JS 44 (Rev. 12/12) cand rev (1/15/13)

CIVIL COVER SHEET

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I. (a) PLAINTIFFS
People of the State of California

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

FILING

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Nicole S. Gordon, Deputy Atty General, California Atty General's Office
455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102
Tel: (415) 703-5702

ADR

DEFENDANTS
Intuit, Inc.

County of Residence of First Listed Defendant Santa Clara
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

CV 13-02933

Attorneys *(If Known)*
Margaret A. Ward, Jones Day,
1755 Embarcadero Road, Palo Alto, CA 94303
Tel: (650) 739-3976

PSG

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

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Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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Brief description of cause:
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DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE Edward J. Davila DOCKET NUMBER CV 12-5874-EJD-PSG

DATE 6/26/13
SIGNATURE OF ATTORNEY OF RECORD

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☐ SAN FRANCISCO/OAKLAND ☑ SAN JOSE ☐ EUREKA

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DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

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JUDGE Edward J. Davila DOCKET NUMBER CV 12-5874-EJD-PSG

DATE 6/26/13

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND ☑ SAN JOSE ☐ EUREKA

Attorney General-Office Copy

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Attorney General of California
MARK J. BRECKLER
Chief Assistant Attorney General
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E-mail: Nicole.Gordon@doj.ca.gov
Attorneys for Plaintiff

E-FILING

ADR

ORIGINAL FILED
JUN 26 2013
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **INTUIT, INC.,** Defendant.	Case No.: CV 13-02933 PSG **COMPLAINT FOR VIOLATIONS OF THE SHERMAN ACT, CARTWRIGHT ACT, AND UNFAIR COMPETITION LAW FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

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

INTRODUCTION

1. Kamala D. Harris, Attorney General, State of California, brings this action in her official capacity as the chief law enforcement officer of the State of California against Intuit, Inc. ("Intuit") for entering into a no-solicitation and no-hiring agreement in violation of Section 1 of the Sherman Act, the Cartwright Act, and the California Unfair Competition Law. Pursuant to

the agreement, Intuit and co-conspirator eBay Inc. ("eBay") agreed not to recruit each other's employees and Intuit required that eBay not hire any Intuit employees, even those that approached eBay for a job. This agreement harmed eBay and Intuit employees by lowering the salaries and benefits they might otherwise have commanded, and deprived these employees of better job opportunities at the other company.

2. Senior executives at Intuit and eBay entered into an evolving "handshake" agreement to restrict their ability to recruit and hire employees of the other company. The agreement, which was entered into no later than 2006, prohibited either company from soliciting one another's employees for employment opportunities, and for over a year Intuit prevented eBay from hiring any Intuit employees. The agreement was enforced at the highest levels of each company.

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

4. This agreement between Intuit and eBay is a naked restraint of trade that is *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. It also violates the Cartwright Act and California's Unfair Competition Law. The State of California seeks an order prohibiting any such agreement and other relief.

JURISDICTION AND VENUE

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

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

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

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

PLAINTIFF

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

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

DEFENDANT

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

CO-CONSPIRATORS

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

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

TRADE AND COMMERCE

14. Firms in the same or similar industries often compete to hire and retain talented employees. This is especially true in technology industries in which particular expertise and highly specialized skills sought by one firm can often be found at another firm. Solicitation of skilled employees at other companies is an effective method of competing for needed employees.

15. Intuit's agreement with eBay eliminated this competition. The agreement harmed employees by reducing the salaries, benefits, and employment opportunities they might otherwise have earned if competition had not been eliminated. This elimination of competition harmed the public by preventing employee mobility. The agreement also misallocated labor between Intuit and eBay — companies that drove innovation based in no small measure on the talent of their employees. In a well-functioning labor market, employers compete to attract the most valuable talent for their needs. Competition among employers for skilled employees may increase employees' salaries and benefits, and facilitate employee mobility. The no-solicitation and no-hiring agreement between Intuit and eBay distorted this competitive process and likely resulted in some employees of eBay or Intuit remaining in jobs that did not fully utilize their unique skills.

16. Intuit and eBay initially sought a limited no-solicitation agreement aimed at high-level executives, but ultimately agreed to an expansive no-solicitation and no-hire agreement. Intuit and eBay placed their relationship with each other above the welfare of their employees.

17. Neither Intuit nor eBay took any steps to ensure that employees affected by the agreement knew of its existence, or how it would impact them. Many affected employees reside in California, which has a strong public policy prohibiting firms from restricting employee movement. California law provides that "every contract by which anyone is restrained from

engaging in a lawful profession, trade, or business of any kind is to that extent void." Cal. Bus. & Prof. Code § 16600. As this Court has observed, "California public policy favors employee mobility and freedom." *Bayer Corp. v. Roche Molecular Sys.*, 72 F. Supp. 2d 1111, 1119 (N.D. Cal. 1999). The agreement at issue here undermined such mobility.

THE UNLAWFUL AGREEMENT

18. Beginning no later than 2006, and lasting at least until 2009, Intuit and eBay maintained an illegal agreement that restricted their ability to actively recruit employees from each other, and restricted eBay from hiring any employees from Intuit. This agreement was entered into and enforced at the most senior levels of these companies.

19. In November 2005, Scott Cook, Intuit's Founder and Chairman of the Executive Committee, received a message from eBay's Chief Operating Officer, Maynard Webb, which sought to "get [Mr. Cook's] advice on a specific hiring situation and then see if we could establish some guidelines on an ongoing basis." Under Mr. Webb's proposal, for Intuit candidates "below Senior Director level" who contacted eBay regarding employment, eBay would be permitted to hire them and would give Intuit "notice" only after a candidate accepted a job offer. For Intuit candidates "at Senior Director level or above", eBay would not make an offer unless Intuit was notified in advance. Mr. Cook rejected this proposal insofar as it allowed hiring of any employees without prior notice to Intuit, saying that "we don't recruit from board companies, period" and "[w]e're passionate on this." Mr. Cook committed that Intuit would not make an offer to anyone from eBay without first notifying eBay, and said "[w]e would ask the same."

20. A month later, in December 2005, Mr. Cook and Meg Whitman, the CEO of eBay at the time, discussed the competition for two employees with an eye toward eliminating that competition altogether.

21. No later than August 2006, the initial agreement between Intuit and eBay restricting the hiring of each other's employees was put into effect. Throughout the course of the agreement, Intuit employees were repeatedly denied opportunities to hire or even interview for positions at

eBay, even when eBay had open positions for "quite some time," when the potential employee "look[ed] great," or when "the only guy who was good was from [I]ntuit." eBay employees were instructed to not pursue potential hires that came from Intuit and to discard their resumes. When a candidate applied for a position and told eBay that she had left Intuit, Ms. Axelrod went so far as to write Mr. Cook to confirm that the applicant had, in fact, left the company.

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

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

24. The agreement between Intuit and eBay harmed employees by lowering the salaries and benefits they might otherwise have been offered, and deprived these employees of job opportunities at the other company. Injunctive relief would make clear to eBay that such restraints on the economy of California are not permitted.

VIOLATIONS ALLEGED

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

25. The State of California hereby incorporates paragraphs 1 through 24.

26. Intuit and eBay are direct competitors for employees, including specialized computer engineers and scientists, covered by the agreements at issue here. Intuit and its co-conspirators entered into a naked no-solicitation and no-hire agreement, thereby reducing their ability and

incentive to compete for employees. This agreement suppressed competition between Intuit and its co-conspirators, thereby limiting affected employees' ability to secure better compensation, benefits, and working conditions.

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

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

29. For the purpose of forming and effectuating the alleged agreement, understanding, or conspiracy, Intuit and its co-conspirators did those things that they combined and conspired to do, including, but not limited to the acts, practices, and course of conduct set forth above, and the following, among others:

a. Not actively recruit Intuit or eBay employees; and

b. Not hire Intuit employees.

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

a. Suppressed competition between Intuit, eBay and their co-conspirators for employees;

b. Limited affected employees' ability to secure employment, as well as better compensation, benefits, and working conditions.

31. Natural persons employed in the high tech industry were injured, and will continue to be injured, in their business and property by lower wages and benefits, and fewer opportunities than those to which they would have otherwise had access, as a direct and indirect result of the actions of Intuit and its co-conspirators.

32. Plaintiff is entitled to an injunction against Intuit, preventing and restraining the violations alleged herein, as well as enjoining it from engaging in similar conduct in the future.

II. (VIOLATION OF THE CARTWRIGHT ACT, BUSINESS AND PROFESSIONS CODE SECTION 16720)

33. The State of California hereby incorporates paragraphs 1 through 32.

34. Intuit and its co-conspirators' contract, combination, trust, or conspiracy was substantially carried out and effectuated within the State of California, and Intuit's conduct within California injured natural persons.

35. Beginning at least in or around January, 2006, and continuing thereafter at least up to and including June, 2009, Intuit and its co-conspirators entered into and engaged in a continuing unlawful trust for the purpose of unreasonably restraining trade in violation of Section 16720 of the California Business and Professions Code.

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

37. For the purpose of forming and effectuating the unlawful trust, Intuit and its co-conspirators conspired to:

a. Not actively recruit Intuit or eBay employees; and

b. Not hire Intuit employees.

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

a. Suppressed competition between Intuit and eBay for employees; and

b. Limited affected employees' ability to secure employment, as well as better compensation, benefits, and working conditions.

39. As a direct and proximate result of Intuit's violations of Section 16720 of the California Business and Professions Code, natural persons residing in the State of California were injured in their business and property in that they were deprived of competition between

companies for employees. The State of California brings this claim pursuant to Section 16760 to obtain injunctive relief and recover the costs of this action, including reasonable attorney's fees.

III. (VIOLATION OF THE UNFAIR COMPETITION LAW BUSINESS AND PROFESSIONS CODE SECTION 17200)

40. The State of California hereby incorporates paragraphs 1 through 39.

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

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

a. The violations of Sections 16720, *et seq.*, of the California Business and Professions Code, thus constituting unlawful acts within the meaning of Section 17200 of the California Business and Professions Code; and

b. The violation of Section 16600 of the California Business and Professions Code, thus constituting unfair acts within the meaning of Section 17200 of the California Business and Professions Code.

PRAYER FOR RELIEF

The State of California requests that:

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

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

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

(D) Defendant be permanently enjoined and restrained from establishing any similar agreement unreasonably restricting competition for employees that enforce or adhere to existing agreements that unreasonably restrict competition for employees except as prescribed by the Court;

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

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

(G) Plaintiff be awarded the costs of this action and reasonable attorneys' fees.

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: June 26, 2013

Respectfully submitted,

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Attorneys for Plaintiff