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

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

MAR 26 2012

CLERK OF THE COURT  
WESLEY RAMIREZ  
Deputy Clerk

CARMEN A. TRUTANICH, State Bar No. 86629  
City Attorney, City of Los Angeles  
TINA HESS, State Bar No. 143900  
Assistant City Attorney  
JULIA FIGUEIRA-MCDONOUGH, State Bar No. 200452  
Deputy City Attorney

DENNIS J. HERRERA, State Bar No. 139669  
City Attorney, City of San Francisco  
DANNY CHOU, State Bar No. 180240  
Chief of Complex and Special Litigation  
OWEN CLEMENTS, State Bar No. 141805  
Chief of Special Litigation

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.

Case No. CGC-12-519349  
STIPULATION FOR ENTRY OF FINAL JUDGMENT  
Dept:  
Judge:  
Trial Date:  
Action Filed:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

1 Plaintiff, The PEOPLE OF THE STATE OF CALIFORNIA (“PEOPLE”), through its  
2 attorneys, Attorney General Kamala Harris, by and through Senior Assistant Attorney General  
3 Frances T. Grunder and Deputy Attorney General Sheldon H. Jaffe, Los Angeles City Attorney  
4 Carmen A. Trutanich, by and through Assistant City Attorney Tina Hess and Deputy City  
5 Attorney Julia Figueira-McDonough, and San Francisco City Attorney Dennis J. Herrera, by and  
6 through Danny Chou, Chief of Complex and Special Litigation, and Owen Clements, Chief of  
7 Special Litigation, and Defendant ARBITRON INC. (Arbitron) through its Executive Vice  
8 President and Chief Legal Officer, Timothy T. Smith, and its attorneys Winston & Strawn, LLP  
9 by Alfred R. Fabricant, hereby stipulate as follows:

10 1. The Final Judgment Pursuant to Stipulation (“Judgment”), a true and correct copy of  
11 which is attached to this Stipulation for Entry of Final Judgment (“Stipulation”) as Exhibit 1, may  
12 be entered in this matter.

13 2. Concurrently with the filing of this Stipulation, Plaintiff has filed its Complaint in this  
14 matter alleging that Arbitron committed violations of California Business and Professions Code  
15 sections 17200 and 17500 et seq. and California Civil Code section 51 et seq.

16 3. Plaintiff and Arbitron (Parties) have agreed to the entry of this Judgment by the Court  
17 without trial or adjudication of any issue of fact or law or finding of wrongdoing or liability of  
18 any kind.

19 4. The Court has jurisdiction over the subject matter of this action, jurisdiction over the  
20 Parties to this action, and venue is proper in this Court. Arbitron submits to the jurisdiction of the  
21 Court for purposes of entry of this Judgment and for any action by any of the Parties regarding  
22 the construction, carrying out, enforcement, or punishment for any violation of any provision of  
23 the Judgment.

24 5. Arbitron, at all relevant times, has transacted business in the City and County of San  
25 Francisco, the City of Los Angeles, and elsewhere in the State of California.

26 6. The Parties have agreed to the entry of the Judgment to resolve all matters in dispute  
27 in this action without the completion of trial or the adjudication of any issue of law or fact. This  
28 Judgment shall not constitute evidence of admission of fault or concession of liability or

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STIPULATION FOR ENTRY OF FINAL JUDGMENT

1 wrongdoing by Arbitron regarding any allegations of law or fact, alleged either expressly or  
2 impliedly, in the Complaint, and Arbitron denies such allegations.

3 7. Neither this Stipulation nor the Judgment constitutes an approval by the People of  
4 Arbitron's business practices, and Arbitron shall make no representation or claim to the contrary.

5 8. The Parties hereby waive any right to move for a new trial or otherwise seek to set  
6 aside the Judgment through any collateral attack, and further waive their right to appeal from the  
7 Judgment.

8 9. All signatories to this stipulation on behalf of the Parties specifically represent that  
9 they have been authorized by the party on behalf of whom they are signing to enter into this  
10 stipulation.

11 10. The Judgment may be entered by any judge of the San Francisco Superior Court.  
12 Counsel for Plaintiff may submit the Judgment to any judge of the Superior Court for approval  
13 and signature, during the Court's ex parte calendar or on any other ex parte basis. Arbitron  
14 waives the right to any personal notice of any such ex parte submission of the Judgment to the  
15 Court. Arbitron will accept service of the Complaint and any accompanying papers and notice of  
16 entry of judgment entered in this action by delivery of the Complaint and any accompanying  
17 papers and the notice of entry of judgment via Federal Express or other overnight delivery service  
18 to its counsel: Alfred R. Fabricant, Esq., Winston & Strawn, LLP, 200 Park Avenue, New York,  
19 NY 10166. Arbitron agrees that service of these documents in this manner will be deemed  
20 personal service upon it for all purposes.

21 11. This Stipulation and the Judgment sets forth the entire agreement between the Parties  
22 and supersedes all prior agreements or understandings, whether written or oral, between the  
23 Parties and/or their respective counsel, with respect to the conduct alleged in the Complaint.

24 12. This Stipulation may be executed in counterparts, each of which shall be deemed to  
25 constitute an original counterpart of this Stipulation, and all of which shall together constitute one  
26 and the same Stipulation. One or more counterparts of this Stipulation may be delivered by  
27 facsimile or electronic transmission with the intent that it, or they, shall constitute an original  
28 counterpart of this Stipulation.

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Dated: \_\_\_\_\_ 2012

Respectfully Submitted,  
  
KAMALA D. HARRIS  
Attorney General of California  
  
FRANCES T. GRUNDER  
Senior Assistant Attorney General

---

SHELDON H. JAFFE  
Deputy Attorney General

Dated: \_\_\_\_\_ 2012

CARMEN A. TRUTANICH  
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Assistant City Attorney

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Dated: Mar. 19 2012

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City Attorney, City of San Francisco



---

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Dated: \_\_\_\_\_ 2012


Respectfully Submitted,  
  
KAMALA D. HARRIS  
Attorney General of California  
  
FRANCES T. GRUNDER  
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---

SHELDON H. JAFFE  
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Dated: March 16, 2012

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Dated: \_\_\_\_\_ 2012

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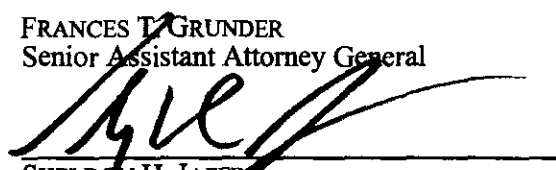
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Dated: 3/16 2012

Respectfully Submitted,  
KAMALA D. HARRIS  
Attorney General of California  
FRANCES T. GRUNDER  
Senior Assistant Attorney General

  
SHELDON H. JAFFE  
Deputy Attorney General

Dated: \_\_\_\_\_ 2012

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Dated: \_\_\_\_\_ 2012


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On behalf of Defendant  
ARBITRON INC.

Dated: 3/14 2012

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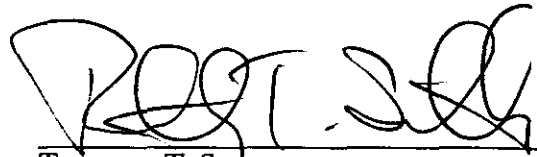
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Dated: March 16, 2012



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On behalf of Defendant  
ARBITRON INC.

Dated: \_\_\_\_\_ 2012

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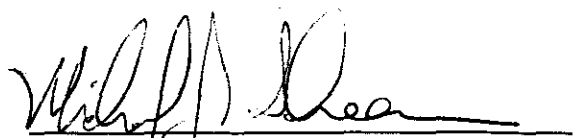
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ARBITRON INC.



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Dated: March 21 2012



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# **EXHIBIT 1**

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UNDER GOV. CODE § 6103]

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Assistant City Attorney  
8 JULIA FIGUEIRA-MCDONOUGH, State Bar No. 200452  
Deputy City Attorney

10 DENNIS J. HERRERA, State Bar No. 139669  
City Attorney, City of San Francisco  
11 DANNY CHOU, State Bar No. 180240  
Chief of Complex and Special Litigation  
12 OWEN CLEMENTS, State Bar No. 141805  
Chief of Special Litigation

14 Attorneys for Plaintiff  
THE PEOPLE OF THE STATE OF CALIFORNIA

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SAN FRANCISCO  
17

19 THE PEOPLE OF THE STATE OF  
CALIFORNIA,  
20  
21 Plaintiff,  
22  
23 v.  
24 ARBITRON INC.  
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26  
27  
28 Defendant.

Case No.  
[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.

28

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.

### 13 INJUNCTIVE PROVISIONS

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

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

21 A. **Address Based Recruitment:** Arbitron has historically recruited Panelists  
22 in the California Markets using a combination of telephone and address based methodologies.  
23 Arbitron is transitioning to a full address-based sample frame for all new sample selections. The  
24 implementation of the address-based sample frame for new sample selections will be completed  
25 by July 1, 2012, for all California Markets. Previously selected telephone sample that is within  
26 the panel or within eligible recruitment pools will remain eligible until its expiration date. As a  
27 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  
28

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:

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

|  |  |
|--|--|
| 1<br>2   | Facsimile: (415) 703-5843<br>Frances.Grunder@doj.ca.gov<br>Sheldon.Jaffe@doj.ca.gov  |
| 3<br>4<br>5<br>6                                   | If to the Los Angeles City Attorney:<br>Tina Hess<br>Office of the Los Angeles City Attorney<br>500 City Hall East<br>200 North Main St.<br>Los Angeles, CA 90012-4131<br>Facsimile: (213) 978-8112<br><a href="mailto:Tina.Hess@lacity.org">Tina.Hess@lacity.org</a>  |
| 7<br>8<br>9<br>10<br>11                            | If to the San Francisco City Attorney:<br>Danny Chou<br>Owen Clements<br>Office of the San Francisco City Attorney<br>1390 Market Street<br>San Francisco, CA 94102-5408<br>Facsimile: (415)554-3985<br><a href="mailto:Danny.Chou@sfgov.org">Danny.Chou@sfgov.org</a><br><a href="mailto:Owen.Clements@sfgov.org">Owen.Clements@sfgov.org</a>   |
| 12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | If to Arbitron:<br>Timothy T. Smith<br>Executive Vice President, Business<br>Development & Strategy, Chief Legal Officer<br>9705 Patuxent Woods Drive<br>Columbia, MD 21046<br>Facsimile: (410) 312-8613<br><a href="mailto:tim.smith@arbitron.com">tim.smith@arbitron.com</a><br><br>with a copy to:<br>Alfred R. Fabricant<br>Winston & Strawn LLP<br>200 Park Avenue<br>New York, NY 10166<br>Facsimile: (212) 294-4700<br><a href="mailto:afabricant@winston.com">afabricant@winston.com</a> |

**GOVERNING LAW**

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

**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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT