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CASE MANAGEMENT CONFERENCE SET

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8 craigslist, Inc.

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.

1 32. Mr. Newmark and Mr. Buckmaster did, however, share their frustrations about
2 eBay's conduct with Mr. Omidyar at the craigslist Board of Director's meeting that was held
3 March 28, 2005.

4 33. But these and other efforts to communicate their concerns to eBay fell on deaf
5 ears. Only two days after the board meeting, on March 30, 2005, Mr. Price (who was in
6 attendance at the board meeting) conveyed that eBay was frustrated with its relationship with
7 craigslist at eBay's very highest levels. In an e-mail to Mr. Buckmaster, Mr. Price stated:

8 ". . . far far more important, is that we conclusively move past the
9 current limbo we are in with respect to alignment that is putting a
10 strain on our relationship, driving our execs (especially Meg) to
 distraction and preventing us from learning all we could from one
 another; . . ."

11 34. In November 2005, after serving on the craigslist board of directors for less than a
12 year, Mr. Omidyar was replaced on the board by Joshua Silverman, who would later be named
13 Chief Executive Officer of eBay's Skype division. Mr. Newmark and Mr. Buckmaster have had
14 no substantive dialogue with Mr. Omidyar since that time.

15 **eBay Announces its Decision to Directly Compete with craigslist**

16 35. From the very beginning of their discussions, craigslist and eBay accepted that
17 each had, and would continue to have, the absolute right to compete with the other. This would
18 even extend to the market in which craigslist then earned 100% of its revenue – the provision of
19 an internet posting board allowing U.S. employers and recruiters to post classified
20 advertisements for available jobs (hereinafter referred to as the "Online Job Listing Market").
21 However, in the event eBay acquired the Minority Interest, and then chose to compete with
22 craigslist in the Online Job Listing Market, eBay would of necessity need to relinquish certain
23 rights that it otherwise might have.

24 36. On June 29, 2007, eBay launched the Kijiji classified website in the United States.
25 The site allowed the posting of online classified advertisements for jobs in the United States, in
26 direct competition with craigslist. On that same day, craigslist notified eBay that this constituted
27 direct competition which would, of necessity, result in the forfeiture of certain of eBay's rights.
28

1 37. As indicated above, when eBay originally acquired the Minority Interest, its first
2 designee to serve on craigslist’s board of directors was eBay founder and chairman, Mr.
3 Omidyar. Later, on November 21, 2005, eBay formally appointed Mr. Silverman, who was then
4 serving as Vice President Europe, eBay New Ventures, as a replacement for Mr. Omidyar on the
5 craigslist board. Mr. Silverman was responsible for launching and/or operating Kijiji in
6 Germany, Italy, and France and, according to eBay, was responsible for “leading the launch of
7 eBay’s European Classifieds business.” One week after it announced it was commencing direct
8 competition with craigslist in the U.S. through its Kijiji website, Brian Levey, who was then
9 eBay’s Associate General Counsel, on July 6, 2007, sent craigslist a letter containing the
10 resignation of Mr. Silverman as the eBay designee on craigslist’s board of directors. In an
11 accompanying letter, Mr. Levey designated Mr. Thomas Jeon, eBay’s competition counsel, to
12 replace Mr. Silverman on the craigslist board of directors.

13 38. Although Mr. Silverman’s resignation did not address his reasons for
14 withdrawing, and Mr. Levey’s letter did not address the reasons for replacing Mr. Silverman, in
15 hindsight they are obvious. Though it did not state so in its July 6, 2007 letter, even eBay could
16 not with a straight face insist that it was appropriate to have Mr. Silverman, with his eBay
17 classifieds background, serve as a craigslist board member. eBay also did not address the
18 impropriety of having had Mr. Silverman serve on the craigslist board while eBay was secretly
19 formulating its plans to directly compete with craigslist.

20 39. Moreover, eBay’s designation of Mr. Jeon far from solved the problem. eBay
21 justified its designation of Mr. Jeon on the basis that he had not had, and would not have any
22 involvement in eBay’s classifieds business in general, or Kijiji specifically. However, it appears
23 that representation was and is false. Mr. Jeon in fact now admits to being “responsible” for
24 Kijiji’s “world-wide competition policy.”

25 **eBay’s Unfair and Unlawful Business Practices**

26 40. Despite being a shareholder of craigslist with a seat on its board, eBay has
27 engaged in a pattern of behavior which, on information and belief, was designed and intended to
28 interfere with craigslist’s business, injure craigslist, and harm competition. This behavior

1 includes, but is not limited to, misusing its position to gather proprietary information about
2 craigslist's business, and infringing on craigslist's trade rights in order to illegally divert internet
3 traffic from craigslist to eBay's Kijiji.com and other websites, all to the harm of fair competition.

4 41. Both before and after the June 29, 2007 Kijiji launch date in the United States,
5 eBay made repeated requests for detailed confidential competitive craigslist information under
6 the guise of a member of craigslist's board of directors and a friendly investor. Indeed, while
7 building its Kijiji U.S. website, eBay continued to request detailed confidential craigslist
8 information, and to receive certain confidential information, without disclosing to craigslist that
9 it was simultaneously building a competitive website.

10 42. Since June 29, 2007, eBay has continued to demand access to confidential
11 competitive craigslist information. For example, eBay repeatedly requested information
12 regarding business plans, business strategy, head count, lease terms, and specific spend
13 categories (including legal fees and expenses, marketing expenses, and the like). eBay had no
14 right to this information, and such information in the hands of a direct competitor would likely
15 harm consumers and competition. Moreover, even after it commenced directly competing with
16 craigslist, eBay attempted to place an eBay agent on the craigslist board. This despite the fact
17 that board members have access to information that would likely be abused by a direct
18 competitor.

19 43. Permitting a direct competitor access to competitive information through
20 shareholder requests, or by virtue of having a board seat, runs a significant risk of harm to
21 competition, and as a result would be unfair and unlawful under California law. A direct
22 competitor having access to and use of such information also constitutes free-riding, which
23 would result in the discouragement of innovation, product development, and investment, all to
24 the harm of competition in a manner that is unlawful and unfair under California law. Likewise,
25 participation on a competitor's board of directors, particularly including participation in the
26 discussions and voting conducted during those meetings, runs the significant risk of harm to
27 competition and is therefore unfair and unlawful under California law. eBay's conduct, as
28 specified above, threatens each of these forms of competitive harm.

1 44. eBay's continuing to hold significant amounts of craigslist stock once eBay
2 decided to directly compete against craigslist also provides an incentive for eBay to act anti-
3 competitively in conducting its own business affairs, harming competition in a manner that is
4 unfair and unlawful under California law.

5 **eBay Engages in a Pattern of False Advertising and Trademark and**
6 **Trade Name Infringement in an Attempt to Divert Internet Traffic**
7 **from craigslist.com to eBay and its Kijiji Websites**

8 45. In addition to common law rights acquired through use in commerce, craigslist is
9 the owner of the following registrations for the trademark and name CRAIGSLIST:

- 10 ➤ U.S. Registration No. 2395628 for CRAIGSLIST for "Advertising and
11 information distribution services, namely, providing classified advertising space
12 via the global computer network" and "Providing an online interactive bulletin
13 board featuring job listings, event listings, commercial notices and resume
14 listings," filed on October 30, 1999; registered on October 17, 2000; and having a
15 first use date of July 1, 1995. craigslist is the incontestable owner of this
16 trademark;
- 17 ➤ U.S. Registration No. 2905107 for CRAIGSLIST for "Providing online
18 interactive bulletin boards for transmission of messages among computer users
19 concerning classified listings and listings for announcements, events, classes,
20 meetings, activities, housing, real estate, roommates, rentals, for sale
21 advertisements, want ads, employment, resumes, volunteerism, services,
22 community, personals, politics, family, arts and information on a wide variety of
23 topics of general interest to the public; providing on-line forums and discussion
24 groups for transmission of messages among computer users concerning health,
25 family, arts, politics, leisure, romance, work, and information on a wide variety of
26 topics of general interest to the public; electronic mail services; electronic mail
27 subscription services; and electronic transmission of messages, data and images,"
28 filed on November 5, 2003; registered on November 23, 2004; and having a first
use date of July 1, 1995;
- U.S. Registration No. 2985065 for CRAIGSLIST for "Advertising and
information distribution services, namely, providing classified advertising space
via the global computer network; providing consumer product and service
information via the Internet; promoting the goods and services of others over the
Internet; providing an online business information directory on the Internet;
computerized database management; promoting and advertising information
about the professional services of others; providing on-line computer databases
and on-line searchable databases featuring classified listings and want ads;
providing on-line computer databases and on-line searchable databases featuring
information, classified listings and announcements about employment
information and resumes, job openings, volunteer information and volunteer
opportunities through community and charitable organizations and businesses,
information about community service programs, information about politics,
business events, and business meetings; classified listings for rentals of a wide-
variety of consumer and business goods; computer services, namely, providing
on-line computer databases and on-line searchable databases featuring consumer
information on a wide variety of topics of general interest to the consuming

1 public,” filed on November 5, 2003; registered on May 24, 2005; and having a
2 first use date of July 1, 1995;

- 3 ➤ U.S. Registration No. 3008562 for CRAIGSLIST for “Providing on-line computer
4 databases and on-line searchable databases featuring information, classified
5 listings and announcements about housing, apartments, condominiums, town
6 homes, real estate, commercial real estate, roommate-wanted, and rental and
7 leasing and for sale advertisements for the forgoing” (having a first use date of
8 July 1, 1995) and “Computer services, namely, hosting online web facilities for
9 others for organizing and conducting online meetings, gatherings, and interactive
10 discussions; and computer services in the nature of customized web pages
11 featuring user-defined information, personal profiles and information” (having a
12 first use date of June 1, 2000), filed on November 5, 2003 and registered on
13 October 25, 2005.

14 46. Despite knowing that craigslist owns the rights to the CRAIGSLIST mark and
15 name, eBay infringed those rights by knowingly engaging in a pattern of false advertising and
16 trademark and trade name infringement in order to exploit craigslist’s trade rights and unlawfully
17 divert internet traffic from the craigslist domains to eBay’s own Kijiji and eBay domains.

18 47. For example, eBay placed or caused to be placed misleading advertisements on
19 the Google.com website, and on the websites of Google’s partners and affiliates. This was a
20 deliberate effort by eBay to deceive internet users seeking craigslist, and to instead misdirect
21 them to Kijiji and eBay websites. Many of these advertisements featured blue underlined
22 headlines such as the “Craigslist.org,” “Craigslist.Com,” or “www.Craigslist.Org” web addresses
23 as follows:

24 **Craigslist.org**

25 100% Free local classifieds site!
26 Compare Kijiji & Craigslist.org.
27 www.Kijiji.com

28 **Craigslist.Com**

100% Free local classifieds site!
Compare Kijiji & Craigslist.Com.
www.Kijiji.com

Craigslist.org

Browse a huge selection now.
Find exactly what you want today.
www.ebay.com

www.Craigslist.Org

Vast Selection at Affordable Prices
Deal with Canadians and Save Money
www.ebay.ca

Craigslist.org

Browse a huge selection now. Find exactly
what you want today.

48. Blue underlined text strings such as these are globally recognized on the internet
as “hyper-links,” wherein the text of the link describes the destination to which users will be

1 taken if they click upon the link. Likewise, “Craigslist.org,” “Craigslist.Com,” and
2 “www.Craigslist.Org” are examples of Uniform Resource Locators (URLs) – the universal
3 format for specifying a web address where a specific web site may be found. However, eBay
4 purposefully and deceptively programmed the hyper-linked craigslist URLs in the above-
5 referenced ads so that users who clicked on them would *not* be taken to craigslist.org or
6 craigslist.com as represented. Instead, eBay programmed the “Craigslist.org,” “Craigslist.Com,”
7 and “www.Craigslist.Org” hyperlinked craigslist URLs to misdirect users instead to eBay’s own
8 Kijiji.com, eBay.com, and eBay.ca websites. Through this subterfuge, eBay created confusion in
9 the marketplace and unlawfully misdirected users seeking craigslist to eBay’s Kijiji and eBay
10 domains. eBay’s actions were particularly harmful to craigslist, since the company prides itself
11 on not advertising, and eBay’s actions thus further harmed craigslist’s reputation. Consumers
12 were not only confused but, by falsely designating eBay’s inferior websites, eBay also diluted
13 the CRAIGSLIST mark and name.

14 VI. CLAIMS FOR RELIEF

15 FIRST CLAIM

16 **[Unlawful and Unfair Competition Under Cal. Bus. & Prof. Code § 17200 et seq. –**

17 **Against All Defendants]**

18 49. Plaintiff hereby realleges and incorporates by reference the allegations of
19 paragraphs 1 through 48 of this Complaint as if fully set forth herein.

20 Unlawful Competition

21 50. The acts and conduct of eBay as alleged above, and alleged below at paragraphs
22 65 through 70, in this Complaint are violations of California Business & Professions Code §
23 17500, and as a result they constitute an unlawful business practice in violation of Cal. Bus. &
24 Prof. Code § 17200.

25 51. The acts and conduct of eBay as alleged above, and as alleged below at
26 paragraphs 71 through 77, in this Complaint constitute trademark infringement and/or unfair
27 competition under the common law of the State of California, and as a result they constitute an
28 unlawful business practice in violation of Cal. Bus. & Prof. Code § 17200.

1 the antitrust laws, including Section 7 of the Clayton Act (15 U.S.C. § 18), and Section 8 of the
2 Clayton Act (15 U.S.C. § 19), and they have effects comparable to or the same as a violation of
3 the antitrust laws, including Sections 7 and 8 of the Clayton Act. These acts and conduct
4 constitute unfair competition in violation of Cal. Bus. & Prof. Code § 17200.

5 58. The acts and conduct of eBay as alleged above in this Complaint, including as
6 alleged below at paragraphs 59 through 61, have significantly harmed, and significantly threaten
7 to harm, competition in the relevant market, that being the Online Job Listing Market or a
8 broader market (hereinafter “Relevant Market”). These acts and conduct constitute unfair
9 competition in violation of Cal. Bus. & Prof. Code § 17200.

10 59. eBay’s acquisition and subsequent holding of craigslist stock, in combination with
11 eBay’s acts and conduct as alleged in this Complaint, is a use of such stock ownership to bring
12 about, or attempt to bring about, a substantial lessening of competition. These actions
13 significantly and/or incipiently harm and threaten competition in the Relevant Market, and the
14 anti-competitive effect of these acts has caused craigslist injury. These acts and conduct have
15 had (and, if not stopped, will likely have) the effect or incipient effect of substantially lessening
16 competition in the Relevant Market. They have caused (and, if not stopped, will likely cause)
17 substantial injury to both consumers and competitors. eBay’s acts and conduct amount to unfair
18 competitive practices; they are against public policy because of their dangerous tendency unduly
19 to hinder competition; and they lessen fair competition through predatory, restrictive, deceitful
20 and/or otherwise oppressive conduct. Upon information and belief, these practices are motivated
21 by an anticompetitive intent or purpose, and not by any legitimate independent business reason.
22 The acts and conduct conflict with the policy and spirit of the antitrust laws, including Section 7
23 of the Clayton Act (15 U.S.C. § 18); and their effects are comparable to those caused by a
24 violation of the antitrust laws. As a result they constitute an unfair business practice in violation
25 of Cal. Bus. & Prof. Code § 17200.

26 60. eBay, through its agents, currently operates the Kijiji.com website, which directly
27 competes with craigslist in the Relevant Market, such that the elimination of competition by any
28 agreement between eBay and craigslist would constitute a violation of the antitrust laws.

1 Nonetheless, eBay has had its agents serve as voting directors on the board of craigslist and, even
2 after it started directly competing with craigslist, eBay attempted to place an eBay agent on the
3 craigslist board. eBay is thus seeking to have its agents simultaneously serve on the boards of
4 eBay and craigslist—two corporations that are engaged in commerce and are competitors—and
5 this joint representation has competitive significance in the Relevant Market. The adverse
6 effects on competition would be exacerbated by eBay’s access to craigslist’s proprietary
7 information through its agent, and the agent’s ability to participate in discussions and voting held
8 by the craigslist board. These acts and conduct, coupled with the acts and conduct alleged above
9 in this Complaint, have had (and, if not stopped, will likely have) the effect or the incipient effect
10 of substantially lessening competition in the Relevant Market. They have caused (and, if not
11 stopped, will likely cause) substantial injury to consumers, competitors, and others. eBay’s acts
12 and conduct amount to unfair competitive practices; they are against public policy because of
13 their dangerous tendency to unduly hinder competition; and they lessen fair competition through
14 predatory, restrictive, deceitful and/or otherwise oppressive conduct. Upon information and
15 belief, these practices are motivated by an anticompetitive intent or purpose, and not by any
16 legitimate independent business reason. The acts and conduct conflict with the policy and spirit
17 of the antitrust laws, including Section 8 of the Clayton Act (15 U.S.C. § 19); and their effects
18 are comparable to those caused by a violation of the antitrust laws. As a result they constitute an
19 unfair business practice in violation of Cal. Bus. & Prof. Code § 17200.

20 61. eBay has, through its agents, served as a voting director on the board of craigslist
21 even while eBay was preparing to compete with craigslist, and eBay has attempted even after it
22 started directly competing with craigslist to place an eBay agent on the craigslist board. As a
23 director, eBay has gained and would continue to gain access to sensitive financial and other
24 competitive information relating to craigslist and its business activities. eBay is also a
25 shareholder of craigslist with access to craigslist’s confidential financial and other competitive
26 information. As a shareholder, eBay has made inappropriate requests for such information and,
27 upon information and belief, has misused this information for anticompetitive ends. Allowing
28 eBay future access to such information, as a director and/or shareholder, will more likely than

