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

13 **THE STATE OF CALIFORNIA,**

14 Plaintiff,

15 v.

17 **EBAY, INC. ,**

18 Defendant.

Case No. CV12-5874-EJD-PSG

SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE SHERMAN ACT, CARTWRIGHT ACT, AND UNFAIR COMPETITION LAW FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

19 COMES NOW, Kamala D. Harris, Attorney General for the State of California, and alleges
 20 the following:

21 **INTRODUCTION**

22 1. Kamala D. Harris, Attorney General, State of California, brings this action in her
 23 official capacity as the chief law enforcement officer of the State of California against eBay, Inc.
 24 (“eBay”) for entering into a no-solicitation and no-hiring agreement in violation of Section 1 of
 25 the Sherman Act, the Cartwright Act, and the California Unfair Competition Law. Pursuant to
 26 the agreement, eBay and Coconspirator Intuit, Inc. (“Intuit”) agreed not to recruit each other’s
 27 employees and eBay agreed not to hire any Intuit employees, even those that approached eBay for
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1 a job. This agreement harmed employees by lowering the salaries and benefits they might
2 otherwise have commanded, and deprived these employees of better job opportunities at the other
3 company.

4 2. Senior executives at eBay and Intuit entered into an evolving “handshake” agreement
5 to restrict their ability to recruit and hire employees of the other company. The agreement, which
6 was entered into no later than 2006, prohibited either company from soliciting one another’s
7 employees for job opportunities, and for over a year prevented at least eBay from hiring any
8 employees from Intuit at all. The agreement was enforced at the highest levels of each company.

9 3. The agreement reduced eBay’s and Intuit’s incentives and ability to compete for
10 employees and restricted employees’ mobility. This agreement thus harmed employees and the
11 public by lowering the salaries and benefits they otherwise would have commanded, and deprived
12 these employees of better job opportunities at the other company.

13 4. eBay continued to enforce the agreement even though it was on notice that it was
14 potentially illegal, both from a federal consent decree in 2010 which directly addressed such no-
15 poach agreements and from California state law. There is no reason to believe that eBay has
16 ceased or would not resume such actions.

17 5. This agreement between eBay and Intuit is a naked restraint of trade that is *per se*
18 unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, that eBay adopts or abandons at
19 will. It also violates the Cartwright Act and California’s Unfair Competition Law. Under the
20 Cartwright Act and Unfair Competition Law, the Attorney General does not need to show
21 irreparable injury before obtaining injunctions. Cal. Bus. & Prof. Code §§ 16754-54.5. The State
22 of California seeks an order prohibiting any such agreement and other relief to prevent eBay from
23 engaging in further employment-related anti-competitive activities

24 **JURISDICTION AND VENUE**

25 6. This complaint alleges violations of the Sherman Act, 15 U.S.C. § 1. It is filed under,
26 and jurisdiction is conferred upon this Court by, Sections 4, 4C, 12, and 16 of the Clayton Act, 15
27 U.S.C. §§ 15, 15c, 22, and 26. The Plaintiff also alleges violations of State antitrust, consumer
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1 protection, and/or unfair competition and related laws, and seeks civil penalties, and/or other
2 equitable relief under those State laws. All claims under federal and state law are based upon a
3 common nucleus of operative facts, and the entire action commenced by this Complaint
4 constitutes a single case that would ordinarily be tried in one judicial proceeding.

5 7. The Court has jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1337.
6 The Court has jurisdiction over the state claims under 28 U.S.C. § 1367 under the Court's
7 supplemental jurisdiction because those claims are so related to the federal claims that they form
8 part of the same case or controversy.

9 8. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391 because
10 eBay transacts business, committed an illegal or tortious act, and is found in this District, within
11 the meaning and scope of 15 U.S.C. § 22, Cal. Bus. & Prof. Code § 1672 and 28 U.S.C. § 1391(b)
12 and (c), and a substantial part of the events giving rise to the claims arose in this District.

13 9. The activities of eBay, as described herein, were within the flow of, were intended to,
14 and did have a substantial effect on the foreign and interstate commerce of the United States.

15 **PLAINTIFF**

16 10. The Attorney General is the state's chief law officer and is charged with enforcing the
17 state's antitrust laws, including the Cartwright Act. Cal. Bus. & Prof. Code §§ 16700 - 16770.
18 The Attorney General has a continuing interest in applications of the Cartwright Act because she
19 "may bring an action on behalf of the state or of any of its political subdivisions or public
20 agencies to recover the damages provided for by this section, or by any comparable provision of
21 federal law," subject to certain notification provisions. Cal. Bus. & Prof. Code § 16750(c).
22 Moreover, under the Cartwright Act, except as provided in the act, "every trust is unlawful,
23 against public policy and void." Cal. Bus. & Prof. Code § 16726.

24 11. The Attorney General is specifically authorized under the Unfair Competition Law,
25 Business and Professions Code Section 17200 to bring actions in the name of the People of the
26 State of California to obtain injunctive and other equitable relief, restitution, and civil penalties to
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1 redress unfair, unlawful, and fraudulent business practices. *See* Bus. & Prof. Code §§ 17203,
2 17204, 17206.

3 **DEFENDANT**

4 12. eBay is a Delaware corporation with its principal place of business in San Jose,
5 California.

6 **CO-CONSPIRATORS**

7 13. Intuit is a Delaware corporation with its principal place of business in Mountain
8 View, California.

9 14. Various other persons and corporations not made defendants in this complaint,
10 including senior executives at Intuit and eBay, participated as co-conspirators in the violation
11 alleged and performed acts and made statements in furtherance of the violation alleged.

12 **TRADE AND COMMERCE**

13 15. The information technology industry in Silicon Valley and the San Francisco Bay
14 Area is a critical part of California's overall economy. In 2012 the Bay Area's total economic
15 product was \$535 billion, and tech companies represented about 30% of the regional economy.
16 California's gross state product last year was \$1.9 trillion, which means more than 8% — 1 of
17 every 12 dollars — of economic activity produced by the entire state was produced by technology
18 companies in Silicon Valley.

19 16. Most of eBay's employees reside in California, and California has a strong, clear,
20 often-articulated public policy in favor of employee mobility.

21 17. Skilled employees are one reason for the success of technology companies. Firms in
22 the same or similar industries often compete to hire and retain talented employees. This is
23 especially true in technology industries because particular expertise and highly specialized skills
24 sought by one firm can often be found at another firm. Solicitation of skilled employees at other
25 companies is an effective method of competing for needed employees. eBay officials understood
26 that recruitment is very important. Beth Axelrod, eBay's Senior Vice President for Human
27 Resources at the time the agreement with Intuit was in effect emphasized the importance of "cold-
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1 calling” as a recruitment tool: “The recruiting game is changing for yet another reason: It’s no
2 longer sufficient to target your efforts to people looking for a job; you have to reach people who
3 aren’t looking.”

4 18. Constant solicitation of skilled employees from other companies is also critical for the
5 continued success of technology companies. Silicon Valley's dominance as the world leader in
6 technology results from “knowledge spillovers”— transfers of ideas and know-how from one
7 organization to another. It is commonly understood and widely discussed in Silicon Valley that
8 knowledge spillovers facilitated by the mobility of employees and the resulting bias against
9 vertical integration turn the entire industrial district into an engine of continuous innovation,
10 thereby transcending the life cycle of any single product.

11 19. California’s long standing public policy in favor of employee mobility is an essential
12 element to that continuous innovation.

13 20. eBay’s agreement with Intuit eliminated competition for employees. The agreement
14 harmed employees by reducing the salaries, benefits, and employment opportunities they might
15 otherwise have earned if competition had not been eliminated. The agreement also misallocated
16 labor between eBay and Intuit — companies that drove innovation based in part on the talent of
17 their employees. In a well-functioning labor market, employers compete to attract the most
18 valuable talent for their needs. Competition among employers for skilled employees may
19 improve employees’ salaries and benefits and facilitate employee mobility. The no-solicitation
20 and no-hiring agreement between Intuit and eBay distorted this competitive process and likely
21 resulted in some of eBay’s and Intuit’s employees remaining in jobs that did not fully use their
22 unique skills. Ms. Axelrod has stated that “structural forces fueling the war for talent” have
23 resulted in power “shift[ing] from the corporation to the individual,” giving “talented individuals
24 ... the negotiating leverage to ratchet up their expectation for their careers.”

25 21. Instead of working harder to acquire this “critical and scarce” talent, eBay and Intuit
26 called a truce in the “war for talent” to protect their own interests at the expense of their
27 employees. eBay initially sought a limited no-solicitation agreement aimed at high-level
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1 executives, but ultimately agreed to an expansive no-solicitation and no-hire agreement. eBay
2 valued its relationship with Intuit and the benefits eBay gained from restricting its own
3 employees' career mobility above the welfare of its employees.

4 22. Neither eBay nor Intuit took any steps to ensure that employees affected by the
5 agreement knew of its existence, or how it would impact them.

6 23. eBay knew that its agreement violated state law. It was aware that California law
7 provides that "every contract by which anyone is restrained from engaging in a lawful profession,
8 trade, or business of any kind is to that extent void." Cal. Bus. & Prof. Code § 16600. In 2008,
9 the California Supreme Court reaffirmed that prohibition, declaring that Business and Professions
10 Code §16600 "evinces a settled legislative policy in favor of open competition and employee
11 mobility." The Court stated that §16600 ensures "that every citizen shall retain the right to pursue
12 any lawful employment and enterprise of their choice," and protects "the important legal right of
13 persons to engage in businesses and occupations of their choosing." *Edwards v. Arthur Andersen*
14 *LLP*, 44 Cal. 4th 937, 946 (Cal. 2008).

15 THE UNLAWFUL AGREEMENT

16 24. Beginning no later than 2006, and lasting at least until 2009, eBay and Intuit
17 maintained an illegal agreement that restricted their ability to actively recruit employees from
18 each other, and for some part of that time further restricted at least eBay from hiring any
19 employees from Intuit. As alleged in more detail below, this agreement was entered into and
20 enforced at the most senior levels of these companies.

21 25. In November 2005, eBay's Chief Operating Officer, Maynard Webb, wrote to Scott
22 Cook, Intuit's Founder and Chairman of the Executive Committee, to "get [Mr. Cook's] advice
23 on a specific hiring situation and then see if we could establish some guidelines on an ongoing
24 basis." Mr. Webb asked Mr. Cook for "permission to proceed" with hiring an Intuit employee
25 who contacted eBay regarding a job, and then proposed a "structure" to Mr. Cook for future
26 situations, whereby eBay would "not actively recruit from Intuit." Under Mr. Webb's proposal,
27 for Intuit candidates "below Senior Director level" who contacted eBay regarding employment,
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1 eBay would be permitted to hire them and would give Intuit “notice” only after a candidate
2 accepted a job offer. For Intuit candidates “at Senior Director level or above”, eBay would not
3 make an offer unless Intuit was notified in advance. Mr. Cook rejected this proposal insofar as it
4 allowed hiring of any employees without prior notice to Intuit, saying that “we don’t recruit from
5 board companies, period” and “[w]e’re passionate on this.” Mr. Cook committed that Intuit
6 would not make an offer to anyone from eBay without first notifying eBay, and said “[w]e would
7 ask the same.”

8 26. A month later, in December 2005, Meg Whitman, the CEO of eBay at the time, and
9 Mr. Cook discussed the competition for two employees with an eye toward eliminating that
10 competition altogether. As Ms. Whitman told Ms. Axelrod, Mr. Cook was “slightly miffed by
11 our recent hire of two Intuit executives.”

12 27. No later than August 2006, the initial agreement between eBay and Intuit restricting
13 the hiring of each other’s employees was put into effect. In August 2006, when eBay considered
14 hiring an Intuit employee for an opening at its PayPal subsidiary, Ms. Axelrod said that while she
15 was “happy to have a word with Meg [Whitman] about it,” Ms. Axelrod was “quite confident she
16 will say hands off because Scott [Cook] insists on a no poach policy with Intuit.” When the
17 PayPal executive asked Ms. Axelrod to confer with Ms. Whitman, Ms. Axelrod reported back
18 that “I confirmed with Meg [Whitman] that we cannot proceed without notifying Scott Cook
19 first.” eBay does not appear to have pursued the potential candidate beyond this point as
20 everyone agreed “that it’s to[o] awkward to call Scott [Cook] when we don’t even know if the
21 candidate has interest,” demonstrating that the non-solicitation agreement had a distinct chilling
22 effect on recruitment and hiring between the two companies.

23 28. On or about April 2007, eBay’s commitment metastasized into a no-hire agreement.
24 The impetus was a complaint from Mr. Cook to Ms. Whitman that he was “quite unhappy” about
25 a potential offer that eBay was going to make to an Intuit employee who had approached eBay.
26 Ms. Axelrod spoke with Ms. Whitman regarding Mr. Cook’s concerns, and instructed David
27 Knight, then eBay’s Vice President, Internal Communications, to hold off on making the offer.
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1 Mr. Knight urged Ms. Axelrod to find a way to make the offer happen, as the decision put the
2 applicant “in a tough position and us in a bad place with California law” and left eBay “another 6
3 months away from getting another candidate” for the position. A week later, Mr. Knight wrote to
4 Ms. Axelrod and Ms. Whitman pleading with them to at least “negotiate” any shift from a “no
5 poaching” agreement to a “no hiring” agreement after this particular applicant was hired, as eBay
6 “desperately need[ed] this position filled.”

7 29. While Ms. Axelrod ultimately authorized Mr. Knight to extend an offer to this Intuit
8 employee, eBay did expand the agreement to prohibit eBay from hiring any employee from Intuit,
9 regardless of how that employee applied for the job. A few months later, for example, an eBay
10 human resources manager alerted Ms. Axelrod to a potential “situation” and wanted to know if
11 eBay “continue[d] to be sensitive to Scott [Cook]’s request” or if there was “any flexibility on
12 hiring from Intuit.” The Intuit candidate was “getting a lot of responses from managers directly”
13 before the human resource manager’s team was involved as his “education is fantastic.” Ms.
14 Axelrod confirmed, however, that even when an Intuit employee was “dying” to work for eBay
15 and had proactively reached out to eBay, hiring managers had “no flexibility” and must keep their
16 “hands off” the potential applicant.

17 30. Two eBay staffers sought to clarify the situation with Ms. Axelrod shortly thereafter.
18 Ms. Axelrod said: “We have an explicit hands of[f] that we cannot violate with any Intuit
19 employee. There is no flexibility on this.” The staff asked for further clarification: “This applies
20 even if the Intuit employee has reached out and specifically asked? If so then I assume that
21 person could NEVER be hired by ebay unless they quit Intuit first.” Ms. Axelrod confirmed this
22 was “correct.” Ms. Axelrod similarly explained the impact of the agreement to Ms. Whitman: “I
23 keep getting inquiries from our folks to recruit from Intuit and I am firmly holding the line. No
24 exceptions even if the candidate proactively contacts us.” In another email exchange, Ms.
25 Axelrod explained that she was responding to all inquiries regarding hiring from Intuit by “firmly
26 holding the line and saying absolutely not (including to myself since their comp[ensation] and
27 ben[efits] person is supposed to be excellent!).”
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1 31. Mr. Cook was a driving force behind eBay's no-hire agreement with Intuit. In one
2 2007 e-mail, an eBay recruiter confirmed that the message to Intuit candidates should be that
3 eBay was "not allowed to hire from Intuit per Scott Cook regardless of whether the candidate
4 applies directly or if we reach out." eBay recruiting personnel understood that "Meg [Whitman]
5 and Scott Cook entered into the agreement (handshake style, not written) that eBay would not
6 hire from Intuit, period." Mr. Cook and Intuit, on the other hand, agreed that Intuit would not
7 recruit from eBay. Mr. Cook explained to one applicant who had decided to work for eBay but
8 expressed a future interest in joining Intuit, that "Intuit is precluded from recruiting you" unless
9 eBay has decided it does not need the employee or where the employee informs his management
10 and then proactively contacts Intuit.

11 32. eBay insisted that Intuit refrain from recruiting its employees in exchange for the
12 limitation on eBay's ability to recruit and hire Intuit employees. On August 27, 2007, Ms.
13 Axelrod wrote Ms. Whitman to complain that while eBay was sticking to its agreement to not hire
14 Intuit employees, "it is hard to do this when Intuit recruits our folks." Ms. Axelrod forwarded
15 Ms. Whitman a recruiting flyer that Intuit had sent to an eBay employee. Ms. Whitman forwarded
16 Ms. Axelrod's e-mail to Mr. Cook the same day asking him to "remind your folks not to send this
17 stuff to eBay people." Mr. Cook responded quickly: "#@!%\$#^&!!! Meg my apologies. I'll
18 find out how this slip up occurred again..."

19 33. Throughout the course of the agreement, eBay repeatedly declined opportunities to
20 hire or even interview Intuit employees, even when eBay had open positions for "quite some
21 time," when the potential employee "look[ed] great," or when "the only guy who was good was
22 from [I]ntuit." eBay employees were instructed to not pursue potential hires that came from
23 Intuit and to discard their resumes. When a candidate applied for a position and told eBay that
24 she had left Intuit, Ms. Axelrod went so far as to write Mr. Cook to confirm that the applicant
25 had, in fact, left the company.

26 34. The companies acknowledged that throughout the agreement, they "passed" on
27 "talented" applicants, consistent with their anticompetitive agreement. The repeated requests
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1 from lower level employees at both companies to be allowed to recruit employees from the other
2 firm demonstrates that the agreement denied employees the opportunity to compete for better job
3 opportunities.

4 35. The agreement between eBay and Intuit remained in effect for at least some period of
5 time after a United States Department of Justice investigation of agreements between technology
6 companies that restricted hiring practices became public. One eBay employee asked another in
7 June 2009 if she had been “able to connect with Beth [Axelrod] re our policies around hiring from
8 Intuit with respect to” a former employee at eBay’s PayPal division who “wishes to return” and
9 noted press reports of the Department of Justice investigation. The employee responded back:
10 “It’s a no go....too complicated. We should move to plan b.” (Ellipses in original.)

11 36. California’s Silicon Valley owes its unique success, in part, to the rapid dissemination
12 of knowledge facilitated by the mobility of employees that turns the entire industrial district into
13 an engine of continuous innovation. In addition to harming employees and the public, this
14 agreement also harmed California’s economy by depriving Silicon Valley of its usual pollinators
15 of ideas, hurting the overall competitiveness of the region.

16 37. eBay’s coconspirator, Intuit, is prevented by consent decrees from entering into such
17 agreements in the future. It is possible that eBay is party to such agreements currently, or may
18 enter them in the future, pursuant to its interpretation of the antitrust laws.

19 38. In part because of the 2008 *Edwards* decision, eBay was on notice that no-poach or
20 non-solicit agreements between competing employers without business justification were contrary
21 to California law. Moreover, any employment contract provision is unenforceable to the extent
22 that the provision attempts to restrain a person from hiring his former colleagues after the
23 cessation of his employment with their employer.

24 39. eBay, however, did not end its anti-competitive and anti-employee activities after
25 *Edwards* in 2008 or after *US v. Adobe* in 2009. eBay continued to be concerned with employee
26 poaching at least through May 2011 when it eBay’s filed a case against Google Inc., claiming
27 that former eBay employee and current Google Senior Vice President Stephanie Tilenius violated
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1 her agreement not to solicit any eBay or PayPal employees for a period of one year after her
2 departure from eBay when she brought over another former eBay employee, Osama Bedier, to
3 work with her after her arrival at Google. *PayPal, Inc. v. Google, Inc.*, 1-11-CV-201863 (Cal.
4 Sup. Ct. Santa Clara Co. filed May 26, 2011).

5 40. Absent injunctive relief, eBay is likely to continue this strategy of anti-competitive,
6 anti-employee behavior.

7 VIOLATIONS ALLEGED

8 I. (VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

9 41. The State of California hereby incorporates paragraphs 1 through 40.

10 42. eBay and Intuit are direct competitors for employees, including specialized computer
11 engineers and scientists, covered by the agreements at issue here. eBay and its coconspirators
12 entered into a naked no-solicitation and no-hire agreement, thereby reducing their ability and
13 incentive to compete for employees. This agreement suppressed competition between eBay and
14 its coconspirators, thereby limiting affected employees' ability to secure better compensation,
15 benefits, and working conditions.

16 43. eBay's agreement with Intuit is *per se* unlawful under Section 1 of the Sherman Act,
17 15 U.S.C. § 1. No elaborate industry analysis is required to demonstrate the anticompetitive
18 character of this agreement.

19 44. The no-solicitation and no-hire agreement between eBay and Intuit is also an
20 unreasonable restraint of trade that is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1
21 under an abbreviated or "quick look" rule of reason analysis. The principal tendency of the
22 agreement between eBay and Intuit is to restrain competition as the nature of the restraint is
23 obvious and the agreement has no legitimate pro-competitive justification. It is clear that the
24 agreement would have an anticompetitive effect on employees and harm the competitive process.

25 45. For the purpose of forming and effectuating the alleged agreement, understanding, or
26 conspiracy, eBay and its co-conspirators did those things that they combined and conspired to do,
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1 including, but not limited to the acts, practices, and course of conduct described, and the
2 following, among others:

- 3 a. not actively recruit Intuit or eBay employees; and
- 4 b. not hire Intuit employees.

5 46. The combination and conspiracy has had, among other things, the following effects:

- 6 a. Suppressed competition between eBay, Intuit, and their co-conspirators for
7 employees;
- 8 b. Limited affected employees' ability to pursue and secure new employment, as
9 well as better compensation, benefits, and working conditions.
- 10 c. Injured, and continues to pose a risk of injury to, the general economy of the
11 State.

12 47. Natural persons employed in the high tech industry were injured, and will continue to
13 be injured, in their business and property by lower wages and benefits, and fewer opportunities, to
14 which they would have had access, as a direct and indirect result of the actions of eBay and its co-
15 conspirators. This includes the future deprivation of competition arising from the failure of eBay
16 to discontinue its wrongful conduct until at least the USDOJ investigation, and very likely
17 afterwards as well.

18 48. Plaintiff is entitled to an injunction against eBay, preventing and restraining the
19 violations alleged herein, as well as enjoining it from engaging in similar conduct in the future.
20 eBay has demonstrated, through its continuous attempts to restrict employee mobility, that it
21 remains a serious threat to the free movement of labor.

22 **II. (VIOLATION OF THE CARTWRIGHT ACT, BUSINESS & PROFESSIONS CODE SECTION**
23 **16720)**

24 49. The State of California hereby incorporates paragraphs 1 through 48.

25 50. eBay and its co-conspirators' contract, combination, trust, or conspiracy was
26 substantially carried out and effectuated within the State of California. This contract,
27 combination, trust, or conspiracy injured natural persons and the general economy of the State.
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1 51. Beginning at least in or around January, 2006, and continuing thereafter at least up to
2 and including June, 2009, eBay and its co-conspirators entered into and engaged in a continuing
3 unlawful trust for the purpose of unreasonably restraining trade in violation of Section 16720 of
4 the California Business and Professions Code. eBay's policy of hindering employee mobility
5 threatens continued harm to the economy of the State.

6 52. These violations of Section 16720 of the California Business and Professions Code,
7 consisted, without limitation, of a continuing unlawful trust and concert of action among eBay
8 and Intuit, the substantial terms of which were to create and carry out restrictions on commerce in
9 the hiring of high tech employees.

10 53. For the purpose of forming and effectuating the unlawful trust, eBay conspired to:

- 11 a. refrain from recruiting Intuit or eBay employees.
- 12 b. not hire Intuit employees.

13 54. The combination and conspiracy has had, among other things, the following effects:

- 14 a. Suppressed competition between eBay and Intuit for employees;
- 15 b. Limited affected employees' ability to secure employment, as well as better
16 compensation, benefits, and working conditions; and
- 17 c. Injured, and continues to pose a risk of injury to, the general economy of the
18 State.

19 55. California seeks an injunction in order to restore competition in the high tech employee
20 market.

21 56. As a direct and proximate result of eBay's violations of Section 16720 of the
22 California Business and Professions Code, natural persons residing in the State of California were
23 injured in their business and property in that they were deprived of competition between
24 companies for employees.

25 57. The State of California brings this claim pursuant to California Business and
26 Professions Code Sections 16750, 16754, and 16754.5 to obtain injunctive relief and the costs of
27 suit, including reasonable attorneys' fees.

1 **III. (FOR VIOLATION OF THE UNFAIR COMPETITION LAW BUSINESS & PROFESSIONS**
2 **CODE SECTION 17200)**

3 58. The State of California hereby incorporates paragraphs 1 through 57.

4 59. Beginning at least in or around January, 2006, and continuing thereafter at least up to
5 and including June, 2009, Defendants committed acts of unfair competition, as defined by
6 Sections 17200, *et seq.* of the California Business and Professions Code.

7 60. Under section 17200, *et seq.*, a business practice is *unfair* within the meaning for the
8 Unfair Competition Law if it violates established public policy. Under section 17200, *et seq.*, a
9 business practice is *unlawful* and becomes independently actionable under the Unfair Competition
10 Law if the practice violates other laws. The State of California is entitled to recovery for each
11 violation of section 17200 of the California Business and Professions Code.

12 61. The acts, omissions, misrepresentations, practices and non-disclosures of eBay, as
13 alleged herein, constituted unfair competition by means of unfair, unlawful and/or fraudulent
14 business acts or practices within the meaning of California Business and Professions Code,
15 sections 17200, *et seq.*, including, but not limited to, the following:

16 a. The violations of sections 16720, *et seq.*, of the California Business and
17 Professions Code, thus constituting unlawful acts within the meaning of section 17200 of the
18 California Business and Professions Code;

19 b. The violation of the public policy of free competition and employee mobility
20 expressed by section 16600 of the California Business and Professions Code, thus constituting
21 unfair acts within the meaning of section 17200 of the California Business and Professions Code.

22 62. An injunction would ensure that such conduct has ended at eBay and make clear that
23 it will not be permitted. eBay's actions have harmed and risk continuing harm to the general
24 economy of the State.

25 **PRAYER FOR RELIEF**

26 California requests that:

1 (A) the Court adjudge and decree that the agreement between eBay and Intuit not to
2 compete constitutes an illegal restraint of interstate trade and commerce in violation of Section 1
3 of the Sherman Act;

4 (B) the Court adjudge and decree that eBay 's contract, conspiracy, or combination
5 constitutes an illegal restraint of trade in violation of the Cartwright Act, Sections 16720, *et seq.*,
6 of the Business & Professions Code;

7 (C) the Court adjudge and decree that eBay's contract, conspiracy, or combination
8 violates the Unfair Competition Law, Sections 17200, *et seq.* of the Business & Professions
9 Code;

10 (D) that Defendants be permanently enjoined and restrained from establishing any
11 similar agreement unreasonably restricting competition for employees enforcing or adhering to
12 existing agreements that unreasonably restrict competition for employees except as prescribed by
13 the Court;

14 (E) that Plaintiff be awarded civil penalties, pursuant to California Business and
15 Professions Code Section 17206 in the dollar amount of two thousand five hundred dollars and
16 zero cents, (\$2,500.00) for each violation of the Unfair Competition Law as set forth in this
17 Complaint;

18 (F) that Plaintiff be awarded such other relief as the Court may deem just and
19 proper to redress and prevent recurrence of the alleged violation and to dissipate the
20 anticompetitive effects of the illegal agreement entered into by eBay; and

21 (G) that Plaintiff be awarded the costs of this action and reasonable attorneys' fees.
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JURY TRIAL DEMAND

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Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury for all issues so triable.

Dated: October 11, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

NICOLE S. GORDON
Deputy Attorney General
Attorneys for Plaintiff

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury for all issues so triable.

Dated: October 11, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California



NICOLE S. GORDON
Deputy Attorney General
Attorneys for Plaintiff

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