

HONORABLE RICARDO S. MARTINEZ

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THE UNITED STATES DISTRICT COURT
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.

CLASS ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Dated this 17 day of November 2009.

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24 RICARDO S. MARTINEZ
25 UNITED STATES DISTRICT JUDGE
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