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(Additional Counsel listed on following page)

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

14 MICHAEL EWERT, on Behalf of Himself and
 15 for the Benefit of All with Common or General
 16 Interest, Any Persons Injured, and All Others
 Similarly Situated,

17 Plaintiffs,

18 v.

19 EBAY, INC., DOES 1 to 100, inclusive.

20 Defendant.

Case Nos. C 07-2198 RMW
 C 07-4487 RMW

**STIPULATION REGARDING
 SCHEDULING AND
 ORDER**

Date: N/A
 Time: N/A
 Courtroom: 6, 4th Floor
 Judge: Hon. Ronald M. Whyte

21 THE MISSING LINK, INC., d/b/a BATH
 22 PLUS INC., and JEFFREY MARKS,
 23 individually and on behalf of all others
 similarly situated,

24 Plaintiffs,

25 v.

26 EBAY INC.,

27 Defendant.

1 Having conferred on the matter, the parties stipulate to the following discovery and trial
2 schedule and ask the Court to enter this Stipulation as its Scheduling Order:¹

3 1. Fact Discovery Cut-Off: All non-expert discovery must be served in time so that
4 responses are due no later than November 17, 2011. All non-expert depositions must be
5 commenced by November 17, 2011. After that date, fact discovery may be reopened without
6 further order of the Court only for the limited purpose of pursuing additional discovery based on
7 the testimony of the experts, and only to the extent that either side's expert has offered testimony
8 based on evidence not previously disclosed during fact discovery. The parties will confer on any
9 proposed schedule for the reopening of discovery if that should become necessary.

10 2. Expert Discovery:

11 a. Plaintiffs' Expert Report: Plaintiffs' expert report and disclosure shall be
12 served no later than December 14, 2011.

13 b. Defendant's Expert Report: Defendant's expert report and disclosure shall
14 be due no later than January 26, 2012.

15 c. Expert Depositions: Depositions of experts must be completed by
16 February 23, 2012.

17 d. "Daubert" Motions: Daubert motions, if any, must be filed within 30 days
18 of completing the deposition of the expert who is the subject of the motion.

19 3. Dispositive Motions: Any Motions for Summary Judgment or Partial Summary
20 Judgment shall be filed by no later than April 27, 2012.

21 4. Trial: The Pre-Trial Conference shall be held on June 29, 2012, or as soon
22 thereafter as the Court's schedule permits.

23 5. Class Notice: The parties agree that Class Notice should not be scheduled at this
24 time as the parties are working together and contemplate production of documents and further
25 evaluation that could lead to settlement or narrowing of issues that would implicate the notice.

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27 ¹ On July 8, 2011, eBay filed a Motion to Decertify the Class, which is now set for hearing on
28 September 2, 2011 at 9:00 a.m. Should the Court grant that motion, eBay anticipates that the
parties would need to enter a further scheduling stipulation.

1 The parties will report to the court on the status of these efforts and the timing of notice within
2 ninety days of the entry of this order.

3
4 August 9, 2011

Respectfully submitted,
MARKUN ZUSMAN & COMPTON LLP

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By: /s/ Edward S. Zusman
Edward S. Zusman

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Attorneys for Plaintiffs The Missing Link
d/b/a Bath Plus, Inc. and Jeffrey Marks

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10 August 9, 2011

BAILEY & GALYEN

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By: /s/ John R. Fabry
John R. Fabry

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Attorneys for Plaintiff Michael Ewert

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15 August 9, 2011

COOLEY LLP

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By: /s/ Whitty Somvichian
Whitty Somvichian

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Attorneys for Defendant eBay, Inc.

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[PROPOSED] ORDER

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The parties' proposed schedule is hereby approved.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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Dated: August 11, 2011


Hon. Ronald M. Whyte

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