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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DOMENIC TRICOME,
Plaintiff,

v.

eBAY, INC., et al.,
Defendants.

Case No. 5:10-cv-03214-JF

**ORDER DENYING PLAINTIFF'S
MOTIONS FOR DEFAULT JUDGMENT
AND RECONSIDERATION; AND
DIRECTING THAT NO FURTHER
DOCUMENTS BE FILED IN THIS
CLOSED CASE**

[Re: ECF Nos. 112 and 113]

Plaintiff Domenic Tricome, acting *pro se*, filed this action in the United States District Court for the Eastern District of Pennsylvania on May 30, 2009. Compl., ECF 1. Tricome asserted fraud and related claims against Defendant eBay, Inc. (“eBay”) and several of its officers and attorneys. *Id.* He alleged that his eBay accounts had been wrongfully suspended and that eBay had violated various aspects of its user agreement. *Id.* On October 20, 2009, the Pennsylvania court dismissed all defendants other than eBay and transferred the case to this district. Order, ECF 29. Tricome unsuccessfully appealed the transfer order, and the case was transferred to this Court on July 22, 2010. Dkt. Entry, ECF 36.

This Court held a Case Management Conference on December 3, 2010. Minute Entry, ECF 79. Plaintiff did not appear. *Id.* The Court issued an Order to Show Cause why the action should not be dismissed for failure to prosecute, and it set a show cause hearing for February 4, 2011. Order to Show Cause, ECF 80. Tricome filed a Motion for Sanctions and to Change Venue, which the Court also set for hearing on February 4, 2011. Clerk’s Notice, ECF 81. On

1 February 1, 2011, after reviewing the record and the papers filed by the parties, the Court issued
2 an order dismissing the action without prejudice for failure to prosecute, terminating all pending
3 motions, and vacating all scheduled dates. Dismissal Order, ECF 85. Tricome appealed the
4 Dismissal Order.

5 On October 16, 2012, the United States Court of Appeals for the Ninth Circuit affirmed the
6 dismissal of Plaintiff's action in an unpublished Memorandum disposition. Mem. Dispo., ECF
7 106. Plaintiff's subsequent petitions for panel rehearing and rehearing en banc were denied.
8 Order, ECF 107. The mandate issued on March 28, 2013. Mandate, ECF 108. Plaintiff's petition
9 for writ of certiorari was denied by the United States Supreme Court on October 7, 2013. Appeal
10 Remark, ECF 111.

11 Exactly one year later, Plaintiff filed the present motions for default judgment and
12 reconsideration. Motions, ECF 112, 113. Those motions are hereby DENIED. While a district
13 court retains jurisdiction to entertain certain motions after affirmance of its judgment, a district
14 court may not act in a manner inconsistent with a mandate of affirmance except with consent of
15 the appellate court. *See Palomo v. Baba*, 497 F.2d 959, 960 (9th Cir. 1974). In this case, the
16 mandate affirmed this Court's dismissal of Tricome's action for failure to prosecute. Even if his
17 motions had merit, any order granting the relief Tricome has requested would be inconsistent with
18 the mandate.

19 As explained above, this action has been dismissed; that dismissal has been affirmed; and
20 Tricome's petition for writ of certiorari has been denied. Accordingly, no further filings will be
21 entertained in this closed case.

22 **IT IS SO ORDERED.**

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24 Dated: December 10, 2014

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JEREMY FOGEL
United States District Judge