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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KYLE SAWYER,

Plaintiff,

No. C 10-00014 JSW

v.

BILL ME LATER, INC.; EBAY INC.,

ORDER TO SHOW CAUSE

Defendants.

Federal courts are under a duty to raise and decide issues of subject matter jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R. Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). If the Court determines that subject matter jurisdiction is lacking, the Court must dismiss the case. *Id.*; Fed. R. Civ. P. 12(h)(3).

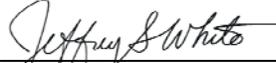
Plaintiff filed this action in federal court pursuant to the Class Action Fairness Act of 2005 (“CAFA”). The CAFA provides that district courts have original jurisdiction over any class action in which (1) the amount in controversy exceeds \$5,000,000, (2) any plaintiff class member is a citizen of a state different from any defendant, (3) the primary defendants are not states, state officials, or other government entities against whom the district court may be foreclosed from ordering relief, and (4) the number of plaintiffs in the class is at least 100. 28 U.S.C. §§ 1332(d)(2), (d)(5). In response to Defendant eBay Inc.’s motion to dismiss, Plaintiff argues that eBay is liable as the alter ego of Defendant Bill Me Later. In its reply brief, eBay points out that if Bill Me Later is eBay’s alter ego, then there would not be a defendant with a

1 citizenship diverse from Plaintiff. As a result, this Court would lack jurisdiction under CAFA
2 to hear this matter.

3 Therefore, the Court HEREBY ORDERS Plaintiff, in light of his alter ego contentions,
4 to show cause in writing of no more than five pages why this case should not be dismissed for
5 lack of jurisdiction by no later than April 29, 2010. Defendants may file a response of no
6 longer than five pages by May 5, 2010. The Court FURTHER ORDERS that the hearing on
7 eBay and Bill Me Later's motions to dismiss currently set for April 23, 2010 is VACATED.
8 The Court will reset a hearing on Defendants' motions, if necessary, after the issue regarding
9 jurisdiction is resolved.

10 **IT IS SO ORDERED.**

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12 Dated: April 20, 2010

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15 JEFFREY S. WHITE
16 UNITED STATES DISTRICT JUDGE
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