16 MOTOR SPORTS, LLC, Individually and) on behalf of all others similarly situated,,) STIPULATION Plaintiff,) 17 Plaintiff,) CERTIFICATION Plaintiff,) 18) V. 19 V.) 20 EBAY, INC.,) Judge: FE 21 Defendant.) Trial Date: N 22 Plaintiffs Richard Noll and Rhythm Motor Sports, LLC 24 eBay, Inc. ("eBay") file this Stipulation Regarding Class Certification 25 The following definitions apply to this Stipulation: 26 "Class Period" means the time period September 16, 2008 th 27 "GTC Listing" means a listing placed with the duration of "Others"	
2 PARKER D. YOUNG (parker.young@figdav.com) RAYMOND E. WALKER (ray.walker@figdav.com) 3 FIGARI & DAVENPORT, L.L.P. 901 Main Street, Suite 3400 4 Dallas, Texas 75202 Tel: (214) 939-2090 (Admitted Pro Hac Vice) 5 SHAWN T. LEUTHOLD 7 Belawn T. LEUTHOLD 8 IAW OFFICE OF SHAWN T. LEUTHOLD 7 Belawn T. LEUTHOLD 9 San Jose, California 95126 7 Tel: (408) 924-0132 7 Tel: (408) 924-0132 7 Tel: (408) 924-0134 8 Fax: (408) 924-0134 9 San Jose, California 95126 7 Tel: (408) 924-0134 8 Fax: (408) 924-0134 9 NOLL AND RHYTHM MOTOR SPORTS, LLC 10 IN THE UNITED STATES DISTRICT CO NORTHERN DISTRICT OF CALIFORN SAN JOSE DIVISION 11 ATTORNEYS FOR PLAINTIFFS RICHARD 12 IN THE UNITED STATES DISTRICT CO NORTHERN DISTRICT OF CALIFORN SAN JOSE DIVISION 14 Fax: (408) 924.0134 OTOR SPORTS, LLC, Individually and) on behalf of all others similarly situated,) 17 Plaintiff, OERTIFICA 18 NOTCR SPORTS, LLC, Individually and) OT LE: MELA	
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28	hrough June 19, 2012.
28	'Good 'Til Cancelled."
STIPULATION REGARDING CLASS CERTIFICATION	PAGE 1

"Insertion Fee" is the basic fee a person is charged when they list an item on eBay.

"Optional Feature Fee" means any of the fees described below the heading "Optional feature fees" on the Fees Schedule pages that are hyperlinked to the User Agreement.

"Core" means listings placed on eBay.com.

"Motors" means listings placed on ebaymotors.com or ebay.com/motors.

"Stores" means listings placed via the listing format called Store Inventory format.

"Renewal Fees" means Insertion Fees and any Optional Feature Fees charged 30 days or more after the original placement of a GTC Listing.

Counsel for Plaintiffs and eBay have conferred and the Parties each agree, for the sole purpose of Plaintiffs' anticipated motion for class certification, not to contest the following assertions:

The proposed Class consists of all persons who placed a GTC listing during the Class Period, and incurred one or more Renewal Fees, except for persons who placed only Stores GTC listings from September 16, 2008 through March 29, 2010, and who did not place any other GTC Listings in Core, Motors or at any other time during the Class Period.

The profits earned by proposed Class Members for any sale resulting from a GTC Listing would require evidence of the cost of each item sold and potentially the shipping and other costs associated with completing the sale, which evidence would be individualized for each proposed Class Member and potentially each item sold and which evidence might not be available should the proposed Class Member not recall or not have records of the costs. Therefore, Plaintiffs have no source of Class-wide evidence of profits, if any, derived by each proposed Class Member from GTC Listings. In addition, Plaintiffs do not have sufficient evidence to determine the profits (if any) from their own sales associated with their GTC listings.

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eBay's electronic data generally contains contact information for the User ID(s) of sellers who placed GTC Listings during the Class Period and were charged Renewal Fees. The identity and number of Class Members can therefore be determined. This is subject to limited exceptions where sellers have requested that their contact information be deleted or where there is an unexpected glitch in the data.

The number of unique User IDs of Proposed Class Members exceeds 1 million.

The amount of Renewal Fees incurred and paid by each unique User ID is determinable from eBay's electronic data by querying that data for each unique User ID's GTC Listings during the proposed Class Period and identifying and adding together the associated Renewal Fees.

The Renewal Fees incurred and paid by each unique User ID can be segregated by type of fee (*i.e.*, Insertion Fee and each Optional Feature Fee), the date of each Renewal Fee relative to the original listing date, and the platform or format for each listing (*e.g.*, Core, Motors or Stores).

Renewal Fees can be calculated from eBay's electronic data for each proposed unique User ID for the proposed Class Period and segregated into combinations of (1) type of fee (*i.e.*, Insertion Fee or Optional Feature Fee); (2) date and date range of fees (*e.g.*, fees for listings placed between September 16, 2008 and December 15, 2008); (3) number of renewals (*e.g.*, only the first renewal 30 days after the original listing or multiple renewals after the original listing); and (4) dates and date ranges the Renewal Fees were charged and/or paid (*e.g.*, fees charged and/or paid between October 16, 2008 and January 15, 2009).

The Parties further agree that this Stipulation satisfies their respective discovery obligations on the issues set forth above, and the Parties will not seek further discovery on these issues prior to or in connection with the class certification process. Notwithstanding the

1	foregoing, the Parties agree to meet and confer following the Court's ruling on Plaintiffs'
2	anticipated class certification motion to determine the extent to which additional discovery on
3	the issues referenced herein may be necessary in light of the Court's ruling.
4	
5	By: /s/ Keith R. VergesBy: /s/ Whitty SomvichianCounsel for PlaintiffsCounsel for Defendant
6	
7	
8	
9	FILER'S ATTESTATION:
10	Pursuant to General Order No. 45, § X(B) regarding signatures, Keith Verges hereby
11	attests that concurrence in the filing of this document has been obtained.
12	<u>/s/ Keith R. Verges</u> Keith R. Verges
13	
14	
15	
16	CERTIFICATE OF SERVICE
17 18	I hereby certify that all counsel of record will be served with a copy of this document via the Court's CM/ECF system pursuant to the local rules of this Court, on this 14 th day of July, 2014.
19	/s/ Keith R. Verges
20	Keith R. Verges
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	STIPULATION REGARDING CLASS CERTIFICATION PAGE 4