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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**

19 Date: August 29, 2014  
20 Time: 9:00 am  
21 Dept: Courtroom 4, 5th Floor  
22 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

eBay or Intuit over the Settlement Period (each, a “Claimant”). 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, even if the Claimant may meet the criteria for more than one of the Claimant Pools.

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

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

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

Below are the total amount of funds allocated to each pool, the estimated number of 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

Any amount remaining in the Settlement Fund Account after the claims of the Claimants 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) (each, a “*Cy Pres* Recipient”). As a condition to receiving any payment under this section, each *Cy Pres* Recipient must agree to use the funds for public 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

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

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

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

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

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

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

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

For affected employees of eBay and Intuit, the benefits of this Settlement are numerous. 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***  
***Indicate Settlement May be Appropriate***

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

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

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

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

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

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

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

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

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

In this Settlement, each proposed *Cy Pres* Recipient must agree to use the funds for public education and/or to support research, development, and initiatives related to promoting employment mobility in the high-tech industry. Plaintiff will strive to select local non-profit 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

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

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

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

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

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

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

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

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

Direct notice will be provided to each potential Claimant via both a postcard and an email (if that potential Claimant's email address is available) directing potential Claimants to a Settlement Website that includes all relevant documents with the ability to file claims, request 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 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,

3 KAMALA D. HARRIS  
4 Attorney General of California

5 /s/ Nicole S. Gordon  
6 NICOLE S. GORDON  
7 Deputy Attorney General  
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