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10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN JOSE DIVISION**

13 IN RE EBAY SELLER ANTITRUST  
 LITIGATION

Case No. C 07-01882-JF (RS)

14 **STIPULATION AND [PROPOSED] ORDER**  
 15 **REGARDING CLASS CERTIFICATION**  
 16 **AND SUMMARY JUDGMENT BRIEFING**  
 17 **AND DEPOSITION SCHEDULE**

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1           Following the Court's September 1, 2009 Order that, among other things, set the  
2 hearing date for Plaintiffs' motion for class certification and eBay's motion for summary  
3 judgment on October 30, 2009, the parties have conferred further about certain scheduling  
4 issues related to those motions. The parties have reached the following stipulation with  
5 respect to the following matters and request the Court enter it as an order. The stipulation  
6 does not affect the October 30 hearing date.

7           1.       Plaintiffs must file their Reply to eBay's Opposition to Plaintiffs' Motion  
8 for Class Certification by September 30, 2009, rather than September 14, 2009, as  
9 currently required by the Court's Order dated April 21, 2009.

10          2.       Plaintiffs must file their Opposition to eBay's Motion for Summary  
11 Judgment by October 6, 2009, rather than October 9, 2009, as would be the deadline  
12 under the default schedule in the Local Rules, based on the October 30 hearing date.

13          3.       eBay must file its Reply to Plaintiffs' Opposition to eBay's Motion for  
14 Summary Judgment by October 16, 2009, which is the deadline under the default schedule  
15 in the Local Rules.

16          4.       eBay may file a supplemental opposition to Plaintiffs' Motion for Class  
17 Certification by September 11, 2009. This supplemental opposition may be no longer  
18 than ten pages and will be accompanied by a supporting declaration from Dr. Robert H.  
19 Topel. The scope of the Addendum and accompanying declaration shall be limited to the  
20 following: (1) discussing the additional testimony provided during the court-ordered  
21 continuation of Professor Woroch's August 31, 2009, deposition, which Judge Seeborg  
22 permitted after the August 14 deadline for eBay's original opposition; (2) responding to  
23 specific questions Plaintiffs raised in Dr. Topel's August 28, 2009, deposition that related  
24 to whether Dr. Topel controlled for the introduction of the iPhone when reaching his  
25 opinions regarding the cause of the shift in the price format of listings in certain categories  
26 during July 2008; (3) correcting exhibits 4 through 6 to Dr. Topel's Declaration in  
27 Support of eBay's Opposition to Plaintiffs' Motion for Class Certification, as well as  
28 supporting calculations; (4) including a new version of exhibit 5 that includes omitted

1 categories; and (5) providing non-substantive errata to Dr. Topel's Declaration.

2 5. The following depositions, or continuations of depositions, are scheduled on  
3 the following dates:

- 4 • Lee E. Manfred: September 22 in Berkeley, CA.
- 5 • Kevin M. Murphy: September 21 in Chicago, IL.
- 6 • Robert H. Topel, 3 hours of continued deposition on September 24  
7 in Phoenix, AZ.
- 8 • Brant M. Cruz, 3 hours of continued deposition on September 30 in  
9 Boston, MA, if Plaintiffs choose to proceed with a continued  
10 deposition.
- 11 • Armando Levy: September 28, 2009 in San Francisco, CA.

12 6. Plaintiffs will hold open October 9, 2009 and October 12, 2009 for eBay to  
13 depose their yet-to-be-disclosed declarants in support of their Opposition to eBay's  
14 Motion for Summary Judgment.

15 7. Whenever either side submits a declaration from an expert to support a  
16 substantive motion, opposition, or reply, the sponsoring party will provide to the other  
17 party all information relied upon by that expert declarant within 3 calendar days of the  
18 declaration. With respect to any expert declarations filed by Plaintiffs on October 6 in  
19 support of their opposition to summary judgment, where the expert will be made available  
20 for deposition on October 9, Plaintiffs will provide the information relied upon by that  
21 expert by no later than 10 a.m. on October 8.

22  
23 Dated: September 8, 2009

O'MELVENY & MYERS LLP

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25 By: /s/ Thomas P. Brown  
26 Thomas P. Brown

27 *Attorneys for Defendant*  
28 eBay Inc.

1 Dated: September 8, 2009

HAGENS BERMAN SOBOL SHAPIRO  
LLP

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By: /s/ Jeff D. Friedman

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Jeff D. Friedman

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*Attorneys for Plaintiffs and Proposed Class*

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I, Thomas P. Brown, am the ECF User whose ID and password are being used to file this  
STIPULATION AND [PROPOSED] ORDER REGARDING CLASS CERTIFICATION AND  
SUMMARY JUDGMENT BRIEFING AND DEPOSITION SCHEDULE. In compliance with  
General Order 45, X.B., I hereby attest that Jeff D. Friedman has concurred in this filing.

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**ORDER**

IT IS SO ORDERED.

Dated: 9/11/2009

  
\_\_\_\_\_  
The Honorable Jeremy P. Fogel  
United States District Judge  
Northern District of California

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