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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 IN RE EBAY SELLER ANTITRUST
13 LITIGATION

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

14 ORDER¹ GRANTING IN PART AND
15 DENYING IN PART DEFENDANT'S
16 MOTION FOR RECONSIDERATION
17 OF THE COURT'S OCTOBER 20,
18 2009 ORDER

[Docket No. 544]

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20 On November 4, 2009, Defendant eBay, Inc. ("eBay") moved for reconsideration of this
21 Court's order entered October 20, 2009 determining that Exhibits 2, 4-5, 12-13, 15-16, 23-24,
22 27-34, 36-37, 39, 41, 44-45, 51, 53-56, 59, 72, 76, 81-82, 85-86 and 88 to the Declaration of Jeff
23 D. Friedman in Opposition to eBay's Motion for Summary Judgment,² portions of Plaintiffs'

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25 ¹ This disposition is not designated for publication in the official reports.

26 ² eBay subsequently has removed Exhibits 16 and 28 from the list of exhibits in its
27 motion for reconsideration because those documents had been filed publicly by Plaintiffs as part
28 of their reply in support of their motion for class certification. See Docket Nos. 522 & 547.

1 Opposition to eBay’s Motion for summary Judgment (“Friedman Declaration”), and portions of
2 the Declaration of Glenn A. Woroch in Opposition to eBay’s Motion for Summary Judgment
3 (“Woroch Declaration”) should be a part of the public record. eBay argues that these documents
4 should be sealed because they contain confidential information of current commercial value to
5 eBay. On November 12, 2009, Plaintiffs filed opposition to the instant motion, arguing that eBay
6 has not presented a compelling justification for sealing these documents.

7 Under Civil Local Rule 79-5 (“Rule 79-5”), only information that is “privileged or
8 protectable as a trade secret or otherwise entitled to protection under the law” may be sealed.
9 Rule 79-5(a). Moreover, a motion to seal documents “must be narrowly tailored to seek sealing
10 only of sealable material.” *Id.* eBay maintains that the documents at issue contain information
11 that provides insight into its pricing and business development strategies. Although it is mindful
12 of eBay’s concern, the Court finds no reason to seal Exhibits 2, 4, 44, 45, 51, and 85 to the
13 Friedman Declaration. The remaining documents and exhibits, however, do contain information
14 disclosure of which would create an unreasonable risk of commercial or competitive harm to
15 eBay. Although some of the information is years old and may appear obvious or commonly
16 known, the manner in which eBay internally discusses and reacts to that information provides a
17 unique perspective of its business model. Allowing competitors to view these exhibits may lead
18 to unfairly specific exploitation of eBay’s weaknesses. Based upon eBay’s additional showing,
19 the Court now is satisfied that the interest in public disclosure of these particular documents is
20 outweighed by the danger that such disclosure poses to eBay’s competitive viability, and it so
21 finds.

22 Good cause therefor appearing, the motion for reconsideration will be granted in part and
23 denied in part as set forth above.

24 IT IS SO ORDERED.

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26 DATED: December 4, 2009

27 
28 JEREMY FOGEL
United States District Judge