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21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN JOSE DIVISION

24 IN RE: HIGH-TECH EMPLOYEE  
25 ANTITRUST LITIGATION  
26 THIS DOCUMENT RELATES TO:  
27 ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Judge: Hon. Lucy H. Koh  
Courtroom: 8, 4th Floor  
Date: March 19, 2015  
Time: 1:30 p.m.

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on March 19, 2015 at 1:30 p.m., or as soon as the matter may be heard in Courtroom 8 of the above-entitled court, Class Representatives Mark Fichtner, Siddharth Hariharan, and Daniel Stover hereby move, pursuant to Federal Rule of Civil Procedure 23(e), for entry of an Order:

1. Preliminarily approving the settlement agreement reached with Adobe Systems, Incorporated, Apple Inc., Google Inc., and Intel Corporation (the "Settlement"), attached as Exhibit 1 to the Declaration of Kelly M. Dermody in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Dermody Decl.").

2. Directing distribution of notice of the Settlement to the class;

3. Appointing Gilardi & Co., LLC as the Notice Administrator; and

4. Scheduling a hearing for final approval of the Settlement.

This motion is made on the grounds that the Settlement is the product of arm's-length, good-faith negotiations; is fair, reasonable, and adequate to the Class; and should be preliminarily approved, as discussed in the Memorandum in Support of the Motion (below).

This motion is based on this Notice of Motion and Motion, the supporting Memorandum in Support of the Motion, the accompanying Declaration of Kelly M. Dermody and exhibits attached thereto, the Declaration of Mark Fichtner, the Declaration of Siddharth Hariharan, the Declaration of Daniel Stover, the Joinder of Class Representative Michael Devine to Motion for Preliminary Approval of Class Action Settlement, the argument of counsel, and all papers and records on file in this matter.

**MEMORANDUM IN SUPPORT OF MOTION****I. INTRODUCTION**

Plaintiffs and Class Representatives Mark Fichtner, Siddharth Hariharan, and Daniel Stover respectfully request that the Court grant preliminary approval of the Settlement reached with Adobe Systems, Incorporated, Apple Inc., Google Inc., and Intel Corporation (“Settling Defendants”), attached as Exhibit 1 to the Declaration of Kelly M. Dermody in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Dermody Decl.”).<sup>1</sup> The Settlement will resolve all of the claims of the Class of employees that the Court certified on October 24, 2013 (Dkt. 531) (the “Class”). The Settlement creates an all-cash fund of \$415,000,000 (the “Settlement Fund”). The amount of this settlement is \$90.5 million more than the parties’ prior settlement (*see* Dkt. 920) and \$35 million more than the \$380 million referenced by the Court in its Order Denying Plaintiffs’ Motion for Preliminary Approval of Settlements (Aug. 8, 2014 Order at 7, n. 8, Dkt. 974). As Class Counsel are not seeking any additional fees or service awards, all of this additional consideration (except any attorneys’ fees awarded to Mr. Devine’s counsel and additional costs incurred) will go to the Class.

Plaintiffs and Settling Defendants reached the Settlement through hard-fought, arm’s-length negotiations after more than three years of litigation, including: substantial investigation by Class Counsel; briefing, argument, and denial of Defendants’ motions to dismiss (Apr. 18, 2012 Order; Dkt. 119); the completion of extensive fact discovery, including the taking of 107 depositions, the review of millions of pages of documents, and analysis of over 50 gigabytes of data consisting of approximately 80,000 different files produced by Defendants (Dermody Decl. ¶ 5); two rounds of class certification briefing and argument, including the exchange of eight expert reports by four economists (Apr. 4, 2013 and Oct. 24, 2013 Orders; Dkts. 382 & 531); completion of expert merits discovery (covering a total of 10 experts across the parties); and briefing, argument, and partial denial of Defendants’ motions for summary judgment and exclusion of expert

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<sup>1</sup> Plaintiff and Class Representative Michael Devine joins this Motion through his separate counsel Daniel Girard. *See* Joinder of Class Representative Michael Devine to Motion for Preliminary Approval of Class Action Settlement (“Devine Joinder”), filed herewith.

1 testimony (Mar. 28, 2014 and Apr. 4, 2014 Orders; Dkts. 771 & 788). In addition, at the time the  
2 Settlement was reached, the parties had submitted a prior settlement for preliminary approval,  
3 which was denied by the Court (Dkt. 974), completed briefing on Settling Defendants' Petition for  
4 Writ of Mandamus, seeking an order from the United States Court of Appeals for the Ninth Circuit  
5 reversing the Court's order denying preliminary approval of the prior proposed settlement, which  
6 Petition had been set for oral argument on March 13, 2015. (9th Cir. Case No. 14-72745, Dkts. 1, 4,  
7 6, 10, & 19.) The proposed notice provides Class members with the best notice practicable under  
8 the circumstances and will allow each Class member a full and fair opportunity to evaluate the  
9 Settlement and decide whether to participate. Settling Defendants do not oppose this motion and  
10 will cooperate in the settlement process.

11 By this motion, Plaintiffs request that the Court: (1) preliminarily approve the Settlement;  
12 (2) approve the proposed plan of notice to the Class; (3) appoint Gilardi & Co., LLC as the Notice  
13 Administrator; (4) set a schedule for disseminating notice to Class members, as well as deadlines to  
14 comment on, object to, or opt out of, the Settlement; and (5) schedule a hearing pursuant to Rule  
15 23(e) of the Federal Rules of Civil Procedure to determine whether the proposed Settlement is fair,  
16 reasonable, and adequate and should be finally approved.<sup>2</sup>

## 17 **II. PROCEDURAL HISTORY**

18 Plaintiffs Mark Fichtner, Siddharth Hariharan, Daniel Stover, and Michael Devine  
19 (collectively, "Plaintiffs" or "Class Representatives") are former technical employees of  
20 Defendants. Like the Class they represent, each worked for a Defendant while that Defendant  
21 allegedly participated in at least one alleged unlawful agreement with another Defendant. Plaintiffs  
22 challenge agreements among Defendants—all horizontal competitors for the services of Plaintiffs  
23 and Class members—to reduce employee compensation and mobility through eliminating  
24 competition for labor. The complaint alleges that Defendants entered into the following types of  
25

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26 <sup>2</sup> Prior to final approval and the deadline for objections to the Settlement, Plaintiffs will also move  
27 for payment of litigation costs, attorneys' fees, and service awards for the Class Representatives.  
28 Counsel for Plaintiff Michael Devine may apply separately to the Court for attorneys' fees and  
reimbursement of expenses, which, if awarded, shall be paid out of the Settlement Fund separately  
from the attorneys' fees and litigation costs to Class Counsel.

1 express agreements: (1) illegal agreements not to recruit each other's employees; (2) illegal  
2 agreements to notify each other when making an offer to another's employee; and (3) illegal  
3 agreements that, when offering a position to another company's employee, neither company would  
4 counteroffer above the initial offer. (Complaint ¶¶ 55-107.) Plaintiffs also allege that each  
5 Defendant entered into, implemented, and enforced each express agreement with knowledge of the  
6 other Defendants' participation, and with the intent of accomplishing the conspiracy's objective: to  
7 reduce employee compensation and mobility by eliminating competition for skilled labor. (*Id.*  
8 ¶¶ 55, 108-110.) Plaintiffs seek compensation for violations of Section 1 of the Sherman Act,  
9 15 U.S.C. § 1, and the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, *et seq.* (*Id.* ¶¶ 119-164.)

10 After the Court consolidated the Plaintiffs' individual lawsuits, Plaintiffs filed their  
11 Consolidated Amended Complaint on September 13, 2011. (Dkt. 65.) Defendants challenged the  
12 pleadings. All Defendants jointly, and Lucasfilm separately, moved to dismiss Plaintiffs' claims.  
13 (Dkts. 79 & 83.) The Court denied both motions, with the exception that Plaintiffs' UCL claim for  
14 restitution and disgorgement was dismissed for failure to allege a vested interest. (Apr. 18, 2012  
15 Order; Dkt. 119.)

16 After adjustments to the case management schedule, Plaintiffs filed their first motion for  
17 class certification on October 1, 2012. (Pls.' Mot. For Class Cert.; Dkt. 187.) Plaintiffs proposed  
18 an "All-Employee Class," as well as an alternative class of salaried technical, creative, and research  
19 and development employees: the "Technical Class." (*Id.* at 1.) After the Court took the motion  
20 under submission, Plaintiffs continued discovery, conducting numerous depositions, and collecting  
21 voluminous documents. The Court required the parties to file discovery status reports on an  
22 ongoing basis. (Jan. 17, 2013 and Mar. 13, 2013 Case Management Orders; Dkts. 282 & 350.)

23 After the Court lifted a discovery stay in January 2012, the parties completed broad,  
24 extensive, and thorough discovery related to both class certification and the merits. Plaintiffs  
25 served 75 document requests, in response to which Defendants collectively produced over 325,000  
26 documents (over 3.2 million pages), and took 93 depositions of Defendant witnesses. (Dermody  
27 Decl. ¶ 4.) Plaintiffs also served 28 subpoenas on third parties, negotiated with those third parties,  
28 and received 8,809 pages of documents from them. Defendants also propounded document

1 requests, in response to which Plaintiffs produced over 31,000 pages, and took the depositions of  
2 the Named Plaintiffs. (*Id.*) Defendants served 34 subpoenas on third parties, including the  
3 then-current and former employers of the Named Plaintiffs. (*Id.*) Defendants' subpoenas resulted  
4 in 1,834 pages of documents produced, which Plaintiffs' counsel also reviewed. (*Id.*)

5 With expert assistance, Plaintiffs' counsel analyzed vast amounts of computerized  
6 employee compensation and recruiting data, including approximately 80,000 files of  
7 employment-related data exceeding 50 gigabytes. (Dermody Decl. ¶ 5.) Plaintiffs' counsel  
8 retained four experts and numerous consultants to review and analyze this data, documents  
9 produced in the action, deposition testimony, and other relevant facts; apply their relevant expertise  
10 to those facts; and form opinions regarding a range of assigned tasks. (*Id.*) Those experts included  
11 Dr. Edward Leamer of the University of California, Los Angeles, who provided six expert reports  
12 consisting of 433 pages of analysis. (*Id.*) Defendants took four depositions of Dr. Leamer  
13 regarding his opinions. (*Id.*) Plaintiffs retained Dr. Kevin Hallock of Cornell University, who  
14 provided two expert reports consisting of 232 pages of analysis. Defendants took two depositions  
15 of Dr. Hallock. (*Id.*) Plaintiffs also retained Dr. Alan Manning of the London School of  
16 Economics, who provided one expert report, and Dr. Matthew Marx of the Sloan School of  
17 Management at the Massachusetts Institute of Technology, who provided two expert reports.  
18 Defendants also deposed, and Plaintiffs defended the depositions of, Dr. Manning and Dr. Marx.  
19 (*Id.*)

20 Plaintiffs' counsel and their experts also reviewed and analyzed the expert analysis  
21 Defendants submitted. Defendants retained seven experts, who collectively submitted a total of  
22 1,733 pages of expert reports, including detailed and extensive quantitative analysis. (Dermody  
23 Decl. ¶ 6.) Plaintiffs' experts assessed these reports and provided responses to them. (*Id.*)  
24 Plaintiffs' counsel deposed every defense expert, including multiple depositions for some expert  
25 witnesses. (*Id.*)

26 Fact and expert discovery, which is complete, has been thorough, and has required the  
27 parties to engage in numerous and extensive meetings and conferences concerning the scope of  
28

1 discovery and the analysis of the various electronic data, policy documents, and other files  
2 produced. (Dermody Decl. ¶ 7.)

3 On April 5, 2013, the Court issued its Order Granting in Part and Denying in Part Plaintiffs'  
4 Motion for Class Certification. (Dkt. 382.) The Court found that Plaintiffs satisfied Federal Rule  
5 of Civil Procedure 23(a), and satisfied Rule 23(b)(3) as to conspiracy and damages. The Court  
6 found that "the adjudication of Defendants' alleged antitrust violation will turn on overwhelmingly  
7 common legal and factual issues." (*Id.* at 13.) Furthermore, after a detailed inquiry, the Court held  
8 that a statistical regression analysis prepared by Plaintiffs' expert "provides a plausible  
9 methodology for showing generalized harm to the class as well as estimating class-wide damages."  
10 (*Id.* at 43.)

11 The Court requested further briefing on whether the Rule 23(b)(3) predominance standard  
12 was met with respect to the common impact on the proposed class. (*Id.* at 45.) Though the Court  
13 did not find predominance satisfied as to common impact, the Court acknowledged that the  
14 documentary evidence "weighs heavily in favor of finding that common issues predominate over  
15 individual ones for the purpose of being able to prove antitrust impact." (*Id.* at 33.) The Court  
16 requested additional briefing to address this remaining concern: "the Court believes that, with the  
17 benefit of discovery that has occurred since the hearing on this motion, Plaintiffs may be able to  
18 offer further proof to demonstrate how common evidence will be able to show class-wide impact to  
19 demonstrate why common issues predominate over individual ones." (*Id.* at 45.)

20 Plaintiffs filed a Supplemental Motion for Class Certification to address the Court's  
21 request. (Dkts. 418 & 455.) Plaintiffs marshaled additional documentary evidence, testimony, and  
22 expert analyses. (Decl. of Dean M. Harvey, Dkt. 418-1; Decl. of Lisa J. Cisneros, Dkt. 418-2;  
23 Leamer Supp., Dkt. 418-4; Hallock Rpt., Dkt. 418-3; Decl. of Anne B. Shaver, Dkt. 456; and  
24 Leamer Supp. Reply, Dkt. 457.) Plaintiffs submitted additional evidence that the no-cold calling  
25 agreements at issue in this case were designed substantially to disrupt recruiting of Technical Class  
26 employees. Accordingly, Plaintiffs focused their supplemental briefing and analysis on  
27 demonstrating impact to all or nearly all of the Technical Class. Defendants opposed the motion  
28 and submitted supplemental briefing, expert reports, and documents in support of their opposition.

1 (Opp. to Supp. Mot. for Class Cert., Dkt. 439; Decl. of Christina Brown, Dkt. 445; Decl. of Lin  
2 Kahn, Dkt. 446; Murphy Supp. Rpt., Dkt. 440; Shaw Rpt., Dkt. 442.) The Court granted Plaintiffs'  
3 Supplemental Motion on October 24, 2013.<sup>3</sup> (Dkt. 531.)

4 Plaintiffs reached settlement agreements with Defendants Lucasfilm and Pixar, and with  
5 Defendant Intuit, and presented those settlements to the Court on September 21, 2013. (Dkt. 501.)  
6 On October 30, 2013, the Court granted preliminary approval of the settlements. (Dkt. 540.)  
7 Plaintiffs' Motions for Final Approval, Attorneys' Fees and Costs, and Service Awards with  
8 respect to those settlements have been resolved, after a hearing on May 1, 2014. (Dkts. 915 & 916.)

9 The Settling Defendants filed individually and collectively for summary judgment (on the  
10 grounds that Plaintiffs had not marshaled sufficient evidence that each of the defendants had  
11 participated in an overarching conspiracy to suppress compensation), for exclusion of the  
12 testimony of two of Plaintiffs' experts, Dr. Edward Leamer and Dr. Matthew Marx under *Daubert*,  
13 and to strike portions of Dr. Leamer's reply report as improper rebuttal. (Dkts. 554, 556, 557, 559,  
14 560, 561, 564, & 570.) The Court denied all motions for summary judgment. (Dkts. 771 & 788.)  
15 The Court granted in part and denied in part the motions to exclude Dr. Leamer's testimony and  
16 strike portions of his reply report. (Dkt. 788.) Plaintiffs filed a motion for application of the *per se*  
17 standard with supporting evidence (Dkt. 830), and Defendants opposed it (Dkt. 887). Defendants  
18 moved *in limine* to exclude various categories of evidence (Dkt. 855), and Plaintiffs opposed their  
19 motions (Dkt. 882). Plaintiffs also moved to compel production of a document, the identity of  
20 which remains under seal (Dkt. 789-2), and Defendants opposed it (Dkt. 878-1). Plaintiffs' counsel  
21 also prepared extensively for trial, including by retaining a highly-experienced jury consultant to  
22 assist with jury research and selection. (Dermody Decl. ¶ 9.)

23 On May 22, 2014, Plaintiffs Mark Fichtner, Siddharth Hariharan, and Daniel Stover moved  
24 the Court to preliminarily approve a settlement agreement with Settling Defendants providing for a  
25 settlement fund of \$324,500,000. Plaintiff Michael Devine opposed the settlement. The Court  
26 denied preliminary approval on August 8, 2014. (Dkt. 974.) Thereafter, the parties resumed

27 \_\_\_\_\_  
28 <sup>3</sup> The Ninth Circuit denied Defendants' Petition for review pursuant to Rule 23(f) on January 15,  
2014.

1 arm's-length negotiations with the assistance of mediator Hon. Layn Phillips (Ret.), while  
2 continuing to litigate pre-trial matters. Plaintiffs filed a reply in support of their motion for  
3 application of the *per se* standard (Dkt. 988), and Defendants requested leave to file a supplemental  
4 opposition (Dkts. 990 & 990-1), which was granted (Dkt. 1023). Plaintiffs also filed a motion to  
5 unseal all papers associated with their motion to compel (Dkt. 991), which Defendants opposed  
6 (Dkt. 994; *see also* Dkt. 1029).

7         Meanwhile, on September 4, 2014, Defendants filed a Petition for a Writ of Mandamus with  
8 the United States Court of Appeals for the Ninth Circuit, seeking an order vacating the Court's  
9 denial of preliminary approval and directing the Court to preliminarily approve the \$324,500,000  
10 settlement. (9th Cir. Case No. 14-72745, Dkt. 1.) On September 22, 2014, the Ninth Circuit issued  
11 an order stating that Defendants' "petition for a writ of mandamus raises issues that warrant a  
12 response," ordered Plaintiffs to file a response, set a date for Defendants' reply, and ordered that  
13 upon completion of briefing the matter be placed on the next available merits panel calendar for  
14 oral argument. (9th Cir. Dkt. 2; Dkt. 993.) Plaintiffs (and Michael Devine separately) opposed  
15 Defendants' petition (9th Cir. Dkts. 4 & 6), and Defendants filed a reply (9th Cir. Dkt. 10). Putative  
16 amici curiae Chamber of Commerce of the United States of America, California Chamber of  
17 Commerce, and economic scholars filed motions for leave to file amici curiae briefs in support of  
18 the petition (9th Cir. Dkts. 8 & 9), which the Ninth Circuit referred to the panel to be assigned to  
19 hear the merits of the petition (9th Cir. Dkt. 15). Plaintiffs (and Michael Devine separately)  
20 opposed the motions for leave to file amici curiae briefs. (9th Cir. Dkts. 13 & 16.) The Ninth  
21 Circuit scheduled oral argument on the petition for March 13, 2015. (9th Cir. Dkt. 19.)

22         At the time of the current Settlement, the following motions remained pending: Defendants'  
23 motion to exclude Dr. Marx's testimony; Plaintiffs' motion to exclude Defendants' experts'  
24 testimony; Plaintiffs' motion for application of the *per se* standard; Defendants' motions *in limine*;  
25 and Plaintiffs' motion to compel. In addition, Plaintiffs and Defendants have continued to engage  
26 in the exchange of extensive pretrial disclosures and conferences regarding trial exhibits, witnesses,  
27 the joint pretrial statement, the authentication of business records and potential depositions related  
28 thereto, and many other issues. (Dermody Decl. ¶ 12.)

1 **III. SETTLEMENT NEGOTIATIONS**

2 Plaintiffs and the Settling Defendants engaged in extensive mediated negotiations to  
 3 resolve the dispute. Initially, mediation was conducted by David Rotman. After a number of  
 4 sessions, those efforts were unsuccessful. Subsequently, the parties retained the services of  
 5 experienced mediator Hon. Layn Phillips (retired). Plaintiffs and Settling Defendants conducted a  
 6 day-long mediation supervised by Judge Phillips on February 17, 2014. (Dermody Decl. ¶ 10.)  
 7 After two months of negotiations facilitated by Judge Phillips, Plaintiffs executed a Memorandum  
 8 of Understanding with all Settling Defendants on April 24, 2014. (*Id.*) After the Court denied  
 9 preliminary approval of that proposed settlement agreement on August 8, 2014, Judge Phillips  
 10 continued to facilitate negotiations between Plaintiffs, including Plaintiff Michael Devine, and  
 11 Settling Defendants, all of whom reached a new agreement on January 7, 2015. (*Id.* ¶¶ 11-13.)

12 Plaintiffs and the Settling Defendants exchanged several drafts of the final Settlement  
 13 Agreement and related settlement documents before the parties came to final agreement as to each.  
 14 (*Id.* ¶ 13.) At all times during the negotiation process, counsel for Plaintiffs and the Settling  
 15 Defendants bargained vigorously and at arm's length on behalf of their clients. (*Id.* ¶ 15.) All  
 16 Named Plaintiffs and Class Representatives support this Settlement. (*See* Fichtner Decl. ¶¶ 4-6;  
 17 Hariharan Decl. ¶¶ 4-6; Stover Decl. ¶¶ 4-6; Devine Joinder.)

18 **IV. TERMS OF THE SETTLEMENT**

19 The Settlement resolves all claims of Plaintiffs and the Class against the Settling  
 20 Defendants. The details are contained in the attached Settlement Agreement. (Dermody Decl.,  
 21 Ex. 1 ("Settlement Agreement").) The key terms of the Settlement are described below.

22 **A. Settlement Sums and Additional Consideration**

23 Settling Defendants will pay \$415,000,000 to resolve the claims of Plaintiffs and the Class.<sup>4</sup>  
 24 Settling Defendants will deposit an initial sum of \$1,000,000 from the Settlement amount into an

25 \_\_\_\_\_  
 26 <sup>4</sup> Settling Defendants will be entitled to a pro rata reduction of this amount in the event that 4% or  
 27 more of Class members properly exclude themselves from the action. (Settlement Agreement  
 28 § VIII.T.) It is very unlikely that Class member exclusions will reach this threshold. By way of  
 example, only 147 Class members, or 0.23% of all Class members, excluded themselves from  
 Plaintiffs' prior settlements with Intuit, Pixar, and Lucasfilm. Regardless, if such reduction occurs,  
 it will not affect the per capita recovery of the Class, as the Settlement Fund will decrease

1 escrow account (the “Notice Fund”), held and administered by an escrow agent, within 10 days of  
 2 preliminary settlement approval. Class Counsel have selected Citibank, N.A. to be appointed the  
 3 escrow agent, with the consent of the Settling Defendants and subject to the approval of the Court.  
 4 The Notice Fund will be utilized in accordance with applicable orders of the Court for notice and  
 5 administration costs. (Settlement Agreement § III.A.) Any money remaining in the Notice Fund  
 6 after payment of notice and administration costs will be distributed with other Settlement funds.  
 7 (*Id.*) If the Settlement is finally approved, Settling Defendants will pay the remaining  
 8 amount—\$414,000,000, subject to any pro rata reduction, if applicable—into the escrow account  
 9 within the longer of 7 calendar days or 5 business days of the Effective Date.<sup>5</sup> (*Id.*) The Settlement  
 10 Fund will be utilized in accordance with applicable orders of the Court for payment of Class  
 11 member settlement shares, Class Representative service awards (if approved), and Court-approved  
 12 attorneys’ fees, costs, and litigation expenses (if approved).

13 **B. Monetary Relief to Class Members**

14 Each Class member will receive a share of the Settlement Fund. No Class member will be  
 15 required to submit a claim to participate. The Settlement Fund will be distributed based upon the  
 16 following plan of allocation (Settlement Agreement, Ex. B):

17 Class Members who do not opt out will be eligible to receive a share of the Settlement Fund  
 18 net of all applicable reductions based on a formula using a Class Member’s base salary paid on the  
 19 basis of employment in a “Class Position” within the “Class Period” as set forth in the Class  
 20 definition. In other words, each Class Member’s share of the Settlement Fund is a fraction, with the  
 21 Class Member’s total base salary paid on the basis of employment in a Class Position during the  
 22 Class Period as the numerator and the total base salary paid to all Class Members on the basis of  
 23 employment in a Class Position during the Class Period as the denominator:

24 (Class Member’s individual total base salary paid on the basis of  
 25 employment in Class Positions during the Class Period) ÷ (Total of  
 26 base salaries of all Class Members paid on the basis of employment  
 in Class Positions during the Class Period).

27 *Footnote continued from previous page*  
 consistent with the decrease in Class members, capped at 4% even if more than 4% exclude  
 themselves.

28 <sup>5</sup> The Settlement Agreement defines the “Effective Date” in § II.F.

1 Each Class Member's fraction shall be multiplied against the Settlement Fund net of  
2 court-approved costs, service awards, and attorneys' fees and expenses, and the Dispute Fund.

3 There will be no reversion of Settlement funds to any Settling Defendant.

4 **C. Release of All Claims Against the Settling Defendants**

5 In exchange for the Settling Defendants' monetary consideration, upon entry of a final  
6 judgment approving the proposed Settlement, Plaintiffs and the Class will release the Settling  
7 Defendants and all Released Parties from all claims arising from or related to the facts, activities or  
8 circumstances alleged in the Consolidated Amended Complaint (Dkt. 65) or any other purported  
9 restriction on competition for employment or compensation of Class Representatives or Class  
10 members, up to the Effective Date of the Settlement, whether or not alleged in the Consolidated  
11 Amended Complaint, as described in the Settlement Agreement. (Settlement Agreement § V.)

12 **D. Attorneys' Fees and Costs**

13 The Settlement recognizes that Class Counsel may seek attorneys' fees and reimbursement  
14 of costs and expenses incurred in the prosecution of this action. (Settlement Agreement § VII.)  
15 Pursuant to the Settlement, Class Counsel will look solely to the Settlement Fund for satisfaction of  
16 such fees and costs. (*Id.*) Class Counsel intend to move for attorneys' fees and costs separately and  
17 prior to the motion for final approval and the deadline for objections to the Settlement, with a  
18 request for reimbursement of costs not to exceed \$1,200,000 and attorneys' fees not to exceed  
19 \$81,125,000 (approximately 19.54%) of the total Settlement Fund, below the Ninth Circuit  
20 benchmark of twenty-five percent. *See Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268,  
21 272 (9th Cir. 1989). (Dermody Decl. ¶ 19.)

22 Counsel for Plaintiff Michael Devine will apply separately to the Court for attorneys' fees  
23 and reimbursement of expenses, which, if awarded, shall be paid out of the Settlement Fund  
24 separately from the Attorneys' Fees and Expenses to Class Counsel. (Settlement Agreement  
25 § VII.)

26 **E. Class Representative Service Payments**

27 At the same time as moving for attorneys' fees and costs, Class Counsel will also seek  
28 reasonable service award payments of \$80,000 for each of the Named Plaintiffs for their services as

1 Class Representatives, to be paid from the Settlement Fund at the time when the Fund is distributed  
2 and claims are paid.<sup>6</sup> These proposed service awards will be in addition to any monetary recovery  
3 to the Class Representatives pursuant to the plan of allocation.

4 “The purpose of these payments is to compensate named plaintiffs for the services they  
5 provided and the risks they incurred during the course of class action litigation, and to reward the  
6 public service of contributing to the enforcement of mandatory laws.” *Sullivan v. DB Invs., Inc.*,  
7 667 F.3d 273, 333 n.65 (3d Cir. 2011) (en banc) (affirming antitrust class action settlement with  
8 common fund of \$295 million, providing for service awards of \$85,000 to each of two class  
9 representatives) (quotation omitted), *cert. denied*, 132 S. Ct. 1876 (2012). *See also Staton v.*  
10 *Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (“[N]amed plaintiffs . . . are eligible for reasonable  
11 incentive payments”).

12 The requested service awards are reasonable and appropriate here. First, the Class  
13 Representatives have expended substantial time and effort in assisting Class Counsel with the  
14 prosecution of the Class’s claims.<sup>7</sup> They have responded to extensive document requests on their  
15 lifetime employment history well beyond their experience with Defendants here and without regard  
16 to time period (and across all variety of physical and electronic locations); produced over 31,000  
17 pages of documents; responded to interrogatories; given full-day depositions; attended hearings  
18 and mediations; and have otherwise devoted hundreds of hours consulting with Class Counsel  
19 regarding fact development and strategy. Dermody Decl. ¶ 18; Fichtner Decl. ¶¶ 7-8; Hariharan  
20 Decl. ¶¶ 7-8; Stover Decl. ¶¶ 7-8.

21 Second, the Class Representatives—all of whom worked in technical positions for  
22 Defendants—incurred the substantial risks and costs of taking on leadership roles in this visible  
23 litigation against seven of the most prominent technology firms in the world. This case is unusual  
24 in that it combines the risk of two types of class actions, employment and antitrust, that courts have

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25 <sup>6</sup> Class Counsel include Brandon Marshall’s estate in this request, as well as Plaintiff Michael  
26 Devine unless he submits a separate request through his own counsel.

27 <sup>7</sup> Although the Class Representatives received modest service awards in connection with the prior  
28 partial settlements reached in July 2013 with Intuit, Lucasfilm, and Pixar, their service to the Class  
was extensive, continued throughout these proceedings from beginning until now, and was not  
fully recognized by the prior awards.

1 recognized pose heightened threats to class representatives. When a class representative is a  
2 “present or past employee” of a defendant, the class representative’s “present position or  
3 employment credentials or recommendation may be at risk by reason of having prosecuted the suit,  
4 who therefore lends his or her name and efforts to the prosecution of litigation at some personal  
5 peril.” *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 201 (S.D.N.Y. 1997). *See also* Nantiya Ruan,  
6 *Bringing Sense to Incentives: An Examination of Incentive Payments to Named Plaintiffs in*  
7 *Employment Discrimination Class Actions*, 10 *Employment Rights and Employment Policy*  
8 *Journal* 395, 396-397 (2006) (In addition to assuming responsibilities related to the investigation  
9 and discovery of their case, “[e]mployees, former and current, take huge risks when they agree to  
10 be named plaintiffs in a class action bringing legal claims of unlawful bad acts by employers.  
11 Retaliation, isolation, ostracism by co-workers, ‘black listing’ by future employers, emotional  
12 trauma, and fear of having to pay defendants’ legal fees are among the most obvious.”).  
13 Accordingly, courts have approved service payments to current and former employee-class  
14 representatives of defendants that have exceeded the amount Plaintiffs request here. *Texaco*, 979 F.  
15 Supp. at 188 (authorizing incentive awards ranging up to \$85,000 in nationwide employment  
16 discrimination class action from a common fund of \$115 million); *Velez v. Novartis Pharms. Corp.*,  
17 No. 04 Civ. 09194 (CM), 2010 U.S. Dist. LEXIS 125945, at \*73 (S.D.N.Y. Nov. 30, 2010)  
18 (granting service payments of \$125,000 to each of 26 named plaintiffs); *Ingram v. The Coca-Cola*  
19 *Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (awarding \$300,000 service payments to each of four  
20 representative plaintiffs); *Beck, et al. v. Boeing Co.*, Case No. 00-CV-0301-MJP, Dkt. 1067 at 4  
21 (W.D. Wash Oct. 8, 2004) (awarding \$100,000 service payments to each of the named plaintiffs).<sup>8</sup>  
22 These concerns are particularly strong in this high-profile action, where the Class Representatives’  
23 roles are unusually visible and easily verified by current and potential employers with nothing more  
24 than a web search.

25 The Class Representatives faced additional risks because this is an antitrust case. By  
26 definition, antitrust cases are brought against defendants with power in the markets in which

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27  
28 <sup>8</sup> Dermody Decl., Ex. 2.

1 plaintiffs were injured—here, the market for high-tech employment. This is not a case challenging  
2 the employment practices of small and obscure companies. Each Defendant here is a powerful  
3 employer of high-tech employees in its own right. Collectively, the seven Defendants wield  
4 tremendous power and influence in the high-technology industry. In addition, Defendants served  
5 subpoenas on 27 other high-technology companies, each of which employed a Class  
6 Representative, seeking broad categories of information regarding each Class Representative’s job  
7 history, performance, and personnel files. Plaintiffs’ request is consistent with service payments  
8 granted in other antitrust cases. *See, e.g., Marchbanks Truck Serv. v. Comdata Network, Inc.*, Case  
9 No. 07-CV-1078, Dkt. 713 at 8 (E.D. Pa. July 14, 2014) (approving class action settlement,  
10 including service payment of \$150,000 to lead class representative); *In re Titanium Dioxide*  
11 *Antitrust Litig.*, No. 10-CV-00318 (RDB), 2013 U.S. Dist. LEXIS 176099, at \*8 (D. Md. Dec. 13,  
12 2013) (granting service award to lead class representative of \$125,000); *Sullivan v. DB Invs., Inc.*,  
13 Case No. 04-2819 (SRC), 2008 U.S. Dist. LEXIS 81146, at \*108 (D.N.J. May 22, 2008) (approving  
14 service payments to class representatives, including \$85,000 to two lead representatives of direct  
15 purchaser class), *affirmed en banc*, *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir.  
16 2011), *cert. denied*, 132 S. Ct. 1876 (2012); *Ivax Corp. v. Aztec Peroxides, LLC, et al.*, Case No.  
17 02-CV-00593 (D.D.C. Aug. 24, 2005) (awarding service payments to each class representative of  
18 \$100,000 each).<sup>9</sup>

19 Third, the class representatives should be rewarded for their “public service of contributing  
20 to the enforcement of mandatory laws.” *Sullivan*, 667 F.3d at 333 n.65. Here, while the DOJ  
21 obtained a stipulated judgment that enjoined the misconduct at issue going forward, the DOJ did  
22 not obtain any fines from the Defendants, nor compensation for any of Defendants’ employees.  
23 Without the Class Representatives’ willingness to take the risks of filing class action lawsuits, no  
24 recovery would have been possible. As this Court explained, the “Supreme Court has long  
25 recognized that class actions serve a valuable role in the enforcement of antitrust laws.” *In re*  
26 *High-Tech Emp. Antitrust Litig.*, 289 F.R.D. 555, 563 (N.D. Cal. 2013) (citing *Reiter v. Sonotone*  
27

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28 <sup>9</sup> Dermody Decl., Ex. 3.

1 Corp., 442 U.S. 330, 344 (1979)); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262 (1972)). As a  
2 result of the Class Representatives coming forward here, the Defendants will pay a total of  
3 \$415,000,000 (on top of the \$20 million already secured) into a common fund for the benefit of the  
4 Class.

5 Finally, the requested service awards are appropriate when compared to the substantial  
6 recovery achieved. Courts assessing the reasonableness of requests for service awards may  
7 compare the request against the size of the settlement fund. *See, e.g., Novartis Pharms.*, No. 04  
8 Civ. 09194 (CM), 2010 U.S. Dist. LEXIS 125945, at \*22-23 (“Plaintiffs seek, therefore, a total of  
9 \$3,775,000.00 in service award payments, which represents only approximately 2.4 percent of the  
10 entire monetary award of \$152.5 million (or approximately 2.1 percent of the entire value of the  
11 settlement of \$175 million).”). Plaintiffs’ requested service awards here collectively represent only  
12 about 0.096% (*i.e.*, less than a tenth of 1%) of the proposed settlement fund.

13 The Court should preliminarily approve service payments to each Class Representative of  
14 \$80,000 to compensate them for their substantial time and effort, the significant risks they  
15 undertook on behalf of the Class with no guarantee that they would receive anything in return, and  
16 the valuable public service they provided to enforce the nation’s antitrust laws.

## 17 **V. LEGAL ARGUMENT**

### 18 **A. Class Action Settlement Procedure**

19 A class action may not be dismissed, compromised, or settled without the approval of the  
20 Court. Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a defined  
21 procedure and specific criteria for approval of class action settlements. The Rule 23(e) settlement  
22 approval procedure describes three distinct steps where, as here, a class has already been certified:

- 23 1. Preliminary approval of the proposed settlement;
  - 24 2. Dissemination of notice of the settlement to all affected class members; and
  - 25 3. A formal fairness hearing, also called the final approval hearing, at which class  
26 members may be heard regarding the settlement, and at which counsel may introduce evidence and  
27 present argument concerning the fairness, adequacy, and reasonableness of the settlement.
- 28

1 This procedure safeguards class members' procedural due process rights and enables the  
2 Court to fulfill its role as the guardian of class interests. *See 4 Newberg on Class Actions* §§ 11.22,  
3 *et seq.* (4th ed. 2002) ("*Newberg*") (describing class action settlement procedure).

4 By way of this Motion, the parties request that the Court take the first step in the settlement  
5 approval process and preliminarily approve the proposed Settlement.

6 **B. Standards for Preliminary Settlement Approval**

7 Rule 23(e) requires court approval of any settlement of claims brought on a class basis.  
8 "[T]here is an overriding public interest in settling and quieting litigation . . . particularly . . . in  
9 class action suits[.]" *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also*  
10 *Churchill Village, LLC v. General Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific Enters.*  
11 *Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); and *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,  
12 1276 (9th Cir. 1992). Courts recognize that as a matter of sound policy, settlements of disputed  
13 claims are encouraged and a settlement approval hearing should "not . . . be turned into a trial or  
14 rehearsal for trial on the merits." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th  
15 Cir. 1982), *cert. denied sub nom. Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). Furthermore,  
16 courts must give "proper deference" to the settlement agreement, because "the court's intrusion  
17 upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit  
18 must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the  
19 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the  
20 settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler*  
21 *Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (quotation omitted).

22 The purpose of the Court's preliminary evaluation of the proposed settlement is to  
23 determine whether it is within "the range of reasonableness," and thus whether notice to the class of  
24 the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are  
25 worthwhile. Preliminary approval should be granted where "the proposed settlement appears to be  
26 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not  
27 improperly grant preferential treatment to class representatives or segments of the class and falls  
28 within the range of possible approval." *In re NASDAQ Market Makers Antitrust Litig.*, 176 F.R.D.

1 99, 102 (S.D.N.Y. 1997). Application of these factors here support an order granting the motion for  
2 preliminary approval.

3 To grant preliminary approval of the proposed Settlement, the Court need only find that it  
4 falls within “the range of reasonableness.” *Newberg* § 11.25. The Manual for Complex Litigation  
5 (Fourth) (2004) (“*Manual*”) characterizes the preliminary approval stage as an “initial evaluation”  
6 of the fairness of the proposed settlement made by the court on the basis of written submissions and  
7 informal presentation from the settling parties. *Manual* § 21.632. A proposed settlement may be  
8 *finally* approved by the trial court if it is determined to be “fundamentally fair, adequate, and  
9 reasonable.” *City of Seattle*, 955 F.2d at 1276 (quotation omitted). While consideration of the  
10 requirements for *final* approval is unnecessary at this stage, all of the relevant factors weigh in favor  
11 of the Settlement proposed here. As shown below, the proposed Settlement is fair, reasonable and  
12 adequate. Therefore, the Court should allow notice to be disseminated to the Class.

13 **C. The Proposed Settlement Is Within the Range of Reasonableness**

14 The parties’ proposed Settlement meets the standards for preliminary approval. First, the  
15 Settlement is entitled to “an initial presumption of fairness” because it is the result of arm’s-length  
16 negotiations among experienced counsel, facilitated by an experienced and respected mediator,  
17 occurring after the parties completed thorough fact and expert discovery. *Newberg* § 11.41; *City*  
18 *P’shp. Co. v. Atl. Acquisition Ltd. P’shp.*, 100 F.3d 1041, 1043 (1st Cir. 1996) (“When sufficient  
19 discovery has been provided and the parties have bargained at arms-length, there is a presumption  
20 in favor of the settlement.”); *Create-A-Card, Inc. v. Intuit, Inc.*, No. CV-07-6452 WHA, 2009 U.S.  
21 Dist. LEXIS 93989, at \*8-9 (N.D. Cal. Sept. 22, 2009) (“This Court begins its analysis with a  
22 presumption that a class settlement is fair and should be approved if it is the product of arm’s-length  
23 negotiations conducted by capable counsel with extensive experience in complex class action  
24 litigation.”); *Linney v. Cellular Alaska P’shp*, No. C-96-3008 DLJ, 1997 U.S. Dist. LEXIS 24300,  
25 at \*16 (N.D. Cal. July 18, 1997) (“The involvement of experienced class action counsel and the fact  
26 that the settlement agreement was reached in arm’s length negotiations, after relevant discovery  
27 had taken place create a presumption that the agreement is fair.”), *aff’d*, 151 F.3d 1234 (9th Cir.  
28 1998). (Dermody Decl. ¶ 15.)

1           Second, the consideration—a total of \$415 million—is substantial, particularly in light of  
2 the very real risk that the jury could find no liability or award no damages, and any jury verdict  
3 would be subject to appellate review. When combined with the \$20 million received from  
4 Plaintiffs’ previous settlements with Defendants Pixar, Lucasfilm, and Intuit, the result for the  
5 Class in this litigation will total \$435 million.<sup>10</sup> A relevant point of comparison is with the  
6 outcomes achieved by the United States Department of Justice (“DOJ”) and the California Attorney  
7 General (“CA AG”). This action was preceded by a DOJ investigation concerning the same alleged  
8 misconduct at issue in this case. While the DOJ had the ability to seek civil fines, the DOJ settled  
9 their investigation regarding Defendants’ alleged misconduct without any monetary penalty. In  
10 addition, unlike Plaintiffs, the DOJ did not allege a common conspiracy among all Defendants.

11           In addition, the DOJ and the CA AG filed cases against eBay Inc. regarding an alleged  
12 agreement between eBay and Intuit not to poach each other’s employees, which later became a  
13 no-hire agreement between the companies. *State of California v. eBay Inc.*, Case No.  
14 12-CV-5874-EJD-PSG, Dkt. 55-5, ¶¶ 25-42 (N.D. Cal. May 1, 2014) (“CA AG Case”); *United*  
15 *States v. eBay Inc.*, Case No. 12-CV-5869-EJD, Dkt. 36, ¶¶ 14-25 (N.D. Cal. June 4, 2013) (“DOJ  
16 Case”). The alleged agreement there covers broader conduct than at issue in this case, and it lasted  
17 longer—from 2006 through 2011—than is alleged here. (CA AG Case, Dkt. 55-5, ¶ 41.) The DOJ  
18 and the CA AG recently settled that case. The proposed settlement with the DOJ is very similar to  
19 the previous settlement between the DOJ and the Defendants here: while eBay agrees to modify its  
20 behavior going forward, eBay was not required to pay any money, either in the form of penalties or  
21 compensation to victims. (DOJ Case, Dkt. 57 and 57-1.) The proposed settlement with the CA AG  
22 includes a monetary component of \$3.75 million, \$2.375 million of which will be distributed  
23 among approximately 13,990 claimants. The proposed settlement also includes a release of the  
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25 <sup>10</sup> In this Court’s order denying preliminary approval, it used previous settlements as a benchmark  
26 and indicated a reasonable settlement amount for the remaining Defendants would be at least \$380  
27 million. (Aug. 8, 2014 Order, Dkt. 974 at 7.) Plaintiffs did not understand this Court to put in place  
28 any rigid formula. That said, it bears noting that the new Settlement amount from the remaining  
Defendants—\$415 million—exceeds that benchmark by \$35 million. Plaintiffs believe this  
analysis confirms that the new Settlement amount is fair, reasonable and adequate, and that it is  
well within the range of reasonableness required for preliminary approval.

1 proposed class's claims. (CA AG Case, Dkt. 55, at 6.) On August 29, 2014 Judge Davila  
2 preliminarily approved the proposed settlement. (CA AG Case, Dkt. 62.) By comparison,  
3 Plaintiffs here obtained a substantially larger recovery, whether measured on an aggregate or  
4 per-Class-member basis (\$6,437.50 per Class member here versus \$268.05 per class member in the  
5 case before Judge Davila).<sup>1</sup>

6 Third, the Settlement does not grant preferential treatment to the Class Representatives or to  
7 certain portions of the Class; the Plan of Allocation provides a neutral and fair way to compensate  
8 Class members based on their salary and alleged injury. *In re NASDAQ Market Makers Antitrust*  
9 *Litig.*, 176 F.R.D. at 102.

10 Fourth, while settlement provides the Class with a timely, certain, and meaningful cash  
11 recovery, a trial—and any subsequent appeals—is highly uncertain, and in any event would  
12 substantially delay any recovery achieved.

13 Indeed, the risks of trial were highlighted in *The Apple iPod iTunes Antitrust Litig.*, Case  
14 No. 05-cv- 0037 (YGR) (“*iPod*”), the most recent antitrust class action tried to verdict in the  
15 Northern District of California. On December 16, 2014, a unanimous jury ruled in that case in  
16 favor of Apple after 10 years of litigation and a 10-day trial. (See Dermody Decl., Ex. 4 (verdict  
17 form).)

18 Even closer to the claims in this case, the most recent antitrust conspiracy class action  
19 seeking damages that was tried to verdict in this District is likewise illuminating. *See In re:*  
20 *TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. M07-1827-SI (tried to successful liability verdict  
21 in July 2012). In that trial, plaintiffs introduced evidence of a global price-fixing cartel that does  
22 not exist here, including concurrent criminal investigations that resulted in 14 guilty pleas  
23 admitting U.S. antitrust violations. (There were no criminal investigations or guilty pleas here.)  
24 Plaintiffs in *In re: TFT-LCD* asked the jury to find that Toshiba participated in the alleged  
25 price-fixing conspiracy, and to award damages of \$867 million. Unlike in *iPod*, the jury found  
26

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27 <sup>1</sup> Excluding deductions of proposed amounts for attorneys' fees and costs, plaintiff service awards,  
28 claims administrator costs, and the reserve fund, the per capita number is \$5,077.72, compared to a  
per capita net recovery in the eBay case of \$169.76.

1 Toshiba liable. However, the jury awarded only \$87 million, or about 10% of the damages  
2 requested. Dermody Decl., Ex. 5 (completed special verdict form). When a later opt-out action  
3 filed by *In re: TFT-LCD* class member Best Buy went to trial against HannStar Display Corp. and  
4 Toshiba on the same claims, the jury found HannStar liable but not Toshiba, and awarded *less than*  
5 *1%* of the damages Best Buy sought (\$7.5 million from a request of \$770 million). (Dermody  
6 Decl., Ex. 6 (completed special verdict form).) Before *LCDs*, the most recent antitrust class action  
7 for damages tried to a verdict in the Northern District of California was *In re Tableware Antitrust*  
8 *Litig.*, Case No. C-04-3514-VRW. The jury in that case returned a verdict for the defendants.  
9 (Dermody Decl., Ex. 7 (completed special verdict form).)

10 Here, unlike in comparable antitrust conspiracy cases such as *LCDs* and *Tableware*, it was  
11 not clear that the alleged misconduct would be considered under the *per se* standard of illegality,  
12 with important implications regarding how the trial would proceed, Plaintiffs' burden of proof, and  
13 the evidence Defendants would be permitted to introduce. Defendants had successfully moved to  
14 exclude certain parts of Dr. Leamer's expert testimony. (Dkt. 788.) Defendants' other *in limine*  
15 motions to exclude a variety of evidence were pending. (Dkt. 855.) In addition, Defendants  
16 intended to vigorously contest the existence of a common conspiracy among them, and the jury  
17 would be faced with many complicated and contentious issues regarding impact and damages  
18 across the Class. Even if Plaintiffs succeeded in proving liability, they still faced the risk that the  
19 jury would award only a fraction of the alleged damages—or refuse to award damages altogether.  
20 And, even if Plaintiffs were successful at trial, Plaintiffs and the Class faced the risk of protracted  
21 appeals, including an appeal of the Court's class certification order. The substantial obstacles that  
22 Plaintiffs would face in taking this case to trial are discussed in greater detail in Plaintiffs' prior  
23 reply memorandum in support of preliminary approval. (Dkt. 938 at 10-14.)

24 In addition, Defendants' petition for a writ of mandamus to the Ninth Circuit is still  
25 pending. The motions panel which initially reviewed the petition determined that it "raises issues  
26 which warrant a response" and ordered that the matter be fully briefed and calendared for oral  
27 argument. (Dkt. 993.) There is therefore a risk that the Ninth Circuit could overturn this Court's  
28

1 prior denial of preliminary approval and reduce the Class' potential recovery to a lesser settlement  
2 of \$324,500,000.

3 **VI. PROPOSED PLAN OF NOTICE**

4 Rule 23(e)(1) states that, "[t]he court must direct notice in a reasonable manner to all class  
5 members who would be bound by a proposed settlement, voluntary dismissal, or compromise."

6 Notice of a proposed settlement must inform class members of the following: (1) the nature of the  
7 pending litigation; (2) the general terms of the proposed settlement; (3) that complete information is  
8 available from the court files; and (4) that any class member may appear and be heard at the fairness  
9 hearing. *See Newberg* § 8.32. The notice must also indicate an opportunity to opt-out, that the  
10 judgment will bind all class members who do not opt-out, and that any member who does not  
11 opt-out may appear through counsel. Fed. R. Civ. P. 23(c)(2)(B). The form of notice is "adequate  
12 if it may be understood by the average class member." *Newberg* § 11.53. Notice to the class must  
13 be "the best notice practicable under the circumstances, including individual notice to all members  
14 who can be identified through reasonable effort." *Amchem Prods. v. Windsor*, 521 U.S. 591, 617  
15 (1997) (quotation omitted).

16 Within 20 days after the Court grants preliminary approval, Class Counsel and the Settling  
17 Defendants have agreed to direct the prior notice administrator, Heffler Claims Group, to deliver in  
18 a highly secure manner to this Settlement's administrator, Gilardi & Co., LLC ("Notice  
19 Administrator"), the information Defendants previously produced in an electronic format from  
20 their human resources databases, for the Class period, such as the full legal name, last known  
21 physical address, dates of employment in that Defendant's Class job titles, and associated base  
22 salary by date and relevant Class job title of each Class member who was employed by that  
23 Defendant. Defendants will separately provide the Notice Administrator with secure social  
24 security numbers for tax purposes. (Settlement Agreement § II.B.)

25 Within two weeks thereafter, the Notice Administrator shall cause the Settlement Notice to  
26 be mailed by first-class mail, postage prepaid, to Class members pursuant to the procedures  
27 described in the Settlement Agreement, and to any potential Class member who requests one; and,  
28 in conjunction with Class Counsel, shall cause a case-specific internet website to become

1 operational with case information, court documents relating to the Settlement, and the Notice.  
2 (Settlement Agreement § II.B.) At least thirty days prior to the Final Approval Hearing, the Notice  
3 Administrator will file with the Court an Affidavit of Compliance with Notice Requirements.  
4 (Settlement Agreement § II.E.)

5 Class members will have until forty-five days from the date the Notice period begins  
6 (established by the first day upon which the Notice Administrator provides mail Notice to Class  
7 Members (“Notice date”)) to opt-out (the “Opt-Out Deadline”) of the proposed Settlement.  
8 (Settlement Agreement § II.D.) Any Class member who wishes to be excluded (opt out) from the  
9 Class must send a written request for exclusion to the Notice Administrator on or before the close of  
10 the Opt-Out Deadline. (Settlement Agreement § II.D.)

11 Consistent with the prior notice disseminated to the Class in this action, the content of the  
12 Proposed Class Notice fully complies with due process and Rule 23. (Settlement Agreement, Ex.  
13 A.) As before, it provides the definition of the Class, describes the nature of the action, including  
14 the class allegations, and explains the procedure for making comments and objections. The Class  
15 Notice describes the terms of the Settlement with the Settling Defendants, informs Class members  
16 regarding the plan of allocation, and advises Class members that the funds will be distributed at a  
17 future time to be determined. The Class Notice specifies the date, time, and place of the final  
18 approval hearing and informs Class members that they may enter an appearance through counsel.  
19 The Class Notice also informs Class members how to exercise their rights and make informed  
20 decisions regarding the proposed Settlement and tells them that if they do not opt out, the judgment  
21 will be binding upon them. The Class Notice further informs the Class that Class Counsel will seek  
22 costs of up to \$1.2 million, Class Counsel’s attorneys’ fees of approximately 19.54 percent  
23 (\$81,125,000) of the Settlement fund, Devine Counsel attorneys’ fees and expenses of up to  
24 approximately 1.09 percent (\$4,525,000) of the Settlement Fund, and service awards for the current  
25 Class Representatives of up to \$80,000 each, plus \$80,000 to the estate of deceased Class  
26 Representative Brandon Marshall. Courts have approved class notices even when they only  
27 generally describe a settlement. *See, e.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir.  
28

1 1980) (“very general description of the proposed settlement” satisfies standards). This Notice  
2 exceeds that standard.

### 3 **VII. PROPOSED PLAN OF ALLOCATION**

4 A plan of allocation of class settlement funds is subject to the “fair, reasonable and  
5 adequate” standard that applies to approval of class settlements. *In re Citric Acid Antitrust Litig.*,  
6 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). “A plan of allocation that reimburses class members  
7 based on the type and extent of their injuries is generally reasonable.” *In re Oracle Sec. Litig.*, No.  
8 C-90-0931-VRW, 1994 U.S. Dist. LEXIS 21593, at \*3 (N.D. Cal. June 16, 1994). Here, as  
9 explained above, Plaintiffs propose that the Settlement Fund be allocated based upon total base  
10 salary received during the conspiracy period. Such *pro rata* distributions are “cost-effective,  
11 simple, and fundamentally fair.” *In re Airline Ticket Comm’n Antitrust Litig.*, 953 F. Supp. 280,  
12 285 (D. Minn. 1997). This is the same plan of allocation the Court approved in connection with the  
13 prior settlements with Lucasfilm, Pixar, and Intuit, which are now final. (Dkt. 915, at 7:7-18.)

### 14 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING SCHEDULE**

15 The last step of the settlement approval process is the final approval hearing, at which the  
16 Court may hear all evidence and argument necessary to evaluate the proposed settlement. At that  
17 hearing, proponents of the Settlement may explain and describe its terms and conditions and offer  
18 argument in support of approval and members of the Class, or their counsel, may be heard in  
19 support of or in opposition to the Settlement. Plaintiffs propose the following schedule for final  
20 approval of the Settlement:

<b><u>Event</u></b>	<b><u>Date</u></b>
Notice of Class Action Settlement to Be Mailed and Posted on Internet	Within 14 days of receipt of Class member information for all Defendants
Class Counsel Motion for Attorneys’ Fees and Costs, Motion for Named Plaintiffs’ Service Awards, and Devine Counsel Motion for Attorneys’ Fees and Expenses	To be completed 31 days from Notice Date
Opt-Out and Objection Deadline	45 days from Notice Date
Notice Administrator Affidavit of Compliance with Notice Requirements	To be filed 30 days prior to the Final Approval Hearing

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<u>Event</u>	<u>Date</u>
Motion for Final Approval	To be filed 70 days from the Notice Date and 21 days prior to the Final Approval Hearing
Replies in Support of Motions for Final Approval, Attorneys' Fees and Costs, and Named Plaintiffs' Service Awards to Be Filed by Class Counsel and Devine Counsel	To be filed 7 days prior to Final Approval Hearing
Final Approval Hearing	_____, 2015

**IX. CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request that the Court: (1) preliminarily approve the Settlement; (2) approve the proposed plan of notice to the Class; (3) appoint Gilardi & Co., LLC as the Notice Administrator; (4) set a schedule for disseminating notice to Class members, as well as deadlines to comment on, object to, or opt out of the Settlement; and (5) schedule a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved.

Respectfully submitted,

Dated: January 15, 2015

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By:           /s/ Kelly M. Dermody            
Kelly M. Dermody

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JOSEPH SAVERI LAW FIRM, INC.

By:           /s/ Joseph R. Saveri            
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS’ MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT WITH DEFENDANTS ADOBE  
SYSTEMS INCORPORATED, APPLE INC.,  
GOOGLE INC., AND INTEL CORPORATION,  
APPROVING FORM AND MANNER OF  
NOTICE, AND SCHEDULING FINAL  
APPROVAL HEARING**

This matter is before the Court on Plaintiffs’ motion for preliminary approval of the proposed class action settlement (the “Settlement”) between individual and representative Plaintiffs Mark Fichtner, Siddharth Hariharan, Daniel Stover, and Michael Devine and the Class of individuals they represent (“Plaintiffs”) and Defendants Adobe Systems Incorporated, Apple Inc., Google Inc., and Intel Corporation (collectively, the “Settling Defendants”), as set forth in the Settlement Agreement attached hereto as Exhibit A. Having considered the Motion, the Settling Parties’ Settlement Agreement, the proposed form of notice to the Class, the pleadings and other papers filed in this Action, and the statements of counsel and the parties, and for good cause shown, **IT IS HEREBY ORDERED** as follows:

1           1.       Unless otherwise defined herein, all terms that are capitalized herein shall have  
2 meanings ascribed to those terms in the Settlement Agreement, attached hereto as Exhibit A.

3           2.       The Court has jurisdiction over this Action (and all actions and proceedings  
4 consolidated in the Action), Plaintiffs, Class Members, Adobe, Apple, Google, and Intel, the  
5 Released Parties, and any party to any agreement that is part of or related to the Settlement  
6 Agreement.

7           3.       To grant preliminary approval of the proposed Settlement, the Court need only  
8 find that it falls within “the range of reasonableness.” Alba Conte et al., *Newberg on Class*  
9 *Actions* § 11.25, at 11-91 (4th ed. 2002). *The Manual for Complex Litigation (Fourth)* (2004)  
10 (“*Manual*”) characterizes the preliminary approval stage as an “initial evaluation” of the fairness  
11 of the proposed settlement made by the court on the basis of written submissions and informal  
12 presentation from the settling parties. *Manual* § 21.632. A proposed settlement may be finally  
13 approved by the trial court if it is determined to be “fundamentally fair, adequate and reasonable.”  
14 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). While consideration of  
15 the requirements for final approval is unnecessary at this stage, all of the relevant factors weigh in  
16 favor of approving the Settlement proposed here.

17           4.       First, the settlement is entitled to “an initial presumption of fairness” because it is  
18 the result of arm’s-length negotiations among experienced counsel. *Newberg* § 11.41. Plaintiffs  
19 and the Settling Defendants engaged in extensive mediated negotiations to resolve the dispute.  
20 Initially, mediation was conducted by David Rotman. After a number of sessions, those efforts  
21 were unsuccessful. Subsequently, the parties retained the services of experienced mediator Hon.  
22 Layn Phillips (retired). Plaintiffs and Settling Defendants conducted a day-long mediation  
23 supervised by Judge Phillips on February 17, 2014. (Dermody Decl. ¶ 10.) After two months of  
24 negotiations, Plaintiffs executed a Memorandum of Understanding with all Settling Defendants  
25 on April 24, 2014. (*Id.*)

26           5.       On May 22, 2014, Plaintiffs Mark Fichtner, Siddharth Hariharan, and Daniel  
27 Stover moved the Court to preliminarily approve a settlement agreement with Defendants  
28 providing for a settlement fund of \$324,500,000. The Court denied preliminary approval on

1 August 8, 2014 (Dkt. 974). Thereafter, the parties resumed arm's-length negotiations through  
2 mediator Hon. Layn Phillips (Ret.), while continuing to litigate outstanding pre-trial matters.  
3 Plaintiffs filed a reply in support of their motion for application of the *per se* standard (Dkt. 988),  
4 and Defendants requested leave to file a supplemental opposition (Dkt. 990 & 990-1), which was  
5 granted (Dkt. 1023). Plaintiffs also filed a motion to unseal all papers associated with their  
6 motion to compel (Dkt. 991), which Defendants opposed (Dkt. 994; *see also* Dkt. 1029).  
7 Meanwhile, on September 4, 2014, Defendants filed a Petition for a Writ of Mandamus with the  
8 United States Court of Appeals for the Ninth Circuit, seeking an order vacating the Court's denial  
9 of preliminary approval and directing the Court to preliminarily approve the \$324,500,000  
10 settlement. (9th Cir. Case No. 14-72545, Dkt. 1.) On September 22, 2014, the Ninth Circuit  
11 issued an order stating that Defendants' "petition for a writ of mandamus raises issues that  
12 warrant a response," ordered Plaintiffs to file a response, set a date for Defendants' reply, and  
13 ordered that upon completion of briefing the matter shall be placed on the next available merits  
14 panel for oral argument. (9th Cir. Dkt. 2; Dkt. 993.) Plaintiffs (and Michael Devine separately)  
15 opposed Defendants' petition (9th Cir. Dkt. Nos. 6 and 7), and Defendants replied (9th Cir. Dkt.  
16 10). Putative amici curiae Chamber of Commerce of the United States of America, California  
17 Chamber of Commerce, and economic scholars filed motions for leave to file amici curiae briefs  
18 in support of the petition (9th Cir. Dkts. 8 & 9), which the Ninth Circuit referred to the panel to be  
19 assigned to hear the merits of the petition (9th Cir. Dkt. 15). Plaintiffs (and Michael Devine  
20 separately) opposed the motions for leave to file amici curiae briefs. (9th Cir. Dkts. 13 & 16.)  
21 The Ninth Circuit scheduled oral argument on the petition for March 13, 2015. (9th Cir. Dkt. 19.)

22 6. At the time of settlement, the following motions remained pending: Defendants'  
23 motion to exclude Dr. Marx's testimony; Plaintiffs' motion to exclude Defendants' experts'  
24 testimony; Plaintiffs' motion for application of the *per se* standard; Defendants' motions *in*  
25 *limine*; and Plaintiffs' motion to compel. In addition, Plaintiffs and Defendants have continued to  
26 engage in the exchange of extensive pretrial disclosures and conferences regarding trial exhibits,  
27 witnesses, the joint pretrial statement, the authentication of business records and potential  
28 depositions related thereto, and many other issues.

1           7.       At all times during the negotiation process, counsel for Plaintiffs and the Settling  
2 Defendants bargained vigorously and at arm's length on behalf of their clients. There was no  
3 discussion of attorneys' fees prior to negotiating the class relief. There are no commitments  
4 between the parties beyond what is set forth in the settlement agreement.

5           8.       Second, the consideration—a total of \$415 million—is substantial, particularly in  
6 light of the very real risk that the jury could find no liability or award no damages. When  
7 combined with the \$20 million received from Plaintiffs' previous settlements with Defendants  
8 Pixar, Lucasfilm, and Intuit, the result for the Class in this litigation will total \$435 million. A  
9 relevant point of comparison is with the outcomes achieved by the United States Department of  
10 Justice ("DOJ") and the California Attorney General ("CA AG"). This action was preceded by a  
11 DOJ investigation concerning the same alleged misconduct at issue in this case. While the DOJ  
12 had the ability to seek civil fines, the DOJ settled their investigation regarding Defendants'  
13 alleged misconduct without any monetary penalty. In addition, unlike Plaintiffs, the DOJ did not  
14 allege a common conspiracy among all Defendants.

15           9.       In addition, the DOJ and the CA AG filed cases against eBay Inc. regarding an  
16 alleged agreement between eBay and Intuit not to poach each other's employees, which later  
17 became a no-hire agreement between the companies. *State of California v. eBay Inc.*, Case No.  
18 12-CV-5874-EJD-PSG, Dkt. 55-5, ¶¶ 25-42 (N.D. Cal. May 1, 2014) ("CA AG Case"); *United*  
19 *States v. eBay Inc.*, Case No. 12-CV-5869-EJD, Dkt. 36, ¶¶ 14-25 (N.D. Cal. June 4, 2013)  
20 ("DOJ Case"). The alleged agreement covers broader conduct than is at issue in this case, and  
21 lasted longer, from 2006 through 2011, than is alleged here. (CA AG Case, Dkt. 55-5, ¶ 41.) The  
22 DOJ and the CA AG recently settled that case. The proposed settlement with the DOJ is very  
23 similar to the previous settlement between the DOJ and the Defendants here: while eBay agrees to  
24 modify its behavior going forward, eBay was not required to pay any money, either in the form of  
25 penalties or compensation to victims. (DOJ Case, Dkt. 57 and 57-1). The proposed settlement  
26 with the CA AG includes a monetary component of \$3.75 million, \$2.375 of which will be  
27 distributed among approximately 13,990 claimants. The proposed settlement also includes a  
28 release of the proposed class's claims. (CA AG Case, Dkt. 55, at 6.) On August 29, 2014 Judge

1 Davila preliminarily approved the proposed settlement. (CA AG Case, Dkt. 62.) By comparison,  
2 Plaintiffs here obtained a substantially larger recovery, whether measured on an aggregate or per-  
3 Class-member basis.

4 10. Third, the Settlement does not grant preferential treatment to the Class  
5 Representatives or to certain portions of the Class; the Plan of Allocation provides a neutral and  
6 fair way to compensate Class members based on their salary and alleged injury. *In re NASDAQ*  
7 *Market Makers Antitrust Litig.*, 176 F.R.D. at 102.

8 11. Fourth, litigation through trial would be complex and costly, and would require a  
9 significant amount of Court resources, which settlement avoids. *In re Austrian & German Bank*  
10 *Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd sub. nom. D'Amato v. Deutsche*  
11 *Bank*, 236 F.3d 78 (2d Cir. 2001). While settlement provides the Class with a timely, certain, and  
12 meaningful cash recovery, a trial—and any subsequent appeals—is highly uncertain, and in any  
13 event would substantially delay any recovery achieved.

14 12. Indeed, the risks of trial were highlighted in the most recent antitrust class action  
15 tried to verdict in the Northern District of California. *See The Apple iPod iTunes Antitrust Litig.*,  
16 Case No. 05-cv- 0037 (YGR). On December 16, 2014, a unanimous jury ruled in that case in  
17 favor of Apple after 10 years of litigation and a 10-day trial. *See Dermody Decl.*, Ex. 4 (verdict  
18 form).

19 13. Even closer to the claims in this case, the most recent antitrust conspiracy class  
20 action seeking damages that was tried to verdict in this District is likewise illuminating. *See In re:*  
21 *TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. M07-1827-SI (tried to successful liability  
22 verdict in July 2012). In that trial, Plaintiffs introduced evidence of a global price-fixing cartel  
23 that does not exist here, including concurrent criminal investigations that resulted in 14 guilty  
24 pleas admitting U.S. antitrust violations. At trial, Plaintiffs asked the jury to find that Toshiba  
25 participated in the alleged price-fixing conspiracy, and to award damages of \$867 million. While  
26 the jury found Toshiba liable, the jury awarded only \$87 million, or about 10% of the damages  
27 requested. *Dermody Decl.*, Ex. 5 (completed special verdict form). When a later opt-out action  
28 filed by *In re: TFT-LCD* class member Best Buy went to trial against HannStar Display Corp. and

1 Toshiba on the same practices, the jury found HannStar liable but not Toshiba, and awarded *less*  
2 *than 1%* of the damages Best Buy sought (\$7.5 million from a request of \$770 million).

3 Dermody Decl., Ex. 6 (completed special verdict form). Before *LCDs*, the most recent antitrust  
4 class action tried to a verdict in the Northern District of California was *In re Tableware Antitrust*  
5 *Litig.*, Case No. C-04-3514-VRW. The jury in that case returned a verdict for the defendants.

6 Dermody Decl., Ex. 7 (completed special verdict form).

7 14. Here, unlike in *LCDs* and *Tableware*, it was not clear that the alleged misconduct  
8 would be considered under the *per se* standard of illegality, with important implications regarding  
9 how the trial would proceed, Plaintiffs' burden of proof, and the evidence Defendants would be  
10 permitted to introduce. Defendants had successfully moved to exclude certain parts of Dr.  
11 Leamer's expert testimony. (Dkt. 788.) Defendants' other *in limine* motions to exclude a variety  
12 of evidence were pending. (Dkt. 855.) In addition, Defendants intended to vigorously contest the  
13 existence of a common conspiracy among them, and the jury would be faced with many  
14 complicated and contentious issues regarding impact and damages across the Class. Even if  
15 Plaintiffs succeeded in proving liability, they still faced the risk that the jury would award only a  
16 fraction of the alleged damages—or not award damages altogether. And, even if Plaintiffs were  
17 successful at trial, Plaintiffs faced the risk of protracted appeals.

18 15. Fifth, the Settling Parties agreed to settle at a particularly advanced stage of the  
19 proceedings—after the completion of discovery and dispositive motions.

20 16. Sixth, the Settlement was reached under the supervision of an experienced  
21 mediator, Hon. Layn Phillips (retired).

22 17. Accordingly, notice to the Class is appropriate here.

23 18. The Court finds that the proposed Plan of Allocation, attached to the Settlement  
24 Agreement, and described in the Motion, also is sufficiently fair, reasonable, and adequate such  
25 that it is hereby preliminarily approved, subject to further consideration at the hearing to be held  
26 as set forth below.

27

28

**THE CLASS**

1  
2 19. On October 24, 2013, this Court entered an Order certifying a class pursuant to  
3 Rule 23 of the Federal Rules of Civil Procedure, defined as all natural persons who work in the  
4 technical creative, and/or research and development fields that were employed on a salaried basis  
5 in the United States by one or more of the following: (a) Adobe from May 2005 through  
6 December 2009; (b) Apple from March 2005 through December 2009; (c) Google from March  
7 2005 through December 2009; (d) Intel from March 2005 through December 2009; (e) Intuit from  
8 June 2007 through December 2009; (f) Lucasfilm from January 2005 through December 2009; or  
9 (g) Pixar from January 2005 through December 2009 (the “Class Period”). Excluded from the  
10 Class are: retail employees, corporate officers, members of the boards of directors, and senior  
11 executives of all Defendants. In its Order, this Court found that the requirements of Rule 23(a)  
12 and (b)(3) were met. The Ninth Circuit denied Defendants’ Petition for review pursuant to  
13 Rule 23(f) on January 15, 2014. The proposed Settlement here includes a class definition  
14 identical to the Class defined above and certified by this Court.

**NOTICE TO CLASS MEMBERS**

15  
16 20. The Court approves the Notice of Proposed Settlement of Class Action, Fairness  
17 Hearing, and Right to Appear (the “Settlement Notice,” attached as Exhibit A to the Settlement  
18 Agreement), and finds that the dissemination of the Notice substantially in the manner and form  
19 set forth in the Settlement Agreement complies fully with the requirements of Federal Rule of  
20 Civil Procedure 23 and due process of law, and is the best notice practicable under the  
21 circumstances.

22 21. The notice procedures set forth in the Settlement Agreement are hereby found to  
23 be the best practicable means of providing notice of the Settlement Agreement under the  
24 circumstances and, when completed, shall constitute due and sufficient notice of the proposed  
25 Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled  
26 to participate in the Settlement Agreement, in full compliance with the applicable requirements of  
27 Federal Rule of Civil Procedure 23 and due process.  
28

**ADMINISTRATION OF THE SETTLEMENT FUND**

1  
2           22.     The Court hereby appoints Gilardi & Co., LLC, as administrator (the “Notice  
3 Administrator”). Consistent with the Settlement Agreement, the responsibilities of the Notice  
4 Administrator shall include: (a) maintaining a post office box for purposes of communicating  
5 with Class Members, including receiving any objections; (b) disseminating the Notice to the  
6 Class; (c) maintaining a website to enable Class Members to access relevant documents;  
7 (d) receiving and maintaining documents sent from Class Members relating to Settlement  
8 administration and requests for exclusion; (e) handling withholding, reporting, payment,  
9 dissemination of forms, and other aspects of Settlement administration relating to all applicable  
10 taxes as set forth in the Settlement Agreement; and (f) distributing Settlement checks to Class  
11 Members. Pursuant to the Settlement Agreement, the costs of the Notice Administrator’s services  
12 and all other reasonable costs of Settlement administration shall be paid out of the Settlement  
13 Fund, subject to Court review and approval, with certain notice and administration costs incurred  
14 prior to the Effective Date advanced by Adobe, Apple, Google, and Intel as provided in the  
15 Settlement Agreement.

16           23.     All funds held by the Escrow Agent (Citibank, N.A.) after the Effective Date of  
17 the Settlement as defined in the Settlement Agreement shall be deemed and considered to be in  
18 *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such  
19 funds shall be distributed pursuant to the Settlement Agreement and further order(s) of the Court.

20           24.     The Settlement Fund, to be held at Citibank, N.A., shall be established as a  
21 fiduciary account and administered in accordance with the provisions of the Settlement  
22 Agreement. The Court approves the establishment of the escrow account under the Settlement  
23 Agreement as a qualified settlement fund (“QSF”) pursuant to Internal Revenue Code  
24 Section 1.468B-1 and the Treasury Regulations promulgated thereunder, and retains continuing  
25 jurisdiction as to any issue that may arise in connection with the formation and/or administration  
26 of this QSF.

27           25.     Within twenty (20) days of the date of this Order:  
28

- 1 (a) Co-Lead Class Counsel shall direct Heffler Claims Group, subject to and  
2 consistent with the extant Protective Order and all existing confidentiality and non-  
3 disclosure agreements, to transmit to Class Counsel, the Defendants, and the  
4 Notice Administrator the employee ID numbers and/or hashed social security  
5 numbers for all employees to whom Heffler Claims Group sent notices in  
6 connection with the certification of the litigation class in the Action (the “Prior  
7 Notice Recipients”). For the avoidance of doubt, “Prior Notice Recipients” shall  
8 include any employee that a Defendant has identified as a Class Member and shall  
9 not include persons who have been determined not to be Class Members.  
10 Specifically with respect to Google, “Prior Notice Recipients” shall mean those  
11 current and former Google employees to whom reminder notices were sent on or  
12 about March 13, 2014, as well as the other current and former Google employees  
13 who were subsequently informed by Heffler Claims Group that they were Class  
14 Members. Heffler Claims Group shall transmit such information in a secure  
15 manner that has received the prior approval of Co-Lead Class Counsel and the  
16 Settling Defendants.
- 17 (b) Heffler Claims Group shall transmit to the Notice Administrator, subject to and  
18 consistent with the extant Protective Order and all existing confidentiality and non-  
19 disclosure agreements the full legal name, and last known physical address  
20 (including the best information concerning each address, as determined using the  
21 national change of address database, information provided by Class Members, and  
22 other sources) for the Prior Notice Recipients. Heffler Claims Group shall  
23 transmit such information in a secure manner that has received the prior approval  
24 of Co-Lead Class Counsel and the Settling Defendants;
- 25 (c) Each Defendant shall, at its option, either transmit the social security numbers for  
26 the Prior Notice Recipients employed by that Defendant to the Notice  
27 Administrator or request that Heffler Claims Group do so. In either case, the  
28 information shall be transmitted pursuant to and in a manner consistent with the

1 extant Protective Order and all existing confidentiality and non-disclosure  
2 agreements.

3 26. The Notice attached to this Order satisfies the requirements of the Federal Rules of  
4 Civil Procedure and of due process and, accordingly, is approved for dissemination to the Class.  
5 By no later than \_\_\_\_\_, 2015, after receiving the information in paragraph 25, the  
6 Notice Administrator shall cause the Settlement Notice to be mailed by first-class mail, postage  
7 prepaid, to Class Members pursuant to the procedures described in the Settlement, and to any  
8 Class Member who requests one; and, in conjunction with Class Counsel, shall maintain the case-  
9 specific website providing case information, court documents relating to the Settlement and the  
10 Notice. By no later than \_\_\_\_\_, 2015, the Claims Administrator shall file with the Court an  
11 Affidavit of Compliance with Notice Requirements.

12 27. All costs incurred in disseminating Notice and administering the Settlement shall  
13 be paid from the Settlement Fund pursuant to the Settlement Agreement, with certain notice and  
14 administration costs incurred prior to the Effective Date advanced by Adobe, Apple, Google, and  
15 Intel as provided in the Settlement Agreement.

16 **RESPONSE BY CLASS MEMBERS**  
17 **AND THE SCHEDULING OF A FINAL APPROVAL HEARING**

18 28. Class Members will have until \_\_\_\_\_, 2015 (45 days after notice) to opt-out (the  
19 “Opt-Out Deadline”) of the Class.

20 29. Any Class Member who wishes to be excluded (opt out) from the Class must send  
21 a written Request for Exclusion to the Notice Administrator on or before the close of the Opt-Out  
22 Deadline. Members of the Class may not exclude themselves by filing Requests for Exclusion as  
23 a group or class, but must in each instance individually and personally execute a Request for  
24 Exclusion. Class Members who exclude themselves from the Class will not be eligible to receive  
25 any benefits under the Settlement, will not be bound by any further orders or judgments entered in  
26 this matter, and will preserve their ability independently to pursue any claims they may have  
27 against Adobe, Apple, Google, and Intel.  
28

1           30.     Class Counsel and counsel for Plaintiff Michael Devine shall file their respective  
2 motions for payment of attorneys' fees, costs, and for Plaintiff Service Awards, no later than  
3 \_\_\_\_\_, 2015.

4           31.     All Class Members who did not properly and timely request exclusion from the  
5 Class shall, upon entry of the Final Approval Order and Judgment, be bound by all the terms and  
6 provisions of the Settlement Agreement, including the Release provisions, whether or not such  
7 Class Member objected to the Settlement and whether or not such Class Member received  
8 consideration under the Settlement Agreement.

9           32.     A final hearing on the Settlement Agreement ("Final Approval Hearing") shall be  
10 held before the Court at \_\_\_\_\_ on \_\_\_\_\_, 2015 in Courtroom 8,  
11 4th Floor, of the Northern District of California, 280 South 1st Street, San Jose, CA 95113. Such  
12 hearing shall be at least 90 days from the completion of notice pursuant to the Class Action  
13 Fairness Act.

14           33.     At the Final Approval Hearing, the Court will consider (a) the fairness,  
15 reasonableness, and adequacy of the proposed Settlement Agreement and whether the Settlement  
16 Agreement should be granted final approval by the Court; (b) approval of the proposed Plan of  
17 Allocation; and (c) entry of a Final Approval Order and Judgment including the Settlement  
18 Release. Class Counsel's application for payment of costs and attorneys' fees and counsel for  
19 Plaintiff Michael Devine's application for payment of costs and attorneys' fees, and all requests  
20 for the Court to approve service awards to the Named Plaintiffs, shall also be heard at the time of  
21 the hearing.

22           34.     The date and time of the Final Approval Hearing shall be subject to adjournment  
23 by the Court without further notice to the Class Members, other than that which may be posted by  
24 the Court. Should the Court adjourn the date for the Final Approval Hearing, such adjournment  
25 shall not alter the deadlines for mailing of the Notice, nor the deadlines for submissions of  
26 settlement objections, requests for exclusion, or notices of intention to appear at the Final  
27 Approval Hearing unless those dates are explicitly changed by subsequent Order.  
28

1           35. Any Class Member who did not elect to be excluded from the Class may, but need  
2 not, enter an appearance through his or her own attorney. For Settlement purposes, Class Counsel  
3 will continue to represent Class Members who do not timely object and do not have an attorney  
4 enter an appearance on their behalf.

5           36. Any Class Member who did not elect to be excluded from the Class may, but need  
6 not, submit comments or objections to (a) the Settlement Agreement, (b) entry of a Final  
7 Approval Order and Judgment approving the Settlement Agreement, (c) any application for  
8 payment of attorneys' fees and costs, and/or (d) service award requests, by mailing a written  
9 comment or objection to the addresses provided by the Notice Administrator in the Notice.

10           37. Any Class Member making an objection (an "Objector") must sign the objection  
11 personally, even if represented by counsel, and provide the Class Member's name and full  
12 residence or business address and a statement signed under penalty of perjury that the Class  
13 Member was an employee and member of the Class. An objection must state why the Objector  
14 objects to the Settlement Agreement and provide a basis in support, together with any documents  
15 such person wishes to be considered in support of the objection. If an Objector intends to appear  
16 at the hearing, personally or through counsel, the Objector must include with the objection a  
17 statement of the Objector's intent to appear at the hearing. The objection must also contain a  
18 detailed list of any other objections by the Objector, as well as by the Objector's attorney, to any  
19 class action settlements submitted to any court in the United States in the previous five years.

20           38. Objections, along with any statements of intent to appear, must be postmarked no  
21 later than \_\_\_\_\_, 2015 (45 days after notice), and mailed to the addresses provided by  
22 the Notice Administrator in the Notice. If counsel is appearing on behalf of more than one Class  
23 Member, counsel must identify each such Class Member and each such Class Member must have  
24 complied with this Order.

25           39. Only Class Members who have filed and served valid and timely objections  
26 accompanied by notices of intent to appear shall be entitled to be heard at the Final Approval  
27 Hearing. Any Class Member who does not timely file and serve an objection in writing in  
28 accordance with the procedure set forth in the Notice and mandated in this Order shall be deemed

1 to have waived any objection to (a) the Settlement Agreement; (b) entry of a Final Approval  
 2 Order and Judgment; (c) Class Counsel's and Devine's Counsel's application for payment of  
 3 costs and anticipated request for fees; and (d) service award requests for the Named Plaintiffs,  
 4 whether by appeal, collateral attack, or otherwise.

5 40. Class Members need not appear at the hearing or take any other action to indicate  
 6 their approval.

7 41. Upon entry of the Final Approval Order and Judgment, all Class Members who  
 8 have not personally and timely requested to be excluded from the Class will be enjoined from  
 9 proceeding against Adobe, Apple, Google, and Intel and all other Released Parties with respect to  
 10 all of the Released Claims, consistent with the Settlement Agreement.

11 42. The schedule by which the events referenced above shall occur is as follows:

<u>Event</u>	<u>Date</u>
Notice of Class Action Settlement to Be Mailed and Posted on Internet	Within 14 days of receipt of Class Member information pursuant to paragraph 11
Class Counsel and Devine Counsel Motions for Payment of Costs and Award of Attorneys' Fees, and Motions for Plaintiffs' Service Awards	To be completed 31 days from Notice Date
Opt-Out and Objection Deadline	45 days from Notice Date
Notice Administrator Affidavit of Compliance with Notice Requirements	To be filed 30 days prior to the Final Approval Hearing
Motion for Final Approval	To be filed 70 days from the Notice Date and 21 days prior to Final Approval Hearing
Replies in Support of Motions for Final Approval, Attorneys' Fees and Costs, and Service Awards to Be Filed by Moving Parties	To be filed 7 days prior to Final Approval Hearing
Final Approval Hearing	_____, 2015

25 43. All further proceedings as to Adobe, Apple, Google, and Intel are hereby stayed,  
 26 except for any actions required to effectuate or enforce the Settlement Agreement, or matters  
 27 related to the Settlement Fund, including applications for attorneys' fees, payment of costs, and  
 28 service awards to Class Representatives.

1           44.     In the event the Settlement Agreement and the proposed Settlement are terminated  
2 or do not become effective pursuant to the applicable provisions of the Settlement Agreement, the  
3 Settlement Agreement and all related proceedings shall, except as expressly provided in the  
4 Settlement Agreement, become void and shall have no further force or effect, and Class Plaintiffs  
5 shall retain all of their current rights against Adobe, Apple, Google, and Intel and any other  
6 Released Party, and Adobe, Apple, Google, and Intel and any other Released Parties shall retain  
7 any and all of their current defenses and arguments thereto so that the Settling Parties may take  
8 such litigation steps that the Settling Parties otherwise would have been able to take absent the  
9 pendency of this Settlement. These Actions shall thereupon revert forthwith to their respective  
10 procedural and substantive status prior to January 7, 2015, and shall proceed as if the Settlement  
11 Agreement had not been executed.

12           45.     Neither this Order nor the Settlement Agreement, nor any other Settlement-related  
13 document nor anything contained or contemplated therein, nor any proceedings undertaken in  
14 accordance with the terms set forth in the Settlement Agreement or herein or in any other  
15 Settlement-related document, shall constitute, be construed as or be deemed to be evidence of or  
16 an admission or concession by Adobe, Apple, Google, and/or Intel as to the validity of any claim  
17 that has been or could have been asserted against any of them or as to any liability by either as to  
18 any matter encompassed by the Settlement Agreement.

19 Dated: \_\_\_\_\_, 2015  
20

21 \_\_\_\_\_  
22 LUCY H. KOH  
23 United States District Judge  
24  
25  
26  
27  
28

# **EXHIBIT A**

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (the “Settlement Agreement” or “Settlement”) is made and entered into on January 7, 2015, by and between: (a) Mark Fichtner, Siddharth Hariharan, Daniel Stover, and Michael Devine (collectively, the “Named Plaintiffs”) individually and the Class of individuals they represent (“Plaintiffs” or the “Class,” defined below), on the one hand; and (b) Defendants Adobe Systems Incorporated, Apple Inc., Google Inc., and Intel Corporation (collectively, the “Settling Defendants”), on the other hand.

**WHEREAS**, Mark Fichtner, Siddharth Hariharan, Daniel Stover, and Michael Devine (collectively, “Named Plaintiffs” or “Class Representatives”) are Court-appointed Class Representatives for the certified Class in the action captioned *In re High-Tech Employee Antitrust Litigation*, Case No. 11-CV-02509 LHK (the “Action”) pending against Adobe Systems Incorporated, Apple Inc., Google Inc., Intel Corporation, Intuit Inc., Lucasfilm Ltd., and Pixar (collectively, the “Defendants”) in the United States District Court for the Northern District of California (the “Court”);

**WHEREAS**, on September 13, 2011, the Named Plaintiffs filed a Consolidated Amended Complaint (Dkt. 65) that alleges, among other things, that Defendants entered into agreements with each other not to recruit or cold call each other’s employees in violation of federal and state antitrust and unfair competition laws;

**WHEREAS**, the Consolidated Amended Complaint further alleges, among other things, that, as a result of the agreements, Defendants undercompensated the Named Plaintiffs and the Class (collectively referred to as “Plaintiffs”);

**WHEREAS**, the Consolidated Amended Complaint asserts claims under federal and state antitrust and unfair competition laws and seeks recovery of, among other things, unpaid compensation, interest, treble damages, costs and attorneys' fees;

**WHEREAS**, Intuit Inc., Lucasfilm Ltd., and Pixar previously reached settlements with Plaintiffs;

**WHEREAS**, the Settling Defendants have continued to vigorously defend the litigation;

**WHEREAS**, Plaintiffs and the Settling Defendants (collectively the "Settling Parties") have engaged in substantial arm's-length negotiations in an effort to resolve all claims that have been, or could have been, asserted in the Action, including through confidential mediation discussions with David A. Rotman of the firm of Gregorio, Haldeman & Rotman, and with Hon. Layn Phillips (Ret.) of the firm Irell & Manella, which negotiations resulted in the Settlement Agreement;

**WHEREAS**, on May 22, 2014, Class Counsel moved for preliminary approval of a proposed \$324.5 million settlement with the Settling Defendants;

**WHEREAS**, Michael Devine, through his counsel, opposed the proposed \$324.5 million settlement and presented his opposition to the Court through a written submission in opposition to Plaintiffs' motion for preliminary approval and orally at the preliminary approval hearing held June 19, 2014;

**WHEREAS**, the Court denied preliminary approval of the proposed \$324.5 million settlement by order dated August 8, 2014;

**WHEREAS**, the Settling Defendants thereafter filed a petition for a writ of mandamus with the United States Court of Appeals for the Ninth Circuit, which subsequently ordered briefing and has set argument on the writ petition for March 2015;

**WHEREAS**, the Settling Parties, having reviewed the August 8 order and having considered the risks associated with the petition for writ of mandamus, subsequently negotiated the \$415 million settlement embodied in this Settlement Agreement;

**WHEREAS**, the Settling Defendants have denied and continue to deny that they engaged in any wrongdoing of any kind, or that they violated or breached any law, regulation, or duty owed to the Plaintiffs, and they further deny that they have liability as a result of any and all allegations made in the Consolidated Amended Complaint or as part of the Action. The Settling Defendants are entering into the Settlement Agreement to eliminate the burdens, distractions, expense, and uncertainty of further litigation; and

**WHEREAS**, based on their analysis of the merits of the claims and the benefits provided to the Class by the Settlement Agreement, including an evaluation of a number of factors including the substantial risks of continued litigation and the possibility that the litigation if not settled now might not result in any recovery whatsoever for the Class or might result in a recovery that is less favorable to the Class, Class Counsel and Devine Counsel believe that it is in the interest of all members of the Class to resolve finally and completely their claims against the Settling Defendants and that the terms of the Settlement Agreement are in the best interests of the Class and are fair, reasonable, and adequate.

**NOW, THEREFORE**, in consideration of the promises, agreements, covenants, representations, and warranties set forth herein, and other good and valuable consideration

provided for herein, the Settling Parties agree to a full, final and complete settlement of the Action on the following terms and conditions:

**I. GENERAL TERMS OF THE SETTLEMENT AGREEMENT**

**A. Definitions**

In addition to terms identified and defined elsewhere in this Settlement Agreement, and as used herein, the terms below shall have the following meanings:

1. “Action” means the lawsuits pending in the United States District Court for the Northern District of California, that were consolidated in the matter captioned *In re High-Tech Employee Antitrust Litigation*, 11-CV-02509 LHK.

2. “Attorneys’ Fees and Expenses” means the amounts approved by the Court for payment to Class Counsel, including attorneys’ fees, costs, and litigation expenses, as described in Section VII.A herein.

3. “Class” means the class certified by the Court on October 24, 2013 (Dkt. 531): “All natural persons who work in the technical, creative, and/or research and development fields that were employed on a salaried basis in the United States by one or more of the following: (a) Apple from March 2005 through December 2009; (b) Adobe from May 2005 through December 2009; (c) Google from March 2005 through December 2009; (d) Intel from March 2005 through December 2009; (e) Intuit from June 2007 through December 2009; (f) Lucasfilm from January 2005 through December 2009; or (g) Pixar from January 2005 through December 2009” (collectively, the “Class Period”).

Excluded from the Class are: retail employees, corporate officers, members of the boards of directors, and senior executives of all Defendants. The exact titles included in the Class (“Class Positions”) are identified in Exhibit C to this Agreement.

4. “Class Counsel” means the law firms of Lief Cabraser Heimann & Bernstein, LLP, the Joseph Saveri Law Firm, Inc., Berger & Montague, P.C., and Grant & Eisenhofer, P.A.

5. “Class Member” means any person who meets the “Class” definition above.

6. “Co-Lead Class Counsel” means the law firms Lief Cabraser Heimann & Bernstein, LLP and the Joseph Saveri Law Firm, Inc.

7. “Consolidated Amended Complaint” means the Consolidated Amended Complaint filed in the Action on September 13, 2011 (Dkt. 65).

8. “Court” means the United States District Court for the Northern District of California.

9. “Defendants” means Adobe Systems Incorporated, Apple Inc., Google Inc., Intel Corporation, Intuit Inc., Lucasfilm, Ltd., and Pixar.

10. “Devine Counsel” means the law firm of Girard Gibbs LLP, counsel for Named Plaintiff Michael Devine.

11. “Devine Counsel Fees” means any amount approved by the Court for payment to Devine Counsel, including attorneys’ fees, costs, and litigation expenses, as described in Section VII.A herein.

12. “Effective Date” is the effective date of the Settlement Agreement, as defined in Section II.F herein.

13. “Escrow Agent” means Citibank, N.A., which, assuming it agrees to do so, shall enter into an Escrow Agreement to carry out the tasks more fully detailed in that agreement, including to receive, hold, invest, and disburse the Settlement Fund, subject to

the direction of the Notice Administrator. The Settling Parties may replace Citibank, N.A. with another mutually agreeable financial institution.

14. “Final Approval” means the order of the Court granting final approval of the Settlement Agreement pursuant to Federal Rule of Civil Procedure 23(e).

15. “Final Approval Hearing” or “Fairness Hearing” means the hearing at which the Court will consider Plaintiffs’ motion for judgment and final approval of the Settlement.

16. “Named Plaintiffs” and “Class Representatives” mean Michael Devine, Mark Fichtner, Siddharth Hariharan, and Daniel Stover.

17. “Notice” means the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing, attached as Exhibit A , which is to be mailed directly to Class Members.

18. “Notice Administrator” means the entity which has been designated to provide notice to the Class and administer the Settlement Fund pursuant to Section II.A below and by order of the Court.

19. “Order and Final Judgment of Dismissal” means the Order which shall be submitted to the Court as described in Section II.E herein and entered by the Court as described in Section II.F herein.

20. “Plaintiffs” means the Named Plaintiffs and the Class, collectively.

21. “Plan of Allocation” means the formula by which the Settlement Fund will be distributed to Class Members as well as the timing and other aspects of the distribution attached as Exhibit B.

22. “Plan of Notice” means the plan for distributing the Notice to Class Members.
23. “Preliminary Approval” means the Court’s Order preliminarily approving the Settlement, the Plan of Notice, the form of Notice, the Plan of Allocation, and other related matters.
24. “Protective Order” means the Stipulated Protective Order filed in the Action (Dkt. 95) .
25. “Released Claims” means those claims specified in Section V.A. *infra*.
26. “Released Parties” means Adobe, Apple, Google and Intel, and their officers, directors, affiliates and employees, and the related entities specified in Section V.A *infra*.
27. “Settlement,” “Agreement,” and “Settlement Agreement” each mean the instant settlement terms agreed to by the Settling Parties as reflected in this Settlement Agreement and attachments hereto, including Attachment 1 and the Plan of Allocation.
28. “Settling Defendants” means Adobe Systems Incorporated, Apple Inc., Google Inc., and Intel Corporation.
29. “Settling Defendants’ Counsel” means the law firms of Jones Day; Keeker & Van Nest LLP; Mayer Brown LLP; Munger, Tolles, & Olson LLP; and O’Melveny & Myers LLP.
30. “Settlement Fund” means the four hundred fifteen million dollars (\$415,000,000.00) subject to the operation of Section VIII.T, if applicable, that the Settling Defendants shall pay as described in Section III.A to be held, invested, administered, and disbursed pursuant to this Settlement Agreement.

**B. Best Efforts to Effectuate the Settlement**

Named Plaintiffs and the Settling Defendants agree to cooperate and work together in order to effectuate the Settlement, including after it has received Final Approval, as set forth in Section II.E. The Settling Defendants shall have no obligation to support any motion for Preliminary or Final Approval of the Settlement, except to confirm representations set forth in Section VIII.S, if so requested by Plaintiffs.

**II. COURT APPROVAL OF SETTLEMENT AND CLASS NOTICE**

**A. Retention of Notice Administrator**

Plaintiffs shall retain a Notice Administrator, which shall be responsible for the notice administration process, calculation of payments to the Class based on the Plan of Allocation approved by the court, distribution to Class Members, withholding and paying applicable taxes, and other duties as provided herein. Plaintiffs shall obtain approval by the Court of the choice of Notice Administrator. The Notice Administrator shall sign and be bound by the Protective Order entered in the Action and be required to agree in writing in a form approved by the Settling Defendants, such approval not to be unreasonably withheld, to treat information it receives or generates as part of the notice administration process as confidential and to use such information solely for the purposes of notice administration, administering the Settlement Fund, including withholding taxes, and functions necessarily associated therewith or by this Agreement, and shall keep the information confidential, including from Class Counsel and Devine Counsel. The fees and expenses of the Notice Administrator shall be paid exclusively out of the Settlement Fund. Prior to the Effective Date, expenses incurred by the Notice Administrator relating to this Settlement and approved by the Court shall be paid solely from the Settlement Notice Fund, as set forth in Section III.A.1, upon invoice to Co-Lead Class Counsel and Settling

Defendants' Counsel. In no event shall the Settling Defendants be separately responsible for fees or expenses of the Notice Administrator.

**B. Preliminary Approval and Notice of Settlement**

1. Plaintiffs, by and through Co-Lead Class Counsel shall file with the Court, promptly after the execution of this Settlement Agreement, a motion for Preliminary Approval of the Settlement and Exhibits to the Settlement Agreement, which will include a Proposed Preliminary Approval Order, a proposed Notice of Proposed Settlement of Class Action Lawsuits and Fairness Hearing ("Notice"), and a Plan of Allocation. Michael Devine, through Devine Counsel, shall join in and otherwise support the motion for Preliminary Approval. The Settling Defendants will then provide timely notice of such submission pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b).

2. Co-Lead Class Counsel shall provide the Settling Defendants and Devine Counsel with the draft motion for preliminary approval, proposed order, and supporting documents at least 5 days, waivable by Settling Defendants and Devine Counsel, prior to the date such motion is filed.

3. In the event that the Court preliminarily approves the Settlement, Co-Lead Class Counsel shall, in accordance with Rule 23(c)(2) of the Federal Rules of Civil Procedure, direct the Notice Administrator approved by the Court to provide the Class with Notice as ordered by the Court.

4. If the Court denies the motion for Preliminary Approval without leave to file a revised motion for Preliminary Approval, and appellate review is not sought or is denied, the case will proceed as if no settlement had been attempted, and the Settling Parties shall be returned to their respective procedural postures, i.e., *status quo* as of January 7, 2015, so that the Settling Parties may take such litigation steps that Plaintiffs or

the Settling Defendants otherwise would have been able to take absent the pendency of this Settlement Agreement. In the event the Settlement does not receive Preliminary Approval and appellate review is not sought or is denied, the Settling Parties will negotiate and submit for Court approval a modified case schedule.

5. No later than twenty (20) days after the date of the Preliminary Approval Order:

a. Co-Lead Class Counsel shall direct Heffler Claims Group, subject to and consistent with the extant Protective Order and all existing confidentiality and non-disclosure agreements, to transmit to Class Counsel, the Defendants, and the Notice Administrator the employee ID numbers and/or hashed social security numbers for all employees to whom Heffler Claims Group sent notices in connection with the certification of the litigation class in the Action (the “Prior Notice Recipients”). For the avoidance of doubt, “Prior Notice Recipients” shall include any employee that a Defendant or Heffler Claims Group has identified as a Class Member and shall not include persons who have been determined not to be Class Members. Specifically with respect to Google, “Prior Notice Recipients” shall mean those current and former Google employees to whom reminder notices were sent on or about March 13, 2014, as well as the other current and former Google employees who were subsequently informed by Heffler Claims Group that they were Class Members. Heffler Claims Group shall transmit such information in a secure manner that has received the prior approval of Co-Lead Class Counsel and the Settling Defendants.

b. Heffler Claims Group shall transmit to the Notice Administrator, subject to and consistent with the extant Protective Order and all existing confidentiality

and non-disclosure agreements the full legal name, last known physical address (including the best information concerning each address, as determined using the national change of address database, information provided by Class Members, and other sources), and the compensation data and dates of employment in job titles identified in Exhibit C for the Prior Notice Recipients. Heffler Claims Group shall transmit such information in a secure manner that has received the prior approval of Co-Lead Class Counsel and the Settling Defendants;

c. Each Defendant shall, at its option, either transmit the social security numbers for the Prior Notice Recipients employed by that Defendant to the Notice Administrator or request that Heffler Claims Group do so. In either case, the information shall be transmitted pursuant to and in a manner consistent with the extant Protective Order and all existing confidentiality and non-disclosure agreements.

6. The Settling Parties intend that the Notice Administrator provide actual notice to each Class Member, to the extent practicable. Notice shall be mailed to all Class Members identified using the data provided to the Notice Administrator at approximately the same time. The Notice Administrator shall ensure that the Notice is mailed and posted on the internet within 14 days of receipt of all Defendants' Class Member data. Settling Defendants shall be provided with the form of notice to be distributed as well as the content of any website relating to administration of the Settlement no later than three business days before the Notice is distributed.

**C. Objections**

Unless the Court provides otherwise, objections to the Settlement, if any, must be submitted in writing, and must include a detailed description of the basis of the objection. Objections must be filed with the Court, with copies served on Co-Lead Class Counsel and

Settling Defendants' Counsel, postmarked on or before a date certain to be specified on the Notice, which will be forty-five (45) days after the Notice was initially mailed to Class Members. No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement without first having filed and served his or her objection(s) in writing postmarked on or before forty-five (45) days after the Notice was mailed to Class Members.

**D. Class Member Opt-Out**

1. Any Class Member may request exclusion from the Class by "opting out." This procedure is in addition to the opt out opportunities provided to the Class in January through March 2014. Class Members who wish to opt out of the Class must complete and timely submit to the Notice Administrator a request for exclusion. To be effective, such requests for exclusion must state the Class Member's full legal name and address, and the approximate dates of his or her employment with one or more of the Defendants. All requests for exclusion must be signed and dated by the Class Member or his or her legal representative, and must be (1) mailed to the Notice Administrator via First Class United States Mail and postmarked by a date certain to be specified on the Notice, which will be 45 calendar days after the Notice Administrator makes the initial mailing of the Notice or (2) received by the Notice Administrator by that date, provided, however, that if a Class Member mails the Opt-Out Statement pursuant to option (1), it will be effective only if received by the Notice Administrator on or before 10 calendar days after the end of the Opt-Out Period. The end of the "Opt-Out Period" shall be 45 calendar days after the Notice Administrator makes the initial mailing. Within eleven calendar days after the end of the Opt-Out Period, the Notice Administrator shall provide to all counsel for the Settling Parties all opt-out statements that are timely received and shall prepare a summary of the

opt outs to be filed with the Court, which shall include the total number of Class Members who have opted out. Individuals who opt out are not entitled to any monetary award under the Settlement.

2. Class Counsel, Settling Defendants, Settling Defendants' Counsel and Devine Counsel shall not solicit or encourage any Class Member to opt out of the Class or object to the Settlement.

**E. Final Approval**

1. The Final Approval Hearing shall be noticed for no earlier than 95 days from the date of the motion for preliminary approval to allow the Settling Defendants sufficient time to complete their obligations under the Class Action Fairness Act.

2. Prior to the Final Approval Hearing, on the date set by the Court, the Named Plaintiffs, through Co-Lead Class Counsel, shall submit a motion for final approval by the Court of the Settlement between the Settling Parties and Class Members (who are not properly excluded as provided herein) and the entry of an Order granting Final Approval of the Settlement that:

a. finds the Settlement and its terms to be fair, reasonable and adequate within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;

b. finds that the Notice given constitutes due, adequate and sufficient notice, and meets the requirements of due process and any applicable laws;

c. provides for service payments from the Settlement Fund (as defined in Section VI herein) to the Named Plaintiffs in addition to whatever monies each will receive from the Settlement Fund pursuant to the Court-approved Plan of Allocation;

- d. provides for payment of Attorneys' Fees and Expenses from the Settlement Fund (as provided in Section VII.A herein);
- e. provides for payment of Devine Counsel Fees from the Settlement Fund (as provided in Section VII.A herein);
- f. sets forth the method for allocating the Settlement Fund (set forth in the Plan of Allocation attached as Exhibit B);
- g. directs that the Action be dismissed with prejudice as against Adobe, Apple, Google, and Intel, without costs to the Settling Parties;
- h. approves the release of claims specified herein as binding and effective as to all Class Members (who are not otherwise properly excluded as provided herein) permanently barring and enjoining all Class Members (who are not otherwise properly excluded as provided herein) from asserting any Released Claims (as defined in Section V.A herein);
- i. reserves exclusive and continuing jurisdiction over the Settlement, including the Settlement Fund (as defined in Section III.A herein) and the administration, consummation and interpretation of this Settlement Agreement; and
- j. directs that an Order and Final Judgment of Dismissal be entered as between the Settling Parties in the Action.

3. Michael Devine, through Devine Counsel, shall join in and otherwise support the motion for Final Approval.

4. Co-Lead Class Counsel shall provide the Settling Defendants and Devine Counsel with the draft motion for final approval and supporting documents at least 5 days, waivable by Settling Defendants and Devine Counsel, prior to the date such motion is filed.

5. If so required by the Court in connection with approval of the Settlement, the Settling Parties agree to accept non-material or procedural changes to this Settlement Agreement. However, the Settling Parties are not obligated to accept any changes in the monetary amount of relief or any other substantive change to their respective obligations.

6. The Notice Administrator's affidavit of compliance with Notice requirements must be filed 30 days prior to the Final Approval Hearing.

**F. Effective Date of the Settlement**

The Settlement shall become final and effective upon the occurrence of all of the following ("Effective Date"):

1. The Settlement receives Final Approval by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
2. As provided for in Section II.E herein, entry is made of the Order and Final Judgment of Dismissal; and
3. Completion of any appeal(s) from the Court's Order and Final Judgment of Dismissal and/or Order Granting Final Approval of the Settlement (including any such order on remand from a decision of an appeals court), provided, however, that a modification or reversal on appeal of any amount of the fees and expenses awarded by the Court from the Settlement Fund, or the amount of any service awards to the Plaintiffs shall not by itself prevent this Settlement from becoming final and effective if all other aspects of the final judgment have been affirmed. If no appeal is filed from the Court's order finally approving the Settlement under Rule 23(e) of the Federal Rules of Civil Procedure, the Effective Date shall be the date on which the time for any such appeals has lapsed.

**III. CONSIDERATION FOR SETTLEMENT**

**A. Monetary Settlement Fund**

1. Subject to the provisions hereof, and in full, complete and final settlement and release of all Released Claims against the Settling Defendants and the Released Parties in the Action, any claim for Attorneys' Fees and Expenses, Devine Counsel Fees, administrative costs, and any and all amounts to be paid to Class Members, within ten (10) days from the date of the Court's Order granting Preliminary Approval of the Settlement, the Settling Defendants shall deposit or cause to be deposited by wire transfer to the Escrow Agent approved by the court \$1,000,000 (the "Settlement Notice Fund") payable in lawful money of the United States. Within seven (7) calendar days or five (5) business days, whichever is longer, from the Effective Date, Settling Defendants shall deposit or cause to be deposited by wire transfer to the Escrow Agent the remaining \$414,000,000 payable in lawful money of the United States, subject to the operation of Section VIII.T, if applicable. Under no circumstances shall the Settling Defendants or Released Parties be required to pay more than the total of \$415,000,000. The Settlement Fund is the maximum amount that the Settling Defendants shall be required to pay for settlement of the Action. The Settlement Fund will cover compensation to the Class, additional service awards to the Named Plaintiffs, the fees and costs of the Escrow Agent and Notice Administrator, the employer's and employee's shares of payroll taxes associated with the Settlement, Attorneys' Fees and Expenses to Class Counsel, and Devine Counsel Fees. No portion of the Settlement Fund will revert to the Settling Defendants unless the Settlement is terminated, as described in Section VIII.A, or is not finally approved or does not become effective for any reason.

2. The Escrow Agent will place the Settlement Fund in an interest-bearing account (the “Account”) created by order of the Court intended to constitute a “qualified settlement fund” (“QSF”) within the meaning of Section 1.468B-1 of the Treasury Regulations (“Treasury Regulations”) promulgated under the U.S. Internal Revenue Code of 1986, as amended (the “Code”). Settling Defendants shall be the “transferor” to the QSF within the meaning of Section 1.468B-1(d) (1) of the Treasury Regulations with respect to the Settlement Fund or any other amount transferred to the QSF pursuant to this Settlement Agreement. The Notice Administrator shall be the “administrator” of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations, responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Section 1.468B-2(l)(2) of the Treasury Regulations or any other applicable law on or with respect to the QSF. Settling Defendants and the Notice Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including any relation-back election within the meaning of Section 1.468B-1(j) of the Treasury Regulations.

3. The Settling Defendants, Settling Defendants’ Counsel, and Released Parties shall have no liability, obligation or responsibility with respect to the investment, disbursement, or other administration or oversight of the Settlement Fund or QSF and shall have no liability, obligation or responsibility with respect to any liability, obligation or responsibility of the Escrow Agent or Notice Administrator, including but not limited to,

liabilities, obligations or responsibilities arising in connection with the investment, disbursement or other administration of the Settlement Fund and QSF.

4. The Settlement Fund shall constitute a special award to the Class and to any Class Members receiving a payment and no portion shall be considered as a payment of overtime, salary, wages, and/or compensation under the terms of any company benefits plan or for any purpose except for tax purposes to the extent contemplated by Section IV.B. Any of the Settlement Fund's taxes due as a result of income earned or payments made by the Settlement Fund will be imposed upon and paid from the Settlement Fund. Interest earned by the Settlement Fund (less any tax imposed upon such interest) shall be for the benefit of the Class, less reasonable Attorneys' Fees and Expenses approved by the Court, any Devine Counsel Fees approved by the Court, any Court-approved service award to the Named Plaintiffs, and payment of any and all administrative or other Court-approved expenses associated with the Action or Settlement. The Settling Defendants, Settling Defendants' Counsel, and Released Parties shall have no liability, obligation or responsibility for any such taxes, Attorneys' Fees and Expenses, Devine Counsel Fees, interest, service awards or administrative or other expenses or for any reporting requirements relating thereto.

5. The Settling Defendants' transfer of the Settlement Fund to the Escrow Agent shall constitute full and complete satisfaction of their obligations under this Section III and any and all Released Claims. Following the Settling Defendants' transfer of the Settlement Fund, no Settling Defendant nor any Released Party shall have any liabilities, obligations or responsibilities with respect to the payment, disbursement, disposition or distribution of the Settlement Fund. Class Members shall look solely to the Settlement

Fund for settlement and satisfaction against any Settling Defendant and any Released Party of all claims that are released herein, all Attorneys' Fees and Expenses, all Devine Counsel Fees, all service awards to Named Plaintiffs, and all administrative or other costs and expenses arising out of or related to the Action or the Settlement. Class Members shall not under any circumstances be entitled to any further payment from any Settling Defendant or any Released Party with respect to the Released Claims, the Action or the Settlement. In the event that the Settlement Agreement becomes final and effective, payment of the Settlement Fund will fully satisfy any and all Released Claims. Except as provided by Order of the Court, no Class Member shall have any interest in the Settlement Fund or any portion thereof.

6. Notwithstanding any effort, or failure, of the Notice Administrator or the Parties to treat the Account as a QSF, any tax liability, together with any interest or penalties imposed thereon, incurred by any Settling Defendant or any Released Party resulting from income earned on the Settlement Fund or the Account or payments made from the Account (or the receipt of any payment under this paragraph) shall be reimbursed from the Account in the amount of such tax liability, interest or penalties promptly upon and in no event later than five (5) days after any Settling Defendant's or any Released Party's written request to the Notice Administrator.

#### **IV. DISTRIBUTION OF SETTLEMENT FUND**

##### **A. Eligibility**

1. Any Class Member who does not opt out pursuant to Section II.D will be deemed eligible for a payment hereunder.

2. Any Class Member who does not opt out pursuant to Section II.D is subject to and bound by the releases set forth in Section V.

3. Payments to Named Plaintiffs and Class Members shall not be considered as a payment of overtime, salary, wages and/or compensation under the terms of any company benefit plan or for any purpose except for tax purposes as provided under Section IV.B. The receipt of settlement payments shall not affect the amount of any contribution to or level of benefits under any company benefit plan.

4. Within a reasonable time period after the Effective Date, the Notice Administrator shall render a determination as to the monetary award that should be paid to each eligible Class Member from the Settlement Fund based on the methodology set forth in the Plan of Allocation as approved by the Court.

5. The Notice Administrator's determination as to the monetary award that should be paid to each Class Member shall be final and not subject to review by, or appeal to, any court, mediator, arbitrator or other judicial body, including without limitation this Court. As will be reflected in the Final Approval Order, Class Counsel, Devine Counsel and the Released Parties shall have no responsibility, and may not be held liable, for any determination reached by the Notice Administrator.

6. The Notice Administrator shall reserve \$250,000.00 from the Settlement Fund to resolve any Class Member disputes or payment issues ("Dispute Fund") that arise within 180 days of the first date on which distribution of the Settlement Fund is made to Class Members.

7. The total amount of all monetary awards paid to Class Members, as determined by the Notice Administrator, shall not exceed the net amount of the Settlement Fund after all costs, expenses, service awards, Attorneys' Fees and Expenses, Devine

Counsel Fees, and taxes have been paid, and the Dispute Fund has been reserved or fully utilized.

8. In the event monies remain as residue in the Settlement Fund following all distribution efforts approved by the Court and payment of all costs, expenses, service awards, Attorneys' Fees and Expenses, Devine Counsel Fees, and taxes (including, for example, residue resulting from Class Members' failure to negotiate checks or the Dispute Fund not having been fully utilized) ("Residue"), the Settling Parties shall jointly move the Court for an order disposing of all such funds by *cy pres* distribution to charitable and/or non-profit organizations whose principal purpose is the education, development, or advancement of workers as approved by the Court or by further distribution to the Class.

**B. Settlement Fund Distribution Procedures**

**1. Allocation**

Without admitting liability, the Settling Parties agree that one-sixth of the payments to Class Members is allocable to wages, one-sixth of such payments is allocable to lost mobility and career opportunities, and two-thirds of such payments is allocable to statutory multiplier damages. The Settling Parties agree that no portion of the Settlement Fund is attributable to government penalties or fines. Class Counsel, Devine Counsel, Named Plaintiffs, and the Class represent and agree that they have not received and/or relied upon any advice and/or representations from Settling Defendants and/or Settling Defendants' Counsel as to taxes, including as to the allocation of payments for tax purposes, the necessity for withholding, and/or the taxability of the consideration paid pursuant to this Agreement, whether pursuant to federal, state or local income tax statutes or otherwise. Co-Lead Class Counsel represents that neither Named Plaintiffs nor Class

Counsel nor Devine Counsel has provided any advice as to the taxability of payments received pursuant to this Agreement.

**2. Payment of Federal, State and Local Taxes**

a. Payments to eligible Named Plaintiffs and other Class Members from the Account will be subject to applicable tax withholding and reporting requirements pursuant to the allocation set out in Section IV.B.1, and shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and applicable FICA taxes.

b. The Notice Administrator, as administrator of the QSF, and on behalf of the QSF, is expected to and shall carry out all the duties and obligations of the QSF in accordance with the Code and Treasury Regulations and all other applicable law, including in respect of all withholding and employment taxes and all information reporting requirements with respect thereto.

c. The Notice Administrator, as administrator of the QSF, shall report that portion of the Settlement Fund payments made by the QSF allocable to wages and lost mobility and career opportunities to each eligible Class Member and to the United States Internal Revenue Service (“IRS”) and to other appropriate taxing authorities (each of the IRS and any such other taxing authority, a “Taxing Authority,” and collectively, “Taxing Authorities”) on an IRS Form W-2, or any other applicable form for the reporting of amounts treated as wages for tax purposes. Such amounts shall be subject to applicable employment taxes and withholding taxes, including without limitation FICA, FUTA, Medicare and any state and local taxes, including without limitation SUTA.

d. The Notice Administrator shall pay from the QSF the employee’s and employer’s shares of all U.S. federal, state, and local employment taxes, including

without limitation the employer's share of FICA, FUTA, Medicare and any state and local taxes, including without limitation SUTA, required to be paid by an employee or employer on amounts as allocable to wages and lost mobility and career opportunities (all such U.S. federal, state and local taxes, collectively the "Payroll Taxes"). Neither Named Plaintiffs, their counsel, Class Members nor the Notice Administrator shall seek payment for Payroll Taxes from the Settling Defendants or any Released Party.

e. The Notice Administrator, as administrator of the QSF, shall report that portion of the Settlement Fund payments made by the QSF allocable to statutory multiplier damages to each eligible Class Member and all applicable Taxing Authorities, to the extent required by law, under the Class Member's name and U.S. federal taxpayer identification number on IRS Forms 1099, or other applicable forms, and such payments shall be made without deduction for taxes and withholdings, except as required by law, as determined by the Notice Administrator, as administrator of the QSF making such payments.

f. The Notice Administrator shall be responsible to satisfy from the Settlement Fund any and all federal, state and local employment and withholding taxes, including, without limitation, federal, state and local income tax withholding, and any U.S. federal taxes including without limitation FICA, FUTA, and Medicare and any state employment taxes including without limitation SUTA. The Notice Administrator shall promptly provide to any Settling Defendant the information and documentation (including copies of applicable IRS and state forms) reasonably requested by the Settling Defendant with respect to the payment or remittance of such employment and withholding taxes. The Notice Administrator shall satisfy all federal, state, local, and other reporting requirements

(including without limitation any applicable reporting with respect to attorneys' fees and other costs subject to reporting), and any and all taxes, together with interest and penalties imposed thereon, and other obligations with respect to the payments or distributions from the Settlement Fund not otherwise addressed herein.

g. The Notice Administrator shall be responsible for procuring any required tax forms from the Class Members prior to making any such payments or distributions.

h. For avoidance of doubt, neither the Settling Defendants nor any Released Party nor Class Counsel nor Devine Counsel shall have any liability, obligation or responsibility whatsoever for tax obligations arising from payments to any Class Member, or based on the activities and income of the QSF. In addition, neither the Settling Defendants nor any Released Party shall have any liability, obligation or responsibility whatsoever for tax obligations arising from payments to Class Counsel or Devine Counsel. The QSF will be solely responsible for its tax obligations. Each Class Member will be solely responsible for his/her tax obligations. Each Class Counsel and Devine Counsel attorney or firm will be solely responsible for his/her/its tax obligations.

**V. RELEASES**

**A. Release And Covenant Not To Sue**

1. Upon the Effective Date, each Named Plaintiff and Class Member (who is not otherwise properly excluded as provided herein) (the "Releasers") shall release, forever discharge and covenant not to sue the Settling Defendants, their past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the

foregoing) (the “Released Parties”) from all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising from or related to the facts, activities or circumstances alleged in the Consolidated Amended Complaint (Dkt. 65) or any other purported restriction on competition for employment or compensation of Named Plaintiffs or Class Members (collectively, the “Released Claims”). Released Claims shall be released up to the Effective Date of the Settlement whether or not alleged in the Consolidated Amended Complaint and whether or not any Class Member objects to the Settlement. For the avoidance of doubt, this Agreement shall not be construed to release any local, state or federal claim arising out of allegations of any product defect, discrimination, or personal or bodily injury, and shall not be construed to release any local, state or federal claim arising out of allegations of unlawful overtime or violations of ERISA or similar statutes that are unrelated to the facts, activities, or circumstances alleged in the Consolidated Amended Complaint or to the payments or distributions made pursuant to this Settlement.

2. Each Releasor expressly agrees that, upon the Effective Date, he, she, or it waives and forever releases with respect to the Released Claims any and all provisions, rights and benefits conferred by either (a) § 1542 of the California Civil Code, which reads:

Section 1542. General release; extent. 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.

or (b) any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code.

3. Upon the Effective Date, Class Members shall be bound by the dismissal with prejudice of the Action and the release of the Released Claims set forth in Section V.

**VI. PLAINTIFF SERVICE AWARDS**

At the Fairness Hearing, Co-Lead Class Counsel will seek Court approval for service awards to each of the Named Plaintiffs for their participation in the Action. Devine Counsel may file papers in support of a service award to Named Plaintiff Michael Devine. The proposed service awards will be in addition to any monetary award to the Named Plaintiffs under the Plan of Allocation, and are subject to Court approval. Such service awards shall be paid by the Notice Administrator solely out of the Settlement Fund upon Court approval. Settling Defendants will take no position on the application for such service awards for requests that are \$25,000.00 or less per Named Plaintiff including Devine (exclusive of previous service awards received in connection with other settlements). The amount requested will be consistent with class action jurisprudence in this District.

These service payments shall constitute a special award to Named Plaintiffs receiving such payments and shall not be considered as a payment of overtime, salary, wages and/or compensation under the terms of any company benefit plan or for any other purpose except to the extent required for tax purposes. The receipt of service payments shall not affect the amount of any contribution to or level of benefits under any company benefit plan.

**VII. ATTORNEYS' FEES AND EXPENSES AND ADMINISTRATIVE EXPENSES**

**A. Attorneys' Fees and Expenses**

1. Prior to the deadline for objections to the Settlement pursuant to Section II.C, Co-Lead Class Counsel may apply to the Court for an award of Attorneys' Fees and Expenses incurred on behalf of the Plaintiffs. All Attorneys' Fees and Expenses and any

interest due any counsel (to the extent any interest is awarded) shall be payable solely out of the Settlement Fund in such amounts as the Court orders. No Settling Defendant nor any Released Party has any liability or responsibility for fees, costs, expenses, or interest, including without limitation attorneys' fees, costs, expenses, expert fees and costs or administrative fees or costs.

2. Devine Counsel may apply separately to the Court for attorneys' fees and reimbursement of expenses (Devine Counsel Fees). If awarded, all Devine Counsel Fees and any interest due thereon shall be payable solely out of the Settlement Fund separately from the Attorneys' Fees and Expenses to Class Counsel. No Settling Defendant, no Class Counsel, nor any Released Party has any liability or responsibility for any Devine Counsel Fees or interest.

3. Upon the Effective Date, Class Counsel, Devine Counsel and Named Plaintiffs, individually and on behalf of the Class and each individual Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against the Settling Defendants or any Released Party for Attorneys' Fees and Expenses, Devine Counsel Fees or costs associated with this Action or Class Counsel's or Devine Counsel's representation of Named Plaintiffs and/or the Class.

4. All Attorneys' Fees and Expenses, Devine Counsel Fees, and any interest due any counsel (to the extent any interest is awarded) for the Plaintiffs shall be payable solely out of the Settlement Fund and may be deducted from the Settlement Fund prior to the distribution to Class Members, but only on or after entry of an order by the Court approving any Attorneys' Fees and Expenses or Devine Counsel Fees and only on or after the Effective Date. The undersigned Co-Lead Class Counsel may withdraw from the

Account and allocate amongst counsel for the Plaintiffs the Attorneys' Fees and Expenses so awarded.

5. Settling Defendants will not comment on or oppose Class Counsel's request for Attorneys' Fees so long as the request for fees is no greater than \$81,125,000 (approximately 19.54%) of the \$415 million Settlement Fund.

6. Devine Counsel will request Devine Counsel Fees in an amount not to exceed \$4,525,000 (approximately 1.09%) of the \$415 million Settlement Fund. Settling Defendants and Class Counsel retain the right to comment on or oppose any application for Devine Counsel Fees.

**B. Costs of Notice and Administration**

All costs of notice and administration shall be paid for solely from the Settlement Fund. Under no circumstances shall Settling Defendants or any Released Party be otherwise obligated to pay for costs of Notice or any costs to administer the Settlement.

**VIII. OTHER CONDITIONS**

**A. Settlement Does Not Become Effective**

In the event that the Settlement Agreement is terminated, is not finally approved (following the exhaustion of any appellate review) or does not become effective for any reason, judgment is not entered in accordance with this Agreement, or such judgment does not become final, then (a) this Settlement Agreement shall be null and void and of no force and effect, (b) any payments of the Settlement Fund, including the \$1,000,000.00 Settlement Notice Fund transferred by Settling Defendants 10 days from Preliminary Approval and any and all interest earned thereon less monies expended toward settlement administration, shall be returned to the Settling Defendants within ten (10) business days from the date the Settlement Agreement becomes null and void, and (c) any release

pursuant to Section V herein shall be of no force or effect. In such event, the case will proceed as if no settlement has been attempted, and the Settling Parties shall be returned to their respective procedural postures, i.e., *status quo* as of January 7, 2015, so that the Settling Parties may take such litigation steps that Plaintiffs or the Settling Defendants otherwise would have been able to take absent the pendency of this Settlement. However, any reversal, vacating, or modification on appeal of (1) any amount of the fees and expenses awarded by the Court to Class Counsel or Devine Counsel, or (2) any determination by the Court to award less than the amount requested in Attorneys' Fees and Expenses, service awards to Named Plaintiffs, or Devine Counsel Fees shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

In the event the Settlement does not become effective, the Settling Parties will negotiate and submit for Court approval a case schedule.

**B. Preservation of Rights**

The Settling Parties expressly reserve all of their rights, contentions and defenses if this Settlement does not become final and effective in accordance with the terms of this Settlement Agreement. The Settling Parties further agree that this Settlement Agreement, whether or not it shall become effective pursuant to Section II.F herein, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by any Settling Defendant, any Released Party, or any other Defendant, and shall not be deemed or construed to be an admission or evidence of the truth of any of the claims or allegations made in the Action, whether in this case or any other action or proceeding. The Settling Parties further

acknowledge and agree that the negotiations and discussions that led to this Settlement are fully protected from disclosure by Federal Rule of Evidence 408 and California Evidence Code Sections 1119 and 1152.

**C. Authority to Settle**

The undersigned represent and warrant each has authority to enter into this Settlement Agreement on behalf of the party indicated below his or her name.

**D. No Assignment**

Class Counsel and Named Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Action or any related action, and they further represent and warrant that they know of no such assignments or transfers on the part of any Class Member.

**E. Binding Effect**

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Named Plaintiffs and Class Counsel shall be binding upon all Class Members.

**F. Mistake**

In entering and making this Agreement, the Settling Parties assume the risk of any mistake of fact or law. If the Settling Parties, or any of them, should later discover that any fact they relied upon in entering into this Agreement is not true, or that their understanding of the facts or law was incorrect, the Settling Parties shall not be entitled to seek rescission of this Agreement, or otherwise attack the validity of the Agreement, based on any such

mistake. This Agreement is intended to be final and binding upon the Settling Parties regardless of any mistake of fact or law.

**G. Advice of Counsel**

Except as set forth in this Agreement, the Settling Parties represent and warrant that they have not relied upon or been induced by any representation, statement or disclosure of the other Settling Parties or their attorneys or agents, but have relied upon their own knowledge and judgment and upon the advice and representation of their own counsel in entering into this Agreement. Each Settling Party warrants to the other Settling Parties that it has carefully read this Agreement, knows its contents, and has freely executed it. Each Settling Party, by execution of this Agreement, represents that it has been represented by independent counsel of its choice throughout all negotiations preceding the execution of this Agreement.

**H. Integrated Agreement**

This Settlement Agreement, including exhibits, contain the entire, complete, and integrated statement of each and every term and provision of the Settlement Agreement agreed to by and among the Settling Parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by the undersigned in the representative capacities specified, or others who are authorized to act in such representative capacities.

**I. Headings**

The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

**J. No Drafting Presumption**

All counsel to all Settling Parties hereto have materially participated in the drafting of this Settlement Agreement. No party hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

**K. Choice of Law**

All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

**L. Consent to Jurisdiction and Choice of Exclusive Forum**

Any and all disputes arising from or related to the Settlement, the Settlement Agreement, or distribution of the Settlement Fund, including Attorneys' Fees and Expenses or Devine Counsel Fees, must be brought by a Settling Defendant, a Released Party, Plaintiffs, and/or each member of the Class, exclusively in the Court. Settling Defendants, Plaintiffs and each member of the Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability or interpretation of this Settlement Agreement, including, without limitation, any suit, action, proceeding or dispute relating to the release provisions herein, except that (a) this paragraph shall not prohibit any Released Party from asserting in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim, and (b) in the event that such a defense is asserted in that forum and this Court determines that

it cannot bar the claim, this paragraph shall not prohibit the determination of the merits of the defense in that forum.

**M. Enforcement of Settlement**

Nothing in this Settlement Agreement prevents Settling Defendants or any Released Party from enforcing or asserting any release herein, subject to the provisions of Section V herein. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted by any Named Plaintiff or Class Member (who is not otherwise properly excluded as provided herein) with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

**N. Severability**

In the event any one or more of the provisions of this Settlement Agreement shall for any reason be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision if Settling Defendants' Counsel, Class Counsel and Devine Counsel mutually agree to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Settlement Agreement.

**O. No Admission**

This Settlement shall not be deemed an admission of liability or wrongdoing on the part of any of the Settling Defendants, who have denied, and continue to deny that they engaged in any wrongdoing of any kind, or violated any law or regulation, or breached any duty owed to the Named Plaintiffs or the Class Members. Settling Defendants further deny that they are liable to or owe any form of compensation or damages to, anyone with respect to the alleged facts or causes of action asserted in the Action. Settling Defendants do not,

by entering into this Settlement Agreement, admit that any or all of them have caused any damage or injury to any Class member as a result of the facts alleged or asserted in the Action and do not admit that Plaintiffs' calculations or methods of calculations of alleged damages are accurate or appropriate.

**P. Execution in Counterparts**

This Settlement Agreement may be executed in counterparts. Facsimile or PDF signatures shall be considered as valid signatures as of the date they bear.

**Q. Appeals**

The proposed order and final judgment shall provide that any Class Member that wishes to appeal the Court's Final Approval Order and Final Judgment, which appeal will delay the distribution of the Settlement Fund to the Class, shall post a bond with this Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

**R. Calculation of Time**

To the extent that any timeframe set out in this Settlement Agreement is ambiguous, said ambiguity shall be resolved by applying the conventions contained in Rule 6 of the Federal Rules of Civil Procedure.

**S. Representations to the Court About Settlement Negotiations**

The Settling Parties confirm, and will so represent to the Court, that these settlement negotiations were arm's-length and facilitated through the aid of the mediators described above, that there was no discussion of attorneys' fees prior to negotiating the Settlement, and that there are no commitments between the Settling Parties beyond what is in the Settlement. Class Counsel, Devine Counsel and Settling Defendants' Counsel agree this Settlement is beneficial to the Class and will not represent otherwise to the Court.

**T. Opt Out Credit**

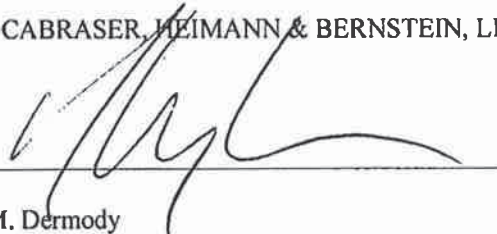
Settling Defendants shall be entitled to a pro rata reduction in the contribution to the Settlement Fund in the event that 4% or more of Class Members properly exclude themselves from this Action pursuant to the terms approved by the Court and described in the class notice.

IN WITNESS WHEREOF, the Settling Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement on the date first herein above written.

**ACCEPTED AND AGREED:**

Dated: JANUARY 7, 2015 On behalf of Plaintiffs Mark Fichtner, Siddharth Hariharan, and Daniel Stover and the Class

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP



Kelly M. Dermody  
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Dated: January 7, 2015 JOSEPH SAVERI LAW FIRM, INC.



Joseph R. Saveri  
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Facsimile: (415) 395-9940

*Co-Lead Plaintiffs' Class Counsel*

Dated: January 8, 2015 On behalf of Adobe Systems, Incorporated

JONES DAY



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*Attorneys for Defendant ADOBE SYSTEMS, INC.*

Dated: \_\_\_\_\_, 2015 On behalf of Apple Inc.

O'MELVENY & MYERS LLP

---

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*Attorneys For Defendant APPLE INC.*

Dated: \_\_\_\_\_, 2015 On behalf of Google Inc.

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*Attorneys for Defendant GOOGLE INC.*

Dated: \_\_\_\_\_, 2015 On behalf of Adobe Systems, Incorporated

JONES DAY

---

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*Attorneys for Defendant GOOGLE INC.*

Dated: \_\_\_\_\_, 2015 On behalf of Adobe Systems, Incorporated

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Dated: \_\_\_\_\_, 2015 On behalf of Apple Inc.

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Dated: 1/7, 2015 On behalf of Google Inc.

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*Attorneys for Defendant GOOGLE INC.*

Dated: January 7, 2015 On behalf of Google Inc.

MAYER BROWN LLP



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*Attorneys for Defendant GOOGLE INC.*

Dated: \_\_\_\_\_, 2015 On behalf of Intel Corporation

MUNGER TOLLES & OLSON LLP

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Facsimile: (213) 687-3702

*Attorneys for Defendant INTEL CORPORATION*

Dated: \_\_\_\_\_, 2015 On behalf of Plaintiff Michael Devine

GIRARD GIBBS LLP

---

Daniel C. Girard  
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Phone (415) 981-4800  
Fax (415) 981-4846

Dated: \_\_\_\_\_, 2015 On behalf of Google Inc.

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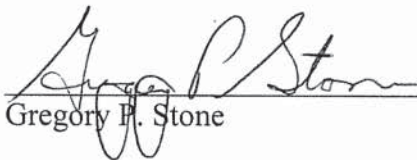
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Dated: January 7, 2015 On behalf of Intel Corporation

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*Attorneys for Defendant INTEL CORPORATION*

Dated: \_\_\_\_\_, 2015 On behalf of Plaintiff Michael Devine

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Fax (415) 981-4846

Dated: \_\_\_\_\_, 2015 On behalf of Google Inc.

MAYER BROWN LLP

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Facsimile: (650) 331-4557

*Attorneys for Defendant GOOGLE INC.*

Dated: \_\_\_\_\_, 2015 On behalf of Intel Corporation

MUNGER TOLLES & OLSON LLP

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*Attorneys for Defendant INTEL CORPORATION*

Dated: Jan 7, 2015 On behalf of Plaintiff Michael Devine

GIRARD GIBBS LLP



---

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## Attachment 1: Lodged Under Seal

# **EXHIBIT A**

**NOTICE OF PROPOSED  
SETTLEMENT OF CLASS ACTION,  
FAIRNESS HEARING, AND RIGHT TO APPEAR**

**IMPORTANT NEW INFORMATION – READ CAREFULLY AND DO NOT DISCARD**

**If you were employed in a technical, creative, or research and development (“Technical”) position at Adobe Systems Incorporated, Apple Inc., Google Inc., Intel Corporation, Intuit Inc., Lucasfilm, Ltd., or Pixar during the time periods set forth below, you could get money from a class action settlement. Please read this Notice carefully.**

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

**Overview**

**This Notice describes a settlement of a lawsuit and how you can get money from that settlement or exclude yourself from it.**

**Background**

- On October 24, 2013, the Hon. Lucy H. Koh of the United States District Court for the Northern District of California entered an order certifying a class of technical, creative, and research and development (“Technical”) employees in a class action lawsuit involving allegations that several high-technology companies agreed not to recruit each other’s employees through “cold calling.” The class action lawsuit claims that Adobe Systems Incorporated (“Adobe”), Apple Inc. (“Apple”), Google Inc. (“Google”), Intel Corporation (“Intel”), Intuit Inc. (“Intuit”), Lucasfilm, Ltd. (“Lucasfilm”), and Pixar (“Pixar”) violated federal and state antitrust laws as a result. Defendants deny that they violated any antitrust law or engaged in any wrongdoing.
- Defendants Intuit, Lucasfilm, and Pixar previously settled the claims brought against those companies. Only claims against remaining defendants Adobe, Apple, Google, and Intel are still in the case.
- The remaining defendants have now settled. **The purpose of this Notice is to advise you of your rights with respect to this new Settlement.** You should read it carefully.
- If you are a Class Member, you have a right to participate in the Settlement.
- This is not a lawsuit against you. Your participation in this lawsuit or acceptance of money from the Settlement will not affect your employment status or compensation in any way.
- Please read this Notice carefully. **This Notice explains your legal rights and options—and the deadlines to exercise them.** Your legal rights will be affected whether you act or don’t act, and you have choices to make now.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [www.](http://www.)

**The Settlement with the Remaining Defendants**

- A Settlement of \$415,000,000 with remaining defendants Adobe, Apple, Google, and Intel has been reached in settlement of the remaining claims in the class action lawsuit. (This is in addition to the \$20,000,000 in settlements previously reached with the other defendants.) Adobe, Apple, Google, and Intel deny that they violated any antitrust laws or engaged in any wrongdoing. For purposes of this Notice, Adobe, Apple, Google, and Intel are referred to collectively as the “Settling Defendants.”
- The Settlement with Adobe, Apple, Google, and Intel will fully resolve the pending class action lawsuit.
- You are a Class Member if you were a salaried Technical Employee (as defined below) who worked in the United States for any of the Defendants during any portion of the following time periods: (a) for Adobe from May 2005 through December 2009; (b) for Apple from March 2005 through December 2009; (c) for Google from March 2005 through December 2009; (d) for Intel from March 2005 through December 2009; (e) for Intuit from June 2007 through December 2009; (f) for Lucasfilm from January 2005 through December 2009; or (g) for Pixar from January 2005 through December 2009. Excluded from the Class are: retail employees, corporate officers, members of the boards of directors, and certain senior executives of all Defendants. For a more complete list of job titles included in the Class, please go to [www.\\_\\_\\_\\_\\_](http://www._____).
- **The Court in charge of this case still has to approve the Settlement. Payment will be made if the Court approves the Settlement and orders that the Settlement Fund be distributed, and if any appeals of the Court’s approval of the Settlement are resolved in favor of the Settlement. Please be patient.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
<b>DO NOTHING</b>	<b>Receive payment from the Settlement.</b> If you do nothing and are a Class Member, you will receive money from the Settlement when the funds are distributed.
<b>EXCLUDE YOURSELF FROM THE LAWSUIT AND SETTLEMENT</b>	<b>Get no payment from the Settlement.</b> This is the only way that you can file your own lawsuit or ever be part of any other lawsuit about the claims in this case against any of the Settling Defendants. As described in Question 17, below, you may exclude yourself from the lawsuit and Settlement.
<b>OBJECT TO OR COMMENT ON THE SETTLEMENT</b>	<b>Following the instructions in Question 20, write to the Court about why you like or do not like the Settlement by no later than [REDACTED], 2015.</b> You may also ask to speak to the Court about your written comments or objections about the fairness of the Settlement at the “Fairness Hearing” on [REDACTED], 2015, though you do not have to do so. To comment on or object to the Settlement and request to speak at the “Fairness Hearing,” you must act before [REDACTED], 2015.
<b>GO TO THE COURT’S FAIRNESS HEARING ABOUT THE SETTLEMENT</b>	If you would like, you may ask to speak in Court about the fairness of the Settlement if you follow the instructions in Question 20 of this Notice. You do not need to speak to the Court to receive benefits under the Settlement.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [www.\\_\\_\\_\\_\\_](http://www._____)

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**QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.](#)** \_\_\_\_\_

**BASIC INFORMATION****1. Why did I get this Notice?**

You have received this Notice because Defendants' records show you may have worked as a salaried Technical Employee in one of the job positions described in Question 5 below during some or all of the following time periods: (a) for Adobe from May 2005 through December 2009; (b) for Apple from March 2005 through December 2009; (c) for Google from March 2005 through December 2009; (d) for Intel from March 2005 through December 2009; (e) for Intuit from June 2007 through December 2009; (f) for Lucasfilm from January 2005 through December 2009; or (g) for Pixar from January 2005 through December 2009.

**The Court sent you this Notice because you have the right to know about the proposed Settlement of this class action lawsuit, and about your legal rights and options, before the Court holds a "Fairness Hearing" to decide whether to grant final approval of the Settlement.**

This Notice explains the lawsuit, the Settlement, and your legal rights. It also explains what benefits from the Settlement will be available, when they will be available, who is eligible for them, and how to obtain them. If the Court approves the Settlement and orders that the Settlement Fund be distributed and if any appeals of the Court's approval of the Settlement are resolved in favor of the Settlement, an administrator appointed by the Court will make the payments that the Settlement allows.

The Court has preliminarily approved the Settlement. If you are a Class Member, you have legal rights and options that you may exercise before the Court considers whether it will grant final approval of the proposed Settlement at the "Fairness Hearing." The Court will hold the Fairness Hearing on [REDACTED], 2015 to decide whether the proposed Settlement is fair, reasonable, and provides adequate compensation and benefits to the members of the Class.

If you wish to comment on or object to the Settlement, or to exclude yourself from the lawsuit and Settlement, you must do so following the procedures described below. If you do nothing, you will receive money from the Settlement and you will be bound by any final judgment.

**2. What is this lawsuit about?**

The lawsuit claims that Defendants entered into a series of agreements with each other not to recruit each other's employees in violation of federal and state antitrust laws. Each of the Defendants denies that it violated any laws or engaged in any wrongdoing.

Adobe, Apple, Google and Intel have entered into a Settlement Agreement with Plaintiffs. (The other Defendants -- Intuit, Lucasfilm, and Pixar -- entered into separate, earlier settlement agreements.)

To obtain more information about the claims in this lawsuit, you can view the complaint and other court documents in this case at [www.\\_\\_\\_\\_\\_](http://www._____)

**3. Why is this a class action, and who is involved?**

In a class action lawsuit, one or more persons called "Named Plaintiffs" or "Class Representatives" sue on behalf of other people who have similar claims. The people with similar claims together are a "Class" and are called "Class Members." A class action resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Court appointed Named Plaintiffs Siddharth Hariharan, Mark Fichtner, Daniel Stover, and Michael Devine as Class Representatives in this case.

**4. Why is there a Settlement?**

The Court has not found in favor of Plaintiffs or Settling Defendants. Plaintiffs and Settling Defendants have agreed to a Settlement which, if it is approved, will bring the claims against Settling Defendants to an end. That way, the Plaintiffs and Settling Defendants avoid the uncertainty of continuing the case between them and

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\\_\\_\\_\\_\\_](http://www._____)

the cost of further litigation, and Class Members will get the benefits of the Settlement. The Class Representatives support the Settlement.

**WHO IS IN THE SETTLEMENT AND THE CLASS ACTION LAWSUIT?**

**5. Am I a Class Member who is part of the Settlement?**

In general, individuals who were salaried technical, creative, and research and development employees at any one of the Defendant companies may be Class Members who are eligible for a payment from the Settlement when the funds are distributed, if they meet the following definition:

All natural persons who work in the technical, creative, and/or research and development fields that were employed on a salaried basis in the United States by one or more of the following: (a) Adobe from May 2005 through December 2009; (b) Apple from March 2005 through December 2009; (c) Google from March 2005 through December 2009; (d) Intel from March 2005 through December 2009; (e) Intuit from June 2007 through December 2009; (f) Lucasfilm from January 2005 through December 2009; or (g) Pixar from January 2005 through December 2009. Excluded from the Class are: retail employees during the Class period; corporate officers, members of the boards of directors, and senior executives of all Defendants.

By way of example, the below technical, creative and/or research and development job titles are included in the Class. This is not a complete list of job titles. To see a more complete list of job titles, please go to [www.\\_\\_\\_\\_\\_](http://www._____):

● Software Engineers	● Research and Development
● Hardware Engineers and Component Designers	● Animators, Digital Artists, Creative Directors and Technical Editors
● Application Developers	● Graphic Designers and Graphic Artists
● Programmers	● Web Developers
● Product Developers	● IT Professionals
● User Interface or User Experience Designers	● Systems Engineers and Administrators
● Quality Analysts	● Employees classified as technical professionals by their employers

**6. I'm still not sure if I am included.**

If you received this Notice mailed to you, it is because you were listed as a potential Class Member. If you are still not sure whether you are included, you can get help at [www.\\_\\_\\_\\_\\_](http://www._____) or by calling **1-800-000-0000**.

**7. Does it make a difference whether I work or worked for Adobe, Apple, Google, or Intel, on the one hand, or Intuit, Lucasfilm, or Pixar, on the other hand?**

As long as you fall within the definition of the Class in Question 5 above, you can participate in the Settlement, regardless of which Defendant you work or worked for. Current and former employees of Settling Defendants (Adobe, Apple, Google, and Intel) and the other Defendants (Intuit, Lucasfilm, and Pixar) who fall within the definition of the Class in Question 5 are all Class Members and are all entitled to receive a payment under the Settlement.

**QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\\_\\_\\_\\_\\_](http://www._____)**

**8. What are my rights as a Class Member?**

You have the right to (1) do nothing, in which case you will receive a payment and will waive any rights to pursue a later lawsuit of your own against the Settling Defendants, (2) exclude yourself from the lawsuit and Settlement (*see* Question 17), (3) comment on or object to the Settlement (*see* Question 20), or (4) attend the Court's Fairness Hearing to speak in support of or against the Court's final approval of the Settlement (*see* Question 21).

**THE SETTLEMENT BENEFITS****9. What does the Settlement provide?**

Defendants Adobe, Apple, Google, and Intel will pay \$415,000,000 into a Settlement Fund. After deducting attorneys' fees, costs, applicable taxes, and other fees and expenses (*see* Question 16), the Settlement Fund will be distributed to Class Members. The Settlement Administrator will reserve \$250,000 to resolve any Class Member disputes or payment issues that arise within 180 days of the first date distribution is made to Class Members ("Dispute Fund"). If any money remains in the Dispute Fund once all disputes are resolved, or if any Class Members fail to cash their Settlement checks, and the total amount of residual money is greater than the administrative costs of redistribution, then the residual funds will be redistributed to the Class on a pro rata basis. If the total amount of residual funds is less than the administrative costs of redistribution, the money will be donated to a charitable and/or non-profit organization whose principal purpose is the education, development, and advancement of workers, as approved by the Court.

As a Class Member, you will give up, or "release," your claims against Adobe, Apple, Google, and Intel in exchange for the right to receive your share of the Settlement Fund. Those releases include any claims made or that could have been made arising from the facts alleged in this lawsuit. The releases are described in more detail in the Settlement Agreement and in Question 13 below. You can view or download a copy of the Settlement Agreement at [www.\\_\\_\\_\\_\\_](http://www._____).

**10. How much money can I get from the Settlement?**

Class Members who do not opt out will be eligible to receive a share of the Settlement Fund net of all applicable reductions based on a formula using a Class Member's base salary paid on the basis of employment in a "Class Position" within the "Class Period" as set forth in the Class definition. In other words, each Class Member's share of the Settlement Fund is a fraction, with the Class Member's total base salary paid on the basis of employment in a Class Position during the Class Period as the numerator and the total base salary paid to all Class Members on the basis of employment in a Class Position during the Class Period as the denominator:

(Class Member's individual total base salary paid on the basis of employment in Class Positions during the Class Period)

÷

(Total of base salaries of all Class Members paid on the basis of employment in Class Positions during the Class Period)

Each Class Member's fractional amount shall be multiplied against the Settlement Fund net of court-approved costs, service awards, and attorneys' fees and expenses, and the Dispute Fund.

The base salary, dates of employment, and whether a potential Class Member held a Class Position will be conclusively derived from Defendants' data maintained by their respective human resources departments

**QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\\_\\_\\_\\_\\_](http://www._____)**

and will not be subject to challenge by Class Members. Payments to Class Members shall not be made until the Effective Date has passed and all objections, collateral challenges or appeals relating to the Settlement have been fully and finally resolved.

The proposed Plan of Allocation is available for review at [www.\\_\\_\\_\\_\\_](http://www._____), and will be presented for approval by the Court at the Fairness Hearing (*see* Question 21).

## RECEIVING MONEY FROM THE SETTLEMENT

### 11. How can I get money from the Settlement?

You do not need to do anything to receive money from the Settlement. If you fall within the Class definition and do not opt-out of the Settlement, you will receive money from the Settlement. If you exclude yourself from the lawsuit and Settlement, you will not receive money from the Settlement.

### 12. When will I get my payments?

The Court will hold a Fairness Hearing on [\_\_\_\_], 2015, to decide whether to approve the Settlement. If the Court approves the Settlement, there still may be appeals of that decision. If an appeal is filed, it is hard to estimate how long it might take for it to be resolved, but it can take a lot of time, perhaps more than a year. Settlement payments to Class Members will be distributed if the Settlement is approved, and after appeals, if any, are resolved.

Updates regarding the Settlement and when payments may be made will be posted on the settlement website, [www.\\_\\_\\_\\_\\_](http://www._____).

### 13. What am I giving up to get payments under the Settlement?

If you are a Class Member, unless you exclude yourself from the lawsuit and Settlement, you will remain within the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Adobe, Apple, Google, or Intel about the claims in this case. It also means that all of the Court's orders will apply to you and legally bind you, and that you agree to the following "Release of Claims," which describes exactly the legal claims that you give up if you participate in the Settlement:

Upon the Settlement Agreement becoming effective, the Named Plaintiffs and Class Members (who do not otherwise properly exclude themselves) shall all release, forever discharge and covenant not to sue Adobe, Apple, Google, and Intel, their past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing) (the "Released Parties") from all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising from or related to the facts, activities or circumstances alleged in the Consolidated Amended Complaint or any other purported restriction on competition for employment or compensation of Named Plaintiffs or Class Members (collectively, the "Released Claims"). Released Claims shall be released up to the Effective Date of the Settlement whether or not alleged in the Consolidated Amended Complaint and whether or not any Class Member objects to the Settlement. For the avoidance of doubt, this Agreement shall not be construed to release any local, state or federal claim arising out of allegations of any product defect, discrimination, or personal or bodily injury, and shall not be construed to release any local, state or federal claim arising out of allegations of unlawful overtime or violations of ERISA or similar statutes that are unrelated to the facts, activities, or circumstances alleged in the Consolidated Amended Complaint or to the payments or distributions made pursuant to this Settlement.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [www.\\_\\_\\_\\_\\_](http://www._____)

## THE LAWYERS REPRESENTING YOU

**14. Who represents me in this case?**

The Court appointed the following law firms as Co-Lead Class Counsel to represent the Class:

<p>Kelly M. Dermody LIEFF CABRASER HEIMANN &amp; BERNSTEIN, LLP 275 Battery Street, 29<sup>th</sup> Floor San Francisco, CA 94111 (415) 956-1000 <a href="mailto:kdermody@lchb.com">kdermody@lchb.com</a></p>	<p>Joseph R. Saveri JOSEPH SAVERI LAW FIRM, INC. 505 Montgomery Street, Suite 625 San Francisco, CA 94111 (415) 500-6800 <a href="mailto:jsaveri@saverilawfirm.com">jsaveri@saverilawfirm.com</a></p>
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These lawyers and law firms are called “Plaintiffs’ Counsel.”

**15. Should I get my own lawyer?**

You do not need to hire your own lawyer because Plaintiffs’ Counsel are working on your behalf. If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer’s services. For example, you can ask your lawyer to appear in Court for you if you want someone other than Plaintiffs’ Counsel to speak for you. You may also appear for yourself without a lawyer.

**16. How will the lawyers be paid?**

Plaintiffs’ Counsel will ask the Court to approve at the Fairness Hearing payment from the Settlement Fund of out-of-pocket costs not to exceed \$1,200,000, which includes incurred and unreimbursed expert and vendor costs Plaintiffs’ Counsel have incurred prosecuting this case to date. Plaintiffs’ Counsel will also ask the Court to approve payment of attorneys’ fees of up to approximately 19.54% percent (or \$81,125,000) of the Settlement Fund. The fees would compensate Plaintiffs’ Counsel for investigating the facts, litigating the case (including through appeals), and negotiating and administering the \$415 million Settlement.

In addition, the law firm of Girard Gibbs LLP, counsel for Class Representative Michael Devine, will seek a fee of up to approximately 1.09% of the Settlement Fund (or \$4,523,500) for its participation in the settlement approval process and the negotiation of the \$415 million settlement. The fee sought by Girard Gibbs is independent of any compensation sought by Plaintiffs’ Counsel and would compensate Girard Gibbs LLP for its services and pay its out-of-pocket litigation expenses..

Plaintiffs’ Counsel will also ask the Court to approve at the Fairness Hearing payments of \$80,000 to each of the individual Class Representatives, as well as to \$80,000 to the estate of former Class Representative Brandon Marshall (who, before his death in December 2013, provided all of the same services to the Class as the other Class Representatives), as Service Awards for their service to the Class. The Service Awards shall be paid when the Settlement Fund is distributed to Class Members. The costs of providing this Notice and administering the Settlement are being paid from the Settlement Fund and are estimated to total approximately \$160,000.

You do not have to pay any of Class Counsel or Devine Counsel’s fees, costs, or expenses. If the Court grants Counsel’s requests, all fees, costs, and expenses would be deducted from the Settlement Fund.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.](http://www.)

**EXCLUDING YOURSELF FROM THE SETTLEMENT****17. How do I get out of the Settlement?**

If you fall within the Class definition but don't want a payment from the Settlement, or if you want to keep the right to sue or continue to sue Adobe, Apple, Google, or Intel (at your own expense) about the issues in this case, then you must "opt out" of the Settlement. This is called excluding yourself from, or opting out of, the Settlement.

To exclude yourself from (opt out of) the lawsuit and Settlement, you must send a letter or written request to the Notice Administrator at the address below saying that you want to be excluded from the Settlement in *In re: High-Tech Employee Antitrust Litigation*, with your full legal name and the name(s) of the Defendant company or companies (i.e., Adobe, Apple, Google, Intel, Intuit, Lucasfilm, or Pixar) for which you worked between 2005 and 2009. You must sign your request.

To exclude yourself from the lawsuit and Settlement, you must submit your opt-out request letter postmarked no later than [\_\_\_\_], **2015** (or received by the Notice Administrator by that date if sent by fax or e-mail) to the following address:

Notice Administrator

In re High Tech Employee Settlement

P.O. Box 0000

City, ST 00000

Fax #

Email Address

You cannot exclude yourself (opt out) by telephone.

If you request to be excluded from the Settlement with Adobe, Apple, Google, and Intel, you will not be legally bound by the Settlement. You will be able to sue (or continue to sue) Adobe, Apple, Google, and Intel in the future about the claims in this case.

If you ask to be excluded from the Settlement, you will not receive payment from it, and you will not be able to object to it.

**18. If I don't exclude myself, can I sue the Settling Defendants for the same thing later?**

No.

If you are a Class Member, unless you exclude yourself from the lawsuit and Settlement, you give up the right to sue Adobe, Apple, Google, and Intel for the claims that the Settlement resolves as more fully described in Question 13 above.

If you have a pending lawsuit against any of the Settling Defendants, speak to your lawyer in that lawsuit immediately, because you may need to exclude yourself to continue your own lawsuit. The process for excluding yourself from the Settlement is described in the preceding sections.

**19. If I exclude myself, can I get money from this case?**

If you exclude yourself, you will **not** receive money from the Settlement. But, by excluding yourself, you keep any rights to sue on your own about the same claims in the lawsuit should you want to do so.

**COMMENTING ON OR OBJECTING TO THE SETTLEMENT****20. How do I tell the Court that I like or don't like the proposed Settlement, and may I speak at the hearing?**

If you're a Class Member, you can comment on or object to the Settlement if you like or don't like any part of it. You can give reasons why you think the Court should or should not approve it. The Court will consider your views.

To comment or to object, you must send a letter to the Notice Administrator with your comments or objections to the proposed Settlement in *In re: High-Tech Employee Antitrust Litigation*. Be sure to include:

- Your name, address, telephone number, email address and signature;
- If you object to the Settlement, a detailed list of any other objections that you or your lawyer have made to any class action settlements submitted to any court in the United States in the previous five (5) years; and
- A detailed statement of your comments or objections, including the grounds for your objections, if any, together with any supporting documents.
- You do not need to attend or speak at the Fairness Hearing (described in Question 21 below) for your comments or objections to be considered. If you would like to speak at the Fairness Hearing about your comments or objections to the Settlement, you must add to your letter a statement that you intend to appear and speak at the hearing, for example, by stating "This is my Notice of Intention to Appear in *In re: High-Tech Employee Antitrust Litigation*."

If you wish for the Court to consider your comments or objections, you must submit the comments or objections, along with a request to speak at the Fairness Hearing (if any), postmarked no later than [REDACTED], 2015 (or received by the Notice Administrator by that date if sent by fax or e-mail) to the following address:

Notice Administrator

In re High Tech Employee Antitrust Lawsuit

P.O. Box 0000

City, ST 00000

Fax #

Email Address

If you choose to exclude yourself from the lawsuit and Settlement, you will have no right to speak at the hearing about the Settlement or object to it, because the Settlement will no longer affect your rights.

**THE COURT'S FAIRNESS HEARING****21. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing at [REDACTED] in Courtroom 8 on the 4<sup>th</sup> Floor of the United States District Court for the Northern District of California, 280 S. First Street, San Jose, California 95113.

At this hearing, the Court will consider the Settlement and determine whether it is fair, reasonable, and adequate. If there are written comments or objections, the Court will consider them. The Court will decide whether to allow people who have raised objections or comments to speak at the hearing. The Court may also decide how much to award to Plaintiffs' Counsel in attorneys' fees and expenses and whether to approve the payment of Service Awards to the Class Representatives, to be paid when the Settlement Fund is distributed to Class Members. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long this decision will take.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [www.](http://www.)

The Court may reschedule the Fairness Hearing or change any of the deadlines described in this Notice. Be sure to check the website, [www.\\_\\_\\_\\_\\_](http://www._____), for news of any such changes.

**22. Do I have to come to the Fairness Hearing?**

No. Plaintiffs' Counsel will be present at the Fairness Hearing to answer any questions the Court may have. You are welcome to come at your own expense. If you send comments or objections to the Settlement, you don't have to come to Court to talk about it. As long as you mailed, faxed, or emailed your written comments or objections on time, the Court will consider them. You may also pay your own lawyer to attend, but it is not required.

**IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you are a Class Member and you do nothing, you will get money from the Settlement and any claims you might have against Adobe, Apple, Google, and Intel for the allegations in this case will be released unless you separately write to exclude yourself (following the instructions in Question 17). In exchange for receiving money from the Settlement, you will give up or "release" your claims in this lawsuit. You will not be able to participate in, or collect money damages from any other lawsuit against Settling Defendants related to their alleged unlawful agreements not to "cold call" each other's employees. (See Question 13 for the exact definition of the claims you are giving up.)

**YOUR PRIVACY**

**24. Will my manager know whether or how I responded to this Notice?**

The Court has appointed an independent, experienced professional Notice Administrator, \_\_\_\_\_ . The Notice Administrator will establish and follow procedures to protect the confidentiality of the identity of persons receiving payments or opting out. The Notice Administrator will issue settlement checks. The list of those Class Members receiving checks will not be shared with Defendants, the Court, or Plaintiffs' counsel.

The Notice Administrator will also receive requests to be excluded from the Settlement, as well as comments (including objections) to the Settlement. The Notice Administrator will be required to share requests to be excluded from the Settlement as well as comments or objections to the Settlement with Class Counsel and counsel for the Defendants, as well as with the Court. Objections to the Settlement, as well as the names of those who opt out of the lawsuit and Settlement, will become part of the public record in the court file.

**GETTING MORE INFORMATION**

**25. Are more details about the Settlement and the lawsuit available?**

Yes. This Notice summarizes the Settlement. More details about the Settlement are in the proposed Settlement Agreement itself. You can see or print copies of the Settlement Agreement at **Error! Hyperlink reference not valid.** More information about the class action lawsuit, including copies of the Order Granting Plaintiffs' Supplemental Motion for Class Certification, the Plaintiffs' class action complaint, the Defendants' answers to the complaint, and other case documents, can also be viewed or printed at **Error! Hyperlink reference not valid.** [www.\\_\\_\\_\\_\\_](http://www._____).

QUESTIONS? CALL 1-800-000-0000 OR VISIT [www.\\_\\_\\_\\_\\_](http://www._____)

**26. How do I get more information?**

The website [www.\\_\\_\\_\\_\\_](http://www._____) provides more information and answers to common questions about the lawsuit and the Settlement. You may also call, write, fax, or email the Notice Administrator with your questions at:

Notice Administrator

In re High Tech Employee Antitrust Lawsuit

P.O. Box 0000

City, ST 00000

Telephone: XXX-XXX-XXXX

Fax #

Email Address

**PLEASE DO NOT CONTACT THE COURT. YOU SHOULD DIRECT ANY QUESTIONS YOU MAY HAVE TO THE NOTICE ADMINISTRATOR AND/OR TO PLAINTIFFS' COUNSEL.**

You may also seek the advice and counsel of your own attorney at your own expense, if you desire.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\\_\\_\\_\\_\\_](http://www._____)

# **EXHIBIT B**

**Plan of Allocation**

Class Members who do not opt out will be eligible to receive a share of the Settlement Fund net of all applicable reductions based on a formula using a Class Member's base salary paid on the basis of employment in a "Class Position" within the "Class Period" as set forth in the Class definition. In other words, each Class Member's share of the Settlement Fund is a fraction, with the Class Member's total base salary paid on the basis of employment in a Class Position during the Class Period as the numerator and the total base salary paid to all Class Members on the basis of employment in a Class Position during the Class Period as the denominator:

(Class Member's individual total base salary paid on the basis of employment in Class Positions during the Class Period) ÷ (Total of base salaries of all Class Members paid on the basis of employment in Class Positions during the Class Period).

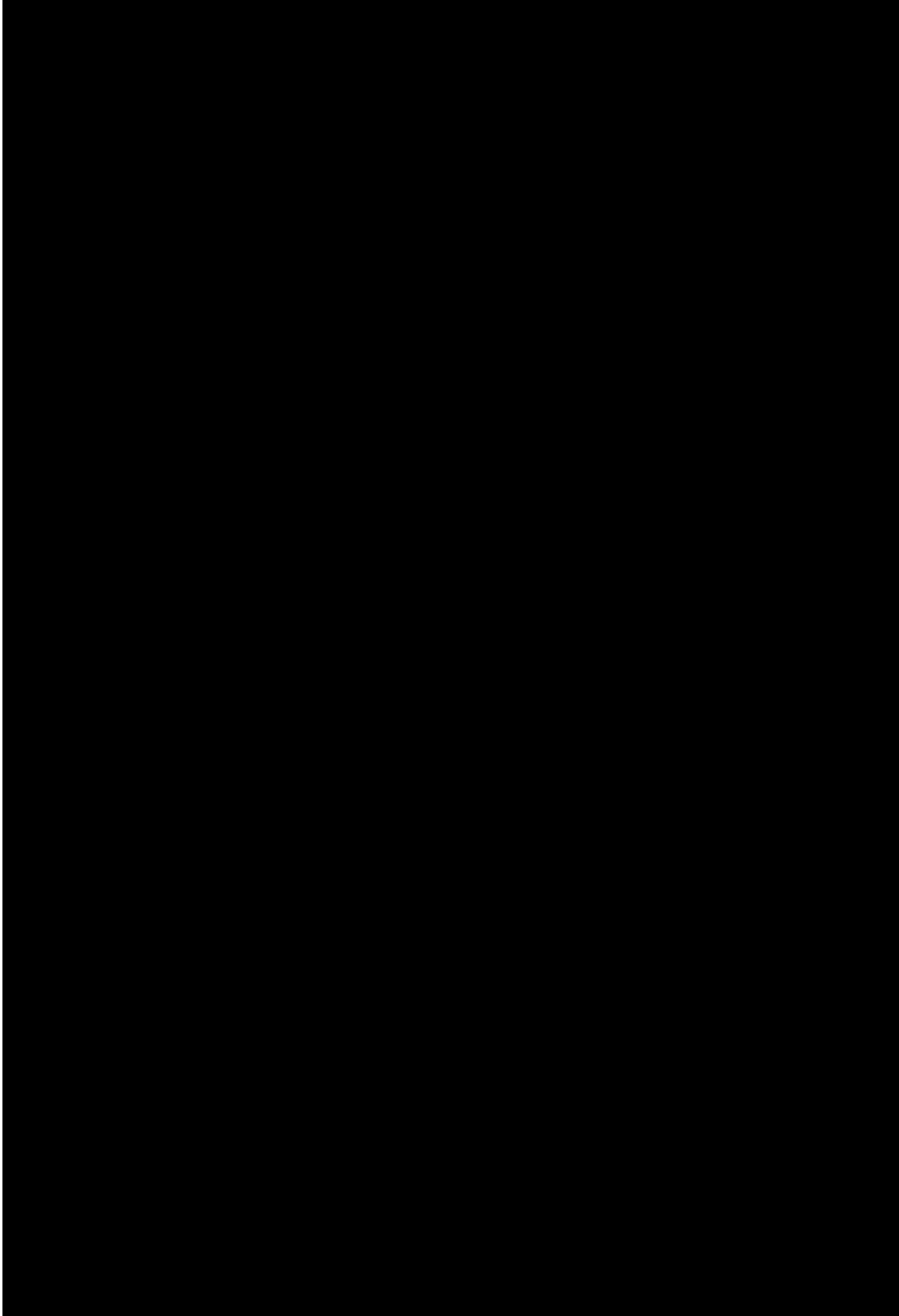
Each Class Member's fractional amount shall be multiplied against the Settlement Fund net of court-approved costs, service awards, and attorneys' fees and expenses, and the Dispute Fund.

The base salary, dates of employment, and whether a potential Class Member held a Class Position will be conclusively derived from Defendants' data maintained by their respective human resources departments and will not be subject to challenge by Class Members.

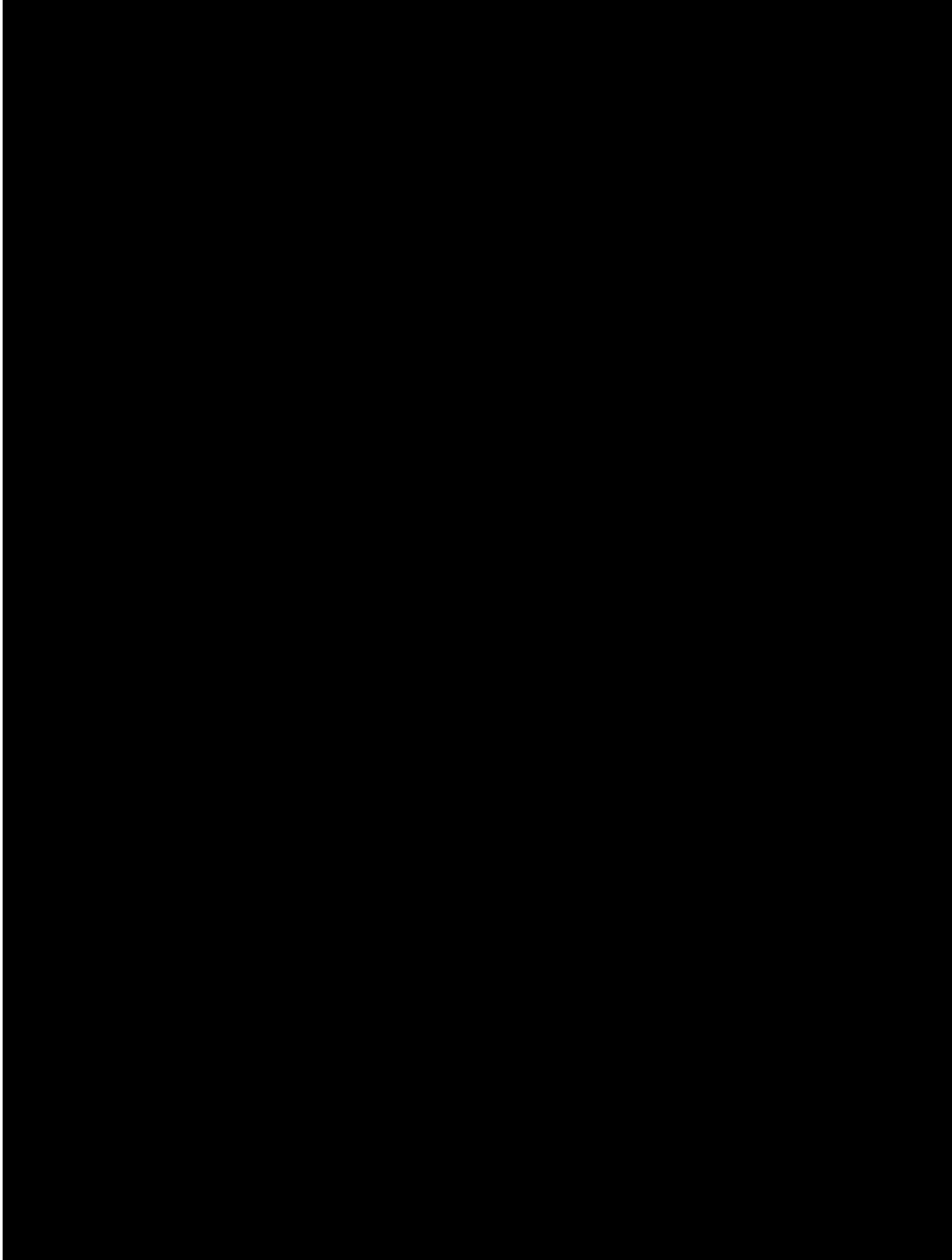
Payments to Class Members shall not be made until the Effective Date has passed and all objections, collateral challenges or appeals relating to the Settlement have been fully and finally resolved.

**EXHIBIT C – REDACTED**

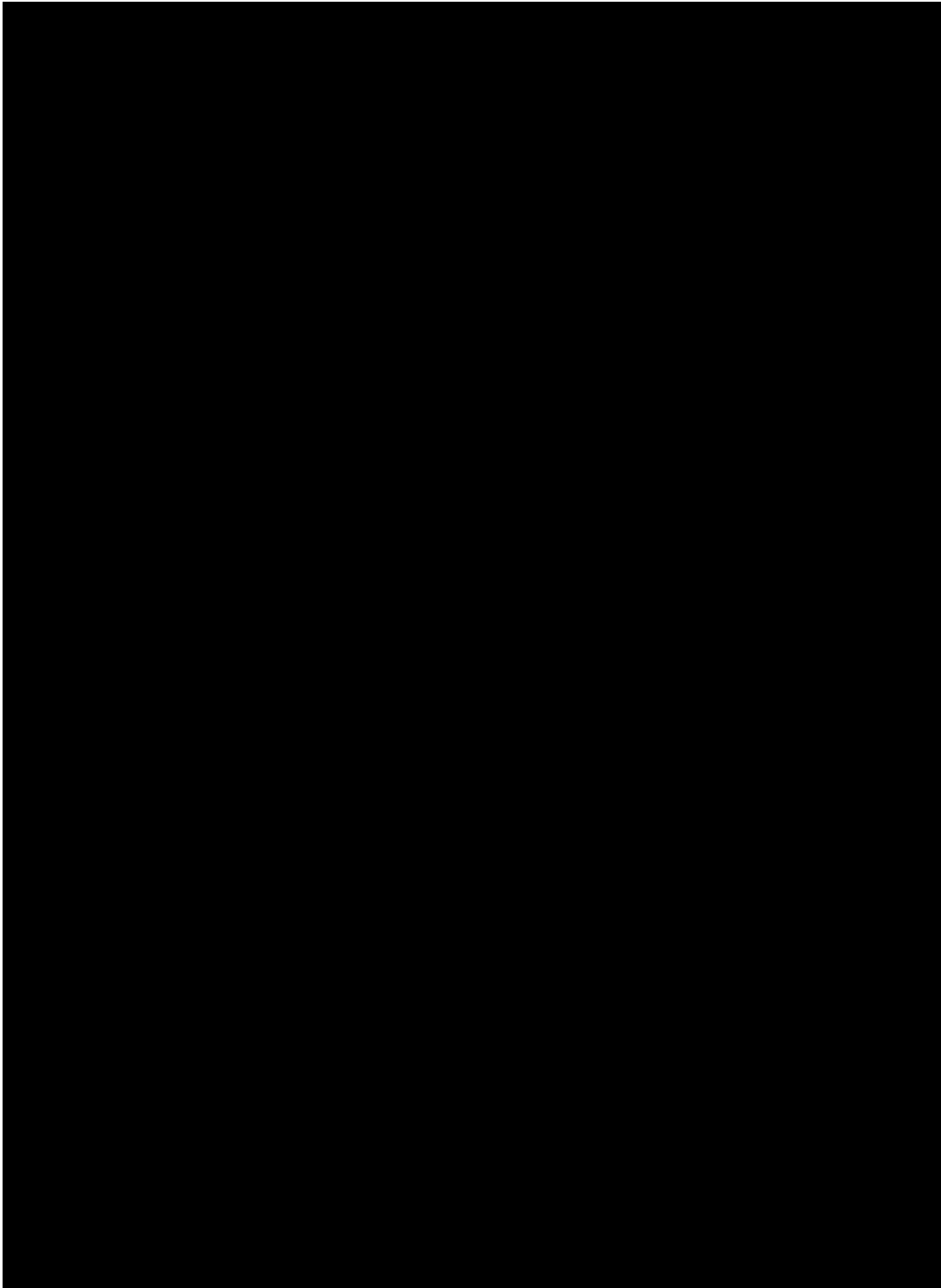
Adobe



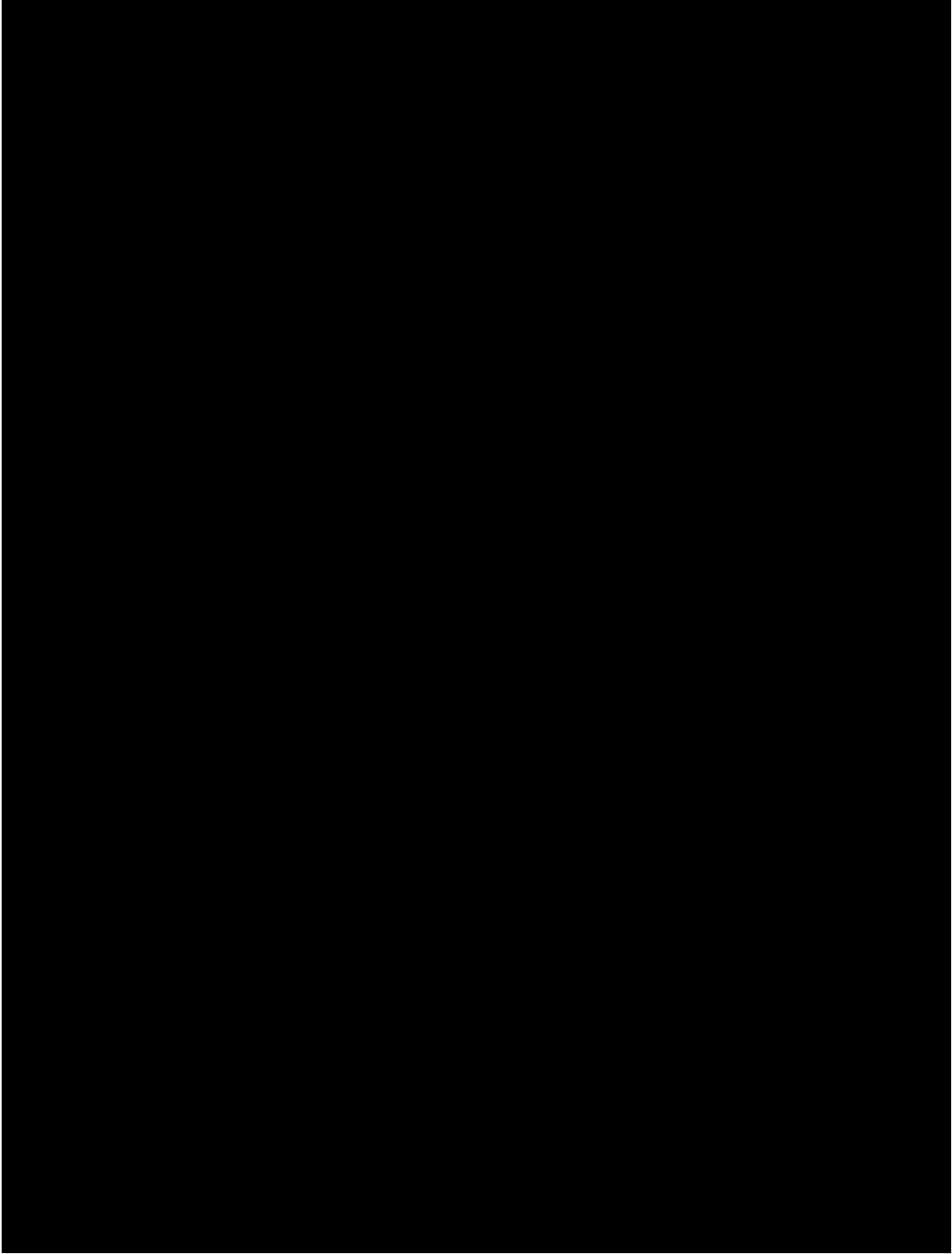
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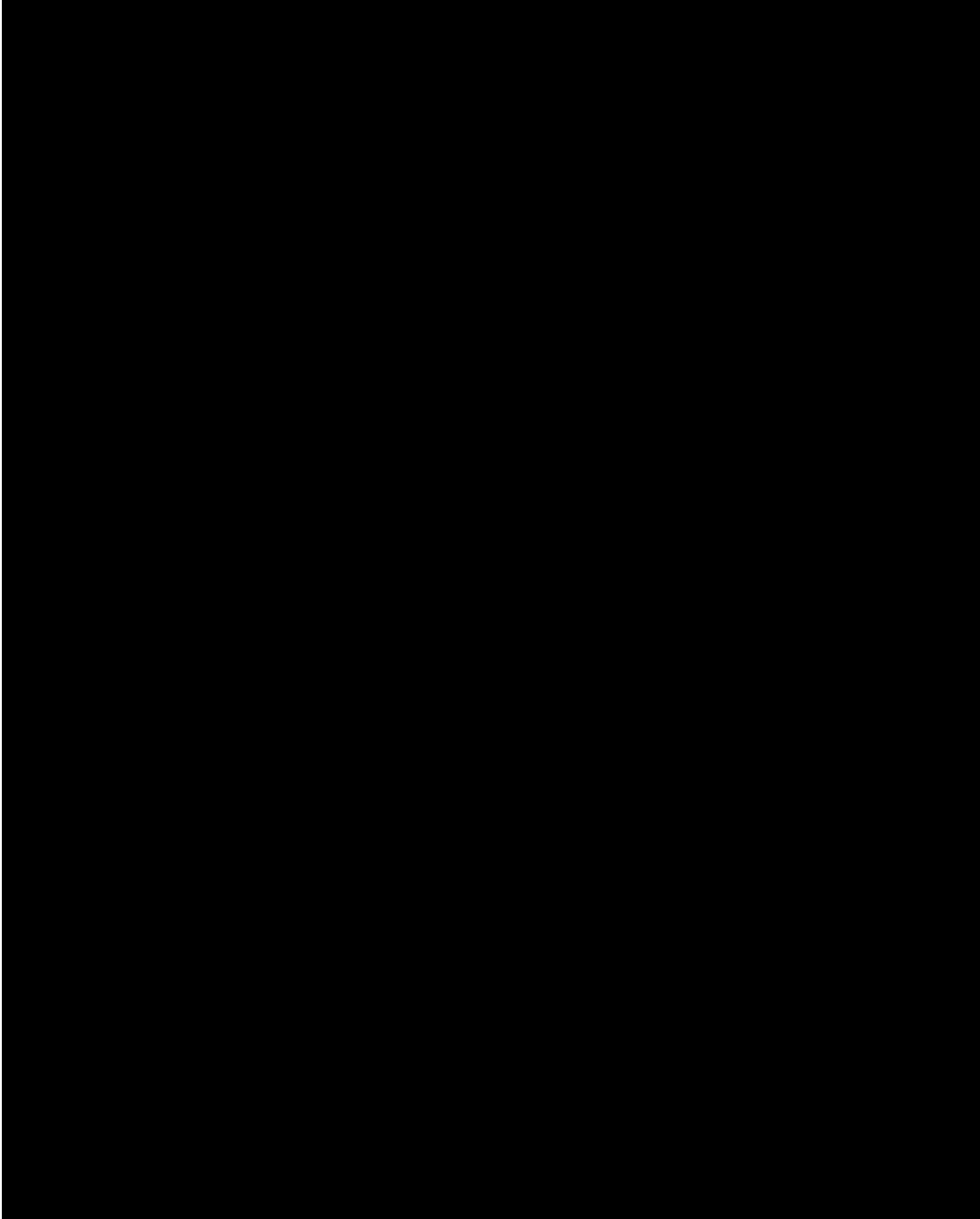
Apple



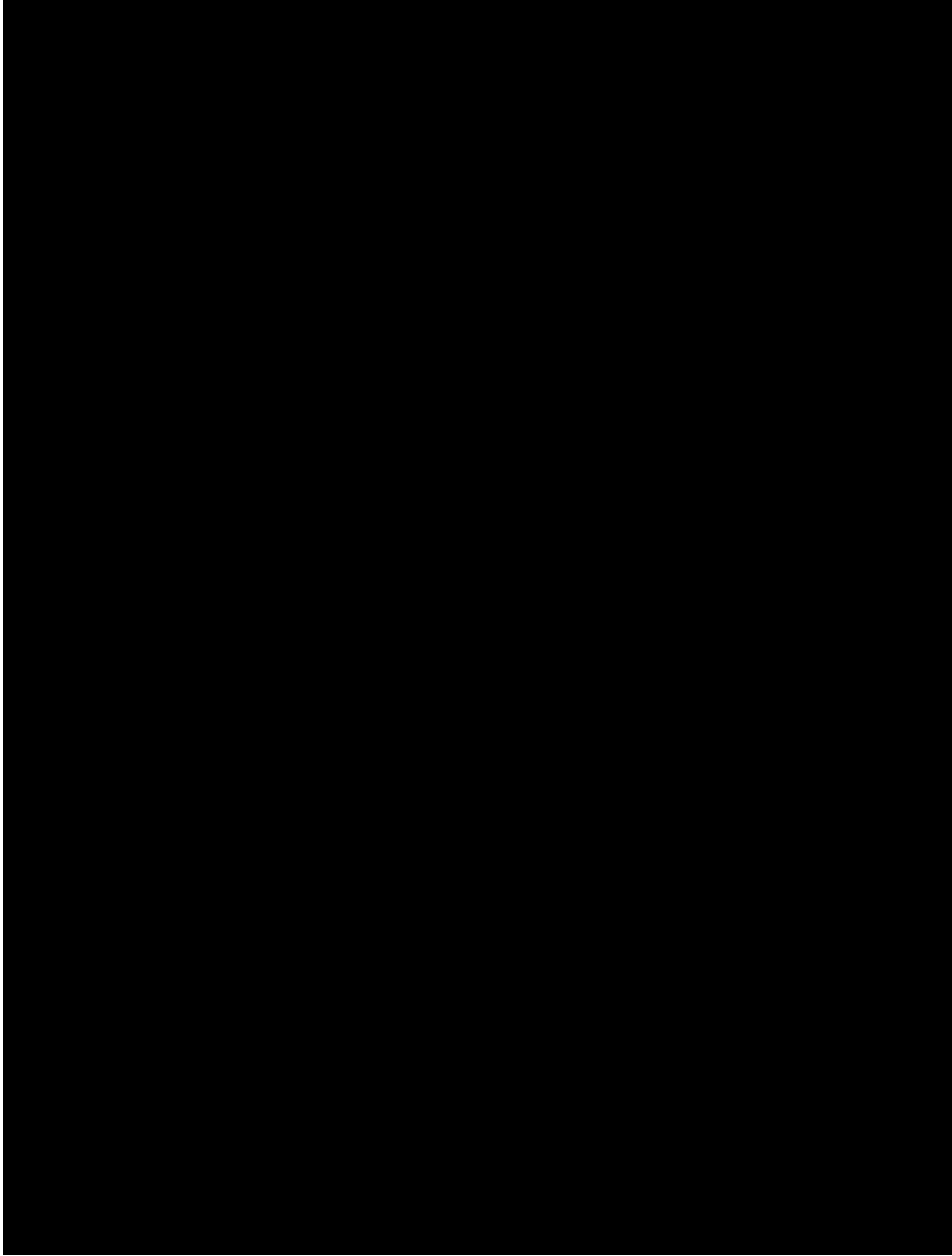
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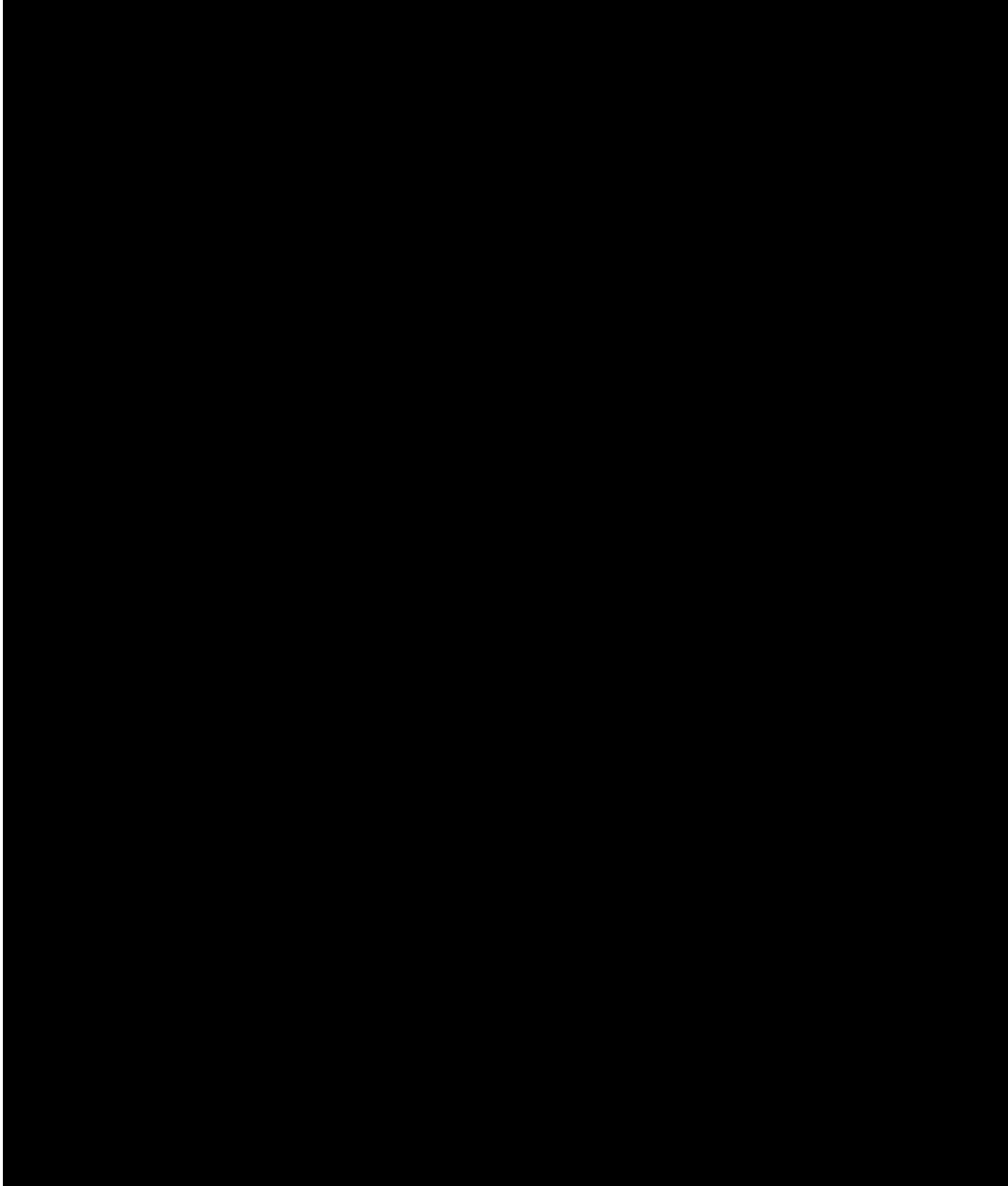
Google



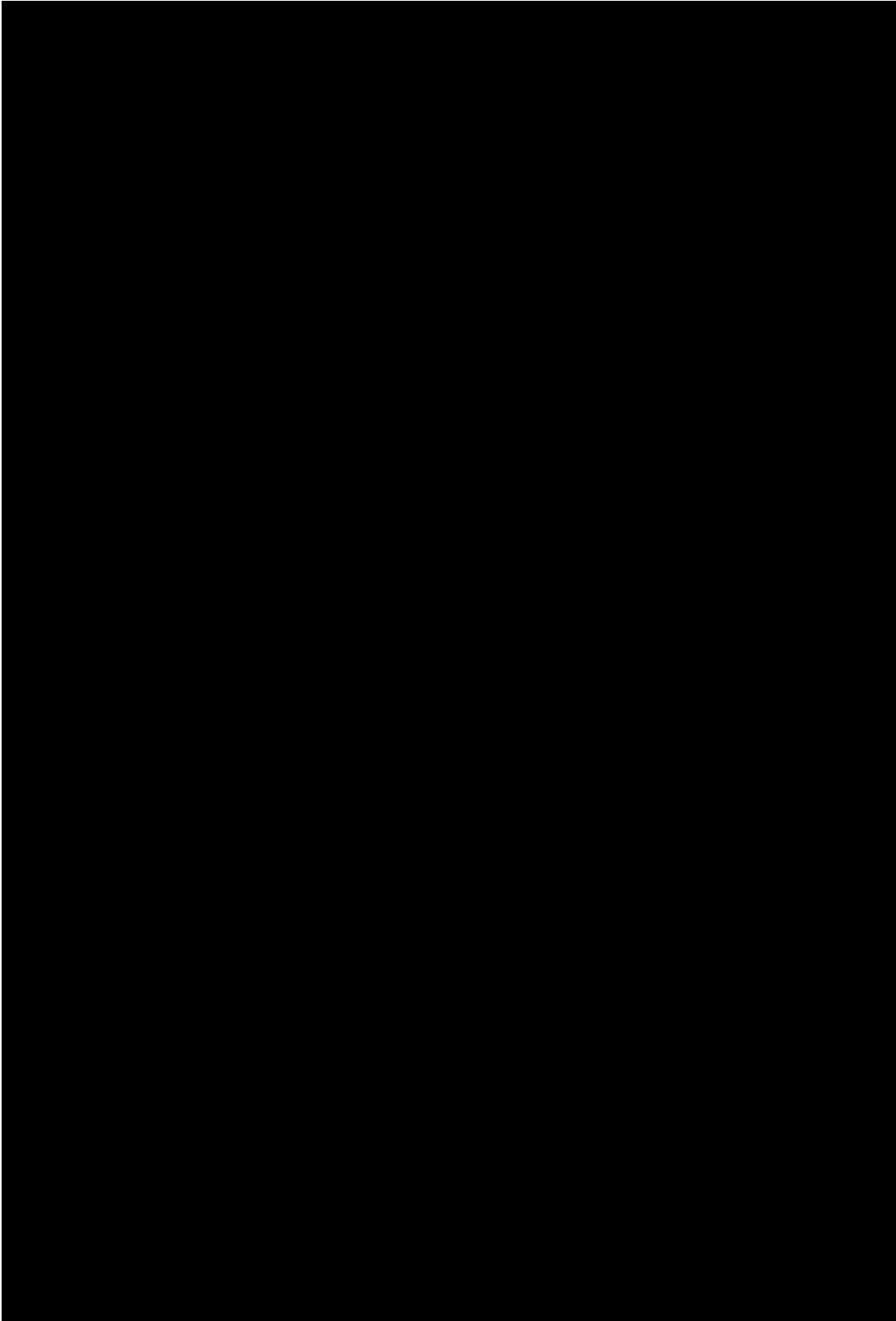
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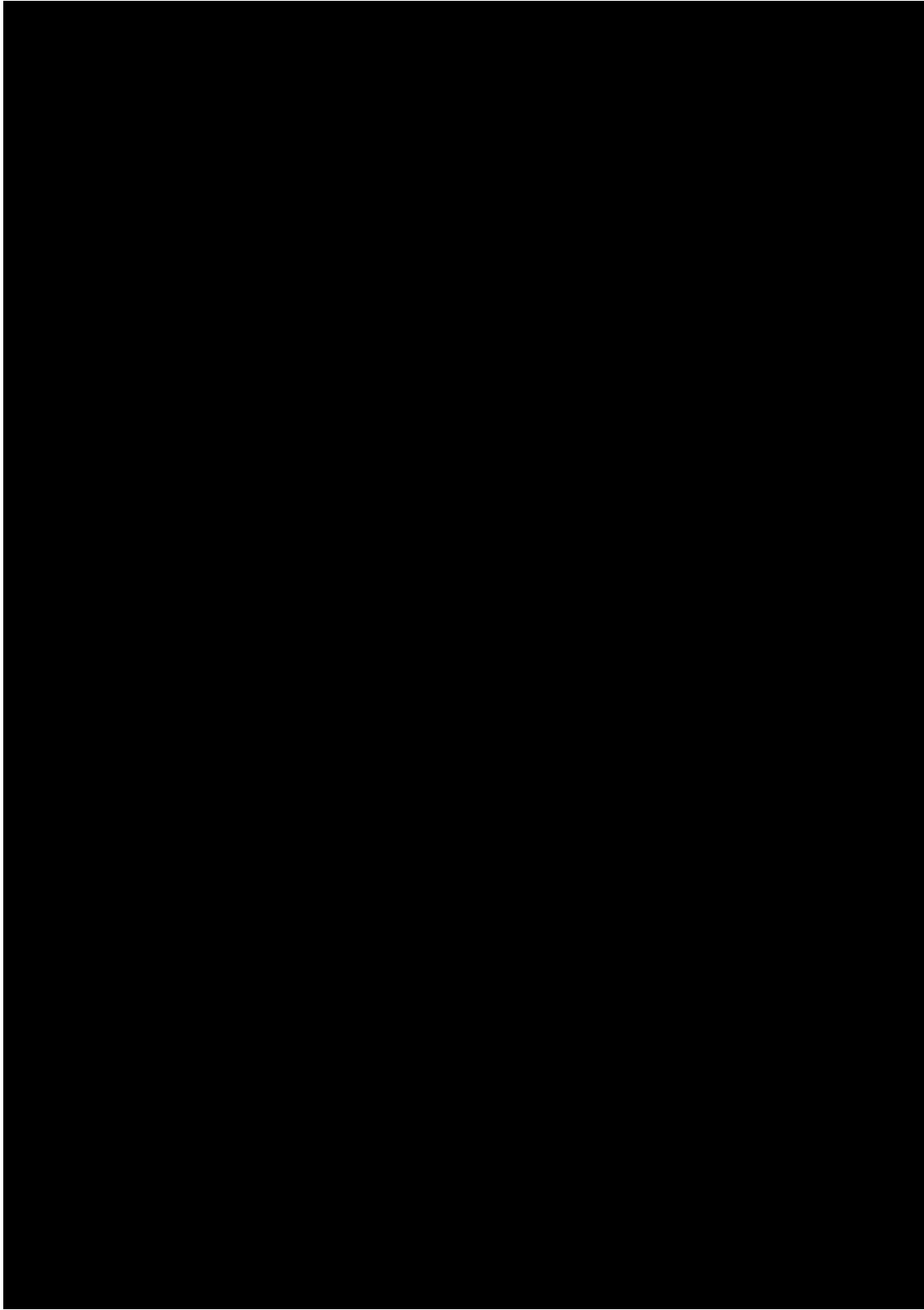
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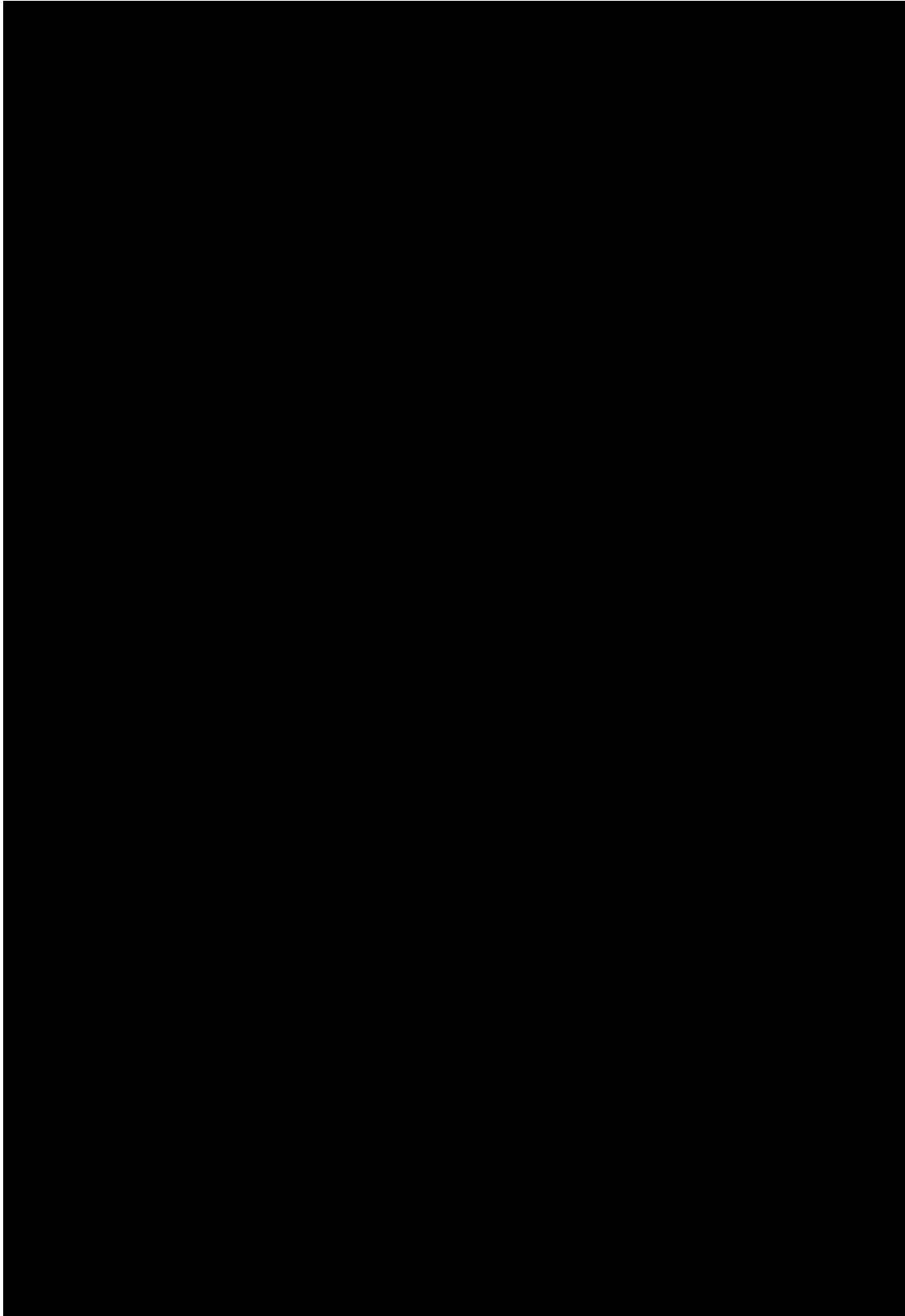
Intel



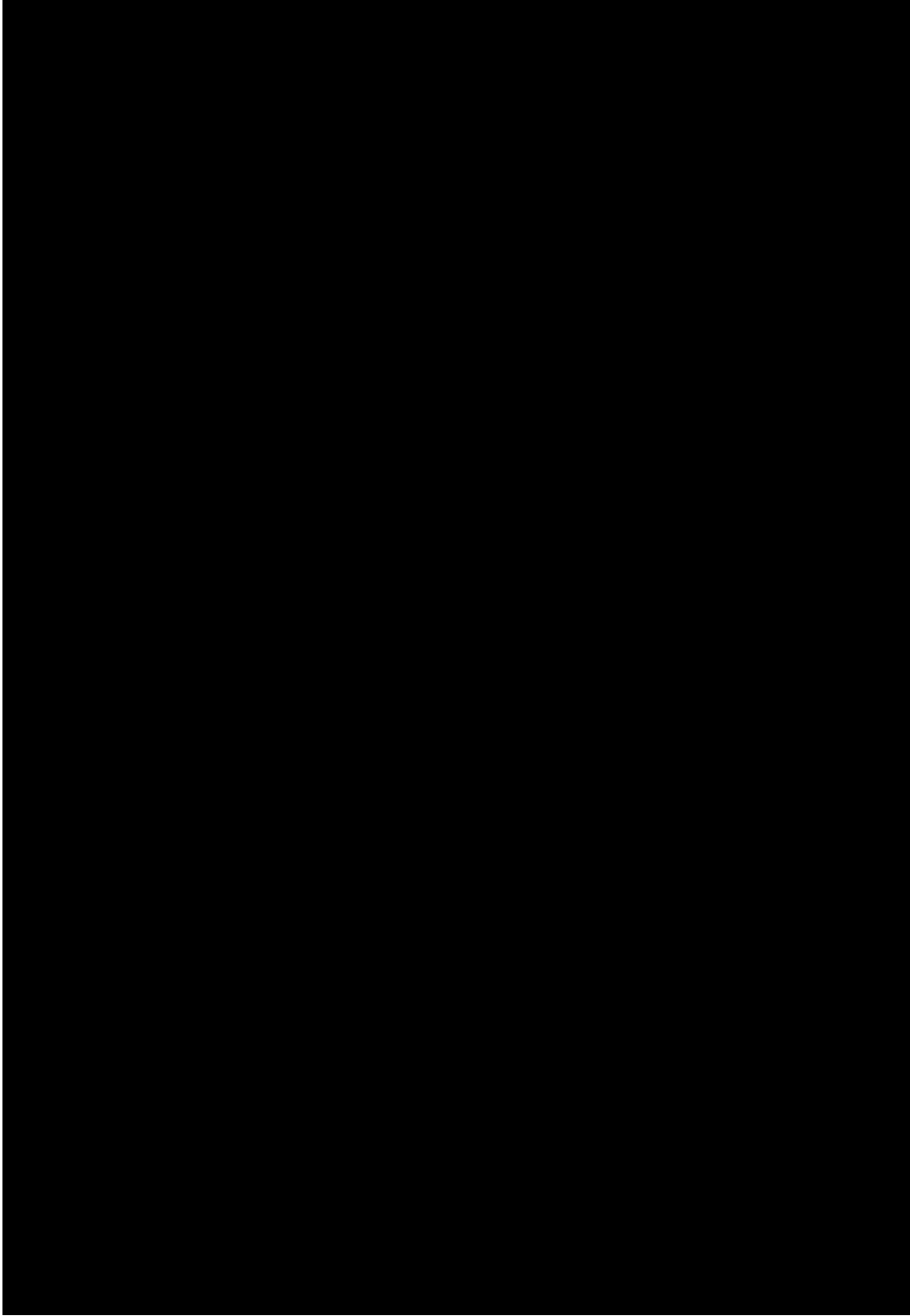
Intel



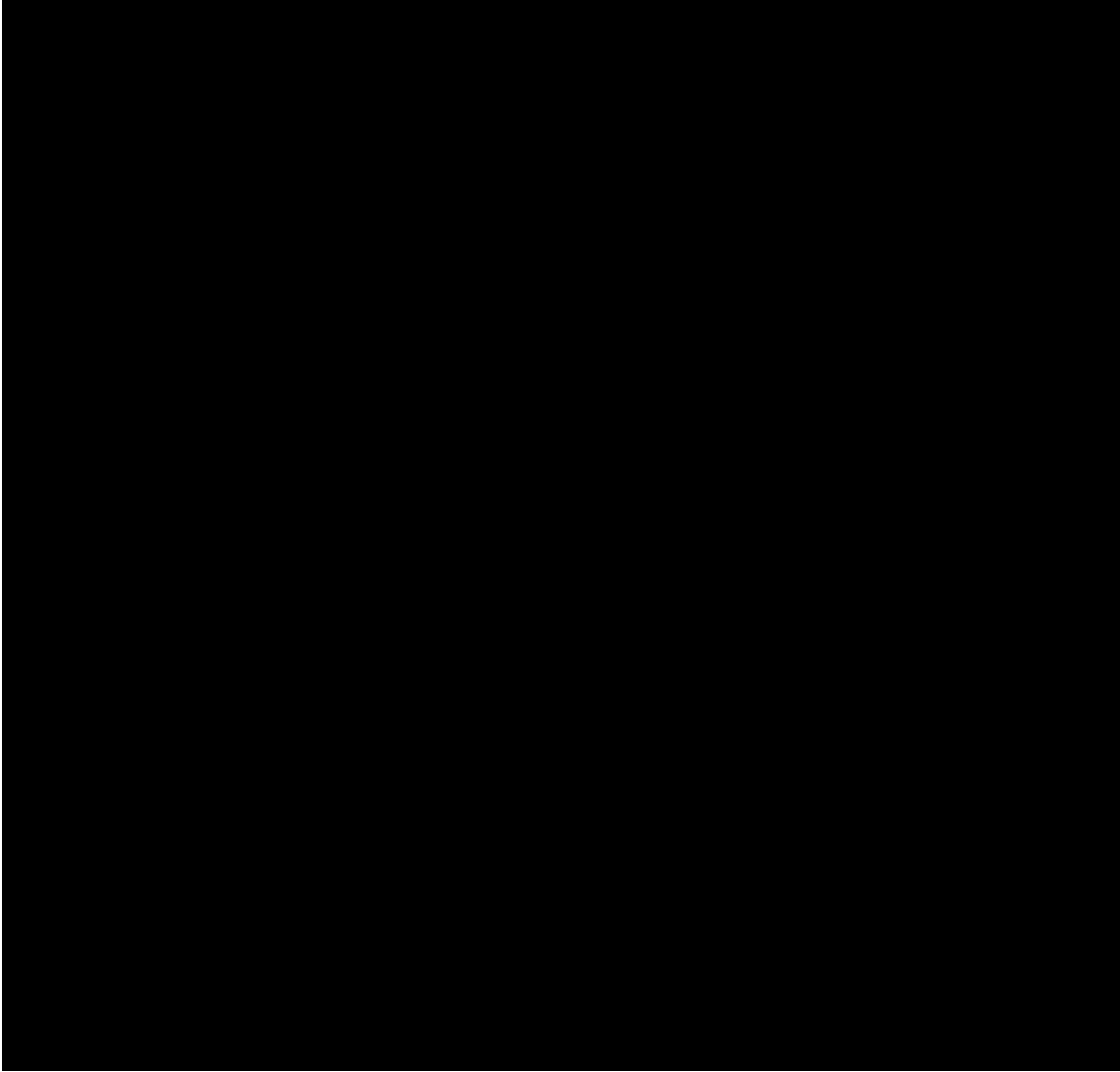
Intel



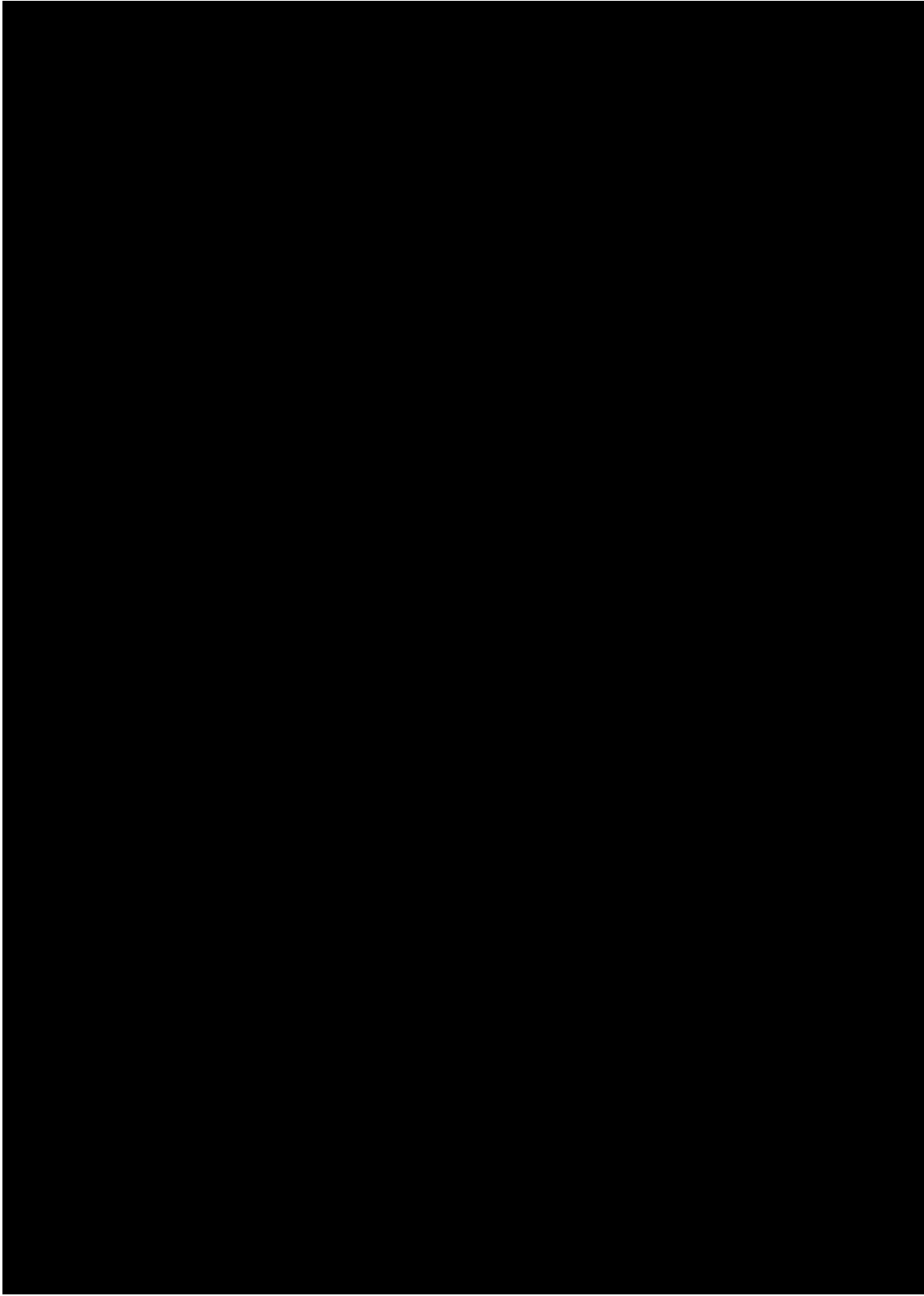
Intel



Intel



Intuit



## Lucasfilm

1. ANIMATION\_SUPERVISOR  
 2. ANIMATOR\_I  
 3. ANIMATOR\_II  
 4. ARCHITECT  
 5. ARTIST  
 6. ARTIST\_I  
 7. ARTIST\_II  
 8. ARTIST\_III  
 9. ART\_DIRECTOR  
 10. ASSISTANT\_EPISODIC\_DIRECTOR  
 11. ASSISTANT\_GRAPHIC\_ARTIST  
 12. ASSOCIATE\_ARTIST  
 13. ASSOCIATE\_PRODUCER  
 14. ASSOCIATE\_PRODUCER\_ANIMATION  
 15. ASSOCIATE\_PRODUCION\_MANAGER  
 16. ASSOCIATE\_TECHNICAL\_ARTIST  
 17. AUDIO\_LEAD  
 18. BUILD\_ENGINEER\_SOFTWARE\_ENGIN  
 19. BUSINESS\_INTEGRATION\_MANAGER  
 20. BUSINESS\_SYSTEMS\_ANALYST\_I  
 21. BUSINESS\_SYSTEMS\_PROGRAMMER  
 22. BUSINESS\_SYSTEM\_ANALYST\_II  
 23. CG\_DEPARTMENT\_SUPERVISOR  
 24. CG\_SUPERVISOR  
 25. CHARACTER\_TECHNICAL\_DIRECTOR\_I  
 26. CHARACTER\_TECH\_DIRECTOR\_II  
 27. CONCEPT\_ARTIST  
 28. CONCEPT\_DESIGNER\_II  
 29. CREATIVE\_DIRECTOR\_II  
 30. DATABASE\_ADMINISTRATOR\_I  
 31. DATABASE\_ADMINISTRATOR\_II  
 32. DATABASE\_ADMINISTRATOR\_III  
 33. DATABASE\_SYSTEMS\_DEVELOPER\_I  
 34. DATABASE\_SYSTEMS\_DEVELOPER\_II  
 35. DATABASE\_SYS\_DEVEL\_FILEMAKER  
 36. DEPARTMENT\_COORDINATOR  
 37. DESIGNER\_I  
 38. DESIGNER\_II  
 39. DESKTOP\_SUPERVISOR  
 40. DESKTOP\_SYSTEMS\_LEAD  
 41. DESKTOP\_SYSTEMS\_SPECIALIST\_I  
 42. DIGITAL\_ARTIST\_II  
 43. DIGITAL\_ARTIST\_PRODCTN\_MANAGER  
 44. DIGITAL\_ARTIST\_SUPERVISOR  
 45. DIGITAL\_ASSET\_SUPERVISOR  
 46. DIGITAL\_CHARACTER\_SUPERVISOR  
 47. DIGITAL\_IMAGE\_ARCHIVES\_MANAGER  
 48. DIGITAL\_PRODUCTION\_SUPERVISOR  
 49. DIGITAL\_RESOURCE\_MANAGER  
 50. DIGITAL\_SUPERVISOR  
 51. DIRECTOR\_ANIMATION\_DEVELOPMENT  
 52. DIRECTOR\_ENGINEERING  
 53. DIRECTOR\_INFORMATION\_SERVICES  
 54. DIRECTOR\_INFORMATION\_TECHNOLOGY  
 55. DIRECTOR\_OF\_BUSINESS\_SYSTEMS  
 56. DIRECTOR\_PRODUCTION\_TECHNOLOGY  
 57. DIRECTOR\_RESEARCH\_&DEVELOPMT  
 58. ENGINEERING\_MANAGER  
 59. ENGINEERING\_SUPERVISOR  
 60. EPISODIC\_DIRECTOR  
 61. EXTERNAL\_ART\_DIRECTOR  
 62. EXTERNAL\_CREATIVE  
 63. EXTERNAL\_TECHNICAL\_DIRECTOR  
 64. FILEMAKER\_DEVELOPER  
 65. HEAD\_OF\_ANIMATION\_TECHNOLOGY  
 66. HRIS\_BUSINESS\_SYSTEMS\_ANALYST  
 67. HUMAN\_RESOURCES\_MANAGER  
 68. INTERNET\_PROD\_&DESIGN\_MANAGER  
 69. INTERNET\_PROD\_GRAPHIC\_ARTIST  
 70. IS\_PROJECT\_MANAGER  
 71. IS\_SOFTWARE\_DEVELOPER\_II  
 72. IS\_SOFTWARE\_DEVELOPER\_III  
 73. IS\_SUPERVISOR  
 74. IT\_MANAGER  
 75. IT\_PROJECT\_MANAGER  
 76. IT\_SUPERVISOR  
 77. LAYOUT\_ARTIST  
 78. LEAD\_ANIMATOR  
 79. LEAD\_CONCEPT\_DESIGNER  
 80. LEAD\_DESIGNER  
 81. LEAD\_DIGITAL\_ARTIST\_I  
 82. LEAD\_IS\_SOFTWARE\_DEVELOPER  
 83. LEAD\_MODELER  
 84. LEAD\_ORACLE\_DATABASE\_ADMIN  
 85. LEAD\_SOFTWARE\_ENGINEER  
 86. LEAD\_TECHNICAL\_DIRECTOR  
 87. LEAD\_UNIX\_SYSTEMS\_ADMIN  
 88. MANAGER\_BUS\_SYSTEMS\_PROGRAMMING  
 89. MANAGER\_DESKTOP\_SYSTEMS  
 90. MANAGER\_DIG\_ARTIST\_DEV\_SINGAPORE  
 91. MANAGER\_IS\_SW\_DEVELOPMENT  
 92. MANAGER\_LOGISTICS\_&CUST\_SERVICE  
 93. MANAGER\_OA  
 94. MANAGER\_SOFTWARE\_DEVELOPMENT  
 95. MANAGER\_SYSTEMS\_OPERATIONS  
 96. MEDIA\_SYSTEMS\_ENGINEER\_I  
 97. MEDIA\_SYSTEMS\_ENGINEER\_II  
 98. MEDIA\_SYSTEMS\_SOFTWARE\_ENGINEER  
 99. MID\_LEVEL\_ANIMATOR  
 100. NETWORK\_ENGINEER  
 101. NETWORK\_SYSTEMS\_ADMINSTR\_II  
 102. ORACLE\_DATABASE\_ADMIN\_II  
 103. PRE\_VIZ\_LEAD\_ARTIST  
 104. PRINCIPAL\_ENGINEER  
 105. PRINCIPAL\_R&D\_ENGINEER  
 106. PRODUCER  
 107. PRODUCER\_ANIMATION  
 108. PRODUCTION\_MANAGER\_I  
 109. PRODUCTION\_MANAGER\_II  
 110. PRODUCTION\_SYSTEMS\_SUPERVISOR  
 111. PRODUCTION\_TECHNOLOGY\_MANAGER  
 112. PRODUCT\_TECHNOLOGY\_SPECIALIST  
 113. PROJECT\_MANAGER\_II  
 114. QUALITY\_CONTROL\_LEAD  
 115. R&D\_ENGINEER\_I  
 116. R&D\_ENGINEER\_II  
 117. R&D\_ENGINEER\_III  
 118. R&D\_OPERATIONS\_MANAGER  
 119. R&D\_PRODUCT\_SPECIALIST\_II  
 120. R&D\_PROJECT\_MANAGER\_II  
 121. R&D\_SUPERVISOR  
 122. RIGGING\_LEAD  
 123. SCRIPTER\_DESIGNER  
 124. SENIOR\_ANIMATOR  
 125. SENIOR\_ARTIST  
 126. SENIOR\_ARTIST\_I  
 127. SENIOR\_ARTIST\_II  
 128. SENIOR\_BUSINESS\_SYSTEMS\_ANALYST  
 129. SENIOR\_BUSINESS\_SYSTEMS\_PROGRAMMER  
 130. SENIOR\_CHARACTER\_TECH\_DIRECTOR  
 131. SENIOR\_CONCEPT\_DESIGNER  
 132. SENIOR\_DESIGNER  
 133. SENIOR\_DIGITAL\_ARTIST  
 134. SENIOR\_GRAPHIC\_ARTIST  
 135. SENIOR\_IS\_SOFTWARE\_DEVELOPER  
 136. SENIOR\_LEAD\_ARTIST\_I  
 137. SENIOR\_MANAGER\_INTERNET\_PROD\_&DESIGN  
 138. SENIOR\_MANAGER\_NETWORK\_OPERATIONS  
 139. SENIOR\_MANAGER\_QUALITY\_ASSURANCE  
 140. SENIOR\_MANAGER\_R&D\_OPERATIONS  
 141. SENIOR\_MANAGER\_SYSTEMS\_OPERATIONS  
 142. SENIOR\_MODELER  
 143. SENIOR\_NETWORK\_ENGINEER  
 144. SENIOR\_ORACLE\_DATABASE\_ADMIN  
 145. SENIOR\_PRODUCER  
 146. SENIOR\_R&D\_ENGINEER  
 147. SENIOR\_SOFTWARE\_ENGINEER  
 148. SENIOR\_SYSTEMS\_ENGINEER  
 149. SENIOR\_TECHNICAL\_DIRECTOR  
 150. SENIOR\_TECHNOLOGY\_OFFICER  
 151. SENIOR\_VIDEO\_ENGINEER  
 152. SET\_DIRECTOR  
 153. SOFTWARE\_ENGINEER  
 154. SOFTWARE\_ENGINEER\_I  
 155. SOFTWARE\_ENGINEER\_II  
 156. SOUND\_DESIGNER  
 157. STORYBOARD\_ARTIST  
 158. SUPERVISOR\_VIDEO\_ENGINEERING  
 159. SYSTEMS\_ADMINISTRATOR\_II  
 160. SYSTEMS\_ENGINEER  
 161. SYSTEMS\_ENGINEER\_LINUX  
 162. SYSTEMS\_ENGINEER\_VIDEO\_SOFTWARE  
 163. TECHNICAL\_DIRECTOR\_I  
 164. TECHNICAL\_DIRECTOR\_II  
 165. TECHNICAL\_SUPERVISOR  
 166. TECH\_TRAINING\_SPECIALIST\_I  
 167. TV\_ANIMATOR  
 168. UI\_ARTIST  
 169. UNIX\_SYSTEMS\_ADMINISTRATOR\_II  
 170. VFX\_SUPERVISOR  
 171. VISUAL\_EFFECTS\_ARTIST  
 172. VISUAL\_EFFECTS\_PRODUCER\_I  
 173. VISUAL\_EFFECTS\_PRODUCER\_II  
 174. WEB\_DEVELOPER\_I  
 175. WEB\_DEVELOPER\_II  
 176. WEB\_DEVELOPER\_III  
 177. WEB\_PRODUCER  
 178. WINDOWS\_SYSTEM\_ADMINISTRATORII

## Pixar

1. 360\_DEGREE\_CREATIVE\_LEAD  
 2. 360\_DEGREE\_TECH\_LEAD  
 3. ADMINISTRATOR\_SYSTEM\_ASSET  
 4. ADMINISTRATOR\_TECH\_DEPT  
 5. ANIMATOR  
 6. ANIMATOR\_DIRECTING  
 7. ANIMATOR\_FIX  
 8. ANIMATOR\_FIX\_LEAD  
 9. ANIMATOR\_SUPERVISING  
 10. APPLICATION\_DEVELOPER  
 11. ARCHITECT\_SYSTEM  
 12. ARTIST\_AFTER\_EFFECTS  
 13. ARTIST\_ASST\_STORY  
 14. ARTIST\_CHARACTER  
 15. ARTIST\_GRAPHIC  
 16. ARTIST\_MOTION\_GRAPHIC  
 17. ARTIST\_SKETCH  
 18. ARTIST\_STORY  
 19. ARTIST\_STORY\_DEVELOPMENT  
 20. ARTIST\_STORY\_TEMP  
 21. ART\_DIRECTOR  
 22. ART\_DIRECTOR\_SHADING  
 23. CGI\_PAINTER  
 24. CHARACTER\_DESIGNER  
 25. CREATIVE\_RESOURCES\_ARTIST  
 26. DESIGNER  
 27. DESIGNER\_CAMERA  
 28. DESIGNER\_ENVIRONMENTAL  
 29. DESIGNER\_GRAPHIC  
 30. DESIGNER\_PRODUCTION  
 31. DESIGNER\_SHADING  
 32. DESIGN\_LEAD  
 33. DEVELOPER\_RENDERMAN\_PRODUCTS  
 34. DIR\_MEDIA\_SYSTEMS  
 35. DIR\_PHOTOSCIENCE  
 36. DIR\_RENDERMAN\_PRODUCT\_DEV  
 37. DIR\_STEREO\_IMAGE\_MASTERING  
 38. DIR\_STUDIO\_TOOLS  
 39. DIR\_SYSTEMS\_INFRASTRUCTURE  
 40. ENGINEER  
 41. ENGINEERING\_MANAGER  
 42. ENGINEER\_API\_QUALITY\_ASSURANC  
 43. ENGINEER\_APPLICATIONS  
 44. ENGINEER\_ASSOCIATE  
 45. ENGINEER\_ASSURANCE\_AUTOMATION  
 46. ENGINEER\_EDITORIAL\_PIPELINE  
 47. ENGINEER\_EDITORIAL\_SUPPORT  
 48. ENGINEER\_IMAGE\_MASTERING  
 49. ENGINEER\_LEAD  
 50. ENGINEER\_LEAD\_PHOTOSCIENCE  
 51. ENGINEER\_LEAD\_SOFTWARE  
 52. ENGINEER\_MEDIA\_SYSTEMS  
 53. ENGINEER\_MENW\_SUPPORT  
 54. ENGINEER\_PHOTOSCIENCE  
 55. ENGINEER\_PIPELINE  
 56. ENGINEER\_PIPELINE\_ROTATION  
 57. ENGINEER\_PNG\_LEAD\_SOFTWARE  
 58. ENGINEER\_PNG\_QUALITY\_ASSURANC  
 59. ENGINEER\_PNG\_SOFTWARE  
 60. ENGINEER\_PNG\_SR\_SOFTWARE  
 61. ENGINEER\_PRODUCTION  
 62. ENGINEER\_PRODUCTION\_SUPPORT  
 63. ENGINEER\_QUALITY\_ASSURANCE  
 64. ENGINEER\_RECORDING  
 65. ENGINEER\_RENDERMAN\_SUPPORT  
 66. ENGINEER\_SCREENING\_ROOM  
 67. ENGINEER\_SOFTWARE  
 68. ENGINEER\_SOFTWARE\_GRAPHICS  
 69. ENGINEER\_SOFTWARE\_ROTATION  
 70. ENGINEER\_SOFTWARE\_TECHSUPPORT  
 71. ENGINEER\_SOFTWARE\_TEMPORARY  
 72. ENGINEER\_SOFTWARE\_TEST  
 73. ENGINEER\_SR\_AUTOMATION  
 74. ENGINEER\_SR\_MEDIA\_SYSTEM  
 75. ENGINEER\_SR\_SOFTWARE  
 76. ENGINEER\_SR\_SW\_INFRASTRUCTURE  
 77. ENGINEER\_STUDIO\_SUPPORT  
 78. ENGINEER\_SW\_INFRASTRUCTURE  
 79. ENGINEER\_TECHNICAL\_SUPPORT  
 80. ENGINEER\_VIDEO  
 81. FINANCIAL\_APPS\_DEVELOPER  
 82. HR\_APPLICATION\_DEVELOPER  
 83. IMAGE\_MASTERING\_COORDINATOR  
 84. INTERACTION\_DESIGNER  
 85. INTRANET\_DESIGNER\_PNG  
 86. LAYOUT\_ARTIST  
 87. LAYOUT\_ARTIST\_LEAD  
 88. MEDIA\_SYSTEMS\_COORDINATOR  
 89. MGR\_360\_GROUP  
 90. MGR\_APPLICATIONS\_GROUP  
 91. MGR\_A\_V\_ENGINEERING  
 92. MGR\_BUILD  
 93. MGR\_DESKTOP\_SYSTEMS  
 94. MGR\_FINANCIAL\_SYSTEMS  
 95. MGR\_IMAGE\_MASTERING  
 96. MGR\_INFRASTRUCTURE  
 97. MGR\_IT\_CONSTRUCTION  
 98. MGR\_LEAD\_PROJ\_STUDIO\_TOOLS  
 99. MGR\_MEDIA\_SYSTEMS  
 100. MGR\_PROJECT  
 101. MGR\_QUALITY\_ASSURANCE  
 102. MGR\_RPG  
 103. MGR\_SR\_PROJECT\_STUDIO\_TOOLS  
 104. MGR\_SW\_INFRASTRUCTURE  
 105. MGR\_SYSTEMS\_INFRASTRUCTURE  
 106. MGR\_SYSTEMS\_OPERATIONS  
 107. MGR\_TOOLS\_WORKFLOW  
 108. MGR\_USER\_INTERFACE  
 109. PAINTER\_DIGITAL  
 110. PAINTER\_MATTE  
 111. PHOTOSCIENCE\_COORDINATOR  
 112. PNG\_GROUP\_LEAD  
 113. PROJECT\_COORDINATOR  
 114. PROJECT\_MGR\_PNG  
 115. PROJECT\_MGR\_RENDERMAN  
 116. PROJECT\_MGR\_STUDIO\_TOOLS  
 117. PROJECT\_MGR\_SYSTEMS  
 118. QA\_TESTER  
 119. RAPD\_PROTOTYPE\_COMPUTER\_ARTIST  
 120. RENDER\_PIPELINE\_SPECIALIST  
 121. RESIDENT\_ANIMATION  
 122. RESIDENT\_SOFTWARE\_ENGINEER  
 123. RESIDENT\_TECHNICAL\_DIRECTOR  
 124. RESIDENT\_TEST\_PILOT  
 125. SCIENTIST\_SR  
 126. SCULPTOR  
 127. SOFTWARE\_DEVELOPER  
 128. STORY\_ARTIST\_DIGITAL  
 129. SYSTEMS\_ADMINISTRATOR  
 130. SYSTEMS\_ADMINISTRATOR\_ASSET  
 131. SYSTEMS\_ADMINISTRATOR\_JR  
 132. SYSTEMS\_ADMINISTRATOR\_JR\_MAC  
 133. SYSTEMS\_ADMINISTRATOR\_LEAD  
 134. SYSTEMS\_ADMINISTRATOR\_SR  
 135. SYSTEMS\_ANALYST  
 136. SYSTEMS\_COORDINATOR  
 137. TECHNICAL\_DIRECTOR  
 138. TECHNICAL\_DIRECTOR\_LEAD  
 139. TECHNICAL\_DIRECTOR\_ROTATION  
 140. TECHNICAL\_DIRECTOR\_TOOLS  
 141. TECHNICAL\_LEAD\_A\_V  
 142. TECHNICAL\_LEAD\_BACKUP\_GROUP  
 143. TECHNICAL\_LEAD\_IMAGE\_MASTERING  
 144. TECHNICAL\_LEAD\_MEDIA\_SYSTEMS  
 145. TECHNICAL\_LEAD\_RENDERING  
 146. TECHNICAL\_LEAD\_STORAGE  
 147. TECHNICAL\_LEAD\_TELECOM  
 148. TECHNICAL\_WRITER  
 149. TECHNICAL\_WRITER\_API  
 150. TECH\_DIRECTOR\_CRTV\_SVCS  
 151. TECH\_DIRECTOR\_DEPT\_SUPV  
 152. TECH\_DIRECTOR\_LEAD\_CRTV\_SVCS  
 153. TECH\_DIRECTOR\_SUPERVISING  
 154. TECH\_DIR\_SR\_ANIM\_SCIENTIST  
 155. TEST\_PILOT\_LEAD  
 156. TEST\_PILOT\_SENIOR  
 157. USER\_INTERFACE\_DESIGNER  
 158. USER\_INTERFACE\_DESIGNER\_SR  
 159. VISUAL\_DESIGNER  
 160. WEB\_DOCUMENTATION\_SPECIALIST  
 161. WORKFLOW\_ARTIST  
 162. WORKFLOW\_INTERACTION\_DESIGNER