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11 ATTORNEYS FOR PLAINTIFF
 12 RICHARD NOLL

13 IN THE UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 RICHARD NOLL, Individually and on)
 17 behalf of all others similarly situated,)
 18 Plaintiff,)
 19 v.)
 20 EBAY INC.,)
 21 Defendant.)
 22)

CASE NO. 5:11-CV-04585-EJD
**STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING DISMISSAL OF
 RELATED CASE**
 Judge: Hon. Edward J. Davila
 Courtroom: 4, 5th Floor
 Trial Date: Not yet set

23 This Stipulation is entered into pursuant to Local Rule 7-12, by and between Plaintiffs
 24 Richard Noll (“Noll”) and Rhythm Motor Sports, LLC (“Rhythm”) and Defendant eBay Inc.
 25 (“eBay”) (collectively, the “Parties”), by and through the respective undersigned counsel.
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1 WHEREAS, on July 10, 2012, Rhythm filed its Notice of Motion and Motion to
2 Intervene, for Joinder and/or for Substitution *Pro Tanto* (“Motion to Intervene”) [Doc. No. 69]
3 and simultaneously filed a separate lawsuit against eBay styled *Rhythm Motor Sports, LLC v.*
4 *eBay Inc.*, Cause No. CV12-03601 PJH, in the United States District Court for the Northern
5 District of California (the “Separate Rhythm Lawsuit”);

6 WHEREAS, on September 4, 2012, the Court entered an Order [Doc. No. 83] granting
7 the Motion to Intervene;

8 WHEREAS, on September 18, 2012, Rhythm filed its Original Class Action Complaint
9 in Intervention herein asserting the same claims that Rhythm has asserted in the Separate
10 Rhythm Lawsuit;

11 WHEREAS, the Parties agree that, for purposes of judicial economy and efficiency,
12 Rhythm’s claims should be litigated in this Action, rather than the Separate Rhythm Lawsuit;

13 WHEREAS, although the Parties disagree as to whether Rhythm’s claims and the claims
14 of the class it proposes to represent relate back to a date prior to July 10, 2012, for purposes of
15 the applicable statutes of limitations, the Parties nevertheless agree that all applicable statutes of
16 limitations governing such claims were fully and properly tolled as of the filing of the Separate
17 Rhythm Lawsuit on July 10, 2012;

18 WHEREAS, the Parties agree that if Rhythm voluntarily dismisses the Separate Rhythm
19 Lawsuit, Rhythm’s ability to pursue its claims in this case should be the same as if it were
20 asserting those claims within the Separate Rhythm Lawsuit and that the statutes of limitations
21 governing Rhythm’s claims and the claims of the class asserted herein should therefore be
22 deemed to have been tolled effective no later than July 10, 2012;

1 WHEREAS, in order to facilitate the dismissal of the Separate Rhythm Lawsuit, the
2 Parties wish to set forth their agreement regarding the applicability of any statute of limitations
3 defenses to Rhythm's claims:

4 NOW THEREFORE, for purposes of any statute of limitations defense that may be
5 asserted with respect to the claims asserted by Rhythm or the class it proposes to represent
6 herein, the Parties agree and request that the Court enter an order that the running of any
7 applicable statute of limitations shall be considered tolled as of no later than July 10, 2012. This
8 stipulation is without prejudice to the Parties' respective positions regarding whether the statutes
9 of limitations governing Rhythm's claims were tolled prior to July 10, 2012, or whether the
10 assertion of Rhythm's claims relates back to a date prior to July 10, 2012, and the Parties
11 expressly reserve their rights regarding such issues. Any issues regarding the tolling of
12 limitations or the relation back of Rhythm's claims prior to July 10, 2012, shall be subsequently
13 presented to the Court by the Parties when such a determination becomes necessary and
14 appropriate.
15
16 appropriate.

17
18 IT IS SO STIPULATED.

19 Dated: September 20, 2012.

FIGARI & DAVENPORT, LLP

20 /s/ Keith R. Verges

Keith R. Verges

Attorneys for Plaintiff RICHARD NOLL

21
22
23 Dated: September 20, 2012.

COOLEY LLP

24 /s/ Whitty Somvichian

Whitty Somvichian

Attorneys for Defendant EBAY INC.

1 Additional attorneys:

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18 PURSUANT TO STIPULATION IT IS SO ORDERED:

19
20 Dated: 9/24/2012


UNITED STATES DISTRICT JUDGE

1 **FILER'S ATTESTATION:**

2 Pursuant to General Order No. 45, 5X(B) regarding signatures, I attest under penalty of
3 perjury that the concurrence in the filing of this document has been obtained from its signatories.

4 */s/ Keith R. Verges*
5 *Keith R. Verges*
6 *Attorneys for Plaintiffs RICHARD NOLL and*
7 *RHYTHM MOTOR SPORTS LLC*

8 **CERTIFICATE OF SERVICE**

9 I hereby certify that all counsel of record will be served with a copy of this document via
10 the Court's CM/ECF system pursuant to the local rules of this Court on this 20th day of
11 September, 2012.

12 */s/ Keith R. Verges*
13 *Keith R. Verges*
14 *Attorneys for Plaintiffs RICHARD NOLL and*
15 *RHYTHM MOTOR SPORTS, LLC*