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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE EBAY ANTITRUST LITIGATION

Case Number 5:07-cv-01882 JF/RS

ORDER¹ (1) DECLINING TO
CONSOLIDATE CASE NUMBER
5:10-cv-03825 HRL WITH THE
INSTANT CASE AND (2)
REQUESTING ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
CASES SHOULD BE RELATED

eBay, Inc. ("eBay") has notified the Court that *Smith v. eBay Corp. et al.*, Case No. 5:10-cv-03825 HRL, has been transferred to the Northern District of California, San Jose Division, from Eastern District of Michigan. The parties stipulated to the transfer. (Case No. 10-03825 Docket No. 20.) eBay contends that *Smith* should be consolidated with the instant case pursuant to Stipulation and Case Management Order No. 1, which provides that:

Each new case that arises out of the subject matter of [the instant case] which is . . . transferred to this Court, shall be consolidated with [the instant case] . . . unless a party in such [a] transferred action objects to consolidation, within ten (10) days after the date upon which a copy of this Order is served on counsel for such party, by filing an application for relief, and this Court deems it appropriate to grant such application.

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

1 (Case No. 07-01882 Docket No. 18.) Plaintiffs' counsel in *Smith* have not filed an application
2 for relief.

3 The Court declines to consolidate *Smith* with the instant case. Under Federal Rule of
4 Civil Procedure 42(a), "[a] district court generally has 'broad' discretion to consolidate actions . .
5 . ." *Pierce v. County of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008) (citing *Investor's Research*
6 *Co. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989)). However,
7 consolidation under Rule 42(a) applies only to actions "pending" before the court. *Pan American*
8 *World Airways, Inc. v. United States Dist. Court for Cent. Dist.*, 523 F.2d 1073, 1080 (9th Cir.
9 1975).² The instant case does not appear to be "pending," as it has been closed subsequent to the
10 Court's order of March 4, 2010, granting summary judgment in favor of eBay, and the judgment
11 in favor of eBay that was entered on the same day. Moreover, the basic purpose of Rule 42
12 consolidation would not be served in this instance. Consolidation is "permitted as a matter of
13 convenience and economy in administration. . . ." *Johnson v. Manhattan R. Co.*, 289 U.S. 479,
14 496-97 (1933) (discussing former 28 U.S.C. § 734, upon which Federal Rule of Civil Procedure
15 42 is based). As just described, the instant case has been closed, and the only active case
16 remaining is *Smith*.

17 However, the two actions may be related under Civil Local Rule 3-12(a). Pursuant to
18 Civil Local Rule 3-12(c), eBay is directed to file an administrative motion to permit the Court to
19 consider whether *Smith* should be related to the instant case. The motion shall be filed on or
20 before September 17, 2010.

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25 ² Prior to its amendment in 2007, Rule 42(a) provided that "[w]hen actions involving a
26 common question of law or fact are pending before the court, . . . it may order all the actions
27 consolidated" See *Pan American*, 523 F.2d at 1080. Among the changes to Rule 42(a) in
28 the 2007 amendment, the phrase "pending before the court" was deleted. Nonetheless, the
advisory committee noted that the "changes are intended to be stylistic only." FED. R. CIV. P. 42
advisory committee's note.

1 IT IS SO ORDERED.

3 DATED: 9/10/10


JEREMY FOGEL
United States District Judge