

# EXHIBIT 1

# If You Purchased an Apple iPod Directly from Apple Inc. Between September 12, 2006 and March 31, 2009

You could be affected by a class-action lawsuit against Apple Inc. The Court ordered this notice, allowed the case to proceed as a class action on behalf of a "Class," and has appointed attorneys as Class Counsel. The Court has not decided that Apple did anything wrong. Apple has not been ordered to pay any money. There has been no settlement. There is no money available now and no guarantee that there will be.

## **What is this case about?**

The lawsuit claims that Apple violated state and federal laws by issuing certain software updates in 2006 for its iPods that prevented iPods from playing songs not purchased from iTunes and that these updates caused prices for iPods to be higher than they would have been. Apple denies it did anything wrong and asserts that the updates improved its products, were good for consumers, and had no effect on iPod prices. The lawyers for the Class will have to prove their claims in Court.

## **Are you included?**

You are a member of the Class if you purchased an iPod directly from Apple (through an Apple retail store or Apple online store or as a reseller) between September 12, 2006 and March 31, 2009. A list of included iPods is available at **[WEBSITE]**

## **What are your options?**

To stay in the Class, you do not have to do anything now. If you do, you will be bound by the Court's orders and will lose any right you may have to sue Apple over the claims in this case. If you do not want to be a Class Member or to be bound by what the Court does and want to keep any rights you may have to sue Apple over the claims in this case, you need to exclude yourself. To be excluded, you must send a letter to **[ADDRESS]** that includes your name, address and a request to be excluded from *In re Apple iPod iTunes Antitrust Litigation*, 05cv00037 (N.D. Cal). If excluded, you cannot get money or benefits that Plaintiffs may obtain if any are awarded. The deadline to exclude yourself is **[MONTH 00, 2012]**.

## **Where to get more information?**

This notice is only a summary. For more information visit the website or call the toll-free number listed below.

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**For more information: [1-800-000-0000]**

**[www.\[XXXXXXXXXXXXXX\].com](http://www.[XXXXXXXXXXXXXX].com)**

# EXHIBIT 2

United States District Court  
for the Northern District of California

*In re Apple iPod iTunes Antitrust Litigation,*  
Case No. C 05-00037 JW

**NOTICE OF PENDENCY OF CLASS ACTION**

TO: ALL PERSONS OR ENTITIES IN THE UNITED STATES WHO PURCHASED ONE OF THE LISTED IPOD MODELS DIRECTLY FROM APPLE BETWEEN SEPTEMBER 12, 2006 AND MARCH 31, 2009 (THE “CLASS”).

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION.

This Notice has been sent to you pursuant to an Order of the United States District Court for the Northern District of California. The purpose of this Notice is to inform you that you have been identified as a potential member of the Class described above so that you can decide whether to remain a Class Member or to exclude yourself or your company from the Class. If you want to stay in this Class Action, you need not do anything now, and you will be bound by the Court’s rulings in the lawsuit. If you do not want to participate in this Class Action or have your rights affected by it, you must request exclusion as described in this notice by [Month xx, 2012].

*This is not a solicitation from a lawyer.*

This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party to this litigation. The Court has not decided whether Defendant Apple Inc. (“Apple”) has done anything wrong. Apple has not been ordered to pay any money. There has been no settlement.

**I. SUMMARY OF THE LITIGATION**

Apple sells iPods directly to customers through its online and retail stores and directly to Apple authorized resellers. The lawsuit claims that Apple violated federal and state laws by issuing software updates in 2006 for its iPod that prevented iPods from playing songs not purchased on iTunes. The lawsuit claims that the software updates caused iPod prices to be higher than they otherwise would have been. Apple denies that it did anything wrong and asserts that the software updates challenged by Plaintiffs improved its products, were good for consumers, and had no effect on iPod prices. The Court has not yet decided whether Plaintiffs or Apple is correct.

On November 22, 2010, the Court allowed the case to proceed as a class action for all persons and entities that purchased certain iPod models between September 12, 2006 and March 31, 2009. The specific models of iPods covered by the Class Definition can be found at [WEBSITE].

The Court appointed Plaintiffs as Class representatives, appointed Robbins Geller Rudman & Dowd LLP as Class Counsel, and directed that this Notice be sent to potential Class Members informing them of the pending litigation.

## **II. EXAMINATION OF PAPERS**

This Notice is just a summary and does not describe all of the details of the litigation. For more details about the matters discussed in this Notice, you may desire to review certain documents related to the litigation. Several documents, including the Complaint, Apple's Answer to the Complaint and the Court's Order certifying the class are available for review at **[INSERT WEBSITE LINK]**. The documents filed in the case may also be inspected during business hours at the office of the Clerk of the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, CA 94102, or by visiting the Court's Public Access to Court Electronic Records ("PACER") website at <https://ecf.cand.uscourts.gov/cand/index.html>.

Additional information can also be obtained from the Notice Administrator, Rust Consulting, Inc. by calling **[PHONE NUMBER]**.

## **III. TO REQUEST EXCLUSION FROM THE LITIGATION**

You have to decide whether to stay in the Class or ask to be excluded by **[DATE]**.

You do not need to do anything to be a member of the Class and to participate in any recovery the Plaintiffs may obtain for the Class and you will not incur any cost for doing so. As a Class Member, you will be represented by Plaintiffs and Class Counsel. However, if you choose, you may enter an appearance through your own counsel, at your expense. If you remain a member of the Class, you may not be permitted to pursue an individual action against Apple regarding the subject matter of this litigation.

If you do not want to remain a Class Member, if you do not want to be bound by what the Court does, or if you want to retain your right to pursue your own independent action against Apple for the claims in this case at your own expense, you must ask to be excluded from this Class Action. To ask to be excluded (which is the same as removing yourself from the Class or "opting-out"), you must send an "Exclusion Request" in the form of a letter sent by mail, to the Notice Administrator at **[INSERT ADDRESS]** stating that you want to be excluded from *In re Apple iPod iTunes Antitrust Litigation*. Your "Exclusion Request" should include your name and address. To be valid, your letter asking to be excluded from the Class must be signed and postmarked no later than **[DATE]**.

If you properly submit a timely request to be excluded from the Class, you will not be bound by what the Court does and will not be eligible to receive any benefits that Plaintiffs may ultimately obtain in the case through judgment or settlement. You will, however, retain whatever legal rights you may have against Apple with regard to the claims that are the subject of this litigation.

**DO NOT CALL THE COURT OR THE CLERK'S OFFICE  
REGARDING THIS NOTICE.**

BY ORDER OF THE COURT.

Dated: \_\_\_\_\_  
Honorable Chief Judge James Ware  
United States District Court  
for the Northern District of California

# EXHIBIT 3

United States District Court for the Northern District of California

**If you purchased one of the listed iPod models directly from Apple between September 12, 2006 and March 31, 2009, a class-action lawsuit may affect your rights.**

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

- Apple Inc. (“Apple”) sells iPods directly to customers through its online and retail stores and directly to Apple authorized resellers. A lawsuit has been filed against Apple claiming that software updates Apple issued in 2006 for its iPod caused iPod prices to be higher than they otherwise would have been. Apple denies that the software updates had any effect on iPod prices. The Court has not yet decided whether Plaintiffs or Apple is correct. Apple has not been ordered to pay any money. There has been no settlement.
- The Court has allowed the lawsuit to proceed as a class action on behalf of all entities or persons who purchased certain iPod models between September 12, 2006 and March 31, 2009. The specific models (“Designated Apple iPods”) are listed below at pages 3-4.
- The Court has not decided whether Apple has in fact violated the law. The sole purpose of this notice is to inform you of the lawsuit so that you can make an informed decision as to whether you should remain in or opt out of this class action. There is no money available now, and no guarantee that there will be. However, your legal rights are affected, and you have a choice to make now:

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

<b>DO NOTHING</b>	<p><b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b></p> <p>By doing nothing, you keep the possibility of sharing in any recovery (monetary or otherwise) that may come from a trial or a settlement. But you give up any right you may have to sue Apple separately about the same legal claims in this lawsuit, and you will be bound by the outcome of this case.</p>
<b>ASK TO BE EXCLUDED</b>	<p><b>Get out of this lawsuit. Get no benefits from it. Keep rights.</b></p> <p>If you ask to be excluded you will not be bound by what the Court does in this case and will keep any right you might have to sue Apple separately about the same legal claims in this lawsuit.</p>

	If a recovery is later awarded in this case, you would not share in that recovery.
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- Your options are explained in more detail in this notice. To be excluded, you must act before [DATE].

## WHAT THIS NOTICE CONTAINS

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### BASIC INFORMATION

- 1. What is this lawsuit about?

The lawsuit claims that Apple violated federal and state laws by issuing software updates in 2006 for its iPod that prevented iPods from playing songs not purchased on iTunes. The lawsuit claims that the software updates caused iPod prices to be higher than they otherwise would have been. Apple denies that it did anything wrong and asserts that the software updates challenged by Plaintiffs improved its products, were good for consumers, and had no effect on iPod prices.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is known as *In re Apple iPod iTunes Antitrust Litigation*, 05cv00037 - JW. The people who sued are called Plaintiffs, and Apple is called the Defendant.

The Court has not yet decided whether Plaintiffs or Apple is correct.

## 2. Why is this a class action?

Three individuals who bought iPods have sued Apple seeking to recover money for themselves and other people who bought iPods. On November 22, 2011, the Court allowed the case to proceed as a class action for all persons and entities that purchased one of the iPod models, listed below, directly from Apple between September 12, 2006 and March 31, 2009. All these people are a Class or Class Members. The Court will resolve the issues in the case for all Class Members, except for those who choose to exclude themselves from the Class. United States District Court Chief Judge James Ware is in charge of this class action.

More information about why the Court is allowing this lawsuit to be a class action is in the Order Granting Plaintiffs' Motion for Class Certification available at [\[WEBSITE\]](#).

## WHO IS IN THE CLASS?

### 3. Who is included in the Class?

The Court decided that everyone who fits the following description is a Class Member: All persons or entities in the United States (excluding federal, state and local governmental entities, Apple, its directors, officers and members of their families) who purchased one of the iPod models listed below directly from Apple between September 12, 2006 and March 31, 2009 ("Class Period").

A list of iPod models covered by the Class Definition are as follows:

- iPod Standard, Classic, Special Models
  - iPod (5th generation) 30 GB
  - iPod (5th generation) 80 GB
  - iPod U2 Special Edition 30 GB
  - iPod Classic 120 GB
  - iPod Classic 80 GB
  - iPod Classic 160 GB
  - iPod (5th generation) 60 GB
- iPod shuffle Models
  - iPod shuffle (2nd generation) 1 GB
  - iPod shuffle (2nd generation) 2 GB
  - iPod shuffle (3rd generation) 4 GB
  - iPod shuffle (1st generation) 1 GB
  - iPod shuffle 512 MB

- iPod touch Models
  - iPod touch 8 GB
  - iPod touch 16 GB
  - iPod touch 32 GB
  - iPod touch (2nd generation) 8 GB
  - iPod touch (2nd generation) 16 GB
  - iPod touch (2nd generation) 32 GB
- iPod nano Models
  - iPod nano (2nd generation) 2 GB
  - iPod nano (2nd generation) 4 GB
  - iPod nano (2nd generation) 8 GB
  - iPod nano (3rd generation) 4 GB
  - iPod nano (3rd generation) 8 GB
  - iPod nano (4th generation) 4 GB
    - (Apple retail sales only during the class period).
  - iPod nano (4th generation) 8 GB
  - iPod nano (4th generation) 16 GB
  - iPod nano (1st generation) 1 GB
  - iPod nano (1st generation) 2 GB
  - iPod nano (1st generation) 4 GB

#### 4. What if I'm still not sure if I am included in the Class?

If you are still not sure whether you are included, you can get more information at [WEBSITE], or get free help by calling or writing the lawyers in this case, at the phone number or address listed in Question 12.

### THE CLAIMS IN THE LAWSUIT

#### 5. What are Plaintiffs asking for?

Plaintiffs are seeking to recover money for themselves and the Class based on Plaintiffs' claim that Apple's software updates violated federal and state antitrust laws and caused iPod prices to be higher than they otherwise would have been. Apple claims that Plaintiffs should recover no money because it has not violated the law and the software updates challenged by Plaintiffs improved its products, were good for consumers, and did not increase iPod prices.

#### 6. Is there any money available now?

No money is available now because the Court has not yet decided whether Apple has done anything wrong, and the two sides have not settled the case. There is no guarantee that any money will ever be available. If it is, you will be notified about your rights regarding any recovery.

## YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or ask to be excluded before the trial, and you have to decide this prior to [DATE].

### 7. What happens if I do nothing at all?

If you do not do anything now you will remain a member of the Class. If you stay in the Class and the Plaintiffs obtain benefits, either as a result of a trial or a settlement, you will be notified about how to seek a share of those benefits (or how to ask to be excluded from any settlement). If you do nothing, you will be bound by the Court's orders and will lose any right you may have to sue Apple over the claims in this case. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in the class action, including any judgment against Plaintiffs and in favor of Apple.

### 8. Why would I ask to be excluded?

If you would like to pursue your own lawsuit or claim against Apple for the claims in this case, do not want to be bound by what the Court does in this case, or if you simply do not want to be part of the Class pursuing claims against Apple, you need to ask to be excluded from the Class. If you exclude yourself from the Class – which also means to remove yourself from the Class, and is sometimes called “opting-out” of the Class – you will not be legally bound by the Court’s judgments in this class action, and will keep any right you may have to later sue Apple for the claims being made in the case. If you exclude yourself you also will not get any benefits from this lawsuit if there are any.

### 9. How do I ask the Court to exclude me from the Class?

To ask to be excluded, you must send an “Exclusion Request” in the form of a letter sent by mail to [ADDRESS], stating that you want to be excluded from *In re Apple iPod iTunes Antitrust Litigation*. Your “Exclusion Request” should include your name and address. To be valid, your letter asking to be excluded from the Class must be signed and postmarked no later than [DATE].

## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in this case?

The Court has appointed Robbins Geller Rudman & Dowd LLP as Class Counsel in this case. The Court has determined that Robbins Geller Rudman & Dowd LLP is qualified to represent you and all other Class Members. You will not be charged for these lawyers. The lawyers handling the case are experienced in handling similar cases. More information about the law firm is available at [www.rgrdlaw.com](http://www.rgrdlaw.com).

### 11. How will the lawyers be paid?

If Class Counsel recovers any money for the Class, they will ask the Court for payment of their fees and reimbursement of their litigation costs. You will not have to pay these fees and expenses out of

your own pocket. If the Court grants Class Counsel's request, the fees and expenses will be deducted from any money obtained for the Class or paid separately by Apple.

## **GETTING MORE INFORMATION**

### **12. Where can I get more information?**

If you want more detailed information, you may visit the website [WEBSITE], where you will find the Court's Order Granting Plaintiffs' Motion for Class Certification and other case-related documents.

#### Class Counsel:

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Alexandra S. Bernay  
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Telephone: 415/626-3939

# EXHIBIT 4

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

9 In Re. Apple & ATTM Antitrust Litigation

## **ORDER GRANTING DEFENDANTS' MOTION TO STAY PROCEEDINGS**

21 Presently before the Court is Defendant Apple's Motion to Stay the Proceedings.<sup>2</sup> The Court  
22 finds it appropriate to take the Motion under submission without oral argument. See Civ. L.R. 7-  
23 1(b). Based on the papers submitted to date, the Court GRANTS Defendants' Motion to Stay.

<sup>26</sup> Plaintiffs are Herbert H. Kliegerman, Paul Holman, Lucy Rivello, Timothy P. Smith,  
<sup>27</sup> Michael G. Lee, Dennis V. Macasadu, Mark G. Morikawa, Vincent Scotti, and Scott Sesso.

<sup>2</sup> (hereafter, “Motion,” Docket Item No. 472). Defendant ATTM filed a Joinder in Apple’s Motion to Stay. (Docket Item No. 477.)

**II. BACKGROUND**

1                   A detailed description of the factual allegations of this case can be found in the Court's  
2 October 1, 2008 Order Denying Defendant ATTM's Motion to Compel Arbitration and to Dismiss;  
3 Denying Defendant ATTM's Motion to Stay Discovery; Granting in Part and Denying in Part  
4 Defendant Apple's Motion to Dismiss.<sup>3</sup>

5                   The Court reviews the procedural history to the extent it is relevant to the present Motion.  
6 On October 5, 2007, Plaintiffs Paul Holman and Lucy Rivello filed a Class Action Complaint.  
7 (Docket Item No. 1.) In 2007 and 2008, the Court consolidated and related several other cases  
8 alleging similar facts and legal claims. (Docket Item Nos. 34, 35, 86, 100.) On June 4, 2008,  
9 Plaintiffs filed a Revised Consolidated Amended Class Action Complaint, which is the operative  
10 Complaint.<sup>4</sup> In its October 1, 2008 Order, the Court denied Defendant ATTM's Motion to Compel  
11 Arbitration and granted in part and denied in part Defendant Apple's Motion to Dismiss. The Court  
12 dismissed only the unfair and deceptive trade practices claims. (See October Order.)

13                   On February 12, 2010, Apple filed a Motion for Summary Judgment on Plaintiffs' claims for  
14 violation of the Magnuson-Moss Warranty Act, trespass to chattels, violation of the Computer Fraud  
15 and Abuse Act, and violation of California Penal Code § 502. (Docket Item No. 265.) Plaintiffs  
16 filed a Motion for Class Certification. (Docket Item No. 289.) On July 8, 2010, the Court issued an  
17 Order as to both Motions. (Docket Item No. 466.) Specifically, the Court granted Defendant

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18                   <sup>3</sup> (hereafter, "October Order," Docket Item No. 144.)

19                   <sup>4</sup> (hereafter, "Amended Complaint," Docket Item No. 109.) The Amended Complaint  
20 alleges the following ten causes of action: (1) Unlawful Monopolization of the Applications  
21 Aftermarket in Violation of Sherman Act § 2 (against Apple); (2) Attempted Monopolization of the  
22 Applications Aftermarket in Violation of the Sherman Act § 2 (against Apple); (3) Unlawful  
23 Monopolization of the Voice and Data Services Aftermarket in Violation of Sherman Act § 2  
24 (against Apple and ATTM); (4) Attempted Unlawful Monopolization of the Voice and Data  
25 Services Aftermarket in Violation of Sherman Act § 2 (against Apple and ATTM); (5) Conspiracy to  
26 Monopolize the Voice and Data Services Aftermarket in Violation of Sherman Act § 2 (against  
27 Apple and ATTM); (6) Unfair and Deceptive Acts and Practices (against Apple and ATTM); (7)  
Apple and ATTM); (8) Trespass to Chattels (against Apple); (9) Violation of the Computer Fraud and Abuse  
Act, 18 U.S.C. § 1030 (against Apple); and (10) Violation of California Penal Code § 502 (against  
Apple).

1 Apple's Motion for Summary Judgment as to the causes of action listed above, and granted in part  
 2 Plaintiffs' Motion for Class Certification as to the remaining claims. (Id.)

3 On July 23, 2010, Defendants filed with the Ninth Circuit a Petition for Permission to Appeal  
 4 the Class Certification Order pursuant to Federal Rule of Civil Procedure 23(f),<sup>5</sup> which is currently  
 5 pending.

6 **III. DISCUSSION**

7 **A. Standards for a Stay**

8 As a preliminary matter, the parties dispute the relevant standard for granting a stay.  
 9 Defendants contend that the Court should follow the Ninth Circuit's decision in Golden Gate  
 10 Restaurant v. San Francisco.<sup>6</sup> (Motion at 2.) Plaintiffs contend that the Supreme Court's decision in  
 11 Winter v. NRDC, Inc.,<sup>7</sup> overturned Golden Gate's sliding scale analysis as to stays. (Plaintiffs'  
 12 Opposition to Defendant Apple Inc.'s Motion to Stay Proceedings at 1, hereafter, "Opp'n," Docket  
 13 Item No. 485.)

14 "A stay is not a matter of right." Nken v. Holder, 129 S. Ct. 1749, 1761 (2009). Rather, a  
 15 court may grant a stay in its discretion "upon [consideration of] the circumstances of the particular  
 16 case." Id. The party requesting a stay bears the burden of showing that the circumstances justify a  
 17 stay. Id. In determining whether to issue a stay pending an interlocutory appeal, the Supreme Court  
 18 has repeatedly held that courts should consider four factors: (1) whether the stay applicant has made  
 19 a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be  
 20 irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other  
 21 parties interested in the proceeding; and (4) where the public interest lies. See, e.g., Nken, 129 S.  
 22 Ct. at 1761; see also Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

23  
 24  
 25 <sup>5</sup> (hereafter, "Rule 23(f) Petition," Docket Item No. 467.)

26 <sup>6</sup> 512 F.3d 1112 (9th Cir. 2008).

27 <sup>7</sup> 129 S. Ct. 365 (2008).

1        In evaluating these factors, the Ninth Circuit in Golden Gate applied a “sliding scale”  
 2 analysis, which “represent[s] the outer reaches of a single continuum.” 512 F.3d at 1116. At one  
 3 end, the moving party can show “a probability of success on the merits and the possibility of  
 4 irreparable injury.” Id. at 1115-16 (quoting Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir. 1983)).  
 5 At the other end of the spectrum, the moving party can show that “serious legal questions are raised  
 6 and that the balance of hardships tips sharply in its favor.” Id.

7        In Winter, the Supreme Court considered whether the Ninth Circuit’s sliding scale analysis  
 8 was appropriate in the context of the standard for a preliminary injunction. 129 S. Ct. at 370. In the  
 9 preliminary injunction context, the Court held that a plaintiff must show that “he is likely to suffer  
 10 irreparable harm in the absence of preliminary relief” regardless of the likelihood of success on the  
 11 merits. Id. at 374. The Court’s decision in Winter, however, did not address the use of the sliding  
 12 scale approach in the stay context. Moreover, the Ninth Circuit has recently held that, even in the  
 13 injunction context, the “‘serious questions’ version of the sliding scale test . . . remains viable after .  
 14 . . Winter.” Alliance for the Wild Rockies v. Cottrell, No. 09-35756, 2010 U.S. App. LEXIS 15537,  
 15 at \*18-19 (9th Cir. July 28, 2010). As such, multiple post-Winter decisions in this Circuit continue  
 16 to apply the “sliding scale” and “serious questions” tests of Golden Gate to motions to stay pending  
 17 appeal.<sup>8</sup>

18        Accordingly, in considering Defendants’ Motion, the Court applies the rules enunciated in  
 19 Golden Gate.

20 **B. Defendants’ Motion**

21        Defendants move for a stay on the grounds that their Rule 23(f) Petition raises serious legal  
 22 questions and that a short delay would serve judicial economy and the public interest. (Motion at 1.)  
 23 Plaintiffs respond that Defendants are not likely to be successful on appeal, and that the balance of  
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25        <sup>8</sup> See, e.g., McArdle v. AT&T Mobility LLC, No. C 09-1117, 2010 U.S. Dist. LEXIS 73519,  
 26 at \*9 (N.D. Cal. July 20, 2010); Countrywide Home Loans, Inc. v. Mortgage Guaranty Ins. Co., No.  
 27 C 10-00233, 2010 U.S. Dist. LEXIS 53900, at \*5-6 (N.D. Cal. May 4, 2010); United States v.  
Greenstein, No. CR08-0296, 2010 U.S. Dist. LEXIS 91999, at \*2-3 (W.D. Wash. Aug. 13, 2010).

1 equities does not tip in Defendants' favor because there is a public interest in moving the class  
2 action forward. (Opp'n at 1-2.)

3 Under Golden Gate, to prevail on a motion to stay pending an interlocutory appeal, a  
4 defendant must show that: (1) serious legal questions are raised in the appeal; and (2) the balance of  
5 hardships tips sharply in its favor. Golden Gate, 512 F.3d at 1115-16.

6 Here, with respect to the first factor, Defendants' Rule 23(f) Petition raises significant legal  
7 questions as to the proper interpretation of Newcal Indus., Inc. v. IKON Office Solution, 513 F.3d  
8 1038 (9th Cir. 2008). In its October 1, 2008 Order regarding Apple's Motion to Dismiss, the Court  
9 allowed Plaintiffs' aftermarket claims under Newcal. (See Docket Item No. 144 at 14-15.) In that  
10 Order, the Court also noted that Plaintiffs alleged that "unknown to consumers, the companies had  
11 agreed to technologically restrict voice and data service in the aftermarket for continued voice and  
12 data services, i.e., after the initial two-year service period expired." (Id. at 1.) Later, in ruling on  
13 Plaintiffs' Motion for Class Certification, the Court held that Newcal "did not require that an inquiry  
14 into whether consumers 'knowingly' entered into de facto commitments to be monopolized must be  
15 determined on an individual basis rather than a class-wide basis." (Docket Item No. 466 at 16  
16 (emphasis in original).)

17 Based on these two Orders, Defendants' Rule 23(f) Petition asks the Ninth Circuit to decide  
18 Newcal's effect on Plaintiffs' burden to show that certain types of aftermarket monopolization  
19 claims are appropriate for class action treatment. (Docket Item No. 467.) The Court recognizes that  
20 this may be a case of first impression, namely, Newcal's implications for the type of class action  
21 claim at issue here.<sup>9</sup> Thus, the Court finds that Defendants have made a sufficient showing that their  
22 Rule 23(f) Petition raises significant legal issues.

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26 <sup>9</sup> Contrary to Plaintiffs' contention, Defendants "need not persuade the court that it is likely  
27 to be reversed on appeal." Costco Wholesale Corp. v. Hoen, No. C04-360P, 2006 U.S. Dist. LEXIS  
65774 at \*2-3 (W.D. Wash. Sept. 14, 2006).

28

With respect to the second factor, the Court finds that the balance of hardships tip sharply in Defendants' favor. As merits discovery has already been stayed,<sup>10</sup> the practical effect of granting this Motion is to stay the dissemination of Class Notice to millions of consumers for a short time until the Ninth Circuit rules on whether or not to take Defendants' appeal. Such a stay will delay the expenditure of the significant costs associated with the dissemination of Notice. Most importantly, a stay will avoid the possibility of the Class receiving two conflicting Notices. A stay therefore also serves the public interest to avoid the risk of significantly confusing the class consumers.<sup>11</sup> Finally, neither Plaintiffs nor the class will be significantly harmed by a short delay. Thus, the Court finds that Defendants have met their burden to show that the equities tip sharply in their favor.

10 | Accordingly, the Court GRANTS Defendants' Motion to Stay.

#### **IV. CONCLUSION**

12 The Court GRANTS Defendants' Motion to Stay Proceedings. The case is stayed for 60  
13 days until **November 15, 2010**. In light of this Order, the Court VACATES the September 20, 2010  
14 Further Case Management Conference.

15 On November 15, 2010 at 10 a.m., the parties shall appear for a Further Case Management  
16 Conference. On or before November 5, 2010, the parties shall file a Joint Case Management  
17 Statement updating the Court on the status of Defendants' Rule 23(f) Petition and the parties'  
18 respective positions with respect to whether the Class Notice is ready for dissemination.

20 || Dated: September 15, 2010

**JAMES WARE**  
United States District Judge

23       <sup>10</sup> Plaintiffs also suggest that the stay as to merits discovery should be lifted. (Opp'n at 8.)  
24 The Court finds Plaintiffs' request both premature and procedurally improper, and thus denies the  
request at this time.

**United States District Court**

For the Northern District of California

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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17 Zachary W. Biesanz biesanz@whafh.com

18 **Dated: September 15, 2010**

**Richard W. Wieking, Clerk**

19 By: /s/ JW Chambers  
20 **Elizabeth Garcia**  
21 **Courtroom Deputy**

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# EXHIBIT 5

1 HONORABLE RICHARD A. JONES  
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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE  
13

14 IN RE CLASSMATES.COM  
15 CONSOLIDATED LITIGATION  
16

17 MASTER CASE NO. C09-45RAJ  
18 ORDER  
19 (APPLIES TO ALL ACTIONS)

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20 **I. INTRODUCTION**

21 This matter comes before the court on Plaintiffs' motion (Dkt. # 73) for  
22 preliminary approval of a settlement with Defendants, including preliminary certification  
23 of a settlement class. Defendants do not oppose the motion. The court GRANTS the  
24 motion subject to the limitations stated below, and sets a hearing on October 27, 2010, at  
25 10:00 a.m. to determine whether the settlement should be made final.

26 **II. BACKGROUND**

27 Defendants, who the court will refer to collectively as "Classmates," operate a  
28 website at [www.classmates.com](http://www.classmates.com). The website contains records of millions of people  
organized according to high school graduating class, college graduating class, and other  
similar groupings. People gain various levels of access to the records by registering for  
unpaid and paid Classmates memberships.

This consolidated class action is an amalgamation of two suits that Anthony  
Michaels and Xavier Vasquez filed challenging various Classmates practices. The court  
consolidated the suits, and Mr. Michaels' counsel was appointed interim class counsel.

1 At the court's direction, class counsel filed an amended complaint to govern all claims in  
2 the consolidated action. They dropped Mr. Vasquez as a Plaintiff and added David  
3 Catapano. The consolidated complaint asserts only Washington law causes of action,  
4 including claims under the Washington Consumer Protection Act ("CPA") and the  
5 Washington Commercial Electronic Mail Act ("CEMA").

6 The consolidated complaint describes Classmates' deceptive practices to induce  
7 users to pay for subscriptions. In one such practice, Classmates sent e-mails to unpaid  
8 members informing each of them that someone with whom they went to high school or  
9 college or the like was seeking contact with them or had visited their Classmates profile.  
10 Each e-mail informed the member that he could communicate with that person by  
11 upgrading to a paid membership. Plaintiffs allege that they paid for a membership in  
12 response to this practice, only to discover that no one (or at least no one known to them)  
13 had visited their profile or sought contact with them. Numerous variations on this  
14 deceptive practice are described in the consolidated complaint.

15 The parties propose a settlement in which Mr. Michaels and Mr. Catapano  
16 (residents of California and Nevada, respectively) will serve as representatives of a  
17 nationwide class of all registered Classmates users since October 30, 2004. In addition,  
18 they will represent a subclass of approximately 3.1 million "Gold Members." A gold  
19 membership is a paid classmates.com membership, and is apparently the membership  
20 package to which Plaintiffs subscribed because of the deceptive Classmates practices  
21 described above. Plaintiffs define the subclass to include only Classmates users who  
22 likely became Gold Members in response to one of Classmates' deceptive practices.  
23 Although the court follows Plaintiffs' lead in referring to these Gold Members as a  
24 "subclass," the court notes that the class is defined so that it excludes all subclass  
25 members. The proposed class and subclass thus share no members in common. The  
26 court refers to the two mutually exclusive classes as the "main class" and the subclass.  
27

28 ORDER – 2

1 When referring to all members of both classes, the court will use the generic term “class  
2 members.”

3 The principal features of the settlement are a Classmates credit for main class  
4 members, a credit or cash payment to subclass members, and a three-year injunction  
5 targeting the challenged Classmates practices. Main class members may claim a \$2  
6 credit to be used toward a paid Classmates membership. Subclass members may claim  
7 the credit, or they may claim a \$3 cash payment, up to a maximum cash outlay of \$9.5  
8 million. The injunction requires Classmates to include disclosures on its website about  
9 the “Guestbook” feature on which many of its allegedly deceptive practices are focused,  
10 and also include disclosures to enable users to better protect their personal information.

11 In exchange, Classmates will receive a broad release of all claims from class  
12 members, including not only the Washington law claims asserted in the consolidated  
13 complaint, but claims under federal law or any state’s law. Classmates admits no  
14 wrongdoing in the settlement.

15 Class counsel will seek attorney fees. They will request no more than \$1.3 million  
16 in attorney fees, although they may also seek costs, as well as a \$2500 incentive payment  
17 for Mr. Catapano and Mr. Michaels.

18 Notice to class members will be accomplished electronically via the last e-mail  
19 address that each class member provided to Classmates, and also via a Wall Street  
20 Journal advertisement. Because of the large number of class members, Plaintiffs have  
21 requested at least 90 days between preliminary approval of their settlement and the  
22 deadline for completing notice. Main class and subclass members would then be required  
23 to submit a claim form (with the option to do so via e-mail) if they wish to claim either  
24 the credit or the cash payment.

25 The court now turns to its preliminary approval analysis.

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27  
28 ORDER – 3

### III. ANALYSIS

The parties' agreement to settle this matter is not itself a sufficient basis for approving the settlement. The settlement would require the court to certify a class and dispose of the claims of its members. The court has an independent obligation to protect class members. *Silber v. Mabon*, 957 F.2d 697, 701 (9th Cir. 1992). Even for a class certified solely for purposes of settlement, the court must ensure that the class and its proposed representatives meet the requirements of Fed. R. Civ. P. 23. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). In addition, the court must ensure that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

Both the main class and subclass satisfy the four prerequisites of Rule 23(a). The parties estimate that there are 3.1 million subclass members. The consolidated complaint estimates the number of main class members at about 50 million. Both the subclass and the main class therefore satisfy the numerosity requirement of Rule 23(a)(1).

The class members' claims satisfy the minimal commonality standard of Rule 23(a)(2). Determining whether Classmates' inducements for paid memberships violated the CPA or CEMA presents numerous common questions of law and fact. A single common question suffices for purposes of Rule 23(a)(2). *E.g., Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 648 (C.D. Cal. 1996).

Mr. Catapano and Mr. Michaels have claims that are typical of the claims of subclass members. They allege that they paid for memberships as a result of Classmates' deceptive practices, and the subclass is defined such that it is likely that other subclass members did so as well. Their claims are not obviously typical of main class members, however, because unlike them, Mr. Catapano and Mr. Michaels succumbed to deceptive Classmates practices. All class members, however, were targets of the deceptive practices, and Mr. Catapano and Mr. Michaels are typical main class members in at least that regard. The court concludes that the main class and subclass satisfy the typicality requirement of Rule 23(a)(3).

1       The court also finds that Mr. Catapano and Mr. Michaels are adequate class  
2 representatives, as Rule 23(a)(4) requires. To the extent that other class members have  
3 claims based on a sufficiently similar factual predicate, the record reflects that Mr.  
4 Catapano and Mr. Michaels can adequately represent them. Subject to the same  
5 limitation, interim class counsel are adequate to represent the main class and subclass.  
6 *See* Fed. R. Civ. P. 23(g).

7       To the extent class members have sufficiently different claims against Classmates,  
8 however, the class representatives' intent to force them to release all of their claims is  
9 suspect. *See, e.g., Hesse v. Sprint Corp.*, No. 08-35235, 2010 U.S. App. LEXIS 5017, at  
10 \*9-24 (9th Cir. Mar. 10, 2010) (concluding that representational inadequacy partially  
11 invalidated release of claims in a nationwide class action settlement). In *Hesse*, the court  
12 found that a broad release imposed on members of a nationwide class action had no  
13 preclusive effect on a later class action against the same defendant. *Id.* at \*9 ("We  
14 conclude . . . that the release cannot preclude the Washington Plaintiffs' claims because  
15 the [prior] Class Plaintiff did not adequately represent the Washington Plaintiffs and  
16 because the Washington Plaintiffs' claims are based on a set of facts different from those  
17 underlying the claims settled in the [prior] settlement."). The release in *Hesse* contained  
18 language much like the release Plaintiffs propose here. *Id.* The court makes no finding  
19 as to whether Plaintiffs are adequate representatives of class members for any claims  
20 other than those sufficiently similar, as described in *Hesse*, to those asserted in the  
21 consolidated complaint. The court need not demand a narrower release, however,  
22 because a future court called upon to determine the preclusive effect of this settlement  
23 will narrow it appropriately. To the extent the release is too broad, Classmates may  
24 obtain less than it bargained for.

25       The court concludes that the main class and subclass meet the requirements of  
26 Rule 23(b)(3). Typically, Rule 23(b)(3) serves to ensure that a class action is the best  
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28 ORDER – 5

1 means of resolving a dispute. When the parties settle a class action, many of the concerns  
2 articulated in the rule do not apply, because a negotiated resolution moots some of the  
3 practical difficulties of resolving the dispute on a classwide basis. *Amchem Prods., Inc.*  
4 *v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only  
5 class certification, a district court need not inquire whether the case, if tried, would  
6 present intractable management problems.”). The common legal and factual questions  
7 related to Classmates allegedly deceptive tactics predominate over any individualized  
8 concerns. There is nothing in the record that suggests this court is an undesirable forum  
9 for resolving those claims.

10 Plaintiffs propose to use e-mail to notify class members of class certification, this  
11 settlement, and their obligations to submit a claim for either a credit or cash payment. E-  
12 mail notice is an excellent option here, where every class member provided an e-mail  
13 address to Classmates in the process of registering as a user. Given the large number of  
14 class members, e-mail notice also avoids the substantial expense of sending notice by  
15 mail. The court finds that Plaintiffs’ notice procedure satisfies the requirements of Rule  
16 23(c)(2)(B) (mandating “the best notice that is practicable under the circumstances”).  
17 The court also appreciates that Plaintiffs have enabled class members to return claim  
18 forms via e-mail. This is an important benefit, as the cost of postage would be a large  
19 portion of the relief that Classmates is offering to each class member. The court notes,  
20 however, that Plaintiffs have not given class members the option to opt out of the class  
21 via e-mail. The court sees no obvious reason for this. It thus orders Plaintiffs to enable  
22 class members to opt out via e-mail. If this requirement presents a problem, Plaintiffs  
23 shall provide a statement as soon as possible explaining why.

24 The court has reviewed Plaintiffs’ proposed forms of notice to main class and  
25 subclass member. Those notices are adequate, but Plaintiffs must modify them to reflect  
26 this order, including the order to permit class members to opt out via e-mail.

27  
28 ORDER – 6

1       Finally, Plaintiffs must allow the court to review the notice, opt-out, and claim  
2 submission features in their electronic format. Accordingly, the court directs class  
3 counsel to arrange for the court to receive electronic notice as soon as the technology is  
4 enabled. Counsel shall also notify the court when the settlement website they have  
5 promised to create becomes “live.”

6       The court now considers whether the settlement is “fair, reasonable, and adequate”  
7 as required by Rule 23(e)(2). The court begins by considering the financial relief. As to  
8 main class members, Classmates’ \$2 credit toward a paid membership is reasonable.  
9 Indeed, main class members have suffered no apparent financial harm, and thus  
10 Classmates’ agreement to offer them even modest compensation is fair. As to subclass  
11 members, the record shows that they paid between \$10 and \$40 to become Gold  
12 Members, with an average price around \$24. Classmates’ offer of \$3 is about an eighth  
13 of what the average subclass member paid. This is a reasonable discount, given the  
14 uncertainty of obtaining any recovery if this case went to trial.

15       The injunctive relief is an additional benefit to all class members. It requires  
16 Classmates to make disclosures that would blunt future deceptive marketing practices.

17       The court’s final observation regarding the fairness and adequacy of the settlement  
18 concerns attorney fees for class counsel. As the court just noted, the relief to class  
19 members is not, standing alone, unreasonable. Collectively, however, it is not certain  
20 what Classmates will pay to settle this action. There is no indication that its offer of  
21 credit toward paid memberships will hurt its bottom line. To the extent that the credit  
22 offer induces persons to pay for memberships that they otherwise would not, it may be a  
23 financial boon to Classmates. The offer of cash to subclass members is different, but  
24 perhaps not substantially so. For Classmates to pay out cash awards equaling the \$9.5  
25 million cap on the settlement, every one of the approximately 3.1 million subclass  
26 members would have to make a claim for the \$3 payment. As the parties are no doubt  
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28       ORDER – 7

1 aware, it is exceedingly unlikely that subclass members will do so. In the court's  
2 experience, class members typically do not bother to make claims for a few dollars of  
3 compensation. It is therefore highly likely that Classmates will pay only a tiny fraction of  
4 \$9.5 million. Class counsel has indicated that they will seek up to \$1.3 million in  
5 attorney fees. That amount is about 14% of \$9.5 million, and perhaps not coincidentally  
6 just below the 15% limit on attorney fees that class counsel agreed to in the event it  
7 sought fees as a percentage of a common fund awarded to class members. The court  
8 cannot forecast what counsel will request for attorney fees, and cannot forecast the  
9 methodology they will use to buttress that request. The court merely notes that if counsel  
10 move for an award of attorney fees that is disproportionate to the payout to class  
11 members, they should acknowledge as much, and explain why such a result is justified.  
12 Thus, Plaintiffs should plan on obtaining information from the settlement administrator  
13 regarding the number of class members making claims for cash payments, so that they  
14 may submit that information in conjunction with the final approval process.

15 For all of the reasons stated above, the court preliminarily approves this class  
16 action settlement. The remainder of this order reproduces Plaintiffs' proposed order,  
17 except that it inserts dates where appropriate, and modifies paragraph 8 to provide class  
18 members the option to opt out of the class via email. The preceding portion of this order  
19 shall control in the event of any conflict between Plaintiffs' language and the court's  
20 language.

#### 21 IV. ORDER

22 This matter comes before the Court on Plaintiffs' Motion for Preliminary  
23 Approval of Class Action Settlement. The parties have agreed, subject to final approval  
24 by this Court following notice to the Settlement Class and Settlement Subclass, as  
25 defined below, to settle this action upon the terms and conditions set forth in the  
26 Settlement Agreement. The Court has reviewed the Class Action Settlement Agreement,

1 as well as all files, records, and proceedings to date in this matter.

2 IT IS HEREBY ORDERED:

3 1. **Preliminary Approval of Proposed Settlement.** The Settlement  
4  
5 Agreement is preliminarily approved as fair, reasonable and adequate. The Court also  
6 finds that notice to members of the Settlement Class and Settlement Subclass should be  
7 provided and a final fairness hearing on the Settlement Agreement should be held as set  
8 forth in this Order.

9 2. **Stay of Proceedings.** All proceedings in this action are hereby stayed and  
10 suspended until further order of the Court, except such actions as may be necessary to  
11 implement the Settlement Agreement and this Order.

12 3. **Class Findings.** Solely for the purposes of the Settlement Agreement, the  
13 Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure,  
14 the United States Constitution, the Rules of the Court and any other applicable law have  
15 been met as to the Settlement Class and Settlement Subclass defined below, in that:

16 (a) The Court preliminarily finds for purposes of settlement only that, as  
17 required by FED. R. CIV. P. 23(a)(1), the Settlement Class and Settlement Subclass are  
18 ascertainable from records maintained by Defendants, and the members of the Settlement  
19 Class and Settlement Subclass are so numerous that their joinder before the Court would  
20 be impracticable.

(b) The Court preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(a)(2), there are one or more questions of fact and/or law common to the Settlement Class and the Settlement Subclass.

(c) The Court preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(a)(3), the claims of the Plaintiffs are typical of the claims of the Settlement Class and Settlement Subclass.

(d) The Court preliminarily finds, for purposes of settlement only, as required by FED. R. CIV. P. 23(a)(4), that the Plaintiffs will fairly and adequately protect the interests of the Settlement Class and the Settlement Subclass in that: (i) the interests of the Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class and Settlement Subclass, (ii) there appear to be no conflicts between or among the Plaintiffs and the Settlement Class or Settlement Subclass, and (iii) the Plaintiffs and the members of the Settlement Class and Settlement Subclass are represented by qualified, reputable counsel who are experienced in preparing and prosecuting complex consumer class actions.

(e) The Court finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(b)(2), final injunctive relief or corresponding declaratory relief is appropriate respecting the Settlement Class and Settlement Subclass as a whole.

(f) The Court finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(b)(3), that questions of law or fact common to Settlement Class and Settlement Subclass members predominate over any questions affecting only individual

1 members, and that a class action is superior to other available methods for fairly and  
2 efficiently adjudicating the controversy.

3 (g) The Court preliminarily finds for purposes of settlement only that, as  
4 required by FED. R. CIV. P. 23(g), Counsel for Plaintiffs (“Class Counsel”) are capable  
5 of fairly and adequately representing the interests of the Settlement Class and Settlement  
6 Subclass, in that Class Counsel (i) have done appropriate work identifying or  
7 investigating potential claims in the action; (ii) are experienced in handling class actions;  
8 (iii) are knowledgeable of the applicable law; and (iv) have committed the necessary  
9 resources to represent the Class.

12 4. **Class Certification.** The Court, in conducting the settlement approval process as  
13 required by FED. R. CIV. P. 23, preliminarily certifies the following Settlement Class  
14 and Settlement Subclass under FED. R. CIV. P. 23(b)(2) and 23(b)(3):

16 **“Settlement Class”**

17 All Persons, excluding Settlement Subclass members,  
18 residing in the United States who were registered with or  
subscribed to [www.classmates.com](http://www.classmates.com) at any time between  
October 30, 2004 and the date of entry of this Order.

19 **“Settlement Subclass”**

20 All Persons residing in the United States who registered with  
21 or subscribed to [www.classmates.com](http://www.classmates.com) and between January  
22 1, 2007 and the date of entry of this Order, paid for a Gold  
23 Membership subscription to [www.classmates.com](http://www.classmates.com) (and did  
not previously receive a refund of such payment) as a result  
of:

24 1. Upgrading to a Gold Membership through the process  
on Classmates.com of seeking to see who visited their  
Guestbook; or

25 2. Upgrading to a Gold Membership after clicking on a  
link to Classmates.com in a Guestbook email, or  
Connections email that included a Guestbook subject

1 line, and upgrading to a Gold Membership within the  
2 same session activated by clicking on that link or  
3 within the same day of clicking on that link; or

4

3. Upgrading to a Gold Membership within the same day  
5 of receiving a Guestbook email or Connections email  
6 that included a Guestbook subject line.

7 The following Persons are expressly excluded from the Settlement Class and Settlement  
8 Subclass:

9 Defendants, all present or former officers and/or directors of Defendants,  
10 Class Counsel, the Judge of this Court, the Judge's family and staff,  
11 Defendants' counsel of record, and all Persons who make a timely and  
12 valid election to be excluded from the Settlement Class and Settlement  
13 Subclass in accordance with the provisions of the Individual Notice to  
14 Settlement Class and Individual Notice to Settlement Subclass.

15 The Court appoints David Catapano and Anthony Michaels as representatives for  
16 the Settlement Class and Settlement Subclass and Class Counsel as counsel for the  
17 Settlement Class and Settlement Subclass.

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4. **Final Approval Hearing.** A final approval hearing (the "Settlement  
19 Hearing" or "Final Hearing") shall be held before this Court on October 27, 2010, at  
20 10:00 a.m., to determine whether the Settlement Agreement is fair, reasonable and  
21 adequate and should be approved. The Settlement Hearing may be postponed, adjourned,  
22 or continued by order of the Court without further notice to the Settlement Class and  
23 Settlement Subclass. After the Settlement Hearing, the Court may enter a Final Approval  
24 Order and Judgment that will fully and finally adjudicate the rights of the Settlement  
25 Class and Settlement Subclass members and the named parties to this lawsuit.

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5. **Notice.** No later than ninety (90) days after the date of entry of this Order  
27 (the "Notice Date"), the Settlement Administrator shall have a copy of the Individual  
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1 Notice to Settlement Class and Settlement Class Claim Form and the Individual Notice to  
2 Settlement Subclass and Settlement Subclass Claim Form in substantially the same form  
3 as Exhibits A through Exhibit D of the Settlement Agreement sent or made available via  
4 electronic mail to all members of the Settlement Class and Settlement Subclass. In  
5 addition, the Settlement Administrator shall provide publication notice to potential  
6 Settlement Class members and Settlement Subclass members by a *Wall Street Journal*  
7 newspaper classified advertisement no smaller than one-eighth of a page, and establish a  
8 website with settlement and claim administration information, within 30 days of the date  
9 of entry of this Order.

12 6. **Findings Concerning Notice.** The Court finds that electronic notice,  
13 together with the proposed form of published notice, is the best practicable notice under  
14 the circumstances and is as likely as any other form of notice to apprise potential  
15 Settlement Class and Settlement Subclass members of the Settlement Agreement, and  
16 their rights to opt out and to object. The Court further finds that such notice is  
17 reasonable, that it constitutes adequate and sufficient notice to all persons entitled to  
18 receive notice, and that it meets the requirements of Due Process.

20 7. **Papers in Support of Settlement.** The parties to the Settlement  
21 Agreement may file additional papers in support of the proposed settlement seven (7)  
22 calendar days prior to the Final Hearing.

24 8. **Right to Exclude.** Any Settlement Class or Settlement Subclass member  
25 may choose to be excluded from the Settlement Class or Settlement Subclass, as the case  
26

may be, by signing and submitting to the Settlement Administrator a Request For Exclusion postmarked no later than thirty (30) days after the Notice Date, or by sending an e-mail to the appropriate address, as set forth more fully in the Notice to Settlement Class and Notice to Settlement Subclass.

## **9. Objections and Appearances**

(a) **Written Objections.** Any Settlement Class or Settlement Subclass member may object to the fairness, reasonableness or adequacy of the Settlement Agreement. Settlement Class and Settlement Subclass members may do so either on their own or through counsel hired at their own expense. Any Settlement Class or Settlement Subclass member who wishes to make a written objection to the Settlement Agreement must serve a written statement of objection as set forth in the Notice along with any other supporting materials, papers or briefs that he or she wishes the Court to consider postmarked no later than thirty (30) calendar days after the Notice Date. The objection must be sent to the Clerk of the Court **and** he or she must also serve such papers so as to be received by Class Counsel and counsel for Defendants, as set forth below, no later than thirty (30) calendar days after the Notice Date:

Mark A. Griffin and Amy Williams-Derry  
Keller Rohrback L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052

and to

Stellman K. Keehnel and Russ Wuehler  
DLA Piper LLP (US)  
701 Fifth Avenue, Suite, 7000  
Seattle, Washington 98104-7044

(b) **Appearance at Settlement Hearing.** Any Settlement Class or Settlement Subclass member who has served an objection may appear at the Settlement Hearing, either in person or through counsel hired at the Settlement Class or Settlement Subclass member's expense, and object to the fairness, reasonableness or adequacy of the

1 Settlement Agreement. Any Settlement Class or Settlement Subclass member who  
2 chooses to be heard must send a written notice of intent to appear to the Clerk of the  
3 Court and on Class Counsel at the addresses listed above so as to be received no later  
4 than thirty (30) calendar days after the Notice Date.

5           10. **Effect of Failure to Finally Approve the Settlement Agreement.** If (i)  
6 the Court does not finally approve this Settlement Agreement, (ii) the Court does not  
7 enter the Final Approval Order and Judgment dismissing the Consolidated Lawsuit with  
8 prejudice and without leave to amend, (iii) Defendants terminate the Settlement  
9 Agreement pursuant to Section 16.4 of the Settlement Agreement, or (iv) the Settlement  
10 Agreement does not become final for any other reason, then:  
11

12           (a) The Settlement Agreement shall automatically become null and void and  
13 have no further force or effect, and all proceedings that have taken place with regard to  
14 this Settlement Agreement and the settlement shall be without prejudice to the rights and  
15 contentions of the Parties hereto;

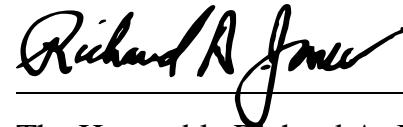
16           (b) The Settlement Agreement, all of its provisions (including, without  
17 limitation, any provisions concerning class certification), and all negotiations, statements  
18 and proceedings relating to the Settlement Agreement shall be without prejudice to the  
19 rights of any of the Parties, each of whom shall be restored to their respective position as  
20 of December 18, 2009;

21           (c) The Settlement Agreement, any provision of the Settlement Agreement  
22 (including, without limitation, the provisions concerning class certification), and the fact  
23

1 of the Settlement Agreement having been made, shall not be admissible or entered into  
2 evidence for any purpose whatsoever; and

3 (d) Any judgment or order entered in connection with the Settlement  
4 Agreement, including, without limitation, any order certifying the Settlement Class  
5 and/or Settlement Subclass, will be vacated and will be without any force or effect.  
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7 DATED this 19th day of April, 2010.  
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11 The Honorable Richard A. Jones  
12 United States District Judge  
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# EXHIBIT 6

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~~ORIGINAL~~  
**FILED**  
*San Francisco County Superior Court*

Mark 1 - 2018

GORDON PARK-LI, Clerk  
Y: Nicki Mack Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

SARA CHO, on behalf of herself and all others similarly situated.

Case No.: CGC-06-453195  
UNLIMITED CIVIL CASE

Plaintiff,

10

SEAGATE TECHNOLOGY (US) HOLDINGS,  
INC. and DOES 1-10, inclusive.

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Judge: Hon. Donald Sullivan  
Dept.: 318

## Defendants

1 Plaintiff having filed a motion for an order preliminarily approving the Settlement  
2 Agreement ("Agreement") entered into between plaintiff and defendant Seagate  
3 Technology (US) Holdings, Inc. ("Seagate"), Seagate having filed papers in support of that  
4 motion; objector David Klausner having filed papers relating to the motion; the said motion  
5 having come on for hearing before the above-entitled Court; the Court having reviewed and  
6 considered all documents, evidence and arguments of counsel presented in connection with  
7 said motion; the Court being fully advised of the premises and good cause appearing  
8 therefor, the Court enters its order and, subject to final determination by the Court as to the  
9 fairness, reasonableness and adequacy of the settlement, finds and orders as follows:

10 1. The Agreement and the settlement set forth therein appear to be within the  
11 range of reasonableness of a settlement which could ultimately be given final approval by  
12 the Court.

13 2. The Court finds that the manner and content of the notice specified in the  
14 Agreement, including the Supplement thereto, and the Summary Published Notice, Long  
15 Form Notice and Summary Email Notice (Exhibits B1, B2 and B3 thereto) (together, the  
16 "Class Notice") will provide the best practicable notice to members of the Plaintiff  
17 Settlement Class, as defined in the Order Conditionally Certifying a Plaintiff Settlement  
18 Class, and consistent with the Court of Appeal's direction to this Court in *Cho v. Seagate*  
19 *Technology Holdings, Inc.*, 177 Cal. App. 4th 734 (2009). Accordingly, Seagate shall  
20 provide notice by publication four times in *USA Today* of a Summary Published Notice of  
21 the pendency of this action and the proposed settlement in substantially the form of Exhibit  
22 B1 to the Agreement. Seagate shall also provide notice of the proposed settlement by:  
23 (1) providing a Long Form Notice in substantially the form of Exhibit B2 to the Agreement  
24 via posting on a dedicated website linked to the homepage of Seagate's website, and to  
25 which the notices refer; and (2) sending a Summary Email Notice in substantially the form  
26 of Exhibit B3 via electronic mail to identifiable Settlement Class Members for whom  
27 Seagate has an email address. The notice shall be provided according to the procedures and  
28 in the manner specified in Part VIII of the Agreement, and the costs and expenses of such

1 notice shall be paid by Seagate, subject to the provisions of Section 8.5 of the Agreement.  
2 The Court authorizes the parties to make minor revisions to the Class Notice as they may  
3 jointly deem necessary or appropriate, without the necessity of further Court action or  
4 approval.

5 3. A final approval hearing shall be held by this Court to consider and finally  
6 determine:

7 a. Whether the Agreement should be finally approved as fair, reasonable,  
8 and adequate;

9 and

10 b. The merits of any objections to the Agreement and the settlement set  
11 forth therein, or any of its terms.

12 The final approval hearing described in this paragraph may be postponed, adjourned,  
13 or continued by order of the Court without further notice to the Plaintiff Settlement Class.

14 4. Any member of the Plaintiff Settlement Class who does not request exclusion  
15 (or who revokes a previously submitted request for exclusion), and who objects to approval  
16 of the proposed settlement in compliance with the requirements of the Agreement, may  
17 appear at the final approval hearing in person or through counsel to show cause why the  
18 proposed settlement should not be approved as fair, reasonable, and adequate. Any member  
19 of the Plaintiff Settlement Class who does not request exclusion (or who revokes a  
20 previously submitted request for exclusion), and who seeks to intervene in the Action in  
21 compliance with the requirements of the Agreement, may file and serve a motion to  
22 intervene in accordance with applicable law. A Plaintiff Settlement Class Member may  
23 revoke a previously submitted request for exclusion by submitting a written revocation to  
24 Plaintiffs' Counsel or by submitting a Claim Form, as provided in the Long Form Notice.

25 5. However, no person (other than representatives of the named parties) may be  
26 heard at the final approval hearing, or file papers or briefs, unless on or before the date set  
27 forth in the Class Notice, such person files with the Clerk of the Court and serves on  
28 Plaintiffs' Counsel and Seagate's Counsel, consistent with Section 11.4 of the Agreement, a

1 timely written objection and notice of intent to appear, in accordance with the procedures  
2 specified in the Class Notice. Any member of the Plaintiff Settlement Class who does not  
3 make his, her or its objection to the settlement or request for intervention in the manner  
4 provided herein and in the Agreement and in compliance with applicable law, shall be  
5 deemed to have waived such objection or right to intervene for purposes of appeal,  
6 collateral attack or otherwise.

7       6. The publication and dissemination of the Class Notice, as directed by this  
8 Order and consistent with the direction of the Court of Appeal, constitutes the best notice  
9 practicable under the circumstances and sufficient notice to all members of the Plaintiff  
10 Settlement Class. The contents of the Class Notice and the manner of its dissemination  
11 satisfy the requirements of California Rule of Court 3.769, other California law, and state  
12 and federal due process.

13       7. Any member of the Plaintiff Settlement Class who desires exclusion  
14 therefrom must mail, by the date set forth in the Class Notice, a written request for  
15 exclusion to the address(es) set forth in the Class Notice. All persons who properly submit  
16 requests for exclusion shall not be Plaintiff Settlement Class members and shall have no  
17 rights with respect to the settlement.

18       8. If the Agreement is finally approved, the Court shall enter a Final Approval  
19 Order and Judgment approving the Agreement, within the meaning of and for purposes of  
20 Section 11.2 of the Agreement. Said Final Approval Order and Judgment shall be fully  
21 binding with respect to all members of the Plaintiff Settlement Class who did not request  
22 exclusion by the date set forth in the Class Notice, in accordance with the terms of the Class  
23 Notice and the Agreement.

24       9. All discovery and other pretrial proceedings in this Action are stayed and  
25 suspended until further order of this Court, except as otherwise agreed to by the parties or as  
26 may be necessary to implement the Agreement or this Order.

27       10. In the event that the proposed settlement as provided in the Agreement is not  
28 approved by the Court, or entry of a Final Approval Order and Judgment as provided in the

1 Agreement does not occur for any reason, then the Agreement, all drafts, negotiations,  
2 discussions, and documentation relating thereto, and all orders entered by the Court in  
3 connection therewith shall become null and void. In such event, the Agreement and all  
4 negotiations and proceedings relating thereto shall be withdrawn without prejudice to the  
5 rights of any and all parties thereto, who shall be restored to their respective positions as of  
6 the date of the execution of the Agreement.

7 11. The dates of performance of this Order are as follows:

8 a. The Class Notice shall be published and disseminated by newspaper  
9 publication, website posting and electronic mail in accordance with the provisions of Part  
10 VIII of the Agreement. The parties shall use their best efforts to complete the electronic  
11 mail notice by March 12, 2010, and to commence the other publication and dissemination  
12 by March 15, 2010, and to complete such publication and dissemination by April 16, 2010.

13 b. Requests for exclusion must be received by May 14, 2010.

14 c. Objections to the settlement, requests for intervention and notices of  
15 intention to appear at the final approval hearing shall be deemed timely only if filed with the  
16 Court and served on counsel for the parties by May 14, 2010.

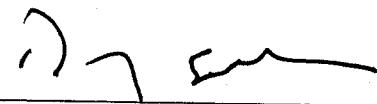
17 d. Plaintiffs' Counsel shall prepare and file with the Court a joint list of  
18 class members who have filed timely requests for exclusion by May 28, 2010.

19 e. Plaintiffs' Counsel and Seagate shall file and serve papers in support of  
20 final approval of the settlement, and responding to any objections or motions to intervene  
21 by May 28, 2010.

22 f. The final approval hearing shall be held on June 9, 2010, at 10:00 a.m.

23 IT IS SO ORDERED.

24 DATED: 24 FEB 10

25   
26 Donald Sullivan  
27 Judge of the Superior Court

# EXHIBIT 7

1 HONORABLE RICARDO S. MARTINEZ  
2  
3  
4  
5  
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7  
8

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 HOLLY BARKER and BRIAN CARNES,  
10 individually and on behalf of all the  
members of the class of persons similarly  
situated,

11 Plaintiffs,

12 vs.

13 SKYPE, INC., a Delaware corporation;  
14 SKYPE DELAWARE HOLDINGS, INC., a  
Delaware corporation; SKYPE  
15 COMMUNICATIONS S.A.R.L., a  
Luxembourg corporation; SKYPE  
TECHNOLOGIES S.A., a Luxembourg  
16 corporation; and EBAY INC., a California  
corporation,

17 Defendants.

18 CLASS ACTION

Case No. 2:09-cv-01364-RSM

ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT

19 **WHEREAS**, this Preliminary Approval Order incorporates by reference the  
20 definitions in the Agreement that reflects the proposed class action settlement that  
21 currently is pending for preliminary approval before this District Court, and all terms  
22 used in this Preliminary Approval Order shall have the same meanings as set forth in  
23 the Agreement; and

24 **WHEREAS**, as a condition of the Agreement, Plaintiffs, on behalf of themselves  
25 and on behalf of each of the persons in the Settlement Class, have agreed to release  
26 all claims arising under federal, state or common law as specified in the Agreement;  
and

ORDER PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT - 1  
(CASE NO. 09-CV-1364 RSM)

BRESKIN | JOHNSON | TOWNSEND PLLC  
1111 Third Avenue, Suite 2230  
Seattle, Washington 98101 Tel: 206-652-8660

1       **WHEREAS**, the District Court having read and considered Plaintiffs' Motion, the  
2 Agreement and the Exhibits attached thereto, as well as all arguments and  
3 submissions from the Parties;

4       **NOW, THEREFORE, IT IS HEREBY ORDERED:**

5       1. For purposes of the Action only, the District Court has subject matter and  
6 personal jurisdiction over the parties, including all persons in the Settlement Class.

7       2. Pursuant to Federal Rule of Civil Procedure Rule 23(b)(3), the District  
8 Court certifies, solely for purposes of effectuating the settlement, the Settlement Class  
9 as follows:

10       All current and former users of Skype Communications, S.A.R.L. who are  
11 residents of the United States and who purchased Skype Credit that, on at least one  
12 occasion prior to the Implementation Date, expired pursuant to Skype  
13 Communications' Skype Credit expiration policy.

14       3. The District Court preliminarily approves the Agreement as being fair,  
15 reasonable and adequate and within the range of possible approval, subject to further  
16 consideration at the Final Fairness Hearing.

17       4. The District Court preliminarily finds that Plaintiffs fairly and adequately  
18 represent the interests of the Settlement Class and therefore designate Plaintiffs as  
19 the representatives of the Settlement Class.

20       5. Pursuant to Federal Rule of Civil Procedure 23(g), and after  
21 consideration of the factors described therein, the District Court designates Roger  
22 Townsend, Esq. and Daniel Johnson, Esq. and the law firm of Breskin, Johnson &  
23 Townsend, PLLC as Lead Class Counsel, and Scott A. Burroughs, Esq. and the law  
24 firm of Doniger/Burroughs APC as additional Class Counsel. The District Court  
25 preliminarily finds that, based on the work Class Counsel has done in identifying,  
26 investigating and prosecuting the claims in the action, Class Counsel's experience in

1 handling class actions, other complex litigation, and claims of the type asserted in this  
 2 action, counsel's knowledge of the applicable law and the resources counsel have and  
 3 will commit to representing the class, Class Counsel have and will fairly and  
 4 adequately represent the interests of the Settlement Class. The District Court  
 5 authorizes Plaintiffs and Class Counsel to enter into the Agreement on behalf of the  
 6 Settlement Class, and to bind them all to the duties and obligations contained therein,  
 7 subject to final approval by the District Court of the settlement. Plaintiffs and Class  
 8 Counsel, on behalf of the Settlement Class, are authorized to take all appropriate  
 9 action required or permitted to be taken by the Settlement Class pursuant to the  
 10 Agreement to effectuate its terms.

11       6. The District Court preliminarily finds, solely for purposes of the  
 12 settlement, that the Action may be maintained as a class action on behalf of the  
 13 Settlement Class because: (i) the Settlement Class is so numerous that joinder of all  
 14 persons in the Settlement Class in the Action is impracticable; (ii) there are questions  
 15 of law and fact common to the Settlement Class that predominate over any individual  
 16 questions; (iii) Plaintiffs' claims are typical of the claims of the Settlement Class; (iv)  
 17 Plaintiffs and Class Counsel have fairly and adequately represented and protected the  
 18 interests of the Settlement Class; and (v) a class action is superior to other available  
 19 methods for the fair and efficient adjudication of the controversy.

20       7. The Final Fairness Hearing shall take place before the Honorable  
 21 Ricardo S. Martinez on March 12, 2010 at 9:00 a.m. at the United States District Court,  
 22 Western District of Washington, 700 Stewart Street, Seattle, Washington 98101, to  
 23 determine: whether the proposed settlement of the Action on the terms and conditions  
 24 provided for in the Agreement is fair, adequate and reasonable as to the Settlement  
 25 Class Members and should be approved; whether judgment, as provided for in the  
 26 Agreement, should be entered; and the amount of fees and costs that should be

1 awarded to Class Counsel, and the amount of the incentive awards to Plaintiffs, as  
2 provided for in the Agreement.

3       8. The District Court approves the form and content of the E-mail Notice  
4 (attached as Exhibit A hereto), which will be available on the Administration Site  
5 described in paragraph 6(c) of the Agreement. Skype Communications and/or the  
6 Settlement Administrator shall administer the settlement and provide notice as follows:

7           (i) Skype Communications, on behalf of itself and Defendants, shall  
8 implement the Reactivation Policy on the Implementation Date.

9           (ii) Within fifteen (15) days after the Implementation Date, the Settlement  
10 Administrator will establish the Administration Site, which shall make available to  
11 Settlement Class Members the E-mail Notice, the claim form and relevant court  
12 documents and contact information for Plaintiffs' Counsel.

13           (iii) Within fifteen (15) days after the Implementation Date, Defendants or  
14 their designee shall provide notice of the settlement by disseminating the E-mail  
15 Notice to the Settlement Class.

16       9. Due to the unique nature of the User Accounts, which are internet based  
17 accounts that typically are not tied to a postal address, mailed notice would not be  
18 effective and would unnecessarily deplete potentially available settlement funds, to the  
19 detriment of the Settlement Class. The District Court therefore preliminarily finds that  
20 the notice program set forth above in paragraph 8 is the only notice required, and that  
21 such E-mail Notice satisfies the requirements of Due Process, the Federal Rules of  
22 Civil Procedure and any other applicable laws, and constitutes the best notice  
23 practicable under the circumstances and shall constitute due and sufficient notice to all  
24 persons entitled thereto.

25       10. The Administration Site shall be the sole mechanism for Settlement  
26 Class Members' submission of claims for benefits relating to this settlement as

1 described in the Agreement. The Internet claim form shall contain substantially all the  
2 information set forth in Exhibit B hereto notwithstanding that the format of the claim  
3 form is subject to change as may be necessitated by the technical limitations and  
4 security requirements of the Administration Site or the computers used by the  
5 Settlement Class Members.

6 11. All Settlement Class Members shall be bound by all determinations and  
7 judgments in the Action concerning the settlement, including, but not limited to, the  
8 validity, binding nature and effectiveness of the Releases set forth in the Agreement.

9 12. Any person in the Settlement Class who wishes to opt out shall submit to  
10 the Settlement Administrator by mail, with a postmark no later than thirty (30) days  
11 after dissemination of the E-mail Notice, an appropriate written request for exclusion,  
12 personally signed and including: (i) the person's name, address, telephone number;  
13 (ii) the person's Skype ID and/or User Account number(s); (iii) a sentence confirming,  
14 under penalty of perjury, that he or she is a Settlement Class Member; and (iv) the  
15 following statement: "I request to be excluded from the class settlement in Barker v.  
16 Skype, Inc. et al., United States District Court for the Western District of Washington,  
17 Case No. 2:09-cv-01364-RSM." No person in the Settlement Class, or any person  
18 acting on behalf of or in concert or participation with that person in the Settlement  
19 Class, may exclude any other person.

20 13. Any Settlement Class Member may appear and show cause if he or she  
21 has any reason why the proposed settlement of the Action should or should not be  
22 approved as fair, adequate and reasonable, why judgment should not be entered, why  
23 attorneys' fees and costs should not be awarded to Class Counsel, or why incentive  
24 awards to Plaintiffs should not be allowed; provided, however, that no Settlement  
25 Class Member shall be heard, and no objection may be considered, unless,  
26 postmarked by no later than thirty (30) days after dissemination of the E-mail Notice,

1 the Settlement Class Member files with the District Court a written statement of the  
 2 objection. Copies of all objection papers must also be served on: Lead Class  
 3 Counsel: Daniel Johnson, Esq. and Roger Townsend, Esq., Breskin Townsend &  
 4 Johnson PLLC, 1111 Third Avenue, Suite 2230, Seattle, Washington 98101; and  
 5 counsel for Defendants: Julia B. Strickland, Esq., Stroock & Stroock & Lavan LLP,  
 6 2029 Century Park East, Los Angeles, California 90067. All objections must include:  
 7 (i) the objector's name, address and telephone number; (ii) the objector's Skype ID  
 8 and/or User Account number(s); (iii) a sentence confirming, under penalty of perjury,  
 9 that the objector is a Settlement Class Member; (iv) the factual basis and legal  
 10 grounds for the objection to the settlement; (v) the identity of witnesses whom the  
 11 objector may call to testify at the Final Fairness Hearing; and (vi) copies of exhibits  
 12 intended to be offered into evidence at the Final Fairness Hearing. Any Settlement  
 13 Class Member who does not make his or her objection within the time and manner set  
 14 forth in this paragraph shall be deemed to have waived such objection and shall be  
 15 foreclosed forever from making any objection to the fairness, adequacy or  
 16 reasonableness of the proposed settlement, to the award of attorneys' fees and  
 17 expenses to Class Counsel and to the incentive awards to Plaintiffs.

18       14. Pursuant to the Settlement Agreement, within one week of entry of this  
 19 Order, Defendants shall deposit 25% of the principle Settlement Amount (i.e.,  
 20 \$462,500) into the Escrow Account.

21       15. All proceedings in the Action are stayed pending final approval of this  
 22 settlement, except as may be necessary to implement the settlement or comply with  
 23 the terms of the Agreement.

24       16. Pending final determination of whether the settlement should be finally  
 25 approved, Plaintiffs, all persons in the Settlement Class, and any person or entity  
 26 allegedly acting on behalf of persons in the Settlement Class, either directly or in a

1 representative or other capacity, are enjoined from commencing or prosecuting  
2 against Defendants, or against any of the other Released Parties, any action or  
3 proceeding in any court or tribunal asserting any of the Released Claims as described  
4 in the Agreement, provided, however, that this injunction shall not apply to individual  
5 claims of any persons in the Settlement Class who timely exclude themselves in a  
6 manner that complies with paragraph 12 of this Preliminary Approval Order. This  
7 injunction applies to, without limitation, all plaintiffs and plaintiffs' counsel in the  
8 following matters: (i) Barker v. Skype Inc., et al., Superior Court of the State of  
9 Washington, King County, Case No. 08-2-41937-1 SEA.; and (ii) Carness v. Skype, et  
10 al., Superior Court of the State of California for the County of Los Angeles, Case No.  
11 BC 406723. This injunction is necessary to protect and effectuate the settlement, this  
12 Preliminary Approval Order, and the District Court's flexibility and authority to  
13 effectuate this settlement and to enter judgment when appropriate, and is ordered in  
14 aid of the District Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C.  
15 section 1651(a).

16           17. The District Court reserves the right to adjourn or continue the date of  
17 the Final Fairness Hearing without further notice to the Settlement Class, and retains  
18 jurisdiction to consider all further applications arising out of or connected with the  
19 settlement. The District Court may approve or modify the settlement without further  
20 notice to the Settlement Class.

21 Dated this 17 day of November 2009.

  
\_\_\_\_\_  
RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE