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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 MICHAEL EWERT, et al.,

13 Plaintiffs,

14 v.

15 EBAY, INC.,

16 Defendant.
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Case No.: C 07-2198 RMW (PVT)

**ORDER TO EBAY, INC. TO SHOW CAUSE
WHY SANCTIONS SHOULD NOT BE
AWARDED AGAINST IT FOR FAILING TO
APPEAR FOR ITS DEPOSITION; AND**

**ORDER ADVANCING HEARING ON
PLAINTIFF'S MOTION TO COMPEL
DEPOSITION**

18 On July 14, 2009, Plaintiffs filed a motion to compel the deposition of Defendant eBay, Inc.
19 ("eBay") under Rule 30(b)(6).¹ Having reviewed the moving papers, the court finds it appropriate to
20 issue this order. Based on the moving papers,

21 IT IS HEREBY ORDERED that no later than July 28, 2009, Defendant eBay shall file a
22 declaration showing cause why sanctions should not be awarded against it for failing to appear for its
23 properly noticed deposition. *See* FED.R.CIV.PRO. 37(d)(2) (providing that a party's failure to appear
24 for its own deposition "is not excused on the ground that the discovery sought was objectionable,

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26 ¹ Plaintiffs erroneously noticed their motion to compel on District Judge Whyte's calendar.
27 Pursuant to the San Jose Division's Standing Order Regarding Case Management in Civil Cases, "All
28 disclosure or discovery disputes in cases assigned to district judges are referred to the assigned
magistrate judge for determination pursuant to Fed.R.Civ.P. 72(a)." This case was assigned Magistrate
Judge Patricia V. Trumbull for disclosure and discovery disputes, and thus the motion should have been
noticed for her law and motion calendar which is held Tuesdays at 10:00 a.m. in courtroom 5.

1 unless the party failing to [appear] has a pending motion for a protective order under Rule 26(c).”).
2 The court is taking this step of issuing an order to show cause because Plaintiffs’ moving papers did
3 not specifically draw Defendant’s attention to the Rule 37(d)(2) standard. In addition to Rule
4 37(d)(2), in determining what sanctions are appropriate, if any, the court will also consider whether
5 Defendant adequately appears for its deposition before July 28, 2009.

6 IT IS FURTHER ORDERED that the hearing on Plaintiffs’ motion to compel Defendant’s
7 deposition is advanced to 10:00 a.m. on August 18, 2009 in courtroom 5 of this court. Defendant’s
8 response to this order to show cause shall be deemed to be its opposition to the motion to compel.
9 Plaintiffs’ reply shall be filed no later than August 11, 2009.

10 Dated: 7/15/09

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12 PATRICIA V. TRUMBULL
13 United States Magistrate Judge
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