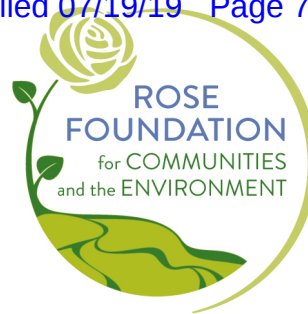


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Consumer Privacy Rights Fund Google Cy Pres Proposal

The Rose Foundation for Communities and the Environment specializes in directing consumer class action cy pres and environmental remediation payments back to affected communities. Our Consumer Funds have received over \$12 million in cy pres and our Environmental Funds have received more than \$25 million in restitution settlements. Entrusting cy pres to the Rose Foundation clears a path to settlement because we assume the burden of compliance with the class-action nexus. With the assistance of experts whom we recruit to advise each of our funds, we are able to identify nonprofits and university organizations whose work is at the cutting edge of a class action nexus, but which may not be immediately known to the court or the parties at the time of settlement. We then manage a competitive application process, and award the funds in a fair and transparent process that helps the cy pres benefits penetrate deeply and strategically into the communities represented in the class action. Entrusting cy pres to the Rose Foundation also eases post-settlement burdens because we have the ability to efficiently direct remainder cy pres to support the interests of the class, and because we provide accountability over cy pres expenditures by rigorously tracking grantee activities and accomplishments, and reporting back to the parties and the court documenting how the grants tied into nexus and benefited the class.

Here are profiles of our cy pres Consumer Funds:

- **Consumer Privacy Fund** (originally created with the Union Bank and Cal Fed privacy cy pres, the Fund has received cy pres awards from 12 privacy class action settlements to date – including Bank of America, American Express, Fleet Bank, Chase/Manhattan, Wells Fargo, Texaco/Citibank, NDCHealth and Netflix). The Fund has awarded over \$6 million in privacy grants to more than 100 consumer privacy non-profits through the United States. According to the Electronic Privacy Information Center, this has made the Rose Foundation one of the nation's leading supporters of consumer privacy rights. The most recent grant cycle in 2018 carried a special focus on technological issues related to the intersection of data management, on-line issues and personal privacy. For a list of past grantees, please visit:
<https://rosefdn.org/consumer-privacy-rights-fund/grantees>
- **Consumer Financial Education Fund** (created with a \$4 million cy pres from Bank of America). Over a five-year period encompassing four national grants rounds, this fund notified thousands of consumer education organizations of the funding opportunity and awarded a total of 68 grants to organizations throughout the United States teach basic financial literacy to some of the United States' most underbanked and vulnerable citizens. An additional grants cycle supported by an HSBC cy pres was recently completed, with funding awarded in February 2019. For reports on the impacts of this cy pres fund, please visit:
<https://rosefdn.org/wp-content/uploads/2016/10/CFEF-Report-Rose-Fdn-9-23-2016.pdf>
<https://rosefdn.org/wp-content/uploads/2019/06/A-Cy-Pres-Impact-Report-2018.pdf>

- **Consumer Products Fund** (created with cy pres from Neutrogena and Symantec). In its inaugural grants cycle, the Fund awarded \$600,000 to organizations specializing in product ingredient and truth in advertising claims. A follow up grants cycle addressed software performance and marketing claims. An additional cy pres related to health-related product advertising claims is pending in 2019. For a list of past grantees, please visit:

<https://rosefdn.org/consumer-products-fund/grantees>

Strategic Grantmaking to Benefit the Google Street View Class

We would utilize our capacity, grantmaking experience, and deep knowledge of privacy issues and consumer education to conduct a grants cycle that would maximize the benefit to the entire class by providing a public, competitive, and transparent national grantmaking process. Utilizing our national database of over 1,000 non-profit and educational organizations specializing in privacy rights and consumer issues we will ensure that notice of the availability of these cy pres funds penetrates deeply into the community and broadly benefits the entire class.

The Rose Foundation's expertise in using consumer cy pres to award strategic and cutting edge grants is well-recognized. For example, *California Lawyer* magazine has hailed the Rose Foundation for, "its reputation for transparency and a no-nonsense approach to the competition for funds." (September, 2011). We have been honored with the Electronic Privacy Information Center's prestigious *Champion of Freedom* award in recognition of our leadership in supporting consumer privacy rights, and have sponsored major conferences on consumer privacy issues, including the *Future of Privacy Rights* conference – a two-day convening of national privacy activists and scholars, as well as the *California Consumer Privacy Symposium*. And the Rose Foundation's overall expertise and excellence has been recognized by Charity Navigator, the nation's leading charity rating website. We proudly hold Charity Navigator's coveted *4 Star Charity* rating, which is the highest rating possible and recognizes exceptional financial management, program impact and organizational transparency.

Restricted Fund/Preservation of the Nexus:

All cy pres funds entrusted to the Rose Foundation will be held in a restricted internal account dedicated solely to the nexus described in the class action settlement. Rose's preliminary understanding is that the nexus of the matter is that it relates to on-line privacy issues and data security. The Rose Foundation looks forward to engaging with the Parties to better understand the nexus and composition of the class, and thus the focus that will shape and target the grantmaking program enabled by this cy pres.

The Rose Foundation regards the settlement documents that would create and describe the allowable uses of the funds as the equivalent of a Deed of Gift. Thus, as directed by the settlement itself as well as a broad underlying body of charitable law, the Rose Foundation assumes full liability for meeting the proscribed nexus with all grants enabled by the fund – including any and all specific restrictions or uses expressed in the settlement documents.

Expert Funding Board:

Each Consumer Fund is advised by an expert funding board. The funding board members provide strategic guidance, and specifically help review grant applications and make funding recommendations. Members of the funding board cannot not be affiliated with likely grant applicants, and are be governed by the Foundation's conflict of interest policy. The funding board serves on a

volunteer basis – however, travel and other direct expenses are reimbursed. We would assemble an expert funding board of between 3-5 individuals to guide the Fund created from the cy pres. To give you the flavor of the types of individuals we would recruit, here is a sample from current funding boards:

- The current Consumer Privacy Rights Funding Advisory Board includes Joanne McNabb, Director of Privacy Education and Policy Office of the Attorney General, California Department of Justice (retired), and Lee Tien, Senior Staff Attorney and Adams Chair for Internet Rights, Electronic Frontier Foundation.
- The financial funding board includes Jean Ann Fox, Director of Financial Services for the Consumer Federation of America, and Greg McBride, CFA, Vice President, Senior Financial Analyst, for Bankrate.com.
- The products funding board includes Stacy Malkan, co-founder of the Campaign for Safe Cosmetics.

While the Rose Foundation's services related to cy pres awards are scalable to the size of the award, the following outline assumes a minimum cy pres of \$500,000. Significant economies of scale are achieved with larger awards.

Publicizing the Fund:

The Rose Foundation maintains a broad service list of non-profit organizations working on consumer education and consumer protection issues. We'll supplement our existing list with targeted research to identify additional organizations whose work associates closely with the nexus. A Request for Proposals (RFP) shall be developed and circulated to this service list. In addition to targeted distribution via the service list, the RFP shall also be posted on the Rose Foundation's website, and will be made available to the appropriate foundation directories. We'll also encourage national networks of consumer protection organizations such as the Consumer Federation of America to rebroadcast the RFP throughout their networks. The result will be extremely broad and deep national penetration of the RFP and this grants opportunity. This ensures that we receive numerous grant applications and are able to select the most strategic and effective proposals that are designed to achieve the greatest benefit to the class.

The RFP shall describe the availability of funds and provide specific application instructions. After the grant cycle supported by this cy pres has been completed and the grants are awarded, the Rose Foundation shall publish on its website a list of grantees along with descriptions of projects funded. Foundation shall supply reports to the parties describing the grants awarded and their conformity with the cy pres nexus. Periodically, the Rose Foundation also publishes more general reports that highlight significant accomplishments of various grants funds or specific grantees. Please visit:

<https://rosefdn.org/reports>

Competitive & Transparent Grant Awards Process:

The Rose Foundation shall use the cy pres funds to conduct a competitive grant awards cycle – as an organization, the Rose Foundation strongly believes that a competitive application process leads to the best grant investments because it allows comparison of different ideas and approaches and selects the most effective strategies and projects. The grant cycle shall be administered in accordance with the Rose Foundation's grantmaking policies and procedures. These procedures require:

- Written applications with detailed project descriptions that explain proposed use of funds.
- Full organizational profiles that help us evaluate the applicants' capacity to successfully complete the project, including descriptions of key staff and board of directors.
- Detailed financial information from the applicants and a specific project budget.
- Project timeline, identification of key deliverables and proposed evaluation metrics.
- Applications processes are scaled based on the range of grants being offered. For example, some of the Rose Foundation's grantmaking funds are targeted towards facilitating small grants to very small organizations – these grassroots funds have a streamlined and user-friendly application process that is designed to help first-time applicants through the fundraising process; our programs designed to award larger grants to larger groups have a more complex application process that asks for much more comprehensive and detailed information.
- Specific reporting from grantees describing accomplishments and use of grant funds. These reports fuel Rose's knowledge base and help us make educated grant decisions in future rounds; they also provide the accountability mechanism for both our own diligence and to provide the basis for reports to the parties and the court as well as any other reporting requirements described in the Class Action settlement.

For a full template of the Rose Foundation's grant application process, please visit <http://rosefdn.org/apply>. Application procedures would be specifically tailored to the requirements of this specific settlement, but would closely track these instructions. Selection of grantees shall be closely advised by the funding board. As required by federal law, the Rose Foundation's governing board must retain final discretion in approving the funding board's recommendations.

Accountability:

All grantees from this cy pres shall be bound by grant contracts that provide for the Rose Foundation's ongoing oversight over each grantee's progress, and all grantees shall be required to submit detailed reports documenting activities, accomplishments, and expenses. These reports also ask grantees to share key insights gained during the project. In addition to documenting conformity with the nexus, these reports are shared with the funding board in order to educate an evaluation of the Fund's impact, document conformity with the nexus, and to catalyze consideration of any strategic revisions in overall grantmaking strategy within the general framework required by the nexus.

After the grant cycle supported by this cy pres has been completed and the grants are awarded, the Rose Foundation shall publish on its website a list of grantees along with descriptions of projects funded, and submit a report to the parties and the court describing the grants awarded and their conformity with the cy pres nexus. The Rose Foundation also publishes more general reports that highlight significant accomplishments of various grants funds or specific grantees. Please visit: <https://rosefdn.org/reports>

Periodically, the Rose Foundation summarizes grantees' key insights and shares this hard-won advice with other grantees; we also provide grantees with contact information so they have opportunities to network with, and learn from, each other. Our rigorous tracking of grantees over the years has developed a strong knowledge base within the Foundation that would educate effective and strategic decisions regarding the grant awards enabled by this cy pres. We then take the best lessons we learn from cy pres grantees and rebroadcast them to the field, thereby providing additional benefits to the

class and extending the benefits of the cy pres awards far beyond the confines of the actual grant dollars.

Since the Rose Foundation will rigorously track all of our grantees throughout the life of their projects, we provide a robust accountability mechanism which is simply lacking in many other cy pres awards processes. This benefits the class because it ensures that the money is spent to the best effect. With the Rose Foundation's grant process, an applicant doesn't just have to look good on paper to win the grant award, they have to produce and document results for the life of the grant.

A list of the grantees funded through this cy pres and summary descriptions of their projects shall be published on the Rose Foundation's website, and sent to the parties. Additionally, the Fund's grants and expenses shall be documented in the Rose Foundation's annual audit. That audit is made available to the public on the Rose Foundation's website: <http://rosefdn.org/financials>. We would also provide a copy of the audit directly to the parties if desired. Organizational tax filings may also be downloaded here.

Here is the cycle of work that the Rose Foundation would conduct for this cy pres

- Review and expand our existing proprietary database of approximately 1,000 consumer organizations to especially target organizations that specialize in at heart of the class action and the settlement. In addition to all of the well-known national consumer protection and privacy organizations, our database includes numerous smaller and mid-size organizations throughout the country which have some of the most direct connections to the community. Therefore, the grants we would make with the cy pres funds would significantly broaden and enhance the overall pool of cy pres recipients beyond any circle of potential nominees already known to the parties.
- Develop and broadly circulate a Request for Proposals (RFP) containing detailed application instructions. In addition to sending this RFP to our expanded database, we would register the RFP with appropriate grants directories.
- Respond to prospective applicant inquiries, and advise applicants on shaping their Letter of Inquiry (LOI). These are typically 3 pages in length, and provide an overview of the applicant, their proposed project, and generally outline the funding request. We typically receive large numbers of these inquiry letters.
- Review and respond to all LOIs. Encourage full proposals from well-qualified applicants with strategic ideas that closely conform to the nexus around telecommunications privacy. Advise applicants whose LOIs illustrate potential, but who may need guidance in designing a competitive proposal. Discourage applications from entities that do not seem well poised to submit a competitive or qualifying proposal.
- Respond to applicants during the full proposal development process. At this stage, most applicants typically have detailed questions about specific proposed activities and/or structural requirements of the application process.
- Review full proposals. In addition to a detailed narrative description of proposed activities, full proposals must include a project budget, organizational budget, profit/loss and balance sheet (audited preferred), timeline of activities, identification of specific deliverables, metrics for measuring impact, qualifications of key staff, identification of board members and their affiliations, outside evidence of organizational capacity such as testimonials, copies of media

coverage, referrals or letters of support, and other materials to help evaluate the organization and rank the proposal.

- Interview applicants to discuss their proposals in detail.
- With the assistance of our Funding Board, select the most qualified and strategic proposals for funding.
- Negotiate grant terms with each grantee as needed. For example, we may seek additional deliverables, or may agree to modify proposed deliverables in the event that we elect to only extend partial funding to a project.
- Bind all grantees through a contract that allows for the Rose Foundation’s oversight and requires detailed follow-up reporting to ensure that promises made in the grant application are fulfilled to the best ability of each grantee. Larger grants are typically paid in installments, with interim milestones which must be met before the next payment.
- Rigorously track grantee achievements to hold grantees accountable for their performance and ensure that funds are well spent. Tracking includes periodic check-in calls and written reports. These reports also provide an important history and context for repeat applications that may be funded though some future cy pres, and become part of our knowledge base that educates future grant decisions (and similarly educates our work to recommend strategic disbursement of this cy pres).

Timeline:

The following timeline assumes a cy pres between \$500,000 and \$2 million, which is an appropriate amount to award in a single grant cycle. Cy pres larger than \$2 million would typically be awarded through a multi-year process. From time of receipt of the cy pres award through grantee selection and the award of grant contracts, a cy pres grant cycle will take about 10 months to complete. Depending on the grant periods – typically one - two years, although sometimes longer – our oversight function over the grants awarded typically then extends for at least two years after grants are awarded. Regardless of the number of grant cycles enabled by the cy pres, the process for each of these grant cycles would be the same.

Costs:

To recover our costs of exercising stewardship over the funds, creating and servicing the volunteer funding board, publicizing the availability of the funds, conducting competitive grant cycles, administering grant awards, and evaluating grantee progress; as well as providing reports to the parties, court (and when required, other governmental agencies such as the U.S. Department of Justice), conducting our annual audit, filing IRS and state charitable tax returns, and other related program administration and general foundation overhead, the Rose Foundation charges a program administration fee based on the size of the award. This fee is comprehensive – there are no other surcharges or annual fees.

Fee Schedule (based on the size of the cy pres award):

Awards up to \$1 million:	8%
Awards up to \$3 million:	7 %
Awards up to \$5 million:	5.5%
Awards over \$5 million:	5%

The Rose Foundation for Communities and the Environment

The Rose Foundation for Communities and the Environment is dedicated to providing resources to communities so that they can participate effectively in civic affairs, consumer protection and environmental stewardship. To accomplish this goal, the Rose Foundation raises funds from individuals, businesses and other foundations, and uses the funds to award grants that benefit consumers, the environment and the community through a competitive and highly transparent grants process. Many of our grantmaking funds (such as the *Consumer Privacy Rights Fund* and *California Watersheds Protection Fund*) are enabled by consumer cy pres awards or pollution restitution settlements where we are selected by the parties and appointed by the court to administer a pollution mitigation or cy pres payment. In each of these Funds, all monies within the Fund are dedicated solely to fulfilling the nexus of the enabling settlement(s), and each fund is advised by an expert funding advisory board to help ensure the most strategic grants decisions. Additional grantmaking programs (such as the *Environmental Grassroots Fund*) are enabled by partnerships with colleague foundations. The Rose Foundation also partners with governmental agencies to manage grants program and conduct service projects. We are particularly proud that the *Central Valley Regional Water Quality Control Board* has chosen the Rose Foundation as its partner in disbursing pollution penalties to impacted communities and our *Central Valley Disadvantaged Community Water Quality Grants Fund* has now disbursed over \$2.5 to support community-based water quality programs throughout the San Joaquin and Sacramento valleys. Cumulatively over its 26 year history, the Rose Foundation has awarded more than \$50 million in consumer and environmental protection grants. The Rose Foundation's *New Voices Are Rising* program provides youth leadership development serving low income and students of color in East Bay high schools, and our *Summer Leadership Academy* has graduated more than 150 students and helped these at-risk youth get into college. All of our programs are described at www.rosefdn.org.

The Rose Foundation is audited by Maze & Associates, CPA. Organizational tax filings and annual audits are posted at www.rosefdn.org and may be downloaded at any time. All grant awards are published in a searchable grants database on our website. Any interested member of the public can easily pull up a list of all of our consumer grants; and they can further search those grants by year, topic or region if they so choose.

Past Experience with Cy Pres and Restitution Funds

The Rose Foundation has been named by the courts to receive funds from more than 400 cy pres and restitution settlements, and these funds have enabled a grantmaking program which has awarded more than \$40 million to consumer, community, environmental and social justice organizations in California and nationally. Our funding model:

- Utilizes the services of an expert funding board.
- Publicizes availability of funds including distributing an RFP to a broad service list.
- Conducts competitive grants rounds in nexus with the underlying cy pres(s).
- Helps community-oriented grant seekers navigate the complex funding application process.
- Performs ongoing grant administration including evaluating grantee progress and ensuring conformity with nexus.

- Meets all requirements imposed by oversight bodies including DOJ and the courts, circulates regular reports regarding grant awards, and provides documentation in an annual audit.

The following summarizes the Rose Foundation's experience in administering grants funds created by cy pres and restitution payments. Additional information about the Foundation's Restitution and Cy Pres Trustee Program may be found at: <http://rosefdn.org/restitution-and-cy-pres-fund-trustee>.

Consumer Financial Education Fund

Created in 2012 with a \$4 million cy pres award from Bank of America, this fund supports consumer education related to finance and banking issues thought the US. The fund has completed a five-year grantmaking program and fully disbursed these funds, and is currently conducting a \$1 million grant cycle enabled by cy pres from HSBC.

Consumer Privacy Rights Fund:

Created in 2002, the *Consumer Privacy Fund* has since been supplemented by 12 additional cy pres with a combined a combined total of over \$5 million from Bank of America, CalFed, Union Bank, American Express, Fleet Bank, Texaco/Citibank and Facebook. It has awarded grants nationally and in California to support consumer education and research on a broad range of privacy issues.

Consumer Product Fund

Created in 2014 with cy pres from Neutrogena and Symantec, the *Consumer Products Fund* awarded \$600 million in its opening grant cycle supporting consumer education around truth in advertising and public health, and additional grant cycles related to health-related and technology-related product advertising, are pending later for 2019.

Environmental Restitution Funds:

Environmental restitution funds include a *California Watersheds Fund* created in 1998 with a \$900,000 mitigation payment from Exxon. Since its launch, the fund has been supplemented by more than 300 other mitigation payments and has awarded more than \$17 million in grants to community-based organizations engaged in a broad range of environmental stewardship activities. Current watershed based funds cover areas of California including San Francisco Bay, the Sacramento River, San Joaquin River, Russian River and Humboldt Bay, as well as coastal funds covering near-shore waters adjacent to the Central Coast, Santa Barbara and Los Angeles, and the watersheds of the Inland Empire. Primary organizations helping to build these funds include San Francisco Baykeeper, California Sportfishing Protection Alliance, and other California waterkeeper groups. Other California-centered environmental funds include partnerships with the *Central Valley* and *Los Angeles Water Boards*, which help steer governmental *Supplemental Environmental Project* funds towards disadvantaged communities. Through the end of 2018, these funds have disbursed \$3 million to project benefiting vulnerable and underserved communities in close nexus with a series of Administrative Compliance Liability orders.

In 2012, Rose launched the *Puget Sound Stewardship and Mitigation Fund* seeded by a large restitution payment from a Puget Soundkeeper Alliance v. BNSF Railroad settlement. So far, the Puget fund has disbursed \$3 million in grants for green infrastructure and other water quality-related projects. Additional location-specific environmental funds have been created as well, including: the *Mike Chappell Fund for the Spokane River*, which conducted its first grants round in 2012 and is being

expanded to encompass parts of the Columbia River; the *Grays Harbor/Chehalis River Watershed Fund*, has awarded \$900,000 for coastal watershed protection in Washington State; the *Kern County Air Pollution Mitigation Fund* - a \$7 million fund which is supported by settlement payments from 18 residential developers including Lennar, Pulte and Centex; and the *Madera County Responsible Growth Fund* utilizing a \$1 million settlement payment from Castle and Cooke. The Kern Fund has helped purchase more than a dozen new clean-fueled school buses, while the Madera Fund is focused on sustainable land use planning.

Environmental Health Fund:

Created by more than \$1.5 million in cy pres payments from Badger Meters and Vons, this fund supports environmental health research and consumer education related to toxics. Recent grantmaking has been enabled by a series of Prop 65 settlement payments.

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