data on
7 the composition of the Total Cell-Phone sample and the CPO sample, cross-tabulated by race,
8 ethnicity and age, to subscribing broadcasters and to the Plaintiff. As soon as Arbitron has
9 completed its transition to an address based sample frame, as described in paragraph “A” above,
10 the requirements of this paragraph “B” shall cease to exist.

11 **C. Country of Origin:** Arbitron shall incorporate Country of Origin (“COO”)
12 as a standard demographic characteristic collected from installed Hispanic households during the
13 panelist characteristic update interviews, commencing in the second quarter of 2010. Arbitron
14 shall implement the systematic production of COO data collection for all Hispanic Controlled
15 Markets within the California Markets by the Effective Date, and for all future Hispanic
16 Controlled Markets within the California Markets within six (6) months of PPM
17 commercialization.

18 **D. Transparency:** No later than three months after the Effective Date,
19 Arbitron shall provide to subscribing broadcasters in the California Markets PPM Install and In-
20 Tab data by individual zip code for the California Markets and provide racial and ethnic
21 demographic population data for each zip code. Thereafter, Arbitron shall continue to provide the
22 zip code data within fifteen (15) business days after the monthly release of the monthly e-book
23 for the California Markets. In Future California Markets, Arbitron shall commence complying
24 with this provision within three (3) months after such market is commercialized. Arbitron
25 reserves the right to discontinue delivery of a portion or all of the zip code data based on formal,
26 written advice from the MRC, or in the event there is substantial evidence, as determined by the
27 People, that a person or company is using the zip code data to identify or contact PPM panel
28 members.

1 E. **Disclaimer.** As of the Effective Date, Arbitron shall include a prominent
2 disclaimer in **14 point bold font typeface** on all written PPM promotional materials, including
3 PPM promotional materials available on the internet, and advertising on direct links, e-book, and
4 any sub-links that contain PPM promotional materials, stating that: PPM ratings are based on
5 audience estimates, are the opinion of Arbitron and should not be relied upon for precise accuracy
6 or precise representativeness of the demographic or radio markets.

7 F. **Sample Performance Indicator:** Arbitron shall take all reasonable
8 measures to increase and or maintain the Sample Performance Indicator (“SPI”) for persons in
9 Basic Households, in each California Market, as indicated below:

10 Los Angeles: at least 21;
11 Riverside-San Bernardino: at least 21;
12 San Francisco: at least 19 (includes the embedded San Jose Market);
13 San Diego: at least 20;
14 Sacramento: at least 17.

15 For purposes of this paragraph, the SPI for San Jose, which is a fully embedded
16 market within the San Francisco Market, shall not be separately calculated.

17 G. **In-Tab Rates:** Arbitron shall take all reasonable measures to ensure
18 overall In-Tab Rates of at least 75% for persons 6+ and for Hispanic persons 6+ by the Effective
19 Date. Arbitron shall take all reasonable measures to ensure In-Tab Rates of all sub-categories of
20 race, ethnicity, age and gender by the Effective Date of at least 70% excluding sub-categories that
21 are less than 10% of each California Market. These percentages shall be determined on a six-
22 month rolling basis beginning on the Effective Date. As part of these requirements, if the In-Tab
23 Rates of any one race, ethnicity, age and gender sub category, that are at least 10% of a California
24 Market, fall below 70% at the end of a reporting quarter, Arbitron shall disclose that fact to
25 subscribing broadcasters and to counsel for the People.

26 H. **MRC Accreditation:** Arbitron shall take all reasonable measures to
27 achieve full MRC accreditation for all California Markets.

28 I. **Future California Markets:** If, during the term of this Agreement

1 Arbitron commercializes its PPM service as currency in one or more additional California
2 markets, Arbitron agrees to negotiate with the People, in good faith, terms for such market(s)
3 which are comparable to the terms for the California Markets set forth in this Judgment. Such
4 agreed to comparable terms shall be implemented by Arbitron within 120 days of the
5 commercialization of the additional California market(s).

6 3. In the event that there is substantial continuing non-compliance of this agreement
7 by Arbitron, a rebuttable presumption shall arise that Arbitron has not taken "all reasonable
8 measures" to achieve the metrics set forth in paragraph 2, above. For purposes of this Agreement,
9 "substantial continuing non-compliance" shall mean Arbitron's failure to meet a metric or
10 requirement set forth in paragraphs 2A through 2G, above, for at least six (6) consecutive months.

11 4. The parties may stipulate to an extension for good cause of any of the foregoing
12 deadlines, without applying to the Court.

13 MONETARY TERMS

14 5. On or before the Effective Date, Arbitron shall pay by bank check or certified
15 check or the equivalent, the total amount of \$400,000.00 in settlement of all claims by the People
16 for investigative costs, attorneys' fees, civil penalties, restitution or other monetary relief.

17 6. The final amount paid by Arbitron shall be allocated as follows pursuant to
18 Business and Professions Code sections 17206, subdivision (c) and 1735, subdivision (c):

- 19 A. \$150,000 shall be made payable to the Attorney General of California.
20 B. \$150,000 shall be made payable to the City of Los Angeles.
21 C. \$100,000 shall be made payable to the San Francisco City Attorney's
22 Office.

23 MONITORING

24 7. Arbitron shall prepare and submit reports within fifteen (15) days of the end of
25 each calendar quarter through December 31, 2012 disclosing whether Arbitron is in compliance
26 with the requirements of paragraphs 2A through 2H to counsel for the People and certifying
27 whether or not the requirements of paragraphs 2A through 2H have been completed. Such reports
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1 shall include the in-tab rates and SPI numbers for each of the California Markets during reported
2 quarter.

3 8. Arbitron shall provide counsel for the People full and free access to all (non-
4 privileged) documents and other information necessary to determine Arbitron's completion of any
5 action required by this Judgment, for the term of this Judgment within thirty (30) days of receipt
6 of any request by counsel for the People.

7 **ENFORCEMENT**

8 9. The People agree that, absent exigent circumstances, before seeking any relief in
9 this action from any court against Arbitron for any violation of the Judgment, it will give Arbitron
10 written notice of the alleged violation and at least thirty (30) days to respond. Absent exigent
11 circumstances, no relief shall be sought by the People until after this thirty (30) day period has
12 elapsed.

13 10. Subject to the requirements of paragraph 9, above, nothing in this judgment shall
14 prohibit the People from bringing any future criminal, civil enforcement or administrative actions
15 arising from any acts or practices occurring subsequent to the Effective Date by any person or
16 entity in connection with the sale of radio audience measurement services.

17 11. This Agreement is the result of compromise and settlement and does not represent
18 an admission by Arbitron to any liability in this action. This Agreement has no precedential value
19 and shall not be cited in any other litigation except as necessary to enforce the terms of this
20 Judgment.

21 **PROVISION OF NOTICE**

22 12. When any party is entitled to receive any notice under this Judgment, the notice
23 shall be sent in writing, by facsimile or e-mail, with a copy sent by United States Postal Service,
24 addressed as follows:

25
26 If to the Attorney General:

Frances T. Grunder
Sheldon H. Jaffe
Office of the California Attorney General
455 Golden Gate Ave. #11000
San Francisco, CA 94102-3664

1		Facsimile: (415) 703-5843 Frances.Grunder@doj.ca.gov Sheldon.Jaffe@doj.ca.gov
2		
3	If to the Los Angeles City Attorney:	Tina Hess Office of the Los Angeles City Attorney 500 City Hall East 200 North Main St. Los Angeles, CA 90012-4131 Facsimile: (213) 978-8112 Tina.Hess@lacity.org
4		
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7	If to the San Francisco City Attorney:	Danny Chou Owen Clements Office of the San Francisco City Attorney 1390 Market Street San Francisco, CA 94102-5408 Facsimile: (415)554-3985 Danny.Chou@sfgov.org Owen.Clements@sfgov.org
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12	If to Arbitron:	Timothy T. Smith Executive Vice President, Business Development & Strategy, Chief Legal Officer 9705 Patuxent Woods Drive Columbia, MD 21046 Facsimile: (410) 312-8613 tim.smith@arbitron.com
13		
14		
15		
16		with a copy to:
17		Alfred R. Fabricant
18		Winston & Strawn LLP
19		200 Park Avenue
20		New York, NY 10166
		Facsimile: (212) 294-4700
		afabricant@winston.com

GOVERNING LAW

13. This Judgment shall be governed by and construed in accordance with the laws of the State of California.

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RETENTION OF JURISDICTION

14. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction of this action to decide any and all disputes, claims or controversies between the parties regard the validity, enforcement, interpretation, or breach of this Judgment.

So ordered this 26th day of MARCH, 2012

HAROLD KAHN

JUDGE OF THE SUPERIOR COURT