

1 Robert S. Green (State Bar No. 136183)

GREEN & NOBLIN, P.C.

2 700 Larkspur Landing Circle, Ste. 275

Larkspur, CA 94939

3 Telephone: (415) 477-6700

Facsimile: (415) 477-6710

4 Laurence M. Rosen (State Bar No. 219683)

THE ROSEN LAW FIRM, P.A.

5 275 Madison Avenue, Suite 3400

6 New York, NY 10016

7 Telephone: (213) 686-1060

Facsimile: (213) 202-3827

8 Attorneys for Plaintiffs

ROPES & GRAY LLP

9 Robert G. Jones (admitted *pro hac vice*)

10 Daniel Krockmalnic (admitted *pro hac vice*)

Prudential Tower, 800 Boylston Street

11 Boston, MA 02199-3600

Telephone: (617) 951-7000

12 Rocky C. Tsai (State Bar No. 221452)

13 Three Embarcadero Center, Suite 300

San Francisco, CA 94111-4006

14 Telephone: (415) 315-6300

Facsimile: (415) 315-6350

15 Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

19 CHRISTIAN HELLUM, DAVID
20 BOOTH, BRIAN RUSSOM AND
MICHAEL DELGRECO, individually
and on behalf of all other similarly
21 situated,

Plaintiffs,

22 vs.

23 PROSPER MARKETPLACE, INC., a
24 Delaware Corporation; CHRISTIAN
LARSEN; ED GIEDGOWD; KIRK T.
25 INGLIS; DOUG FULLER; JAMES W.
BREYER; LARRY W. CHENG;
26 ROBERT C. KAGLE; and JOHN AND
27 JANE DOES 1-100,

Defendants.

Case No.: CGC-08-482329

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

EXHIBIT B

Dept.: 304

Judge: Honorable Curtis E.A. Karnow

1 This matter came before the Court for hearing pursuant to the Order of this Court, dated
2 _____, 2013, on the application of the Parties for approval of the settlement set forth in the
3 Amended Stipulation and Agreement of Compromise, Settlement, and Release (the “Settlement
4 Agreement”). Due and adequate Notice having been given to the Class as required in said
5 Order, and the court having considered all papers filed and proceedings had herein and
6 otherwise being fully informed in the premises and good cause appearing therefore, IT IS
7 HEREBY ORDERED, ADJUDGED, AND DECREED that:

8 1. This Judgment incorporates by reference the definitions in the Settlement
9 Agreement, and all terms herein shall have the same meaning as set forth in the Settlement
10 Agreement.

11 2. This Court has jurisdiction over the subject matter of the Class Action and over
12 all Parties to the Class Action, including all Class Members.

13 3. This Court hereby approves the settlement set forth in the Settlement Agreement
14 and finds that said settlement is, in all respects, fair, reasonable, and adequate to the Class, and
15 the Parties are hereby directed to perform its terms. Class Representatives and the Defendants
16 are directed to consummate the settlement in accordance with the terms and provisions of the
17 Settlement Agreement.

18 4. The claims in the Class Action are hereby dismissed with prejudice, and
19 Plaintiffs and each of the Class Members, at the Effective Time, shall be deemed to have, and
20 by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
21 discharged all Settled Claims against the Released Persons; *provided, however*, that the Release
22 of Defendants shall not include the right to, or any Claim or action brought to, enforce the
23 Settlement Agreement or any Claim for breach of the Settlement Agreement.

24 5. At the Effective Time, all Class Members are hereby forever barred and enjoined
25 from prosecuting the Settled Claims against the Released Persons.

26 6. Each of the Released Persons is hereby deemed to have, and by operation of this
27 Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and
28

1 all of the Plaintiffs and Class Members and Class Counsel from all claims, based upon or arising
2 out of the institution, prosecution, or resolution of the Class Action; *provided, however*, that the
3 Release of Plaintiffs shall not include the right to, or any Claim or action brought to, enforce the
4 Settlement Agreement or any Claim for breach of the Settlement Agreement.

5 7. If Prosper fails to make the First Settlement Payment by or before the date
6 that the Final Order and Judgment is entered by the Court, then Defendants immediately
7 consent to the entry of a consent judgment against Prosper for the Class in the amount of
8 \$10,000,000, plus post-judgment interest at the legal rate of 7% per annum; or

9 if Prosper made the First Settlement Payment by or before the
10 one-year anniversary of entry by the Court of the Preliminary Approval Order, but fails to
11 make the Second Settlement Payment by or within ten (10) days after the one-year
12 anniversary of entry by the Court of the Preliminary Approval Order, then Defendants
13 immediately consent to the entry of a consent judgment against Prosper for the Class in
14 the amount of \$8,000,000, plus post-judgment interest at the legal rate of 7% per annum;
15 or

16 if Prosper made the First Settlement Payment and the Second
17 Settlement Payment by or before the two-year anniversary of entry by the Court of the
18 Preliminary Approval Order, but fails to make the Third Settlement Payment by or within
19 ten (10) days after the two-year anniversary of entry by the Court of the Preliminary
20 Approval Order, then Defendants immediately consent to the entry of a consent judgment
21 against Prosper for the Class in the amount of \$6,000,000, plus post-judgment interest at
22 the legal rate of 7% per annum; or

23 if Prosper made the First Settlement Payment and the Second
24 Settlement Payment and the Third Settlement Payment by or before the third-year
25 anniversary of entry by the Court of the Preliminary Approval Order, but fails to make
26 the Fourth Settlement Payment by or within ten (10) days after the third-year anniversary
27 of entry by the Court of the Preliminary Approval Order, then Defendants immediately
28

1 consent to the entry of a consent judgment against Prosper for the Class in the amount of
2 \$3,000,000, plus post-judgment interest at the legal rate of 7% per annum.

3 8. The Notice of Settlement of Class Action given to the Class was the best notice
4 practicable under the circumstances, including the individual notice to all Class Members who
5 could be identified through reasonable effort. Said Notice provided the best notice practicable
6 under the circumstances to all persons entitled to such Notice, and said Notice fully satisfied the
7 requirements of § 382 of the California Code of Civil Procedure, California Rules of Court,
8 Rule 3.766, and the requirements of due process. A full opportunity has been offered to the
9 Class Members to object to the proposed Settlement and to participate in the hearing thereon.
10 Thus, it is hereby determined that all members of the Class are bound by this Final Order and
11 Judgment except those individual plaintiffs excluded from the Class, whose identities are set
12 forth on Exhibit A hereto.

13 9. Neither the Settlement Agreement, nor any act performed or document executed
14 pursuant to or in furtherance of the Settlement Agreement: (i) is or may be deemed to be or may
15 be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or
16 of any wrongdoing or liability of the Defendants or Plaintiffs or Class Counsel; or (ii) is or may
17 be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any
18 of the Defendants or any Released Person or Plaintiff or Class Counsel, including in any civil,
19 criminal, or administrative proceeding in any court, administrative agency, or other tribunal.
20 Defendants or any other Released Persons or Plaintiffs or Class Counsel may file the Settlement
21 Agreement and/or this Judgment in any action that may be brought against them in order to
22 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,
23 release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or
24 issue preclusion or similar defense or counterclaim.

25 10. The finality of this Final Order and Judgment shall not be affected, in any
26 manner, by rulings that the Court may make on the Class Counsel's application for an award of
27 attorneys' fees and reimbursement of expenses and/or for awards to Named Plaintiffs.

1 11. The Court hereby finds that the proposed Plan of Allocation is a fair and
2 reasonable method to allocate the settlement proceeds among members of the Class.

3 12. The Court reserves exclusive and continuing jurisdiction pursuant to California
4 Code of Civil Procedure Section 664.6 over the Class Action, the Class Representatives, the
5 Class, and the Defendants for the purpose of:

6 (a) supervising the implementation, enforcement, construction, and interpretation of
7 the Settlement Agreement, the Preliminary Approval Order, the Plan of Allocation, and the
8 Final Order and Judgment;

9 (b) hearing and determining any application by Class Counsel for an award of
10 attorneys' fees, costs, expenses, and incentive payments to the Named Plaintiffs; and

11 (c) supervising the distribution of the Settlement Fund.

12
13 IT IS SO ORDERED.

14
15 DATED: _____

_____ THE HONORABLE CURTIS E.A. KARNOW
SUPERIOR COURT JUDGE