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PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

EHARMONY, INC.,

Defendant.

CASE NO. 17CV03314

**FINAL JUDGMENT AND INJUNCTION
PURSUANT TO STIPULATION**

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-1-

FINAL JUDGMENT AND INJUNCTION PURSUANT TO STIPULATION

1 Plaintiff, the People of the State Of California ("the People" or "Plaintiff"), appearing
2 through its attorneys, Jeffrey S. Rosell, Santa Cruz County District Attorney by Francisca B.
3 Allen and Douglas B. Allen, Assistant District Attorneys; Jeffrey F. Rosen, Santa Clara County
4 District Attorney by Jennifer Deng, Deputy District Attorney; Lane Dilg, Santa Monica City
5 Attorney by Adam Radinsky and Gary Rhoades, Deputy City Attorneys; Allison Haley, Napa
6 County District Attorney by Patrick Collins, Deputy District Attorney; Stephanie A. Bridgett,
7 Shasta County District Attorney by Anand "Lucky" Jesrani, Senior Deputy District Attorney, and
8 having filed its complaint herein;

9 Defendant eHarmony, Inc. ("eHarmony" or "Defendant"), appearing through its attorneys
10 DLA Piper LLP by Paul J. Hall, Esq., and having accepted service of the complaint;

11 1. Plaintiff and Defendant having negotiated and agreed to a settlement including
12 stipulating to the entry of this Final Judgment and Injunction Pursuant to Stipulation
13 ("Judgment") prior to the taking of any proof and without admission of fact or fault by Defendant,
14 or any of its current or former officers, employees, directors, agents, representatives, and without
15 trial or adjudication of any issue of fact or law; and

16 The Court having considered the pleadings and good cause appearing,

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff have Judgment
18 against Defendant as follows:

19 JURISDICTION AND VENUE

20 2. This action is brought under the laws of the State of California. This Court has
21 jurisdiction of the subject matter and the parties. Venue is appropriate in this Court.

22 CONSENT DECREE

23 3. The provisions of this Judgment are applicable to eHarmony and to its officers,
24 employees, directors, agents, representatives, successors, and assigns acting within the course and
25 scope of their agency or employment and in concert with eHarmony. Defendant consents to entry
26 of this Judgment without the taking of proof or admission of facts. Nothing in the Complaint in
27 this action, the accompanying Stipulation, this Judgment, the negotiations leading up to these
28 filings, or any action taken to carry them out shall be construed as an admission by Defendant, or

WEST278743974.7

1 by any of its current or former officers, employees, directors, agents, representatives, successors,
2 and assigns, or by any entity, individual, or organization involved in the settlement of this action.

3 DEFINITIONS

4 4. For purposes of this Judgment, the following definitions apply:

5 a. "AUTOMATIC RENEWAL" means a plan or arrangement in which a paid
6 subscription or purchasing agreement is automatically renewed at the end of a definite term for a
7 subsequent term. It also includes "free trial" offers that convert to automatic payment unless
8 cancelled by the consumer.

9 b. "Automatic Renewal Offer Terms" includes:

10 i. A statement that the subscription or purchasing agreement will
11 continue until the consumer cancels;

12 ii. A description of the cancellation policy that applies to the offer;

13 iii. The recurring charges that will be charged to the consumer as part
14 of the automatic renewal plan; and that the amount of the charge may change (if applicable); and
15 the amount to which the charge will change (if known);

16 iv. The length of the automatic renewal term or that the service is
17 continuous, unless the length of the term is chosen by the consumer; and

18 v. The minimum purchase obligation, if any.

19 c. "CALIFORNIA CONSUMER" means a customer of eHarmony with a
20 billing zip code in the State of California.

21 d. "CLEAR AND CONSPICUOUS" means in larger type than the
22 surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or
23 set off from the surrounding text of the same size by symbols or other marks, in a manner that
24 clearly calls attention to the language. In the case of an audio disclosure, it means in a volume and
25 cadence sufficient to be readily audible and understandable.

26 e. "CONTINUOUS SERVICE" means a plan or arrangement in which a
27 subscription or purchasing agreement continues until the consumer cancels the service.

1 CONSPICUOUS.

2 Automatic Renewal: Acknowledgement

3 a. With any AUTOMATIC RENEWAL or CONTINUOUS SERVICE offer
4 to a consumer, failing to provide an emailed confirmation of the transaction immediately after the
5 contract is made. This confirmation must comply with the following:

6 1) Its subject line must clearly identify it as a confirmation of the
7 transaction; and

8 2) It must CLEARLY AND CONSPICUOUSLY disclose the
9 AUTOMATIC RENEWAL OFFER TERMS.

10 Automatic Renewal: Cancellation

11 a. Failing to provide a toll-free telephone number, or electronic mail address,
12 or a postal address only when eHarmony directly bills the CALIFORNIA CONSUMER, or
13 another cost-effective, timely, and easy-to-use mechanism for cancellation.

14 i. For all CALIFORNIA CONSUMERS, Defendant must allow a
15 buyer to give written notice of cancellation by email to an email address provided by Defendant.
16 Additional electronic means of cancellation may be provided by the agreement or offer.

17 ii. All cancellations must be effective within one business day of
18 Defendant's receipt of the cancellation request. Upon cancellation, the CALIFORNIA
19 CONSUMER will not be charged any further fees unless such fees are already subject to an
20 existing valid contractual obligation.

21 Dating Services Contract Law

22 a. Failing to include the following notice either (a) on the contract's face and
23 in close proximity to the space reserved for the signature of the CALIFORNIA CONSUMER a
24 conspicuous statement in a size equal to at least 10-point boldface type, or (b) in a CLEAR AND
25 CONSPICUOUS manner in a stand-alone first paragraph of the contract, the following notice:

26 i. "You, the buyer, may cancel this agreement, without any penalty or
27 obligation, at any time prior to midnight of the original contract seller's third business day
28 following the date of this contract, excluding Sundays and holidays. To cancel this agreement,

1 mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are
2 canceling this agreement, or words of similar effect, or by email or on the website.”

3 ii. The notice shall include the name and address and email address to
4 which such cancellations must be sent.

5 b. Failing to make a copy of the contract available to the CALIFORNIA
6 CONSUMER that is provided in a CLEAR AND CONSPICUOUS manner on the Internet
7 website page where the buyer provides consent to the agreement, and, upon request by the buyer,
8 a digital copy of the contract in PDF format or other retainable digital format.

9 c. Failing to allow a consumer to cancel membership, with prorated refund,
10 due to death, disability, or moving to an area not covered by eHarmony’s services, in accordance
11 with the standards of Civil Code §1694.3.

12 d. Requiring payments or financing by a CALIFORNIA CONSUMER in
13 excess of two years from the date the contract is entered into. However, the preceding sentence
14 shall not apply if the initial term is one year or less, and subsequent terms are for one year or less.

15 Uniform Electronic Transactions Act

16 a. Violating the California Uniform Electronic Transactions Act, Civil Code
17 sections 1633.1 *et. seq.*, including the rules that all contracts formed by electronic signature must
18 also allow electronic cancellation.

19 Customer Debt Collection Practices

20 a. Attempting to collect past due membership fees from customers, incurred
21 prior to the effective date of this Judgment, either directly or through other entities.

22 i. If a CALIFORNIA CONSUMER notifies Defendant of a negative
23 mark or reference on the customer’s credit report resulting from Defendant’s referral of their debt
24 to third-party collection companies, Defendant must within five (5) business days of such notice
25 notify all three major credit reporting agencies to cancel any such negative marks or references.

26 ii. Defendant must adjust its internal records to reflect that any debt
27 previously designated as eligible for reference to third-party collection companies shall no longer
28 be attempted to be collected.

1 shall pay restitution as follows.

2 Restitution Fund

3 11. Within five business days after the Claims Administrator has been appointed by
4 the Court and the Claims Administrator has set up an appropriate trust account for this settlement
5 and so notified Plaintiff and Defendant, the Defendant shall deposit \$250,000.00 into a designated
6 trust account known as "the Restitution Fund."

7 12. The Restitution Fund shall be under the control and operation of the Claims
8 Administrator. Except as otherwise provided in this Judgment, the money in the Restitution Fund
9 shall be used only for paying restitution to persons on the Final List of Payees who are entitled to
10 receive cash restitution.

11 13. If any funds from the initial deposit remain after restitution payments to the Final
12 List of Payees are completed, as provided in Paragraph 27, the remainder shall be returned to
13 Defendant c/o the DLA Piper LLP (US) Client Trust Account for the benefit of Defendant. If the
14 initial deposit is insufficient to satisfy the restitution obligations to the Final List of Payees, then
15 within five (5) business days after Defendant's receipt from the Claims Administrator of written
16 notice of insufficiency, Defendant shall deposit into the Restitution Fund so much as is necessary
17 to cover the restitution demands of the Final List of Payees but in no event shall Defendant be
18 obligated to pay more than an additional \$750,000.00 in cash and/or credits as provided in
19 Paragraph 27. If total approved restitution claims exceed \$1,000,000.00, then all restitution
20 claims shall be reduced pro rata such that the total amount of restitution to be paid in cash and/or
21 credits does not exceed \$1,000,000.00, except that payments to the Claims Administrator in
22 excess of \$75,000 shall be credited to and offset against the \$1,000,000.00 maximum restitution
23 amount.

24 Identification of Prospective Class

25 14. Defendant shall institute a restitution program to reimburse certain eHarmony
26 membership fees paid by CALIFORNIA CONSUMERS between March 10, 2012 and
27 December 13, 2016, provided that any such consumer (1) has not already obtained a refund for all
28 money paid for such membership, and (2) meets one of the following two requirements:

1 a. The consumer was enrolled in an eHarmony AUTOMATIC RENEWAL or
2 CONTINUOUS SERVICE plan between March 10, 2012 and December 13, 2016 and was
3 charged for at least one automatically-renewed cycle without his or her knowledge and consent;
4 or

5 b. The consumer previously requested cancellation of an AUTOMATIC
6 RENEWAL or CONTINUOUS SERVICE plan with eHarmony, or a refund under such plan,
7 which request was either denied or delayed so that at least one additional automatically-renewed
8 charge was made after the request for cancellation was made.

9 15. The CALIFORNIA CONSUMERS who meet the criteria set forth above will be
10 referred to as "Eligible Recipients."

11 16. Following the Notice of Entry of this Judgment, Defendant shall use all reasonable
12 efforts to create a list of the most current, complete and accurate names, email addresses, and last-
13 known billing zip codes and/or available postal addresses of all CALIFORNIA CONSUMERS
14 who began an AUTOMATIC RENEWAL or CONTINUOUS SERVICE plan with Defendant any
15 time between March 10, 2012 and December 13, 2016 and whose subscriptions renewed at least
16 once, and who were not fully refunded by Defendant for such subscription renewal(s). This group
17 shall be referred to as the "Prospective Class." This list shall be contained in a spreadsheet
18 produced using Microsoft Excel or equivalent searchable software.

19 17. Defendant shall appoint at least one management-level employee to oversee the
20 process of identifying the Prospective Class. This employee shall prepare and sign a declaration
21 of compliance under penalty of perjury and based on personal knowledge, which declaration shall
22 remain non-public and confidential except that it may be shared with the Claims Administrator,
23 the People and this Court. The declaration and list of Prospective Class names shall not be filed
24 except in the event of a dispute that requires intervention of the Court, in which case the
25 declaration shall be filed under seal. The declaration of compliance shall describe the steps taken
26 to identify all Prospective Class members, and the electronic or other records that were searched
27 or queried, the manner in which they were searched, and the individuals involved in this process.
28 The declaration shall also attest that the Prospective Class list is accurate and complete, to the

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1 best of the declarant's knowledge and belief.

2 18. No later than 45 days after Notice of Entry of this Judgment, Defendant shall
3 transmit both the declaration of compliance and the list of Prospective Class members to both the
4 People and the Claims Administrator, KCC LLC, which was agreed upon by the parties prior to
5 submission of this Stipulated Final Judgment (the "Claims Administrator").

6 19. If the People determine that the procedures used by Defendant to identify
7 Prospective Class members were deficient or that the list is otherwise materially insufficient, they
8 shall promptly notify Defendant of the reasons for such conclusion. The parties shall then meet
9 and confer and work together in a timely and good faith manner to resolve those concerns. As
10 part of that process, the People may obtain copies of the information on which Defendant relied in
11 ascertaining the list of Prospective Class members.

12 a. If the People are satisfied that any insufficiency or deficiency in the list of
13 Prospective Class members can be corrected, Defendant shall have 45 days from such notice to
14 implement the necessary changes and submit a revised list of Prospective Class members.

15 b. If the People are not satisfied that any insufficiency or deficiency has been
16 or can be corrected, or in the event of any other unresolved dispute regarding the review of
17 Prospective Class members, then the parties shall meet and confer to attempt to resolve the
18 dispute. If the meet and confer process does not produce agreement, then either party may seek
19 further direction from the Court.

20 Consumer Notice

21 20. Within 45 days after receiving the declaration of compliance and list of
22 Prospective Class members, including such additional time as may be necessary to resolve any
23 deficiencies in the list, the Claims Administrator shall prepare a list of Prospective Class
24 members. The Claims Administrator shall promptly thereafter send or cause to be sent an email
25 notice to each Prospective Class member in the form and manner set forth in Exhibit A. The
26 Claims Administrator will take all reasonable steps to ensure that emails are not diverted to the
27 recipients' "junk" or "spam" email folder.

28 21. If within 60 days after two attempts at sending an email notice to a Prospective

1 Class member the Claims Administrator learns that the email(s) were returned as undeliverable,
2 the Claims Administrator will promptly cause to be sent a postcard via United States mail to that
3 Prospective Class member, in the form and manner set forth in Exhibit B, provided that a mailing
4 address to that Prospective Class member is available. The postcard shall be sent to the
5 Prospective Class member's last-known billing address and shall state that:

6 a. The postcard constitutes a final notice of the terms of this Stipulated Final
7 Judgment and give an email address for a restitution claim form and the Claims Administrator's
8 website; and

9 b. Failure to complete and submit a restitution claim form within 60 days may
10 bar the recipient from recovery of restitution under the terms of this Judgment.

11 Claim Forms

12 22. In its notices (both email and postcard), the Claims Administrator shall include an
13 internet address or link to a website maintained by the Claims Administrator devoted exclusively
14 to informing consumers about this case, including information about this Judgment and the
15 underlying action, and a restitution claim form (the "Claim Form") which Prospective Class
16 members can use to claim restitution. The Claim Form shall be capable of completion and
17 submission online and also of being downloaded, completed by hand and sent by hard copy to the
18 Claims Administrator at a designated mailing address. The Claims Administrator shall in its
19 notices to Prospective Class members indicate that they have 30 days to submit the Claim Form.

20 23. The Claim Form shall require the following from Prospective Class members:

- 21 a. Name;
- 22 b. Telephone number;
- 23 c. Email address;
- 24 d. Mailing address where restitution check or restitution credit notification
25 should be sent;
- 26 e. A declaration under penalty of perjury that the Prospective Class member
27 1) has not already obtained a refund for all money paid for his or her
28 eHarmony membership, and

1 remove all newly disqualified individuals from the Preliminary List, which shall thereafter
2 become the "Final List of Payees."

3 27. The restitution payments shall be as follows:

4 a. Each Eligible Recipient in the Final List of Payees who is not a current
5 eHarmony subscriber as of the date of entry of this Judgment shall receive a cash restitution
6 payment of \$29.95. Each Eligible Recipient in the Final List of Payees who is a current
7 eHarmony subscriber as of the date of entry of this Judgment shall receive, at eHarmony's
8 election, either \$29.95 in cash or an account credit from eHarmony of the greater of (1) \$29.95, or
9 (2) one month's free service at the same plan and service level as the subscriber's existing
10 service.

11 b. If the amount needed to pay all valid cash claims exceeds the initial deposit
12 amount into the Restitution Fund, eHarmony shall deliver the additional funds, not to exceed an
13 additional \$750,000.00 in cash, to the Claims Administrator within five business days of
14 receiving such notice.

15 c. The total cash and/or credit restitution paid shall not exceed \$1,000,000.00,
16 less any amount of Claims Administrator's fees in excess of \$75,000.00 credited against the
17 restitution amount as set forth in paragraph 34, below. If the amount of total valid cash and/or
18 credit claims by Eligible Recipients exceeds that amount, the per-person amount shall be reduced
19 pro rata so that the \$1,000,000.00 total of cash and/or credits (less any amount of Claims
20 Administrator's fees in excess of \$75,000.00 as set forth in paragraph 34, below) is shared
21 equally by the Final List of Payees. In the event of such pro rata reduction of amounts of cash or
22 credits to Eligible Recipients, then for the purpose of calculating such pro rata reduction, each
23 current eHarmony subscriber to whom eHarmony elects to give a credit shall be deemed to
24 receive a credit worth \$29.95.

25 28. Immediately after the Final List of Payees is prepared, the Claims Administrator
26 shall calculate the total amount of restitution claimed based on the number of claimants and the
27 amount of cash or credit due each of them, and shall communicate that information to the parties.

28 29. No later than 30 days thereafter, the Claims Administrator shall begin the process

WEST278743974.7

1 of mailing out restitution checks from the Restitution Fund for cash recipients and notices of
2 restitution credit for credit recipients. For restitution credits, eHarmony shall apply to the
3 subscribers' accounts the restitution credits as per the Final List of Payees and shall submit to the
4 Claims Administrator and the parties a declaration under penalty of perjury attesting to the
5 application of the credits to subscribers' accounts as per the Final List of Payees.

6 30. The Claims Administrator shall include with each restitution check or restitution
7 credit notice a letter explaining that the restitution check or restitution credit is in connection with
8 this Stipulated Final Judgment and advising the recipient that the check or credit will expire
9 within ninety days of issuance.

10 31. If any restitution checks or restitution credit notices are returned to the Claims
11 Administrator as undeliverable, the Claims Administrator will within seven days of receipt
12 conduct address searches using available credit bureau information and thereafter re-send the
13 restitution checks or restitution credit notices to all Eligible Recipients for whom updated address
14 information can be found. (Restitution checks or restitution credit notices that are returned with
15 forwarding address information included shall promptly be delivered to the forwarding address in
16 question.)

17 32. Within 120 days of the mailing of the last restitution check, the Claims
18 Administrator shall determine the total amount of all uncashed or returned checks and then issue
19 one check including that amount, plus any remaining funds in the Restitution Fund, to the
20 Defendant c/o the DLA Piper LLP (US) Client Trust Account for the benefit of Defendant.

21 Claims Administrator Report

22 33. Within 120 days following the last restitution check or restitution credit notice
23 being mailed, the Claims Administrator shall deliver to the parties a confidential written report of
24 the restitution program, including the following:

- 25 a. A list of all Eligible Recipients to whom a notice was sent, including the
26 type (email or postcard) of notice that was sent;
- 27 b. A list of all Eligible Recipients who timely submitted a valid claim form;
- 28 c. A list of all Eligible Recipients whose claim was rejected for error or

1 deficiency and not thereafter corrected;

2 d. The total amount of cash restitution paid out of the Restitution Fund and
3 the total amount of restitution paid in the form of eHarmony account credits; and

4 e. The balance (if any) remaining in the Restitution Fund.

5 Claims Administrator Fees

6 34. eHarmony shall pay all fees and costs of the Claims Administrator. Within five
7 days of Notice of Entry of Judgment, eHarmony shall deposit \$75,000.00 into a trust account
8 established by the Claims Administrator for the exclusive purpose of paying the Claims
9 Administrator's fees and costs. If that final amount is less than \$75,000.00, the amount remaining
10 in the trust account when the restitution process is complete will be returned to Defendant c/o the
11 DLA Piper LLP (US) Client Trust Account for the benefit of Defendant. If the fees and costs
12 exceed \$75,000.00, eHarmony shall within five (5) business days of such notice pay the
13 difference to the Claims Administrator. That additional amount paid shall be credited against
14 eHarmony's \$1,000,000.00 restitution liability limit and shall reduce the total amount of
15 restitution cash and/or credits due to Eligible Recipients accordingly.

16 COMPLIANCE

17 35. For the purpose of securing compliance with the terms of this Judgment,
18 Defendant shall, within 30 days after Notice of Entry of Judgment, provide each of its current
19 officers, directors, and executive committee members with a copy of this Judgment.

20 36. Defendant shall keep custody of all documentation of its compliance with the
21 notice requirements of this Judgment for a period of three (3) years following Notice of Entry of
22 this Judgment. Defendant shall provide such items to the People's counsel upon reasonable
23 notice.

24 OTHER PROVISIONS

25 37. The Parties waive the right to appeal this Judgment as to form or content.

26 38. The Parties shall bear their own attorneys' fees and costs, except as provided
27 above.

28 39. If an ambiguity arises regarding any provision of this Judgment that requires

1 interpretation, there is no presumption that documents should be interpreted against any party.
2 The presumption in Civil Code section 1654 is not applicable. The failure of the People to
3 enforce any provision of this Judgment shall not be construed to relieve any party of its
4 obligations required by the Judgment nor be a waiver thereof. Should any portion of this
5 Judgment be deemed void, the remainder shall remain in full force and effect.

6 40. The Court finds that the injunctive provisions and monetary relief included in this
7 Judgment are a fair, reasonable, and appropriate final resolution of this matter.

8 41. Notices under this Judgment shall be served as follows:

9 To the People or People's counsel:

10 Douglas B. Allen, Assistant District Attorney
11 Office of the Santa Cruz County District Attorney
12 701 Ocean Street, Suite 200
13 Santa Cruz, California 95060

14 To Defendant or Defendant's counsel:

15 Paul J. Hall, Esq.
16 DLA Piper LLP
17 555 Mission Street, Suite 2400
18 San Francisco, California 94105

19 With a copy to Defendant:

20 eHarmony, Inc.

21 **INSERT NAME AND ADDRESS**

22 42. If any of the laws sought to be enforced by this Judgment are amended, including
23 but not limited to the Automatic Renewal Law, California Business & Professions Code § 17600
24 *et seq.*, the Dating Services Contract Act, California Civil Code § 1694 *et seq.*, and the Restore
25 Online Shoppers Confidence Act, 15 U.S.C. §§ 8401 *et seq.*, then those amended statutes shall
26 apply.

27 43. Nothing in this Judgment shall be construed as relieving Defendant of its
28 obligations to comply, or as prohibiting Defendant from complying, with all applicable local,
state and federal laws, regulations or rules; nor shall any provision of this Judgment be deemed
permission to engage in any acts or practices prohibited by such laws, regulations or rules.

44. Pursuant to Business and Professions Code section 17203 and the Court's inherent

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authority, the Court shall retain jurisdiction for the purpose of enforcing this Judgment and enabling any party to this Judgment to apply to the Court for such further orders and directions as necessary and appropriate to construe, carry out, enforce, interpret, or modify this Judgment, or to redress violations of this Judgment.

45. This Judgment shall be binding upon its signing by the Court and its filing, and upon the service by the People of a Notice of Entry of Judgment.

46. The Clerk may enter this Judgment immediately.

Dated: 1/8/18

 PAUL P. BURDICK
JUDGE OF THE SUPERIOR COURT