

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
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Deputy Commissioner  
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8 Attorneys for the People of the State of California

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA, by and through the  
13 COMMISSIONER OF CORPORATIONS,

14 Plaintiff,

15 vs.

16 MICHAEL P. GAMBOA; individually and  
17 doing business as GAMBOA & COMPANY;  
18 MPG, LLC; MARK H. POORE; RMB  
19 OPERATIONS, LLC; PALETTE SIENNA  
20 INTERNATIONAL FUND, LLC;  
21 PALETTE GROUP, LLC; PALETTE II  
22 GROUP, LLC; PALETTE III GROUP, LLC;  
23 PALETTE IV GROUP, LLC; PALETTE  
24 AQUA INVESTMENT FUND, LLC;  
25 PALETTE COBALT INVESTMENT  
26 FUND, LLC; THE CRIMSON FUND, LLC;  
27 EPLAY, LLC; EPLAY INVESTMENTS  
28 LLC; EPLAY INVESTMENTS 2 LLC;  
POGA MANAGEMENT PARTNERS, LLC;  
401K RETIREMENT SOLUTIONS, LLC;  
MXM INVESTMENTS, LLC and DOES 1-  
100

Defendants.

Case No.: CGC-09-492027

SETTLEMENT AGREEMENT AND  
STIPULATION BY DEFENDANT  
EPLAY, LLC TO ENTRY OF ORDER RE  
PERMANENT INJUNCTION AND  
DISMISSAL.

1 IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN DEFENDANT  
2 EPLAY, LLC AND PLAINTIFF THE CALIFORNIA CORPORATIONS COMMISSIONER, AS  
3 FOLLOWS:

4 **RECITALS**

5 A. Defendant Eplay, LLC is a Delaware Corporation registered to do business in the State of  
6 California which lists its address with the California Secretary of State as 15260 Ventura Boulevard,  
7 Suite 2100, Sherman Oaks, California 91403. Eplay, LLC operated an internet website which  
8 summarizes and contains news on celebrities and pop culture and purports to allow members to vote  
9 on what they predict celebrity news will occur in the future. Its primary business operations were  
10 located at 3 Embarcadero Center, Suite 1180, San Francisco, California 94111.

11 B. On August 31, 2009, the California Corporations Commissioner (the Commissioner) filed  
12 a civil enforcement action in San Francisco Superior Court on behalf of the People of the State of  
13 California against Eplay, LLC and other Defendants to enjoin the Defendants from violating the  
14 Corporate Securities Law of 1968 (California Corporations Code sections 25000, *et seq.*) and to  
15 request civil penalties and ancillary relief. The court in this action subsequently issued a preliminary  
16 injunction at the request of Plaintiff enjoining all named Defendants from violations of the California  
17 Corporations Code.

18 C. Defendants Eplay, LLC, filed an answer to the complaint denying generally its  
19 allegations.

20 D. It is the intention and the desire of Defendant Eplay, LLC and Plaintiff the Commissioner  
21 of the Department of Corporations (“the parties to this agreement”) to resolve this matter at this time  
22 as between them without the need for a trial, hearing or further litigation.

23 THEREFORE, in consideration of the foregoing, and the terms and conditions set forth  
24 herein, the parties to this agreement hereby agree and stipulate as follows.

25 **TERMS AND CONDITIONS**

26 1. This Settlement Agreement is entered into for the purpose of judicial economy and  
27 expediency, and to avoid the expense of a trial, and possible further court proceedings as between  
28 the parties to this agreement.

1           2.       Eplay, LLC agrees to the terms of this agreement and the entry of the order referred  
2 to below and attached hereto as Exhibit "A" without admitting or denying the allegations contained  
3 in the complaint and without admitting any wrongdoing.

4           3.       Eplay, LLC hereby agrees to the issuance by the court in the above-entitled action of  
5 a permanent injunction enjoining Eplay, LLC, their agents, employees, attorneys in fact, and all  
6 persons acting in concert or participating with them, from directly or indirectly:

7           a.       Violating Corporations Code section 25110 by offering or selling securities, without those  
8 securities being qualified pursuant to the Corporate Securities Law of 1968, or unless exempt;

9           b.       Violating Corporations Code section 25401 by offering or selling any securities by means  
10 of any written or oral communication which includes an untrue statement of a material fact or omits  
11 to state a material fact necessary in order to make the statements made, in light of the circumstances  
12 under which they were made, not misleading.

13          4.       Plaintiff the Department of Corporations hereby agrees that with the exception of the  
14 Permanent Injunction which shall remain in effect as a final order, the remainder of the action and all  
15 other claims for relief alleged in the complaint against Eplay, LLC shall be dismissed without  
16 prejudice.

17          5.       A Copy of the proposed Order Re Permanent Injunction And Dismissal of the  
18 Remaining Action As To Eplay, LLC, is attached hereto as Exhibit "A". As part of this stipulation  
19 the parties agree that the order attached as Exhibit "A" may be entered by the court upon application  
20 by plaintiff without further notice to any party or hearing at any time after the execution of this  
21 agreement and stipulation.

22          6.       The parties hereby acknowledge and agree that this Settlement Agreement is intended  
23 to constitute a final resolution of this action as between the parties to this agreement. The parties  
24 further acknowledge and agree that nothing contained in this Settlement Agreement shall operate to  
25 limit the Commissioner's ability to assist any other agency, (county, state or federal) with any  
26 prosecution, administrative, civil or criminal, brought by any such agency against Eplay, LLC based  
27 upon any of the activities alleged in this complaint or in any way limits or discharges any claims,  
28 charges or remedies that may be asserted by such agencies or third parties against Eplay, LLC in the

1 future for such activities.

2 7. This Settlement Agreement is the final written expression and the complete and  
3 exclusive statement of all the agreements, conditions, promises, representations, and covenants  
4 between the parties with respect to the subject matter hereof, and supercedes all prior or  
5 contemporaneous agreements, negotiations, representations, understandings, and discussions  
6 between and among the parties, their respective representatives, and any other person or entity, with  
7 respect to the subject matter covered hereby.

8 8. This Settlement Agreement may be executed in one or more counterparts, each of  
9 which shall be an original but all of which, together, shall be deemed to constitute a single  
10 document.

11 9. Each signator hereto covenants that he/she possesses all necessary capacity and  
12 authority to sign and enter into this Settlement Agreement.

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14 Dated: 03/14/11

PRESTON DuFAUCHARD  
California Corporations Commissioner

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16 By \_\_\_\_\_  
17 ALAN S. WEINGER  
18 Deputy Commissioner  
Enforcement Division

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19 Dated: 03/11/11

Eplay, LLC

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21 By \_\_\_\_\_  
Tom Tornga,  
President of Eplay, LLC

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