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CASE MANAGEMENT CONFERENCE SET

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9 **DEPARTMENT 212**
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 craigslist, Inc.,

13 Plaintiff,

14 v.

15 eBay Inc.;
16 eBay Domestic Holdings, Inc.;
17 and Does 1 through 100, inclusive,

18 Defendants.

Case No. **CEC-08-475276**

COMPLAINT FOR:

**UNFAIR AND UNLAWFUL
COMPETITION UNDER CAL. BUS.
AND PROF. CODE § 17200**

**FALSE ADVERTISING UNDER
CAL. BUS. AND PROF. CODE
§ 17500**

**CALIFORNIA TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION**

**CALIFORNIA PASSING OFF AND
UNFAIR COMPETITION**

**DILUTION UNDER CAL. BUS. &
PROF. CODE § 14200**

BREACH OF FIDUCIARY DUTY

JURY TRIAL REQUESTED

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I. INTRODUCTION

1. craigslist and its 25 San Francisco employees operate websites designed to serve local communities with classified ad placements and other services. Other than small fees for job postings in ten cities and brokered apartment rentals in one city, craigslist provides its services to the public free of any charge. In August 2004, eBay Inc. and its subsidiary eBay Domestic Holdings, Inc. (collectively, “eBay”) acquired a minority interest in craigslist from a former shareholder. This acquisition followed repeated representations to craigslist by eBay’s top executives regarding the community values they shared with craigslist, and after repeated assertions regarding the benefits that would be enjoyed by craigslist users, the greater internet community, and the general public. Since acquiring its interest, however, eBay has instead engaged in conduct designed to harm craigslist, its users, and consumers in California and elsewhere. This conduct includes but is not limited to unlawful and unfair competition, misappropriation of proprietary information, deceptive passing-off, business interference, false advertising, phishing attacks, free-riding, trademark infringement, trademark dilution, and breaches of fiduciary duty.

2. As a company that now directly competes with craigslist through its Kijiji classified ads website launched in the United States in 2007, eBay cannot deny that it has certain duties under the law. Yet eBay has chosen to ignore these duties and, without this Court’s intervention, it will continue to do so. By way of example, eBay has engaged in the following wrongful behavior:

- In the months leading up to the U.S. launch of its competing Kijiji site (referred to inside eBay as the “craigslist killer”), eBay used its shareholder status to plant on craigslist’s board of directors the individual responsible for launching and/or operating Kijiji and other eBay classifieds properties in Europe;
- Later recognizing the antitrust risk of having a Kijiji insider serve on craigslist’s board, eBay withdrew him, but then proceeded to nominate a

1 second Kijiji insider, namely the individual responsible for Kijiji's worldwide
2 competition policy;

- 3 • Throughout its tenure as a craigslist shareholder, under the guise of
4 shareholder requests for information, eBay has hounded craigslist with
5 improper demands for confidential craigslist information which could be used
6 for anticompetitive purposes; and
- 7 • eBay has used craigslist's mark and name in commerce to confuse the public
8 and illegally divert internet traffic from craigslist to eBay and its Kijiji site.

9 3. eBay's improper conduct has not relented and, absent judicial intervention, eBay
10 will continue to abuse its position. craigslist therefore brings this action against eBay to remedy
11 the substantial and ongoing harm to fair competition – including harm to craigslist and California
12 consumers – through a concerted scheme by eBay and its agents to: (i) interfere with craigslist's
13 business and operations, (ii) unfairly trade on craigslist's confidential and proprietary
14 competitive information – gained in its capacity as a craigslist shareholder and board member –
15 in order to unfairly compete, and (iii) infringe on craigslist's trademark and trade name in order
16 to phish internet traffic away from craigslist and toward eBay's own websites. eBay's unfair
17 trade practices have harmed and, unless enjoined, will continue to cause irreparable harm to
18 craigslist, its employees, millions of consumers, fair competition, and the people of California.

19 II. JURISDICTION

20 4. This is a civil action arising under the trademark, corporate, and unfair
21 competition laws of the State of California, and California common law.

22 5. This Court has personal jurisdiction over eBay by virtue of it transacting and
23 doing business in the City and County of San Francisco as described herein, and since eBay's
24 principal place of business is located in the State of California.

25 III. VENUE

26 6. Venue is proper in this Court because a substantial part of the events giving rise to
27 this action occurred in the City and County of San Francisco.

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IV. THE PARTIES

7. craigslist, Inc. is a Delaware corporation, with its principal and sole place of business in San Francisco, California. craigslist's predecessor in interest was 1010 Cole Street, Inc., a California corporation (collectively "craigslist").

8. craigslist is informed and believes, and on that basis alleges, that defendants eBay Inc. and eBay Domestic Holdings, Inc. are Delaware corporations with their principal places of business located in San Jose, California. craigslist is further informed and believes eBay Domestic Holdings, Inc. is a wholly owned subsidiary of eBay Inc.

9. Does 1-100 are persons or entities responsible in whole or part for the wrongdoing alleged herein. craigslist is informed and believes and thereon alleges that each of the Doe Defendants participated in, ratified, endorsed, or was otherwise involved in the acts complained of, and that they have liability for such acts. craigslist will amend this Complaint if and when the identities of such persons or entities and/or the scope of their actions become known.

V. FACTS GIVING RISE TO ALL CLAIMS FOR RELIEF

eBay's Purchase of an Interest in craigslist

10. craigslist was founded in San Francisco, California in 1995 by Craig Newmark as an e-mail list for friends and others about events going on in or around the San Francisco Bay Area. In 1999, it was incorporated as a California corporation named 1010 Cole Street, Inc., which was later merged into craigslist, Inc. and thereby reincorporated as a Delaware Corporation.

11. Since at least January 2003, an individual (the "Former Shareholder") claiming to be the record holder of a minority interest in craigslist (the "Minority Interest") had been actively seeking to find a purchaser for this interest. craigslist advised the Former Shareholder that it would support a sale of the Minority Interest to a third party (including waiving objections that the Minority Interest had not been properly issued), but only to persons who shared a common vision with the Company.

1 12. On information and belief, in April 2004, Garrett Price, eBay's then Senior
2 Director of Corporate Development, contacted the Former Shareholder and expressed eBay's
3 interest in purchasing the Minority Interest.

4 13. craigslist was first advised of eBay's interest through the Former Shareholder's
5 counsel on May 4, 2004, and at that time was told that eBay agreed with craigslist's vision and
6 was willing to accept a minority stake in craigslist.

7 14. On May 5, 2004, the Former Shareholder advised craigslist that several
8 individuals at eBay, including Pierre Omidyar, Margaret C. "Meg" Whitman, Jeff Jordan, Garrett
9 Price, and Brian Levey, Esq., had an interest in discussing with craigslist a potential purchase of
10 the Former Shareholder's stock.

11 15. craigslist agreed to meet with eBay. Early on in the discussions, eBay submitted
12 an extensive list of "investor protections and recapture rights" which were not included in the
13 Minority Interest. The list included extensive blocking rights on virtually all forms of corporate
14 transactions, the right to approve craigslist's budget and its hiring and firing of officers, the right
15 to financial information, a put/call allowing eBay to increase its share in the company to 50%,
16 and a right of first refusal regarding sales of stock by craigslist or by any of craigslist's
17 stockholders.

18 16. On or around June 10, 2004, eBay and craigslist representatives met to discuss
19 eBay's proposed protections and recapture rights. craigslist advised eBay that its proposals were
20 overreaching and unacceptable, and that any special rights which eBay did require would need to
21 be purchased. eBay agreed, and negotiations continued between the parties. These negotiations
22 all took place in the City and County of San Francisco.

23 17. On Tuesday, July 20, 2004, craigslist informed eBay that it had decided to
24 discontinue discussions with eBay due to eBay's continued unreasonable demands, and that an
25 alternative buyer would need to be found for the Minority Interest.

26 18. On Wednesday, July 21, 2004, eBay invited craigslist to a meeting which was to
27 take place the next day, at which Ms. Whitman, eBay's then President and Chief Executive
28 Officer, would personally present her case for why craigslist should welcome eBay as a

1 shareholder. That evening, eBay's counsel circulated a revised term sheet, which was described
2 as a term sheet for a "basic investment, without any extraordinary rights or obligations."

3 19. The parties met on July 22, 2004, as eBay requested. In attendance (among
4 others) were Ms. Whitman and Michael Jacobsen (eBay's Senior Vice President and General
5 Counsel) from eBay, and Mr. Newmark and Jim Buckmaster (craigslist's Chief Executive
6 Officer) from craigslist. Ms. Whitman mentioned how much she loved craigslist, and even noted
7 that one of her sons had successfully used the site when locating an apartment. She said that
8 eBay and craigslist were similar companies, in that the strength of each was in their very loyal
9 communities, and that the success of both companies had resulted from listening to what their
10 communities wanted. She emphasized that eBay espoused very high values and pointed to the
11 "Code of Conduct" created by eBay's founder, Pierre Omidyar, which at that time was featured
12 prominently on the eBay website.

13 20. Ms. Whitman stated how much eBay could help craigslist on issues such as "trust
14 and safety," where eBay had many years of experience, as well as in operating in international
15 environments, where eBay also had substantial expertise and "on the ground" resources. She
16 said that she viewed eBay's purchase of a minority interest as a courtship, and that craigslist
17 should be happy that eBay was interested in helping craigslist and was willing to acquire the
18 minority stake. Ms. Whitman further committed to craigslist that eBay would drop demands
19 previously made for a bigger interest in craigslist than was presently being offered for sale by the
20 Former Shareholder.

21 21. Mr. Newmark and Mr. Buckmaster were impressed by Ms. Whitman's
22 presentation; most notably the importance to eBay of its community and eBay's dedication to
23 Pierre Omidyar's Community Values – particularly the values that "*We believe that people are*
24 *basically good;*" "*We believe that an honest, open environment can bring out the best in people;*"
25 and "*We encourage you to treat others the way you want to be treated.*" These were very similar
26 to craigslist's own principles and, in reliance on eBay's expressed commitment to these
27 principles, along with Ms. Whitman's representations, craigslist agreed to resume discussions.
28

1 22. Meanwhile, in light of eBay's previous unreasonable demands, craigslist and the
2 Former Shareholder were actively exploring alternative options. eBay became aware of these
3 efforts and, on or around July 31, 2004, Ms. Whitman and Rajiv Dutta (eBay's Chief Financial
4 Officer) cancelled a business trip and flew back to the Bay Area to meet with the Former
5 Shareholder. During a weekend meeting at the Former Shareholder's home, they purchased an
6 option to acquire the Minority Interest, thus precluding craigslist from finding an alternative
7 home for the interest. eBay's purchase of the option effectively terminated the efforts of an
8 alternative investor, which to that point had been actively pursuing a purchase of the Minority
9 Interest and had already submitted a term sheet in connection with a potential acquisition. With
10 its other options now foreclosed, the Minority Interest was repurchased by craigslist and new
11 shares in craigslist along with certain other rights were issued to eBay on or about August 9 and
12 August 10, 2004.

13 23. As indicated above, Mr. Newmark and Mr. Buckmaster placed critical importance
14 on what eBay asserted to be shared community values. They also gave particular weight to Mr.
15 Omidyar's laudable philanthropic activities. On August 7, 2004, shortly before the eBay
16 investment was finalized, Mr. Buckmaster requested in an e-mail to Ms. Whitman that – if the
17 transaction proceeded – Mr. Omidyar be named as the eBay representative to the craigslist board
18 of directors:

19 in addition to sending the strongest possible positive message to the
20 craigslist community, the idea of having pierre and craig on the same
21 board is extremely exciting, and i don't think that i exaggerate in
22 suggesting that the ensuing collaboration could have far-reaching
positive implications for humanity, not-to-mention our respective
organizations and communities.

23 i should also mention that craig has immense respect for pierre, and it
24 would mean a lot to him personally to have such a giant and pioneer
of online community working with us at craigslist in this capacity.

25 24. Following announcement of eBay's acquisition of the Minority Interest, Mr.
26 Newmark explained in his blog his reasons for welcoming eBay:

27 Although I never figured that part of craigslist might be owned by
28 a public company, Meg Whitman and Pierre Omidyar showed that
they were interested in us for all the right reasons.

1 Like craigslist, eBay is about helping folks get everyday stuff
2 done, on a level playing field - they emphasize trustworthiness and
3 reputation, and try really hard to listen to people. Basically, we're
4 both about building community, and humanizing and
5 democratizing the 'net, and there's gotta be more of that.

6 25. At the time, eBay did not disagree with Craig's impression, but instead
7 enthusiastically embraced it. For example, when Mr. Price of eBay (who witnessed virtually all
8 of the negotiations involving the transaction) was provided a late draft of Craig's blog entry, his
9 response was "[I] Love it." However, eBay did not post a link to Craig's blog entry on its own
10 website once the transaction had closed, as eBay had promised it would.

11 eBay as a craigslist Shareholder

12 26. On December 21, 2004, in response to Mr. Buckmaster's earlier request, Mr.
13 Levey of eBay advised craigslist that Mr. Omidyar would accept the offer to be the eBay
14 nominee to the craigslist board of directors. This was viewed by Mr. Newmark and Mr.
15 Buckmaster as a very important gesture of goodwill, which offset growing concerns about
16 eBay's intentions regarding craigslist. They believed that Mr. Omidyar had a moral compass
17 very similar to their own.

18 27. Notwithstanding Ms. Whitman's assurances that eBay would be content with a
19 minority stake in craigslist, and that any increased investment would be considered only after a
20 "courtship" period during which eBay would need to persuade a skeptical Mr. Newmark and Mr.
21 Buckmaster that such an investment would be for the benefit of the craigslist community, eBay
22 almost immediately resumed pressuring Mr. Newmark and Mr. Buckmaster for additional equity
23 in craigslist. In November 2005, after eBay acquired Marktplaats, a classifieds site in the
24 Netherlands, Garrett Price stated: "We just purchased the largest classifieds site in the
25 Netherlands for \$290 Million, what do you think we would pay for the largest classifieds site in
26 the United States?" In the first craigslist board of directors meeting attended by Mr. Omidyar,
27 under an agenda item called "craigslist-eBay Relationship Goals," eBay stated that "eBay has
28 successfully followed a strategy of working extremely closely with affiliates on their path to
becoming wholly-owned subsidiaries of eBay Inc." During this meeting, eBay cited numerous
examples of staged acquisitions of companies in various countries, where eBay initially acquired

1 only a portion of the company, but ultimately succeeded in purchasing the companies in their
2 entirety.

3 28. Notwithstanding its minority investor status, eBay tried to exert control over
4 craigslist. For example, eBay pressured craigslist to allow eBay employees to work out of
5 craigslist's office and, in a February 1, 2005 board presentation, eBay asserted that "It is critical
6 for the craigslist-eBay relationship that eBay DNA becomes a part of craigslist and vice versa."

7 29. In a variety of ways, eBay attempted to treat craigslist as if it were one of eBay's
8 subsidiaries. For example, eBay claimed that – as a shareholder – it should not have to pay for
9 the large volume of job-posting advertisements which eBay had placed on craigslist. Likewise,
10 even though issuance of company stock options to craigslist employees was specifically agreed
11 upon at the time of eBay's investment, eBay pressured craigslist to refrain from issuing
12 employee options on craigslist stock in favor of other alternatives such as options on *eBay*
13 shares.

14 30. Moreover, using the pretext that the information was necessary for craigslist
15 board-related matters, eBay made constant demands for confidential information in excess of
16 what was required for that purpose. This included information regarding planned launches by
17 craigslist in new cities, information on growth of traffic in cities where craigslist had already
18 launched, detailed information regarding craigslist's expenses, and overall craigslist site metrics.
19 eBay even went so far as to request real-time access to craigslist's computer systems so that
20 eBay could directly monitor craigslist site usage data, giving eBay the same access to this
21 proprietary information that craigslist itself had.

22 31. Mr. Newmark and Mr. Buckmaster were taken aback by eBay's behavior, and
23 feared that they had a wolf in sheep's clothing in their midst. However, they still had
24 tremendous respect for the moral compass of Mr. Omidyar, and craigslist tried to review in good
25 faith even extreme proposals made by eBay, particularly since many of the proposals were
26 couched in terms of community service.

