

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement is entered into by and among, on the one hand, plaintiffs HOLLY BARKER and BRIAN CARNES, individually and as putative representatives of the Settlement Class¹ and, on the other hand, defendants SKYPE, INC., SKYPE COMMUNICATIONS, S.A.R.L., SKYPE TECHNOLOGIES S.A. and EBAY INC., on its own behalf and as successor by merger to SKYPE DELAWARE HOLDINGS, INC., subject to preliminary and final approval by the District Court.

I. DEFINITIONS

1.1. "Action" means the putative nationwide class action, entitled Barker, et al. v. Skype, Inc., et al., which was filed on September 25, 2009 and currently is pending before the District Court as Case No. 2:09-cv-01364-RSM.

1.2. "Administration Site" means the settlement website that the Settlement Administrator will create in accordance with paragraph 6.2(c) below.

1.3. "Agreement" means this Stipulation and Agreement of Settlement.

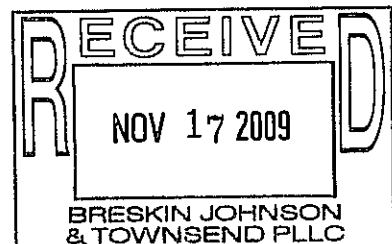
1.4. "Barker" means plaintiff Holly Barker.

1.5. "Barker Action" means the putative class action filed by Barker, entitled Barker v. Skype Inc., et al., Superior Court of the State of Washington, King County, Case No. 08-2-41937-1 SEA.

1.6. "Carnes" means plaintiff Brian Carnes.

1.7. "Carnes Action" means the putative class action filed by Carnes, entitled Carnes v. Skype, et al., Superior Court of the State of California, Los Angeles County, Case No. BC 406723.

¹ All terms are used as defined in Section I, unless otherwise noted.



1.8. "Claim Period" refers to the forty-five (45) day time period after the E-mail Notice of the settlement has been disseminated, during which time Settlement Class Members may submit claims on the Administration Site.

1.9. "Defendants" means Skype Communications, Skype Technologies S.A., Skype, Inc. and eBay Inc., on its own behalf and as successor by merger to Skype Delaware Holdings, Inc.

1.10. "District Court" means the United States District Court for the Western District of Washington.

1.11. "Effective Date" means ten (10) days after the date when the Final Approval Order granting final approval of the settlement becomes Final.

1.12. "E-mail Notice" means the notice of the settlement that Skype Communications or its designee will, subject to the District Court's approval, cause to be e-mailed pursuant to paragraph 6.2 below, substantially in the form attached hereto as Exhibit A.

1.13. "Escrow Account" means an interest-bearing account that will be established by Skype Communications, on behalf of itself and Defendants, at a financial institution chosen by Defendants, subject to Lead Class Counsel's reasonable approval.

1.14. "Federal Complaint" means the class action complaint that Plaintiffs filed in the District Court on September 25, 2009, as provided for in paragraph 7.1 below, to effectuate this Agreement.

1.15. "Final" means the date that the judgment becomes final for all purposes because either (i) no appeal has been filed and the time within which an appeal may be filed has lapsed, or (ii) if a timely appeal has been filed, the appeal is finally resolved, with no possibility of further appellate or other review, resulting in final judicial approval of the settlement.

1.16. "Final Approval Order" means the order to be entered by the District Court, as provided for in paragraph 8.1 below, through which the District Court will grant final approval to the settlement, enter judgment and dismiss the Action with prejudice.

1.17. "Final Fairness Hearing" means the hearing at which the District Court will consider and finally decide whether to approve the settlement provided for in this Agreement, enter judgment and make such other rulings as are contemplated by this Agreement.

1.18. "Implementation Date" means the date of the first scheduled general Skype software release following preliminary approval of the settlement by the District Court. The Parties will use good faith efforts toward an Implementation Date on or before December 31, 2009, provided the District Court preliminarily approves the settlement within a reasonable time prior to that date.

1.19. "Lead Class Counsel" means Roger M. Townsend, Esq. and Daniel F. Johnson, Esq. of Breskin, Johnson & Townsend, PLLC.

1.20. "Mediator" means the Honorable Ellen Sickles James (Ret.) of JAMS.

1.21. "MOU" means the Memorandum of Understanding executed by Plaintiffs and Defendants on September 30, 2009, which memorializes the material terms of the settlement.

1.22. "Net Settlement Amount" means the amount remaining from the Settlement Amount following payment of attorneys' fees, costs and incentive awards, which will be made available for payment of claims submitted by Settlement Class Members.

1.23. "Parties" means Defendants, Plaintiffs and, upon class certification for settlement purposes only as set forth herein, the Settlement Class.

1.24. "Plaintiffs" means Barker and Carness.

1.25. "Plaintiffs' Counsel" and "Class Counsel" mean Daniel F. Johnson, Esq. and Roger M. Townsend, Esq. of Breskin, Johnson & Townsend, PLLC, and Scott A. Burroughs, Esq. of Doniger/Burroughs APC.

1.26. "Preliminary Approval Order" means an order preliminarily approving the settlement to be entered by the District Court, as provided for in paragraph 7.2 below, substantially in the form attached hereto as Exhibit C.

1.27. "Reactivation Page" means and refers to the web page that each Skype user can access by utilizing the hyperlink on his or her "My Account" page at www.skype.com, which web page will make available to the user a "button" labeled "Re-activate Credit" that can be clicked to reactive the user's inactive Skype Credit. Exemplar screenshots of the "My Account" page, including the hyperlink, and a "Reactivation Page," including the "button," are attached hereto as Exhibits D and E, respectively.

1.28. "Reactivation Policy" means the policy that Skype Communications will institute under the settlement whereby Skype Credit that goes unused for a period of one hundred eighty (180) days will not expire but, instead, is deemed "inactive" and subject to reactivation by accessing the Reactivation Page.

1.29. "Released Claims" means and refers to any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law, whether by Constitution, statute, contract, common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that relate to the expiration of Skype Credits issued by Skype Communications through the Implementation Date, including, without limitation: (i) any and all claims and causes of action that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the State Court Actions; and (ii) any and all claims and causes of action that arise out of or are related in any way to the Skype Credit Expiration Policy, including, without limitation, claims regarding the unlawfulness of the

Skype Credit Expiration Policy under any and all consumer deceptive practices statutes or gift certificate or gift card statutes.

1.30. "Released Parties" means and refers to Defendants and their present, former and future officers, directors, partners, employees, agents, attorneys, servants, heirs, administrators, executors, members, member entities, predecessors, successors, affiliates, parents and subsidiaries (whether direct or indirect), representatives, trustees, principals, insurers, vendors and assigns, or interest therein, jointly and severally, and all of the aforementioned's respective officers, directors, employees, attorneys, vendors (including processing facilities) and assigns, jointly and severally.

1.31. "Settlement Administrator" means Rust Consulting, Inc., or such other administrator as may be selected by Defendants and approved by the District Court.

1.32. "Settlement Amount" means and refers to the cash consideration that Skype Communications, on behalf of itself and the other Defendants, will pay in full and complete settlement of the Action and the State Court Actions, which shall not exceed \$1,850,000, plus any interest accrued in the Escrow Account.

1.33. "Skype Communications" means and refers to defendant Skype Communications, S.a.r.l., a Luxembourg company, located at 1 22/24 Boulevard Royal, L-2449 Luxembourg, Luxembourg.

1.34. "Skype Credit(s)" means and refers to money that a user deposits into his or her User Account, which is reflected as credit that can subsequently be used to purchase certain Internet-based communications products from Skype Communications.

1.35. "Skype Credit Expiration Policy" means the policy set forth in paragraph 5.3 of the Terms of Service, and pursuant to which Skype Credit that remained unused for a period of one hundred eighty (180) days expired from the customer's User Account.

1.36. "State Court Actions" means and refers to the Barker and Carness Actions, together.

1.37. "User Account" means and refers to the electronic, Internet based account with User ID and Password that a customer of Skype Communications creates for his or her use of Skype software.

II. RECITALS

This Agreement is made with reference to and in contemplation of the following facts and circumstances.

A. The State Court Actions.

1. The Barker Action.

On December 5, 2008, Barker, on behalf of herself and purportedly on behalf of a putative class comprised of Skype users residing in Washington, filed her Complaint and asserted claims for: (i) violation of Washington's Gift Certificate Law, Revised Code of Washington chapter 19.240; (ii) violation of Washington's Consumer Protection Act, Revised Code of Washington chapter 19.86; and (iii) declaratory judgment. Barker alleges that Defendants permit their customers to set up User Accounts funded with Skype Credit, which can subsequently be used to purchase certain Internet-based communications products² and that the User Accounts and Skype Credit constitute "gift certificates" under the Washington law. Barker further alleges that Defendants unlawfully applied the Skype Credit Expiration Policy against Barker's Skype Credit balance after 180 days of inactivity in supposed violation of the prohibition against expiration dates and dormancy or inactivity fees under Washington law. Barker seeks, among other things, actual and punitive damages, injunctive relief, prejudgment interest, attorneys' fees, expert fees and costs.

² Skype is a software application that enables individuals to make video and voice calls, send instant messages and share files using the Internet, among other things.

2. The Carness Action.

On or about January 30, 2009, Carness, on behalf of himself and purportedly on behalf of a putative class comprised of Skype users residing in California, filed his Complaint and asserted claims for: (i) violation of California's Gift Certificate Law, California Civil Code section 1749.5 et seq.; (ii) unjust enrichment; (iii) conversion and trespass to chattels; (iv) false advertising in violation of California's False Advertising Law, California Civil Code section 17500 et seq.; and (v) violation of California's Unfair Competition Law, California Business and Professions Code section 17200 et seq. Like Barker, Carness contends that User Accounts and Skype Credit constitute gift certificates and further contends that Defendants unlawfully applied the Skype Credit Expiration Policy against Carness' Skype Credit balance after 180 days of inactivity in supposed violation of the prohibition against expiration dates and dormancy or inactivity fees. Carness seeks, among other things, actual and punitive damages, restitution and/or disgorgement, injunctive relief, prejudgment interest, attorneys' fees, expert fees and costs.

B. Investigation by Plaintiffs' Counsel.

Plaintiffs' Counsel have investigated the facts relating to the claims alleged and the underlying events and transactions at issue in the Action and in the State Court Actions and have analyzed the legal principles applicable to the asserted claims and defenses. Plaintiffs' Counsel have concluded, based upon their investigation and taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this Action and the State Court Actions, and the substantial benefits to be received pursuant to this Agreement, that a settlement with Defendants on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class.

C. Settlement Process.

Since June 2009, the Parties have engaged in extensive, good faith arm's length negotiations concerning settlement, including through a day-long session before the Mediator and numerous follow-up telephone conferences and email exchanges. These efforts resulted in the execution of the MOU on September 30, 2009 and the subsequent execution of this Agreement.

D. Defendants' Denial of Liability.

Defendants vigorously deny all claims asserted in this Action and in the State Court Actions, deny all allegations of wrongdoing and liability and contend that they have substantive defenses, as a matter of law, to all of Plaintiffs' claims. Defendants nevertheless desire to settle all claims that are asserted, or could have been asserted, in this Action and in the State Court Actions, and any other action currently pending making these same claims, on the terms and conditions set forth herein, solely for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the actions. Nothing in this Agreement shall be construed as an admission or concession by Defendants of the allegations raised in this Action or the State Court Actions, or any other action, of any fault, wrongdoing or liability of any kind.

E. Effect of Settlement.

It is the Parties' desire and intention to effect a full, complete and final settlement and resolution of all existing disputes and claims that relate to or arise out of this Action and the State Court Actions and the Skype Credit Expiration Policy, including, without limitation, related to the alleged impropriety of any and all expiration dates or dormancy fees applicable to the Skype Credit or the User Accounts. As discussed below, the Parties will seek preliminary and final approval of this settlement and this Agreement in the District Court.

NOW, THEREFORE, in consideration of the premises and agreements set forth herein, it is hereby STIPULATED AND AGREED, subject to the District Court's approval, that each and every claim that has been alleged, or could have been alleged, in this Action or in the State Court Actions, including, without limitation, any other currently pending actions, shall be fully and finally settled and compromised and dismissed with prejudice and shall be fully discharged and released, upon and subject to the following terms and conditions:

III. TERMS OF THE SETTLEMENT

3.1. Certification of Settlement Class for Settlement Purposes Only. Defendants deny that a class properly may be certified in the Action or in the State Court Actions. Solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose the certification for settlement purposes only of the Settlement Class. No agreements made by Defendants in connection with the settlement may be used by Plaintiff, any person in the Settlement Class or any other person to establish any of the elements of class certification other than for settlement purposes. Preliminary certification of a Settlement Class shall not be deemed a concession that certification of a litigation class is appropriate, nor are Defendants estopped from challenging class certification in further proceedings in the State Court Actions or in any other action, including this Action, if the settlement is not finalized or finally approved. If the settlement is not approved, the Parties shall be returned to the status quo ante as of July 28, 2009, for all litigation purposes, as if no settlement had been negotiated or entered into.

3.2. Definition of the Settlement Class. Subject to paragraph 3.1 above, the Parties agree that Plaintiffs will seek certification under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only of the Settlement Class, which is defined as:

All current and former users of Skype Communications, S.a.r.l. who are residents of the United States and who purchased Skype Credit that, on at least one occasion prior to the Implementation Date, expired pursuant to Skype Communications' Skype Credit Expiration Policy.

A "Settlement Class Member" is any person in the Settlement Class who does not opt out of the settlement.

3.3. Benefits to Be Provided to the Settlement Class and Prospective Relief. Pursuant to this settlement, Defendants will provide the following benefits and prospective relief:

- a. Skype Credit Reactivation "Button": On or before the Implementation Date and for at least five years following the Implementation Date, Skype Communications, acting for itself and for the other Defendants, will discontinue the Skype Credit Expiration Policy and implement the Reactivation Policy.
- b. Claims by Settlement Class Members: The Net Settlement Amount shall be available for payment of claims that are submitted by Settlement Class Members. Each Settlement Class Member may, upon verification of membership in the Settlement Class, submit a claim for an electronic voucher entitling him or her to \$4.00 of Skype Credit.³ In order for a claim to be valid, the Settlement Class Member must complete the Internet claim form available on the Administration Site, which will require the following information: (i) name and Skype ID number and/or User Account number; (ii) valid e-mail address; (iii) the approximate date of Skype Credit expiration, if known; and (iv) a statement, under penalty of perjury, that the claimant is a person in the Settlement Class.

3.4. Maximum Total Claim Amounts. All Settlement Class Members are entitled to submit a single claim for payment under the settlement.

³ In connection with the Settlement, Defendants represent that, as of July 16, 2009, the average amount of expired Skype Credit per U.S. user whose credit had expired on at least one occasion was 2.59 €, or approximately \$3.77 as calculated on September 15, 2009 at <http://www.oanda.com/convert/classic>, using the September 15, 2009 exchange rate.

3.5. Deadline for Submission of Claims: In order to be valid, claims must be received by the Settlement Administrator by no later than forty-five (45) days after the E-mail Notice is disseminated.

3.6. Manner/Timing of Payment. Payments shall be made by electronic voucher. No later than thirty (30) days after the Effective Date, the Settlement Administrator will e-mail the electronic voucher to Settlement Class Members who have submitted valid claims. Upon receipt, the Settlement Class Member shall be able to redeem the electronic voucher on the Skype website.

3.7. Proration of Claims. If the Settlement Administrator determines that payment of all verified claims would result in the Net Settlement Amount being exceeded, all claim payments will be reduced pro rata.

3.8. No Residue. Any portion of the Net Settlement Amount that is not claimed by Settlement Class Members pursuant to this Agreement will belong to Defendants. The Parties expressly agree that any such amount shall not be considered residue for purposes of distribution by the District Court.

IV. ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARD TO PLAINTIFF

4.1. Plaintiffs' Counsel shall make an application to the District Court for attorneys' fees and costs and incentive awards, which application, in the aggregate, shall not be for more than 25% of the Settlement Amount. Defendants agree not to object to such application, so long as the sum total of attorneys' fees, costs and incentive awards that they are requested to pay does not exceed 25% of the Settlement Amount.

4.2. In addition, the incentive awards shall not exceed the amount of \$1,000 to each of Barker and Carness.

4.3. Payment of attorneys' fees and costs and incentive awards will be made within fifteen (15) days of the Effective Date.

V. RELEASE AND DISMISSAL

5.1. Release. As of the Effective Date of the settlement, Plaintiffs and each Settlement Class Member, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, and all persons acting for or on their behalf, will be deemed to have fully released and forever discharged the Released Parties from the Released Claims. Without limiting the foregoing, the Released Claims specifically extend to claims that Settlement Class Members do not know or suspect to exist in their favor at the time that the settlement, and the releases contained therein, becomes effective. This paragraph constitutes a waiver of any laws that would limit this release, including, without limitation, section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and each Settlement Class Member understand and acknowledge the significance of these waivers of California Civil Code section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs and each Settlement Class Member acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the settlement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

5.2. Stay/Bar of Other Proceedings. In connection with the settlement, Barker and Carness will seek a stay of all proceedings in the respective State Court Actions, and the Parties will seek a stay of the prosecution of all Released Claims currently being asserted by or on

behalf of any person in the Settlement Class in any forum against any of the Defendants or any of the other Released Parties pending final approval of this settlement, except as may be necessary to implement the settlement or comply with the terms of the Agreement. The Preliminary Approval Order further shall provide that, pending final determination of whether the settlement should be approved, neither the Plaintiffs nor any person in the Settlement Class, either directly or in a representative or other capacity, nor any person or entity allegedly acting on behalf of the Settlement Class, shall commence or prosecute against any of the Defendants, or against any of the other Released Parties, any action or proceeding in any court or tribunal asserting any of the Released Claims, provided, however, that this injunction shall not apply to individual claims of any persons in the Settlement Class who timely exclude themselves from the Settlement Class in a manner that complies with paragraph 7.4 below. The Parties agree that a stay and injunction are necessary to protect and effectuate the settlement and the approval proceedings.

5.3. Dismissal. Promptly following the Effective Date, the Parties agree to take all necessary action to secure the dismissal with prejudice of any pending actions involving prosecution of the Released Claims against the Released Parties, including, without limitation, the State Court Actions.

VI. NOTICE AND SETTLEMENT ADMINISTRATION

6.1. Costs of Notice and Administration. Defendants shall be responsible for the costs of notice and administration, including the costs of the Settlement Administrator, which Defendants shall select.

6.2. E-mail Notice. Skype Communications and/or the Settlement Administrator (and/or its or their designees) shall administer this settlement and provide notice to the Settlement Class, as follows:

- a. The E-mail Notice, substantially in the form attached hereto as Exhibit A, shall be submitted to the District Court for approval in connection with Plaintiffs' Motion for Preliminary Approval, as discussed in paragraph 7.2 below.⁴
- b. Within fifteen (15) days after the Implementation Date, the E-mail Notice shall be disseminated to the Settlement Class.
- c. No later than fifteen (15) days after the Implementation Date, the Settlement Administrator will establish the Administration Site, which shall make available court documents related to the settlement and contact information for Plaintiffs' Counsel. Claims shall be submitted solely through the Administration Site via an Internet claim form, which shall contain substantially all the information set forth in Exhibit B hereto. The format of the claim form may be subject to substantial change necessitated by the technical limitations and security requirements of the Administration Site or the computers used by the Settlement Class Members.

6.3. Notice to Regulators. Defendants shall be responsible, at their own expense, for compliance with the notice provisions of the Class Action Fairness Act ("CAFA"), but Plaintiffs recognize that the Final Fairness Hearing will be set in accord with CAFA. Plaintiffs will cooperate reasonably with Defendants to ensure compliance so that the releases described in paragraph 5.1 above are fully enforceable.

6.4. Expenses Related to Plaintiffs' Website: Defendants shall not be responsible for any expenses incurred by Plaintiffs' Counsel in regard to any settlement-related website they might separately maintain in order to provide additional notice to the Settlement Class, which must be in accordance with paragraph 9.3 below. Defendants also shall not be responsible for

⁴ Defendants have performed a sampling of e-mails sent to U.S. Skype users over a recent 12-month period, which confirmed that such sampled e-mails reached more than 90% of the intended recipients.

fees and costs incurred by Plaintiffs' Counsel in connection with the settlement or otherwise in the Action or in the State Court Actions beyond what is specified in this Agreement.

6.5. Certification to the District Court. No later than five (5) days before the Final Fairness Hearing, Defendants and/or their designee shall file with the District Court a declaration verifying that E-mail Notice has been provided to the Settlement Class.

6.6. Administrative Oversight/Denial of Claims. The Settlement Administrator will administer distribution of benefits pursuant to the settlement and will ensure that all valid claims are paid. The Settlement Administrator shall have no obligation to honor claims received after the Claim Period, even if such claims otherwise would be valid. The Settlement Administrator will have the right to verify all claims before disbursing the settlement benefits described in this Agreement. For example, the Settlement Administrator shall have the right to deny non-conforming claims (e.g., but without limitation, because the Settlement Class Member failed to provide all information required pursuant to paragraph 3.3(b)). The Settlement Administrator shall also have the right to deny claims if there exists a good faith belief that such claims are fraudulent.

6.7. Class Counsel's Right of Review. The Settlement Administrator shall provide notice of denials of claims ("Denial Report") to Class Counsel within ten (10) days after the Effective Date. Class Counsel shall have the right to review the Denial Report and, within five (5) days after receipt of a Denial Report from the Settlement Administrator, provide Defendants and the Settlement Administrator with written notice of any dispute as to any of the denied claims. The Parties agree to meet and confer in good faith in regard to any denied claim. Any dispute that cannot be resolved shall promptly (within five (5) days) be submitted to the Mediator for her recommendation as to a resolution. The Parties will request that the Mediator make a determination within fifteen (15) days.

6.8. Establishment and Funding of Escrow Account. Within one week of entry of an Order preliminarily approving the settlement, Skype Communications, on behalf of itself and Defendants, shall deposit 25% of the principle Settlement Amount (i.e., \$462,500) into the Escrow Account.

VII. PRELIMINARY APPROVAL ORDER AND FINAL FAIRNESS HEARING

7.1. Filing of Stipulated Motions to Stay State Court Actions/Federal Complaint. Plaintiffs have filed Stipulated Motions to Stay the respective State Court Actions and filed the Federal Complaint in the District Court to effectuate this Agreement. All allegations of the Federal Complaint shall be deemed denied and disputed by Defendants without the necessity of filing an Answer.

7.2. Preliminary Approval Order. Within ten (10) days of execution of this Agreement, Plaintiffs will seek the District Court's approval of this settlement by filing an appropriate Motion for Preliminary Approval and seeking entry of a Preliminary Approval Order, substantially in the form attached hereto as Exhibit C. The Parties shall cooperate in presenting such papers to the District Court as may be necessary to effectuate the intent and purposes of this Agreement. Among other things, the Preliminary Approval Order shall specifically include the following:

- a. A determination that, for settlement purposes only, the Action may be maintained as a class action on behalf of the Settlement Class;
- b. A finding that the E-mail Notice, substantially in the form attached hereto as Exhibit A, is the only notice required, and that such E-mail Notice satisfies the requirements of due process and the Federal Rules of Civil Procedure and any other applicable laws;
- c. A preliminary finding that this Agreement is fair, reasonable, adequate and within the range of possible approval;

- d. A preliminary finding that Plaintiffs fairly and adequately represent the interests of the Settlement Class;
- e. A preliminary finding that Lead Class Counsel are adequate to act as counsel for the Settlement Class;
- f. Scheduling a date for the Final Fairness Hearing, which the Parties shall request be no earlier than one hundred (100) days after the filing of the Motion for Preliminary Approval pursuant to CAFA, to determine whether there exists any reason why the settlement should not be approved as being fair, reasonable, and adequate, and in the best interests of the Settlement Class and why judgment should not be entered thereon;
- g. Establishment of a procedure for persons in the Settlement Class to opt out and/or object to the proposed settlement and setting a postmark deadline of thirty (30) days after E-mail Notice is provided to the Settlement Class after which no person in the Settlement Class shall be allowed to opt out of the Settlement Class or object to the proposed settlement; and
- h. Entry of a preliminary injunction as to Plaintiffs, all persons in the Settlement Class and any person or entity allegedly acting on behalf of a person in the Settlement Class in any capacity from commencing or prosecuting against any of the defendants or any of the other Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims, including, without limitation, the State Court Actions.
- i. Entry of a stay of all proceedings in the Action, except as may be necessary to implement the settlement or comply with the terms of the Agreement.

7.3. Denial of Preliminary Approval Order. If the District Court fails for any reason to enter the Preliminary Approval Order with all of the contents specified above or to certify the Settlement Class for settlement purposes consistent with the provisions hereof, and if all Parties do not agree jointly to appeal such ruling, this Agreement shall terminate and be of no further force or effect without any further action by any party and either party may elect to resume litigation in the State Court Actions.

7.4. Opt-Out/Requests for Exclusion.

a. Deadline: Persons in the Settlement Class shall be given the opportunity to opt out of the Settlement Class. All requests to be excluded must be in writing and mailed to the Settlement Administrator, postmarked by no later than thirty (30) days after E-mail Notice is provided to the Settlement Class.

b. Exclusions: An appropriate written request for exclusion must be personally signed by the person in the Settlement Class and must include: (i) his or her name, address, telephone number; (ii) the Skype ID and/or User Account number(s); (iii) a sentence confirming, under penalty of perjury, that he or she is a person in the Settlement Class; and (iv) the following statement: "I request to be excluded from the class settlement in Barker v. Skype, Inc., et al, United States District Court for the Western District of Washington, Case No. 2:09-cv-01364-RSM." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class.

c. Delivery to Parties/Filing with Court: The Settlement Administrator shall provide copies of the original requests for exclusion to the Parties by no later than seven (7) business days after the opt out deadline. Not later than ten (10) days before the Final Fairness Hearing, the Settlement Administrator shall file with the

District Court a declaration that lists the opt-outs received in a form redacted of personal identifying information.

d. Effect: All persons in the Settlement Class who timely exclude themselves from the Settlement Class will not be eligible to receive any benefits pursuant to this settlement, will not be bound by any further orders or judgments in this action, and will preserve their ability to independently pursue any claims they may have against Defendants by filing their own lawsuit or arbitration at their own expense. In the event that a person in the Settlement Class were to submit a claim pursuant to paragraph 3.3(b) above and a request to be excluded from the Settlement Class, the exclusion request will control.

e. Cap On Opt Outs: If the number of persons in the Settlement Class who opt out exceeds 750, Defendants may terminate the settlement in its sole discretion and the Parties shall be returned to the status quo ante as of July 28, 2009, for all litigation purposes, as if no settlement had been negotiated or entered into. If Defendants exercise their right to declare the Agreement void, they shall provide Plaintiffs' Counsel with written notice of this election no later than fourteen (14) business days after the opt out deadline. If Defendants declare this Agreement void, then the terms of the Agreement and the fact that the Agreement was reached shall not be referred to by the Parties in connection with any further proceedings.

7.5. Objections to Settlement.

a. Right to Object: Any Settlement Class Member, who has not previously opted out in accordance with the terms of this Agreement, may appear at the Final Fairness Hearing to argue that the proposed settlement should not be approved

and/or to oppose the application of Class Counsel for an award of attorneys' fees and costs and for Plaintiffs' incentive awards.

b. Deadline: Any such objection must be filed with the District Court, which is located at Courtroom 13206, 700 Stewart Street, Seattle, Washington 98101, postmarked no later than thirty (30) days after E-mail Notice is provided to the Settlement Class. Copies of all objection papers also must be mailed to each of the following, postmarked by the last day to file the objection: Class Counsel: Daniel Johnson, Esq. and Roger Townsend, Esq., Breskin Johnson & Townsend, PLLC, 1111 Third Avenue, Suite 2230, Seattle, Washington 98101; and counsel for Defendants: Julia B. Strickland, Esq., Stroock & Stroock & Lavan LLP, 2029 Century Park East, Los Angeles, California 90067.

c. Content of Objections: All objections must include: (i) the objector's name, address and telephone number; (ii) the objector's Skype ID number and/or User Account number(s); (iii) a sentence confirming, under penalty of perjury, that he or she is a person in the Settlement Class; (iv) the factual basis and legal grounds for the objection to the settlement; (v) the identity of witnesses whom they may call to testify at the Final Fairness Hearing; and (vi) copies of exhibits they intend to offer into evidence at the Final Fairness Hearing.

VIII. FINAL APPROVAL OF SETTLEMENT AND OTHER CONDITIONS

8.1. Final Approval Order. On a date to be set by the District Court, Plaintiffs will petition the District Court for an Order granting final approval of this settlement and entering judgment in the Action. Specifically, the Final Approval Order will:

a. Find that this Action, for purposes of this settlement, may be maintained as a class action on behalf of the Settlement Class;

- b. Find that Plaintiffs fairly and adequately represent the interests of the Settlement Class;
- c. Find that Class Counsel adequately represents Plaintiffs and the Settlement Class;
- d. Find that the E-mail Notice satisfied the requirements of due process, the Federal Rules of Civil Procedure and any other applicable laws;
- e. Find that the settlement is fair, reasonable and adequate to the Settlement Class and that each Settlement Class Member shall be bound by the settlement, including the Release contained in paragraph 5.1 above;
- f. Find that the settlement represents a fair resolution of all claims asserted on behalf of the Settlement Class and should fully and finally resolve all such claims;
- g. Conclude that this Agreement should be, and is, approved;
- h. Dismiss, on the merits and with prejudice, all claims in this Action, and permanently enjoin each and every Settlement Class Member from bringing, joining or continuing to prosecute against the Released Parties any Released Claims and enter judgment thereon; and
- i. Retain jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of this Agreement and the settlement.

8.2. Non-Approval of Settlement. This settlement is conditioned upon final approval without material modification by the District Court. In the event that the settlement is not so approved, either party may elect to return to the status quo ante as of July 28, 2009, for all litigation purposes, as if no settlement had been negotiated or entered into. In the event that the settlement is approved without material modification by the District Court, but is later reversed

or vacated on appeal, either party shall have the right to withdraw from the settlement and return to the status quo ante as of July 28, 2009, for all litigation purposes, as if no settlement had been negotiated or entered into. Specifically, the Parties shall be deemed to have preserved all of their rights as of July 28, 2009, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or to members of the proposed Settlement Class. Plaintiffs' Counsel, however, shall not have the right to withdraw from the settlement if the District Court fails to approve, or materially modifies or reduces, the amounts sought in their application for attorneys' fees and costs and Plaintiffs' incentive awards.

IX. GENERAL CONDITIONS

9.1. Non-Use of the Settlement/Denial of Liability. Defendants expressly deny any liability or any wrongdoing in this Action, the State Court Actions and with respect to the Released Claims. Neither the settlement, nor any act performed or document executed pursuant to or in furtherance of the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim, or of any wrongdoing or liability of Defendants; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; and (iii) is or may be deemed to be a waiver by Defendants or any of the other Released Parties of their right to defend themselves against the Action or the State Court Actions on any and all available grounds, including, without limitation, by filing challenges, if necessary, to pleadings and opposing class certification.

9.2. Dispute Resolution. The Parties agree to meet and confer in good faith in regard to any dispute relating to the settlement or to administration of the settlement, including, without limitation, the approval or denial of claims. Except for disputes regarding denied claims discussed in paragraph 6.7 above, any dispute that cannot be resolved by the Parties shall be submitted, not earlier than fifteen (15) days after notice of the dispute was first given, to the

Mediator for her recommendation as to a resolution. Any party may seek de novo review of the Mediator's recommendation by way of a motion filed in the Action.

9.3. Publicity and Non-Disparagement. No party to this Agreement shall issue any press release, communicate with the media or otherwise engage in any advertising campaigns regarding the settlement except as set forth herein. Plaintiff and Plaintiff's Counsel shall refrain from disparaging Defendants publicly or taking any action designed to harm the public perception of Defendants regarding any issue related to the settlement or the Action. In addition:

- a. Inquiries other than those from persons in the Settlement Class seeking legal advice may be responded to only by reference to information contained in the public record and/or agreed upon by the Parties.
- b. A form of press release that may be issued by Plaintiffs' Counsel, and which is agreeable to the Parties, is attached hereto as Exhibit F. No other form of press release may be issued by Plaintiffs' Counsel.
- c. A form of website posting that may be posted by Plaintiffs' Counsel, and which is agreeable to the Parties, is attached hereto as Exhibit G. To the extent that Plaintiffs' Counsel seek to provide additional information regarding the settlement on their website, they shall first provide Defendants with the proposed text of any such posting and receive Defendants' approval, which shall not be unreasonably withheld or delayed.

9.4. Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties with respect to the settlement of the action. This Agreement supersedes all prior negotiations and agreements, including, without limitation, the MOU. The Parties, and each of them, represent and warrant that no other party or any agent or attorney of any other party has made any promise, representation or warranty whatsoever not contained in this Agreement and the other documents referred to in this Agreement to induce them to execute the

same. The Parties, and each of them, represent and warrant that they have not executed this instrument or the other documents in reliance on any promise, representation or warranty not contained in this Agreement and the other documents referred to in this Agreement.

9.5. Confidentiality. Any and all drafts of this Agreement and other settlement documents relating to the negotiations between the Parties will remain confidential and will not be disclosed or duplicated except as necessary to obtain preliminary and/or final court approval. This provision will not prohibit the Parties from submitting this Agreement to the District Court in order to obtain preliminary and/or final approval of the settlement. It is agreed that, within thirty (30) days after the Effective Date, the originals and all copies of all confidential or highly confidential documents and/or information subject to all confidentiality agreements and any Protective Order in the Action or the State Court Actions shall be returned to the designating party.

9.6. Successors and Assigns. The terms of this Agreement shall apply to the Parties as well as their heirs, successors and assigns.

9.7. Competency of Parties. The Parties, and each of them, acknowledge, warrant, represent and agree that in executing and delivering this Agreement, they do so freely, knowingly and voluntarily, that they had an opportunity to and did discuss its terms and their implications with legal counsel, that they are fully aware of the contents and effect of the Agreement and that such execution and delivery is not the result of any fraud, duress, mistake or undue influence whatsoever.

9.8. Authority. The person signing this Agreement on behalf of Defendants warrants and represents that he or she is authorized to sign on each defendants' behalf.

9.9. Modification. No modification of or amendment to this Agreement shall be valid unless it is in writing and signed by all Parties hereto.

9.10. Construction. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any of the Parties. Before declaring any provision of this Agreement invalid, the District Court shall first attempt to construe the provision valid to the fullest extent possible consistent with applicable precedent so as to find all provisions of this Agreement valid and enforceable. After applying this rule of construction and still finding a provision invalid, the District Court shall thereupon interpret the invalid provision to the fullest extent possible to otherwise enforce the invalid provision. The invalidity of any one provision shall not render this Agreement otherwise invalid and unenforceable unless the provision found to be invalid materially affects the terms of this Agreement after application of the rules of construction set forth in this paragraph.

9.11. No Waiver. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or any other provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any party thereafter to enforce that provision or each and every other provision. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other breach.

9.12. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Washington.

9.13. Notices/Communications. All requests, demands, claims and other communications hereunder shall: (i) be in writing; (ii) be delivered by U.S. Mail or facsimile, with a courtesy copy by email; (iii) be deemed to have been duly given on the date received; and (iv) be addressed to the intended recipient as set forth below:

If to Plaintiffs or the Settlement Class:

Roger Townsend, Esq. (rtownsend@bjtlegal.com)
Daniel Johnson, Esq. (djohnson@bjtlegal.com)
Breskin, Johnson & Townsend, PLLC
1111 Third Avenue, Suite 2230

Seattle, WA 98101 .
Ph: (206) 652-8660
Fax: (206) 652-8290

If to Defendants:

Julia B. Strickland, Esq. (jstrickland@stroock.com)
Stroock & Stroock & Lavan LLP
2029 Century Park East
Los Angeles, California 90067
Ph: (310) 556-5806
Fax: (310) 556-5959

Any party may change the address to which requests, demands, claims or other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

9.14. Counterparts. This Agreement may be executed in one or more counterparts and, if so executed, the various counterparts shall be and constitute one instrument for all purposes and shall be binding on the party that executed it, provided, however, that no party shall be bound unless and until all Parties have executed this Agreement. For convenience, the several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

{Signature Pages Follow}

DATED: Oct 20, 2009

Holly Barker
HOLLY BARKER, individually and as
representative of the Settlement Class

DATED: _____, 2009

BRIAN CARNESS, individually and as
representative of the Settlement Class

DATED: _____, 2009

Defendant SKYPE COMMUNICATIONS,
S.A.R.L.

By: _____

Its: _____

DATED: _____, 2009

Defendant SKYPE, INC.

By: _____

Its: _____

DATED: _____, 2009

Defendant SKYPE TECHNOLOGIES S.A.

By: _____

Its: _____

DATED: _____, 2009

Defendant EBAY INC.

By: _____

Its: _____

DATED: _____, 2009

~~HOLLY BARKER, individually and as
representative of the Settlement Class~~

DATED: 10/27/_____, 2009

~~BRIAN CARNES, individually and as
representative of the Settlement Class~~

DATED: _____, 2009

Defendant SKYPE COMMUNICATIONS,
S.A.R.L.

By: _____

Its: _____

DATED: _____, 2009

Defendant SKYPE, INC.

By: _____

Its: _____

DATED: _____, 2009

Defendant SKYPE TECHNOLOGIES S.A.

By: _____

Its: _____

DATED: _____, 2009

Defendant EBAY INC.

By: _____

Its: _____

DATED: _____, 2009

DATED: _____, 2009

DATED: October 29, 2009

HOLLY BARKER, individually and as representative of the Settlement Class

BRIAN CARNES, individually and as representative of the Settlement Class

Defendant SKYPE COMMUNICATIONS, S.A.R.L.

By: 

PETER FOULDS
GROUP FINANCIAL CONTROLLER

Its: _____

DATED: October 29, 2009

Defendant SKYPE, INC.

By: Susan L. Stick

Its: Regional Counsel

Defendant SKYPE TECHNOLOGIES S.A.

DATED: October 29, 2009

By: 

Its: Director

Defendant EBAY INC.

DATED: _____, 2009

By: _____

Its: _____

DATED: _____, 2009

HOLLY BARKER, individually and as
representative of the Settlement Class

DATED: _____, 2009

BRIAN CARNESS, individually and as
representative of the Settlement Class

DATED: _____, 2009

Defendant SKYPE COMMUNICATIONS,
S.A.R.L.

By: _____

Its: _____

DATED: _____, 2009

Defendant SKYPE, INC.

By: _____

Its: _____

DATED: _____, 2009

Defendant SKYPE TECHNOLOGIES S.A.

By: _____

Its: _____

DATED: _____, 2009

Defendant EBAY INC.

By: Manj Goyal

Its: VP

Approved as to form and content:

DATED: Oct 27, 2009

BRESKIN JOHNSON & TOWNSEND,
PLLC

By: 
Roger Townsend

Attorneys for Plaintiff
HOLLY BARKER, individually and on
behalf of the Settlement Class

Approved as to form and content:

DATED: Oct. 27, 2009

DONIGER/BURROUGHS APC

By: 
Scott Burroughs

Attorneys for Plaintiff
BRIAN CARNES, individually and on
behalf of the Settlement Class

Approved as to form:

DATED: _____, 2009

STROOCK & STROOCK & LAVAN LLP

By: _____
Julia B. Strickland

Attorneys for Defendants
SKYPE COMMUNICATIONS,
S.A.R.L., SKYPE TECHNOLOGIES
S.A., SKYPE, INC. and EBAY INC.

Approved as to form and content:

DATED: _____, 2009

BRESKIN JOHNSON & TOWNSEND,
PLLC

By: _____
Roger Townsend

Attorneys for Plaintiff
HOLLY BARKER, individually and on
behalf of the Settlement Class

Approved as to form and content:

DATED: _____, 2009

DONIGER/BURROUGHS APC

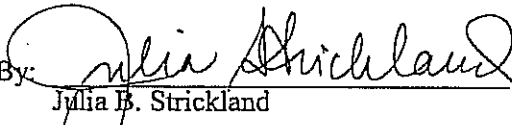
By: _____
Scott Burroughs

Attorneys for Plaintiff
BRIAN CARNES, individually and on
behalf of the Settlement Class

Approved as to form:

DATED: Oct. 28, 2009

STROOCK & STROOCK & LAVAN LLP

By: 
Julia B. Strickland

Attorneys for Defendants
SKYPE COMMUNICATIONS,
S.A.R.L., SKYPE TECHNOLOGIES
S.A., SKYPE, INC. and EBAY INC.

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EXHIBIT "A"

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

If you are a United States resident who purchased Skype Credit that, on at least one occasion prior to December 31, 2009, expired after 180 days of inactivity, a proposed class action settlement may affect your rights. PLEASE READ THIS NOTICE CAREFULLY.

- Plaintiffs Holly Barker and Brian Carness have filed lawsuits against defendants Skype Communications, S.a.r.l. ("Skype Communications"), Skype Technologies S.A., Skype, Inc. and eBay Inc., on its own behalf and as successor by merger to Skype Delaware Holdings, Inc. (collectively, the "Defendants") challenging the Skype Credit expiration policy. Plaintiffs allege that Skype User Accounts and Skype Credits constitute "gift certificates" that cannot expire or be subject to inactivity fees under various states laws and that Defendants unlawfully applied the Skype Credit expiration policy against their Skype Credit balances after 180 days of inactivity in supposed violation of these various states laws, including applicable "gift certificate," consumer protection and/or unfair and deceptive practices laws.
- Defendants deny that they did anything wrong whatsoever, and contend that plaintiffs' claims are meritless. No court has decided which side is right, and both sides have agreed to resolve the cases and provide relief to the Settlement Class instead of litigation. There is a proposed settlement on behalf of a nationwide class of current and former United States resident purchasers of Skype Credit from Skype Communications, which, if approved, will provide that Skype Communications shall discontinue its Skype Credit expiration policy and implement a Reactivation Policy whereby Skype Credit will no longer expire after 180 days of inactivity, but rather be deemed "inactive" and subject to reactivation. In addition, Skype Communications, on behalf of itself and the other Defendants, has agreed to pay a Settlement Amount of \$1,850,000 in full and complete settlement of the Released Claims, which shall include: (i) attorneys' fees and costs and named plaintiffs' incentive awards not to exceed \$1,000 each, which collectively shall not exceed 25% of the Settlement Amount subject to Court approval; and (ii) availability, on a claims made basis, of an electronic voucher for \$4.00 of Skype Credit per claimant from the Net Settlement Amount.
- If you are a member of the Settlement Class, your legal rights are affected and you have a choice to make right now:

YOUR LEGAL RIGHTS AND OPTIONS	
SUBMIT CLAIM FOR VOUCHER	Participate in settlement and receive voucher for \$4.00 of Skype Credit. Go to the Administrative Site at www.***** and complete an Internet claim form.
OBJECT TO SETTLEMENT	Object to the settlement or any of its terms, and ask the District Court not to approve the settlement. Appear at a Final Fairness Hearing on _____, 2010. To object to the settlement, to plaintiffs' counsels' request for attorneys' fees and costs or to plaintiffs' request for incentive awards, you must file with the District Court (700 Stewart St., Seattle, WA 98101), by no later than _____, 2010, written objections setting forth: (i) your name, address and telephone number; (ii) your Skype ID and/or User Account number(s); (iii) a sentence confirming, under penalty of perjury, that you are a person in the Settlement Class; (iv) the factual basis and legal grounds for your objection; (v) the identity of witnesses you intend to call to testify; and (vi) copies of exhibits you intend to offer into evidence at the Final Fairness Hearing. Copies of all objections also must be mailed to each of the following, postmarked by the last day to file the objection: Plaintiffs' Counsel: Roger Townsend, Esq., Breskin, Johnson & Townsend, PLLC, 1111 Third Avenue, Suite 2230, Seattle, Washington 98101; and counsel for Defendants: Julia B. Strickland, Esq., Stroock & Stroock & Lavan LLP, 2029 Century Park East, Los Angeles, CA 90067.
ASK TO BE EXCLUDED	Get out of this action. Get no benefits from the settlement. Keep your rights to sue. If you ask to be excluded or "opt out," you will not share in the settlement benefits and you will not be permitted to object to the terms of the proposed settlement. But, you will keep any rights you have to sue Defendants separately for the same legal claims asserted in the actions. To be excluded, you must mail a written "opt out" request to the Settlement Administrator at _____, with a postmark of no later than _____, 2010, setting forth the following: (i) your name, address, telephone number; (ii) your Skype ID and/or User Account number(s); (iii) a sentence confirming, under penalty of perjury, that you are a person in the Settlement Class; and (iv) the following statement: "I request to be excluded from the class settlement in <i>Barker v. Skype, Inc., et al.</i> United States District Court for the Western District of Washington, Case No. 2:09-cv-01364-RSM."

This is a Summary Notice. For further information about the proposed Settlement, including copies of the Stipulation and Agreement of Settlement and other court documents, visit [www.***](http://www.*****) or contact Plaintiffs' Counsel. DO NOT CONTACT DEFENDANTS, DEFENDANTS' COUNSEL OR THE DISTRICT COURT.**

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EXHIBIT "B"

CLAIM INFORMATION AND FORM

Barker et al. v. Skype Inc. et al.
United States District Court, Western District of Washington
Case No. 2:09-cv-01364-RSM

Please carefully read the information and directions set forth below to determine if you are eligible for benefits under this settlement.

THE SETTLEMENT CLASS

As defined in **paragraph 3.2**¹ of the Stipulation and Agreement of Settlement (the "Agreement"), the Settlement Class is defined to include:

All current and former users of Skype Communications, S.a.r.l. who are residents of the United States and who purchased Skype Credit that, on at least one occasion prior to _____ [i.e., the Implementation Date, no later than December 31, 2009], expired pursuant to Skype Communications' Skype Credit Expiration Policy.

If you fall within the Settlement Class, you are eligible to make a claim under this settlement.

BENEFITS AVAILABLE UNDER THE AGREEMENT

Skype Credit Voucher: To be eligible to receive the \$4.00 Skype Credit voucher described in **paragraph 3.3(b)** of the Agreement, you must complete and submit on this website a **Claim Form**. Defendants and the Settlement Administrator have the right to verify the validity of the Claim Forms received. The maximum total amount available in the settlement is \$1,850,000, including attorneys' fees and incentive awards. If the valid claims would cause this amount to be exceeded, the amount paid on each claim will be reduced.

THE CLAIM FORM MUST BE COMPLETED IN ITS ENTIRETY FOR A CLAIM TO BE PAID. THE LAST DAY FOR SUBMISSION OF A CLAIM IS _____, 2010. ALL CLAIMS SUBMITTED AFTER THAT DATE WILL BE DENIED.

CLAIMS WILL NOT BE PAID UNTIL THE SETTLEMENT IS FINAL. PLEASE DIRECT ALL OF YOUR QUESTIONS ABOUT THE SETTLEMENT TO THE SETTLEMENT ADMINISTRATOR OR PLAINTIFFS' COUNSEL. DO NOT CONTACT THE COURT, DEFENDANTS OR DEFENDANTS' COUNSEL.

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

¹ Bold, underlined terms will be hyperlinked.

Barker et al. v. Skype Inc. et al.
United States District Court, Western District of Washington, Case No. 2:09-cv-01364-
RSM

CLAIM FORM

In order to be eligible to receive a voucher under this settlement, as described in paragraph 3.3(b) of the Agreement, you must provide all information below. Be advised that you are only permitted to submit one claim.

First Name:* _____

Middle Name: _____

Last Name:* _____

E-Mail Address
Associated With
Your Skype
Account:* _____

Skype Name:* _____

Skype ID Number
And/Or User Account
Number:* _____

Approximate Date(s)
Of Skype Credit
Expiration (if known): _____

YOU ALSO MUST CHECK THE BOX BELOW TO HAVE YOUR CLAIM PROCESSED:

By checking this box, I hereby affirm, under penalty of perjury under the law of the United States, that: (i) I am a resident of the United States; and (ii) I purchased Skype Credit that, on at least one occasion prior to December 31, 2009, expired pursuant to Skype Communications' Skype Credit Expiration Policy.

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EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

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

Plaintiffs,)

vs.)

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

Defendants.)

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

[PROPOSED] ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

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

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

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

NOW, THEREFORE, IT IS HEREBY ORDERED:

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

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

All current and former users of Skype Communications, S.a.r.l. who are residents of the United States and who purchased Skype Credit that, on at least one occasion prior to the Implementation Date, expired pursuant to Skype Communications's Skype Credit expiration policy.

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

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

5. Pursuant to Federal Rule of Civil Procedure 23(g), and after consideration of the factors described therein and/or oral and written arguments, the District Court designates Roger

Townsend, Esq. and Daniel Johnson, Esq. and the law firm of Breskin, Johnson & Townsend, PLLC as Lead Class Counsel, and Scott A. Burroughs, Esq. and the law firm of Doniger/Burroughs APC as additional Class Counsel. The District Court preliminarily finds that, based on the work Class Counsel has done in identifying, investigating and prosecuting the claims in the action, Class Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this action, counsel's knowledge of the applicable law and the resources counsel have and will commit to representing the class, Class Counsel have and will fairly and adequately represent the interests of the Settlement Class. The District Court authorizes Plaintiffs and Class Counsel to enter into the Agreement on behalf of the Settlement Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the District Court of the settlement. Plaintiffs and Class Counsel, on behalf of the Settlement Class, are authorized to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Agreement to effectuate its terms.

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

7. The Final Fairness Hearing shall take place before the Honorable Ricardo S. Martinez on _____, 2010 at ____ a.m./p.m. at the United States District Court, Western District of Washington, Courtroom 13206, 700 Steward Street, Seattle, Washington 98101, to determine: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable as to the Settlement Class Members and should be approved; whether judgment, as provided for in the Agreement, should be entered; and

the amount of fees and costs that should be awarded to Class Counsel, and the amount of the incentive awards to Plaintiffs, as provided for in the Agreement.

8. The District Court approves the form and content of the E-mail Notice (attached as Exhibit A hereto), which will be available on the Administration Site described in paragraph 6.2(c) of the Agreement. Skype Communications and/or the Settlement Administrator shall administer the settlement and provide notice as follows:

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

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

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

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

10. The Administration Site shall be the sole mechanism for Settlement Class Members' submission of claims for benefits relating to this settlement as described in the Agreement. The Internet claim form shall contain substantially all the information set forth in Exhibit B hereto notwithstanding that the format of the claim form is subject to change as may

be necessitated by the technical limitations and security requirements of the Administration Site or the computers used by the Settlement Class Members.

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

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

13. Any Settlement Class Member may appear and show cause if he or she has any reason why the proposed settlement of the Action should or should not be approved as fair, adequate and reasonable, why judgment should not be entered, why attorneys' fees and costs should not be awarded to Class Counsel, or why incentive awards to Plaintiffs should not be allowed; provided, however, that no Settlement Class Member shall be heard, and no objection may be considered, unless, postmarked by no later than thirty (30) days after dissemination of the E-mail Notice, the Settlement Class Member files with the District Court a written statement of the objection. Copies of all objection papers must also be served on: Lead Class Counsel: Daniel Johnson, Esq. and Roger Townsend, Esq., Breskin, Johnson & Townsend, PLLC, 1111 Third Avenue, Suite 2230, Seattle, Washington 98101; and counsel for Defendants: Julia B. Strickland, Esq., Stroock & Stroock & Lavan LLP, 2029 Century Park East, Los Angeles, California 90067. All objections must include: (i) the objector's name, address and telephone

number; (ii) the objector's Skype ID and/or User Account number(s); (iii) a sentence confirming, under penalty of perjury, that the objector is a Settlement Class Member; (iv) the factual basis and legal grounds for the objection to the settlement; (v) the identity of witnesses whom the objector may call to testify at the Final Fairness Hearing; and (vi) copies of exhibits intended to be offered into evidence at the Final Fairness Hearing. Any Settlement Class Member who does not make his or her objection within the time and manner set forth in this paragraph shall be deemed to have waived such objection and shall be foreclosed forever from making any objection to the fairness, adequacy or reasonableness of the proposed settlement, to the award of attorneys' fees and expenses to Class Counsel and to the incentive awards to Plaintiffs.

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

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

16. Pending final determination of whether the settlement should be finally approved, Plaintiffs, all persons in the Settlement Class, and any person or entity allegedly acting on behalf of persons in the Settlement Class, either directly or in a representative or other capacity, are enjoined from commencing or prosecuting against Defendants, or against any of the other Released Parties, any action or proceeding in any court or tribunal asserting any of the Released Claims as described in the Agreement, provided, however, that this injunction shall not apply to individual claims of any persons in the Settlement Class who timely exclude themselves in a manner that complies with paragraph 12 of this Preliminary Approval Order. This injunction applies to, without limitation, all plaintiffs and plaintiffs' counsel in the following matters: (i) Barker v. Skype Inc., et al., Superior Court of the State of Washington, King County, Case No. 08-2-41937-1 SEA.; and (ii) Carness v. Skype, et al., Superior Court of the State of California for the County of Los Angeles, Case No. BC 406723. This injunction is necessary to protect and

effectuate the settlement, this Preliminary Approval Order, and the District Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the District Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. section 1651(a).

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

DATED:

By:

Honorable Ricardo S. Martinez
United States District Judge

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EXHIBIT "D"



Hi prm55556666 • Buy Credit • Sign out • Help •

[Download](#) [Use Skype](#) [Business](#) [Shop](#)



Welcome, prm55556666

This is your account. You can view, manage and activate products and features.

© **£0.00**

This is your Skype Credit balance.



Your Skype Credit expired on 11/5/09. To re-activate your Skype Credit [Click here](#)

You have



Free calls and video

Also available



Call phones



Online number



Skype To Go



Voicemail



Send SMS



Call forwarding



Caller ID



Call phones from Skype

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EXHIBIT "E"



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Skype Credit Expiry

[Back to account](#)

Re-active Skype Credit

Your balance of \$4.20 expired on 12th August 2009 as it was unused for 180 days.
You can re-activate your credit by clicking the button below.

[Re-activate Credit](#)

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EXHIBIT "F"

Preliminary Approval Reached for Nationwide Settlement of Claims Against Skype Communications Ending Policy of Expiring Skype Credits
Date of Preliminary Approval

SEATTLE—A settlement has been preliminarily approved in a nationwide class action arising out of Skype Communication's policy of expiring Skype Credits after non-use for a period of 180 days. The plaintiffs in this case sued on a nationwide basis to seek recovery of Skype Credits that had expired under Skype's policy. Pursuant to the settlement, Skype will make available a process for refunding previously expired Skype Credits to qualified members of the class. Additionally, Skype has agreed to change its policy of terminating Skype Credits. Consumers wishing to make claims in the lawsuit can go to [http://{}>](http://{}). The lawsuit was brought in United States District Court for the Western District of Washington and settlement has been preliminary approved by Judge {}.

Class counsel, Roger Townsend of Breskin Johnson & Townsend, PLLC (www.bjtlegal.com), said the settlement would provide millions of dollars in value to consumers. "Skype's settlement is a good result for consumers and demonstrates Skype's consumer-driven approach. With this settlement, consumers can use their stored Skype credit without worrying about it expiring."

A copy of the settlement agreement and other information is available online at <http://www.bjtlegal.com/{}>>.

Breskin Johnson & Townsend, PLLC, represents employees, consumers, and business owners in employment, consumer protection, civil rights, and intellectual property cases, and is active in major litigation in federal and state courts throughout the United States. For more information about the firm's cases and its attorneys please visit its website at www.bjtlegal.com.

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EXHIBIT "G"

Breskin, Johnson & Townsend Website Language

Settled. Reached nationwide settlement in federal lawsuit against Skype, for alleged violations of state laws due to Skype's policy of expiring consumer credits. Settlement included refunding expired customer credits and a nationwide practice change.

<information / documents> (links to court documents and the Skype link for claims made process)