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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROSS SMALL,
Plaintiff,
vs.
EBAY INC. and I.C. SYSTEM, INC.,
Defendants.

CASE NO. 5:14-CV-01693-JGB-KK
**STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 **B. GOOD CAUSE STATEMENT**

2 This action is likely to involve trade secrets, confidential policies and
3 procedures, consumer transaction information, customer and pricing lists, and
4 other valuable research, development, commercial, financial, technical and/or
5 proprietary information for which special protection from public disclosure and
6 from use for any purpose other than prosecution of this action is warranted. Such
7 confidential and proprietary materials and information consist of, among other
8 things, confidential business or financial information, information regarding
9 confidential business practices, or other confidential research, development, or
10 commercial information (including information implicating privacy rights of third
11 parties), information otherwise generally unavailable to the public, or which may
12 be privileged or otherwise protected from disclosure under state or federal statutes,
13 court rules, case decisions, or common law. Accordingly, to expedite the flow of
14 information, to facilitate the prompt resolution of disputes over confidentiality of
15 discovery materials, to adequately protect information the parties are entitled to
16 keep confidential, to ensure that the parties are permitted reasonable necessary uses
17 of such material in preparation for and in the conduct of trial, to address their
18 handling at the end of the litigation, and serve the ends of justice, a protective order
19 for such information is justified in this matter. It is the intent of the parties that
20 information will not be designated as confidential for tactical reasons and that
21 nothing be so designated without a good faith belief that it has been maintained in
22 a confidential, non-public manner, and there is good cause why it should not be
23 part of the public record of this case.

24 **2. DEFINITIONS**

25 2.1 Action: this pending federal law suit.

26 2.2 Challenging Party: a Party or Non-Party that challenges the
27 designation of information or items under this Order.

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1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
4 the Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
6 their support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless
11 of the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced
13 or generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve
16 as an expert witness or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association,
21 or other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a
23 party to this Action but are retained to represent or advise a party to this Action
24 and have appeared in this Action on behalf of that party or are affiliated with a law
25 firm which has appeared on behalf of that party, and includes support staff.

26 2.11 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 **3. SCOPE**

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or
14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
15 compilations of Protected Material; and (3) any testimony, conversations, or
16 presentations by Parties or their Counsel that might reveal Protected Material.

17 Any use of Protected Material at trial shall be governed by the orders of the
18 trial judge. This Order does not govern the use of Protected Material at trial.

19 **4. DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
24 with or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
26 including the time limits for filing any motions or applications for extension of
27 time pursuant to applicable law.

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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
10 designations are prohibited. Designations that are shown to be clearly unjustified
11 or that have been made for an improper purpose (e.g., to unnecessarily encumber
12 the case development process or to impose unnecessary expenses and burdens on
13 other parties) may expose the Designating Party to sanctions.

14 If it comes to a Designating Party's attention that information or items that it
15 designated for protection do not qualify for protection, that Designating Party must
16 promptly notify all other Parties that it is withdrawing the inapplicable designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in
18 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
19 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
20 under this Order must be clearly so designated before the material is disclosed or
21 produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or
24 electronic documents, but excluding transcripts of depositions or other pretrial or
25 trial proceedings), that the Producing Party affix at a minimum, the legend
26 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
27 contains protected material. If only a portion or portions of the material on a page
28 qualifies for protection, the Producing Party also must clearly identify the

1 protected portion(s) (e.g., by making appropriate markings in the margins).

2 A Party or Non-Party that makes original documents available for inspection
3 need not designate them for protection until after the inspecting Party has indicated
4 which documents it would like copied and produced. During the inspection and
5 before the designation, all of the material made available for inspection shall be
6 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
7 documents it wants copied and produced, the Producing Party must determine
8 which documents, or portions thereof, qualify for protection under this Order.
9 Then, before producing the specified documents, the Producing Party must affix
10 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
11 only a portion or portions of the material on a page qualifies for protection, the
12 Producing Party also must clearly identify the protected portion(s) (e.g., by making
13 appropriate markings in the margins).

14 (b) for testimony given in depositions that the Designating Party
15 identify the Disclosure or Discovery Material on the record, before the close of the
16 deposition all protected testimony.

17 (c) for information produced in some form other than documentary
18 and for any other tangible items, that the Producing Party affix in a prominent
19 place on the exterior of the container or containers in which the information is
20 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
21 information warrants protection, the Producing Party, to the extent practicable,
22 shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive
25 the Designating Party’s right to secure protection under this Order for such
26 material. Upon timely correction of a designation, the Receiving Party must make
27 reasonable efforts to assure that the material is treated in accordance with the
28 provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be
8 on the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed only to the categories of persons and under
20 the conditions described in this Order. When the Action has been terminated, a
21 Receiving Party must comply with the provisions of section 13 below (FINAL
22 DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated

1 “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action,
3 as well as employees of said Outside Counsel of Record to whom it is reasonably
4 necessary to disclose the information for this Action;

5 (b) the officers, directors, and employees (including House
6 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
7 this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to
9 whom disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and
14 Professional Vendors to whom disclosure is reasonably necessary for this Action
15 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
16 A);

17 (g) the author or recipient of a document containing the
18 information or a custodian or other person who otherwise possessed or knew the
19 information;

20 (h) during their depositions, witnesses ,and attorneys for witnesses,
21 in the Action to whom disclosure is reasonably necessary provided: (1) the
22 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
23 and (2) they will not be permitted to keep any confidential information unless they
24 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
25 otherwise agreed by the Designating Party or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal Protected
27 Material may be separately bound by the court reporter and may not be disclosed
28 to anyone except as permitted under this Stipulated Protective Order; and

1 (i) any mediator or settlement officer, and their supporting
2 personnel, mutually agreed upon by any of the parties engaged in settlement
3 discussions.

4 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
5 **PRODUCED IN OTHER LITIGATION**

6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this Action as
8 “CONFIDENTIAL,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such
10 notification shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena
12 or order to issue in the other litigation that some or all of the material covered by
13 the subpoena or order is subject to this Protective Order. Such notification shall
14 include a copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served
18 with the subpoena or court order shall not produce any information designated in
19 this action as “CONFIDENTIAL” before a determination by the court from which
20 the subpoena or order issued, unless the Party has obtained the Designating Party’s
21 permission. The Designating Party shall bear the burden and expense of seeking
22 protection in that court of its confidential material and nothing in these provisions
23 should be construed as authorizing or encouraging a Receiving Party in this Action
24 to disobey a lawful directive from another court.

25 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
26 **PRODUCED IN THIS LITIGATION**

27 (a) The terms of this Order are applicable to information produced
28 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such

1 information produced by Non-Parties in connection with this litigation is protected
2 by the remedies and relief provided by this Order. Nothing in these provisions
3 should be construed as prohibiting a Non-Party from seeking additional
4 protections.

5 (b) In the event that a Party is required, by a valid discovery
6 request, to produce a Non-Party's confidential information in its possession, and
7 the Party is subject to an agreement with the Non-Party not to produce the Non-
8 Party's confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the
10 Non-Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
13 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
14 reasonably specific description of the information requested; and

15 (3) make the information requested available for inspection
16 by the Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this court
18 within 14 days of receiving the notice and accompanying information, the
19 Receiving Party may produce the Non-Party's confidential information responsive
20 to the discovery request. If the Non-Party timely seeks a protective order, the
21 Receiving Party shall not produce any information in its possession or control that
22 is subject to the confidentiality agreement with the Non-Party before a
23 determination by the court. Absent a court order to the contrary, the Non-Party
24 shall bear the burden and expense of seeking protection in this court of its
25 Protected Material.

26 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has
28 disclosed Protected Material to any person or in any circumstance not authorized

1 under this Stipulated Protective Order, the Receiving Party must immediately (a)
2 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
3 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
4 the person or persons to whom unauthorized disclosures were made of all the terms
5 of this Order, and (d) request such person or persons to execute the
6 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
7 A.

8 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
9 **OTHERWISE PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other
12 protection, the obligations of the Receiving Parties are those set forth in Federal
13 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
14 whatever procedure may be established in an e-discovery order that provides for
15 production without prior privilege review. Pursuant to Federal Rule of Evidence
16 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
17 of a communication or information covered by the attorney-client privilege or
18 work product protection, the parties may incorporate their agreement in the
19 stipulated protective order submitted to the court.

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
22 person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed in
26 this Stipulated Protective Order. Similarly, no Party waives any right to object on
27 any ground to use in evidence of any of the material covered by this Protective
28 Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party's request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information
6 in the public record unless otherwise instructed by the court.

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4, within
9 60 days of a written request by the Designating Party, each Receiving Party must
10 return all Protected Material to the Producing Party or destroy such material. As
11 used in this subdivision, “all Protected Material” includes all copies, abstracts,
12 compilations, summaries, and any other format reproducing or capturing any of the
13 Protected Material. Whether the Protected Material is returned or destroyed, the
14 Receiving Party must submit a written certification to the Producing Party (and, if
15 not the same person or entity, to the Designating Party) by the 60 day deadline that
16 (1) identifies (by category, where appropriate) all the Protected Material that was
17 returned or destroyed and (2) affirms that the Receiving Party has not retained any
18 copies, abstracts, compilations, summaries or any other format reproducing or
19 capturing any of the Protected Material. Notwithstanding this provision, Counsel
20 are entitled to retain an archival copy of all pleadings, motion papers, trial,
21 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
22 and trial exhibits, expert reports, attorney work product, and consultant and expert
23 work product, even if such materials contain Protected Material. Any such archival
24 copies that contain or constitute Protected Material remain subject to this
25 Protective Order as set forth in Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4
5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 DATED: July 30, 2015

ROBINSON BRADFORD LLP

8
9 By: s/Matthew C. Bradford
10 Matthew C. Bradford
11 Attorneys for Plaintiff
ROSS SMALL

12 DATED: July 30, 2015

CARLSON & MESSER LLP

13
14
15 By: s/Martin Schannong
16 David J. Kaminski
17 Martin Schannong
18 Attorneys for Defendants
19 EBAY INC. and I.C. SYSTEM, INC.

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21
22 DATED: August 4, 2015

23 
24 _____
25 Hon. Kenly Kiya Kato
26 United States Magistrate Judge
27
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on [date] in the case of *Ross Small v. eBay Inc.*
8 *and I.C. System, Inc.*, Case No. 5:14-cv-01693-JGB-KK. I agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms
17 of this Stipulated Protective Order, even if such enforcement proceedings occur
18 after termination of this action. I hereby appoint _____
19 [print or type full name] of _____ [print
20 or type full address and telephone number] as my California agent for service of
21 process in connection with this action or any proceedings related to enforcement of
22 this Stipulated Protective Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28