

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.

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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**

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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**

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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**

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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  
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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  
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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  
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## 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: \_\_\_\_\_

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HON. EDWARD J. DAVILA  
United States District Judge