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Attorneys for eBay Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

eBay Inc.,  
  
Plaintiff,  
  
vs.  
  
Amazon.com, Inc., and Does 1-25  
  
Defendants.

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Superior Court of CA,  
County of Santa Clara  
18CV336315  
Reviewed By: R. Walker

CASE NO. **18CV336315**  
  
**COMPLAINT**  
  
**JURY TRIAL DEMANDED**  
  
Trial Date: None Set

## INTRODUCTION

1  
2 1. Over the past several years, Amazon has perpetrated a scheme to infiltrate and exploit  
3 eBay's internal member email system. Amazon did this to recruit high-value eBay sellers to  
4 Amazon. The breadth and scope of Amazon's conduct is startling. Since 2015, dozens of Amazon  
5 sales representatives in the U.S. and overseas set up eBay member accounts to access eBay's  
6 "M2M" email system and used that system to solicit many hundreds of eBay sellers to sell on  
7 Amazon's platform. Amazon's misuse of eBay's M2M system has been coordinated, targeted, and  
8 designed to inflict harm on eBay. Indeed, one of the Amazon sales representatives who participated  
9 in this scheme described the team he worked on as a "hunter/recruiter team which actively searches  
10 for sellers we believe can do well on the [Amazon] platform."

11 2. Amazon's scheme violated eBay's User Agreement and policies, and induced eBay  
12 sellers to do the same. These rules prohibit eBay members from using the M2M system to solicit  
13 people to sell off the platform. Such controls are critical to the success of a company like eBay that  
14 operates a virtual platform bringing buyers and sellers together. To protect privacy and further  
15 maintain the integrity of the platform, these rules also prohibit users from exchanging personal  
16 contact information over the M2M system (which could otherwise be used to move discussions  
17 regarding transactions off the platform, exposing eBay customers to increased fraud risk).

18 3. In furtherance of Amazon's scheme, its representatives opened eBay accounts with  
19 no intent of ever using them to conduct legitimate business on eBay's platform. One Seattle-based  
20 Amazon representative opened three accounts in the course of a few weeks, sending solicitation  
21 emails to eBay sellers within minutes of opening each separate account. Others waited less than  
22 five minutes between opening an account and sending solicitation messages. Some Amazon  
23 representatives never used their eBay accounts to buy or sell, but instead, only to try to lure sellers  
24 off the eBay platform. To get access to such accounts, the Amazon representatives fraudulently  
25 promised to abide by the User Agreement and policies, without any intent to do so.

26 4. Amazon and its representatives knew that its scheme was wrong, as evidenced by the  
27 representatives' systematic efforts to avoid detection. eBay, like many websites, has automated  
28 programs designed to detect and prevent unauthorized use of its M2M system. As demonstrated by

1 their own written words, Amazon representatives clearly understood that “eBay monitors their  
2 messages pretty well for contact info,” that “eBay doesn’t allow phone numbers in these messages,”  
3 and that “ebay will not allow the exchange of email addresses in these messages[.]”

4         5.         Rather than follow the rules, the representatives employed various techniques to  
5 circumvent detection by eBay. They changed the presentation of Amazon email addresses, for  
6 example: “You can write me at jdoe AT amazon DOT com;” “DoeJohn at Amazon dot com,” and  
7 “JDoe at amazon dot com.”<sup>1</sup> They also provided unconventional phone number formats, again,  
8 solely for the purpose of evading detection – telling eBay sellers, for example, that “you can write  
9 down 2.0.6. – 5.5.5. – 5.5.5.5. and then delete this message if you so choose.”<sup>2</sup>

10         6.         Amazon representatives virtually always sought to immediately move discussions  
11 off the eBay M2M system, observing, for example, that “Ebay does scan for key terms and they  
12 don’t exactly like us poking around. Honestly the easiest way to communicate about this would be  
13 on the phone.” And they acknowledged that they were doing so to avoid getting caught: “For my  
14 own security purposes I would rather not do that over Ebay though.” Amazon representatives even  
15 sought to disguise the company’s own name in messages so as to avoid detection, instead using  
16 variations on the Amazon name, such as “a-m-a-z-o-n,” “A.M.Z.N,” and “AMZ.”

17         7.         Amazon’s illegal efforts to lure eBay sellers appear to be part of a larger pattern of  
18 aggressive, unscrupulous conduct. Just this year, for example, media outlets documented Amazon’s  
19 attempts to poach employees from one of its own customers, an insurance start-up that purchased  
20 Amazon’s cloud computing services. Eugene Kim, Amazon’s aggressive poaching tactics in Israel  
21 have start-ups threatening to abandon AWS, *CNBC* (Jan. 10, 2018, 5:00 PM),  
22 [https://www.cnbc.com/2018/01/10/amazons-poaching-tactic-leads-lemonade-to-consider-ditching-](https://www.cnbc.com/2018/01/10/amazons-poaching-tactic-leads-lemonade-to-consider-ditching-aws.html)  
23 [aws.html](https://www.cnbc.com/2018/01/10/amazons-poaching-tactic-leads-lemonade-to-consider-ditching-aws.html). “Like an 800-pound gorilla with a hand grenade,” media outlets have reported that  
24 Amazon sellers face an industry giant out for itself and providing “no justice for sellers.” Lydia  
25

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26         <sup>1</sup> Amazon representatives’ email addresses, phone numbers, last names, and postal addresses  
27 have been changed to generic ones throughout this Complaint.

28         <sup>2</sup> As noted above, Amazon representatives’ phone numbers have been changed to generic ones  
throughout this Complaint.

1 DePhillis, The high-risk, high-reward world of selling stuff on Amazon, *CNN* (Oct. 9, 2018, 8:14  
2 AM).

3 8. Internally, Amazon fosters a “bruising” corporate environment which “offers no  
4 pretense that catering to employees is a priority.” A 2015 New York Times article reported that  
5 “[t]he company is conducting an experiment in how far it can push white-collar workers to get them  
6 to achieve its ever-expanding ambitions,” and further reported as follows:

7 Many of the newcomers filing in on Mondays may not be there in a  
8 few years. The company’s winners dream up innovations that they  
9 roll out to a quarter-billion customers and accrue small fortunes in  
10 soaring stock. Losers leave or are fired in annual cullings of the staff  
11 – “purposeful Darwinism,” one former Amazon human resources  
12 director said. Some workers who suffered from cancer, miscarriages  
13 and other personal crises said they had been evaluated unfairly or  
14 edged out rather than given time to recover.

12 Jodi Kantor & David Streitfeld, Inside Amazon: Wrestling Big Ideas in a Bruising Workplace, *The*  
13 *New York Times* (Aug. 15, 2015), [https://www.nytimes.com/2015/08/16/technology/inside-](https://www.nytimes.com/2015/08/16/technology/inside-amazon-wrestling-big-ideas-in-a-bruising-workplace.html?_r=0)  
14 [amazon-wrestling-big-ideas-in-a-bruising-workplace.html?\\_r=0](https://www.nytimes.com/2015/08/16/technology/inside-amazon-wrestling-big-ideas-in-a-bruising-workplace.html?_r=0). Former Amazon workers told the  
15 Times reporter that “Nearly every person I worked with, I saw cry at their desk” and that “I would  
16 see people practically combust.” *Id.*

17 9. Amazon’s clandestine efforts have borne fruit. Its representatives have discussed the  
18 success of their scheme with eBay seller prospects.

19 10. A few weeks ago, an eBay seller came forward to notify eBay about one such  
20 approach from an Amazon representative. eBay notified Amazon of the issues by letter, asked  
21 Amazon to cease and desist from such activity, and asked Amazon to provide additional information  
22 about the conduct. Amazon failed to confirm that it would cease and desist, and it did not provide  
23 any requested information.

24 11. eBay brings this action because Amazon—unwilling to fairly compete for third party  
25 seller business—instead has resorted to an orchestrated, coordinated, worldwide campaign, using  
26 eBay’s proprietary M2M system, to illegally lure eBay sellers to sell on Amazon. eBay seeks to  
27 stop Amazon’s unlawful scheme and to obtain redress for the damage it has caused.

1 **JURISDICTION AND VENUE**

2 12. This Court has jurisdiction over the subject matter of this action pursuant to Cal. Civ.  
3 Proc. Code § 410.10.

4 13. This Court has personal jurisdiction over Amazon.com, Inc. because, among other  
5 things, Amazon.com, Inc. has purposely availed itself of the benefits of doing business in California  
6 by regularly conducting commercial activities that impact California on a substantial, continuous,  
7 and systematic basis. Moreover, Amazon.com, Inc. has purposely directed its unlawful activity at  
8 eBay, a resident of California, with knowledge that its actions would harm eBay in its home state;  
9 has used Amazon.com, Inc. representatives with California addresses to perpetrate the scheme; has  
10 unlawfully solicited dozens of eBay sellers who reside in California; and has interfered with  
11 contracts, business relations, and prospective business relations eBay has with sellers in California.

12 14. Venue is proper in Santa Clara County under Cal. Civ. Proc. Code § 395.5 because,  
13 among other things, that is where Amazon's liability arises, where contracts with which Amazon  
14 interfered were made and intended to be performed, and where breaches that Amazon induced  
15 occurred.

16 **THE PARTIES**

17 **I. EBAY**

18 15. Plaintiff eBay Inc. ("eBay") is a Delaware corporation, with its principal place of  
19 business in San Jose, California.

20 16. eBay connects more than 175 million active buyers with millions of sellers around  
21 the world, empowering people and creating opportunity through connected commerce. Founded in  
22 1995 in San Jose, California, eBay is one of the world's largest and most vibrant marketplaces for  
23 discovering great value and unique selection. From the outset, it has served as an online community  
24 dedicated to bringing together buyers and sellers in an honest and open marketplace. eBay is a pure  
25 open marketplace in that it does not own inventory, and thus, does not compete with its sellers. In  
26 2017, eBay enabled \$88.4 billion of gross merchandise volume.

27 17. Sellers on eBay may list items for sale, and when an item is purchased, eBay notifies  
28 the buyer and seller of their completed transaction. There are over 1.1 billion items listed on eBay

1 at any given time. Today, approximately 89% of items sold on eBay are fixed price, while 80% of  
2 items sold are new.

3 **II. AMAZON**

4 18. Defendant Amazon.com, Inc. is a Delaware corporation, with its principal place of  
5 business in Seattle, Washington.<sup>3</sup> Founded as an online bookstore in the 1990s, Amazon today is a  
6 tech giant that sells virtually anything imaginable. In 2017, Amazon generated over \$177 billion in  
7 revenues and over \$3 billion in net income. In contrast to eBay, Amazon sells products directly on  
8 its marketplace – including through private label businesses – oftentimes competing directly against  
9 its third-party sellers.

10 19. The lion’s share of Amazon’s revenues come from product sales, and it is constantly  
11 under pressure, and searching, to increase the number of sellers on its platform. As Amazon’s CEO  
12 explained in his letter to shareholders in Amazon’s 2017 annual report, Amazon customers “are  
13 divinely discontent” and “[t]heir expectations are never static – they go up.” He explained that  
14 Amazon “didn’t ascend from our hunter-gatherer days by being satisfied” and it “cannot rest on [its]  
15 laurels in this world. Customers won’t have it.” Given this mindset and business model, it is no  
16 surprise Amazon has taken to unlawful methods to recruit high value sellers to supply its platform.  
17 Indeed, the sales Amazon makes through third-party sellers are becoming increasingly important.  
18 In 2017, for the first time in Amazon’s history, more than half of the units sold on Amazon  
19 worldwide were from third-party sellers.

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24 <sup>3</sup> The true names and capacities of Defendants Does 1 through 25, inclusive, are unknown to  
25 eBay. Therefore, eBay sues the Doe Defendants under fictitious names pursuant to California Code  
26 of Civil Procedure section 474. When eBay learns their true names and capacities, it will seek  
27 permission from this Court to amend this Complaint to insert the true name and capacity of each  
28 fictitiously named Defendant. eBay is informed and believes, and on that basis alleges, that each  
fictitiously named Defendant is a subsidiary or entity associated with Amazon.com, Inc., that each  
is legally responsible in some manner for the occurrences alleged in this Complaint, and that each  
directly and proximately caused eBay’s injuries. Defendants Amazon.com, Inc. and Does 1 through  
25 are collectively referred to herein as “Amazon.”

1 **III. FACTS**

2 **A. eBay Membership, User Agreement, and Policies**

3 20. eBay permits potential buyers and sellers to become members on its platform.  
4 Membership entitles users to various privileges, including the abilities to sell on eBay and to  
5 communicate using eBay's M2M internal email system. eBay also offers its sellers a number of  
6 tools to increase their sales velocity and to monitor and run their online businesses.

7 21. As a condition to becoming an eBay member, a visitor must agree to the eBay User  
8 Agreement. The User Agreement sets forth the terms of the agreement between eBay and each of  
9 its members and rules for use of eBay that the members agree to follow. It states at the outset that:

10 This User Agreement, the Mobile devices terms, and all policies and  
11 additional terms posted on and in our sites, applications, tools and  
12 services (collectively "Services") set out the terms on which eBay  
13 offers you access to and use of our Services. You can find an overview  
14 of our policies here. All policies and the Mobile devices terms are  
15 incorporated into this User Agreement. You agree to comply with all  
16 of the terms of this User Agreement when accessing or using our  
17 Services.

18 22. Elsewhere in the User Agreement, members agree not to "breach or circumvent any  
19 laws, third party rights or our systems, policies or determinations of your account status . . . or  
20 circumvent any technical measures we use to provide the Services." Moreover, members also agree  
21 not to "distribute or post spam" and "unsolicited or bulk electronic communications." The  
22 agreement explicitly confers in eBay "sole discretion" to limit, suspend, or terminate user accounts  
23 belonging to users that eBay believes to be "abusing eBay" and to take "technical and/or legal steps  
24 to prevent you from using our Services."

25 23. Among the policies members agree to follow is the Member-to-member contact  
26 policy, which provides in relevant part as follows:

27 Members can send messages to each other through eBay. We  
28 encourage open communication between our members but we don't  
allow our members to use these options to send spam, offers to buy  
or sell off eBay, threats, profanity, or hate speech. We also don't  
allow members to offer, reference, or request email addresses, phone  
numbers or other contact information, physical addresses, web  
addresses, or links within eBay messaging systems (Best Offer, My  
Messages etc.). eBay may monitor messages sent through eBay and

1 between users for fraud, abuse, spam, and other violations of eBay's  
2 policies.

3 Spam is defined as "an email (or part of an email) that is both  
4 unsolicited and commercial in nature."

5 24. eBay also has a policy about Offers to buy or sell off eBay. That policy provides in  
6 relevant part as follows:

7 We don't allow our members to use eBay to contact each other to  
8 make offers to buy or sell items outside of eBay. Also, members can't  
9 use information obtained from eBay or any eBay systems to contact  
10 each other about buying or selling outside of eBay.

11 . . . .

12 Buyers and sellers aren't allowed to share or request direct contact  
13 information prior to completing a sale. They also can't use  
14 information they've obtained on eBay to contact each other to buy or  
15 sell off eBay.

16 25. eBay explains the purpose behind this policy to members within the policy itself:

17 Offers to buy or sell outside of eBay are a potential fraud risk for both  
18 buyers and sellers, and are not protected by the eBay Money Back  
19 Guarantee and other buyer protection programs. Additionally, these  
20 offers may be an attempt to avoid eBay fees. This is unfair to other  
21 sellers and violates our policies.

22 **IV. AMAZON'S SCHEME TO INFILTRATE AND EXPLOIT EBAY'S M2M SYSTEM**  
23 **TO ACQUIRE SELLERS**

24 26. For years, and unbeknownst to eBay, Amazon has been engaged in a systematic,  
25 coordinated effort to infiltrate and exploit eBay's proprietary M2M system on eBay's platform to  
26 lure top eBay sellers to Amazon. The scheme is startling in breadth – involving large numbers of  
27 Amazon representatives ("Amazon reps"), targeting many hundreds of eBay sellers, and spanning  
28 several countries overseas and many states in the United States (including California).

29 27. Since 2015, dozens of Amazon reps have obtained and used eBay M2M accounts to  
30 target eBay sellers and solicit them to sell on Amazon. Many of these Amazon reps set up and used  
31 their eBay accounts from devices linked to Amazon IP addresses. For example:

- 32 • eBay accounts "alexityrel0"; "arataa-7"; "kjaneekv" accessed eBay from IP address  
33 54.240.196.170, which is registered to Amazon.



- eBay accounts “bryabec3”; “savvyseller19894”; and “stacsisso0” accessed eBay from IP address 54.240.196.171, which is registered to Amazon.

- eBay accounts “cous141” and “kenmil-7” accessed eBay from IP address 54.240.196.185, which is registered to Amazon.

28. Many Amazon reps began solicitation activity almost immediately after opening eBay accounts and gaining access to the M2M system, demonstrating they never intended to abide by eBay’s User Agreement. For example:

- eBay account “arataa-7” (tied to an address in Burlingame, California) was created on October 17, 2016, at 1:35 PM, and sent its first solicitation message that same day, just four minutes later, at 1:39 PM.
- eBay account “kenmil-7” (tied to an address in Seattle, Washington) was created on August 11, 2016, at 4:33 PM, and sent the first of many solicitation messages that same day, just five minutes later, at 4:38 PM.
- eBay account “stacsisso-0” (tied to an address in Seattle, Washington) was created on March 1, 2017, at 4:37 PM, and sent a solicitation message at 4:40 PM, just three minutes later.

29. Some Amazon reps appear to have used multiple accounts to exploit the eBay proprietary M2M system. One individual appears to have created at least three accounts, called “savvy11025”; “savvyseller15-5”; and “savvyseller19894” within a few week span in 2016.

- eBay account “savvy11025” (tied to an address in Seattle, Washington) was created on September 22, 2016 at 4:24 PM, and sent its first message that same day, just six minutes later, at 4:30 PM.
- eBay account “savvyseller15-5” (opened in the same name as savvy11025 and tied to a different address in Seattle, Washington ) was created on October 2, 2016, at 8:28 PM, and sent its first of five solicitation messages that same day, just five minutes later, at 8:33 PM.
- “savvyseller19894” (opened in the same name as the above two “savvy” accounts and tied to the same Seattle, Washington address as savvy11025) was created on October 13, 2016, at 3:16 PM, and sent its first message that same day, just eight minutes later, at 3:24 PM.

Collectively, these three “savvy” accounts sent more than 120 solicitation emails while making zero bids, zero purchases, zero listings, and zero sales on the eBay platform.

30. Amazon reps often described to targeted eBay sellers how they were operating as a team. Examples of such communications abound: “I am part of what you would call a hunter/recruiter team which actively searches for sellers we believe can do well on the platform”; “I work for Amazon and we are trying to recruit a couple sellers”; and “I work for a small team here

1 at Amazon that recruits a finite number of high-potential sellers.” Another observed that “[w]e’re  
2 recruiting heavily.”

3 31. Further evidencing that Amazon coordinated this scheme from its headquarters, the  
4 team’s solicitation communications often followed a similar pattern. Amazon reps would send a  
5 cold-call email to an eBay seller, introducing themselves as Amazon employees. The Amazon rep  
6 often would explain to the eBay seller that Amazon has observed and is impressed by the seller’s  
7 activity and/or operation, and that the rep would like the seller to consider selling on Amazon. The  
8 rep often would explain alleged benefits associated with selling on Amazon. The Amazon rep then  
9 often provided his or her contact information (often an amazon email address), and asked the eBay  
10 seller to engage in further communication about selling on the Amazon platform through a means  
11 other than the eBay M2M system.

12 32. An example of such a pitch is as follows:

13 Hi there, Hope you are well! I manage the apparel category at  
14 Amazon and came across you guys with a really cool selection. I was  
15 curious to see – have you looked at selling on Amazon? Because  
16 this is a personal invite, I could get you up and running quickly,  
17 opening you up to a whole new audience for you guys. Let me know  
your thoughts and if you’d like my help in getting started! John  
Doe Business Development XXXX XXXX Ave, Seattle, WA  
98XXX Direct: (206) XXX-XXXX jdoe at amazon dot com[.]<sup>4</sup>

18 Another solicitation similarly offers:

19 Hello, My name is John Roe and I am part of the apparel business  
20 development team at Amazon.com. I am specifically working to find  
21 new selection for our Clothing & Accessories store. I came across  
22 your eBay storefront and I believe your apparel selection will lend  
23 well to the Amazon Apparel Category. I would like to speak with you  
24 to discuss a possible fit for your products on Amazon, so that you can  
25 sell directly to our customers. We are providing the integration  
support necessary to help our recruited Apparel merchants get up and  
running quickly. Please email or call me at XXX-XXX-XXXX as  
soon as possible so we can discuss how to get started. I look forward  
to hearing from you! John Roe | Amazon Services LLC Business  
Development Executive XXXX XXXX Ave. | Seattle, WA | 98XXX  
p: 206.XXX.XXXX jroe at amazon dot com[.]

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27  
28 <sup>4</sup> Amazon representatives’ email addresses, phone numbers, last names, and postal addresses  
have been changed to generic ones throughout this Complaint.

1           33.     Indeed, different reps sometimes sent *literally identical* pitch emails, as illustrated  
2 below, first by the solicitation email from “Adam”:

3                   To whom it may concern,     Good afternoon. My name is Adam I  
4 work in the shoes category at Amazon. I came across your store and really  
5 like the selection that you offer and your fantastic feedback. Have you ever considered selling on Amazon as well? If so, I’d like  
6 to chat with you about the platform. I hope to hear back from you.  
Best Regards,     Adam

7 – and then by the identical pitch email from “Eric”:

8                   To whom it may concern,     Good afternoon. My name is Eric I work  
9 in the shoes category at Amazon. I came across your store and really  
10 like the selection that you offer and your fantastic feedback. Have you  
ever considered selling on Amazon as well? If so, I’d like to chat with  
11 you about the platform. I hope to hear back from you.     Best Regards,  
Eric

12           34.     Amazon even sought to improve the effectiveness of its scheme by learning from  
13 mistakes and spreading that learning to higher-ups at the company. For example, when one target  
14 seller declined an Amazon rep’s solicitation, the rep responded: “I will make a note in your file with  
15 me to reflect that. May I ask why though you would not want to expand to AMZ as well? It will  
16 help me explain to my supervisor why I am closing out your file.”

17           35.     Amazon and its representatives understood that this conduct was wrong, and in  
18 violation of eBay’s User Agreement and Policies. Amazon reps often discussed with eBay sellers  
19 the specific eBay policies that the reps knew they were breaking. For example, one eBay seller,  
20 cognizant that engaging in negotiations over eBay’s M2M interface breached eBay’s policies,  
21 responded to an Amazon rep’s solicitation, “I don’t want to receive anything through eBay messages  
22 and violate their policies.” The rep acknowledged the seller’s “reservations.” Others similarly  
23 acknowledged that “eBay doesn’t allow phone numbers in these messages” and that “ebay will not  
24 allow the exchange of email addresses in these messages[.]”

25           36.     Indeed, Amazon has rules for its own platform to prevent the same misconduct  
26 Amazon perpetrated on eBay’s platform. For example, Amazon’s “Prohibited seller activities and  
27 actions” policy states that “[u]nsolicited emails to Amazon customers (other than as necessary for  
28

1 order fulfillment and related customer service) and emails related to marketing communications of  
2 any kind are prohibited.” That policy further provides that:

3 Any attempt to circumvent the established Amazon sales process or  
4 to divert Amazon users to another website or sales process is  
5 prohibited. Specifically, any advertisements, marketing messages  
6 (special offers) or “calls to action” that lead, prompt, or encourage  
7 Amazon users to leave the Amazon website are prohibited. This  
8 might include the use of emails, hyperlinks, URLs, or web addresses  
9 within any seller-generated confirmation email messages or any  
10 product/listing description fields.

11 37. Understanding that they were breaking the rules, Amazon reps engaged in systematic  
12 efforts to circumvent eBay’s detection tools, finding creative ways to share their contact information  
13 with eBay sellers. These anti-detection measures often took the form of spelling out non-word  
14 portions of email addresses and using punctuation and other words to break up telephone numbers.  
15 For example, one rep acknowledged he could not send a seller his contact information, instead  
16 choosing to write his phone number as “2 0 6 - 5 5 5 - 5 5 5 5,” remarking that “the funky typing is  
17 because eBay doesn’t allow for info like this to normally be put into messages[.]” That same rep  
18 notified another seller that he could be reached at “206 phone 555 number 5555 (read between the  
19 words) since eBay doesn’t allow phone numbers in these messages.” One seller was told that “[y]ou  
20 can write me at Jdoe AT amazon DOT com. Sorry for the weird format but Ebay looks for things  
21 like this in their messages and wont allow me to send if I type out my address regularly.” Other  
22 Amazon reps explained the need for these techniques, for example: “Ebay does scan for key terms  
23 and they don’t exactly like us poking around.”

24 38. In carrying out Amazon’s scheme, its reps perpetrated a fraud in opening eBay user  
25 accounts, violated the User Agreement and policies themselves, and caused eBay sellers to violate  
26 their contracts with eBay as well, including the obligations not to use the M2M system to: (1) discuss  
27 offers to sell off eBay; or (2) exchange email addresses, phone numbers, or other contact  
28 information.

39. Amazon’s scheme was far-reaching: it coordinated its solicitation activities across  
various foreign and domestic subsidiaries as part of a global conspiracy. Reps located in the United  
States, United Kingdom, France, Spain, Italy, Australia, and Singapore participated in these efforts,

1 sending similar messages, employing similar solicitation strategies, and using similar anti-detection  
2 measures in furtherance of this common scheme.

3 40. Amazon's efforts have borne fruit. Its representatives have discussed the success of  
4 their scheme with eBay seller prospects.

5 **CAUSES OF ACTION**

6 **COUNT I:**

7 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

8 41. eBay realleges each and every allegation set forth in Paragraphs 1 through 40,  
9 inclusive, and incorporates them by reference herein.

10 42. As described in more detail herein, to become an eBay member, a visitor must agree  
11 to the eBay User Agreement. The User Agreement sets forth, in writing, rules and policies for use  
12 of eBay that the members agree to follow, thereby creating written contracts between eBay and its  
13 members. eBay's User Agreements with its members are valid and enforceable.

14 43. Amazon reps created eBay member accounts and, in doing so, agreed to the terms of  
15 the eBay User Agreement. Amazon and its reps were thus aware of the existence and terms of the  
16 User Agreement between eBay and its members.

17 44. Amazon had its reps prevent performance by eBay's member-sellers under their User  
18 Agreements with eBay; make eBay's member-sellers' performance under such agreements more  
19 difficult; and/or cause eBay member-sellers to breach such contracts. Amazon reps intentionally  
20 encouraged and induced eBay member-sellers to breach by, among other things, encouraging them  
21 to use the M2M system to share "email addresses, phone numbers or other contact information" and  
22 "to make offers to buy or sell items outside of eBay."

23 45. Amazon and its reps intended to disrupt performance of eBay member-sellers'  
24 contracts with eBay, and they intended to cause eBay member-sellers to breach those contracts.  
25 These actions have caused eBay member-sellers to breach their contracts with eBay and have  
26 disrupted performance under those contracts.

27 46. eBay has suffered harm as a result of the coordinated efforts of Amazon reps, and  
28 this conduct was a substantial factor in causing this harm.

47. Amazon reps committed these acts within the scope of their employment, and Amazon coordinated, supported, and ratified the scheme under which Amazon reps did so.

48. The conduct of Amazon and its reps was fraudulent, malicious, oppressive, and in willful disregard of eBay's rights.

**COUNT II:**

## INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

49. eBay realleges each and every allegation set forth in Paragraphs 1 through 48, inclusive, and incorporates them by reference herein.

50. eBay has an ongoing economic relationship with its member-sellers that probably would have resulted in economic benefit to eBay. When sellers sell items on eBay, eBay receives a fee for facilitating the transaction.

51. Amazon and its reps were aware of eBay's economic relationship with its member-sellers.

52. Amazon reps engaged in wrongful conduct by, among other things, fraudulently entering into User Agreements with eBay without any intent of abiding by promises in those Agreements (as described more fully herein); breaching their own User Agreements with eBay; and/or engaging in conduct that violated Cal. Penal Code § 502(c)(3) (as described more fully herein).

53. By and through the wrongful conduct of its reps, Amazon intended to disrupt eBay's relationship with its member-sellers, or it knew that disruption of the relationship was certain or substantially certain to occur.

54. eBay's relationship with its member-sellers was disrupted.

55. eBay has suffered harm as a result of the coordinated efforts of Amazon and its reps to disrupt eBay's relationship with eBay's member-sellers, and this conduct was a substantial factor in causing this harm.

56. Amazon reps committed these acts within the scope of their employment, and Amazon coordinated, supported, and ratified the scheme under which Amazon reps did so.

57. The conduct of Amazon and its reps was fraudulent, malicious, oppressive, and in willful disregard of eBay's rights.

**COUNT III:**

**FRAUD**

58. eBay realleges each and every allegation set forth in Paragraphs 1 through 57, inclusive, and incorporates them by reference herein.

59. To carry out Amazon's scheme, its reps made misrepresentations and/or omissions regarding use of the eBay M2M messaging system. As discussed in more detail herein, Amazon reps opened eBay M2M accounts for the specific purpose of targeting eBay sellers as part of a scheme to solicit them to sell on Amazon. Amazon and its reps knew that their planned activities would violate the terms of eBay's User Agreement. As a condition to becoming eBay members and thereby gaining access to the M2M system, Amazon reps promised to abide by the terms of eBay's User Agreement, despite never intending to do so. Amazon reps failed to inform eBay that they really intended to misuse and abuse the M2M system for the purpose of attempting to move sellers to Amazon.

60. Amazon reps' true intent when making these material misstatements and/or omissions is evidenced by, among other things, the following, which is described in further detail above: (1) Amazon reps began solicitation activity within minutes of opening eBay accounts and gaining access to the M2M system; (2) Amazon reps used multiple accounts to exploit the M2M system; (3) Amazon reps used their M2M accounts solely to target eBay members, never buying or selling goods on the eBay platform; (4) Amazon reps worked as a coordinated team, often sending similar—and sometimes identical—solicitation messages to different eBay members; and (5) Amazon reps' explicit and stated goal was to recruit high-value eBay sellers away from eBay to Amazon; (6) Amazon reps used particular, often similar methods to circumvent eBay's detection systems, for example by using non-conventional methods of writing out email addresses and phone numbers; (7) Amazon reps regularly sought to move discussions off of eBay's M2M system, to avoid detection; and (8) Amazon reps consistently violated eBay's User Agreement, for example by sharing "email addresses, phone numbers or other contact information" and by "us[ing] eBay to

1 contact each other to make offers to buy or sell items outside of eBay” in violation of the eBay User  
2 Agreement and related policies (and using systematic efforts to circumvent eBay’s detection tools  
3 as they were doing so).

4 61. Amazon reps made the above-described misrepresentations and/or omissions  
5 knowingly, or with reckless disregard for the truth, at the time they were made.

6 62. Amazon and its reps intended that eBay would rely on the above-described  
7 misrepresentations and omissions.

8 63. eBay reasonably relied on Amazon reps’ misrepresentations and/or omissions.

9 64. eBay has suffered harm as a result of the coordinated efforts of Amazon and its reps,  
10 and this conduct was a substantial factor in causing this harm.

11 65. Amazon reps committed these acts within the scope of their employment, and  
12 Amazon coordinated, supported, and ratified the scheme under which Amazon reps did so.

13 66. The conduct of Amazon and its reps was fraudulent, malicious, oppressive, and in  
14 willful disregard of eBay’s rights.

15 **COUNT IV:**

16 **VIOLATION OF CALIFORNIA PENAL CODE § 502(c)**

17 67. eBay realleges each and every allegation set forth in Paragraphs 1 through 66,  
18 inclusive, and incorporates them by reference herein.

19 68. To facilitate transactions on eBay’s e-commerce platform, eBay allows interested  
20 buyers and sellers to communicate using eBay’s M2M system, on the condition that those buyers  
21 and sellers become eBay members and agree to eBay’s User Agreement.

22 69. eBay’s M2M system constitutes “computer services” under Cal. Penal Code §  
23 502(b)(4). eBay owns and operates one or more computers, computer systems, computer networks,  
24 computer programs, and data that facilitate and permit operation of the M2M system.

25 70. Amazon caused its reps to knowingly and without permission use the M2M system,  
26 in violation of California Penal Code § 502(c)(3).

27 71. Amazon, by and through its reps, willfully violated the provisions of California Penal  
28 Code § 502(c).



72. The conduct of Amazon and its reps was fraudulent, malicious, oppressive, and in willful disregard of eBay's rights.

73. eBay has suffered irreparable harm as a result of Amazon's activities and will continue to suffer irreparable injury that cannot be adequately remedied at law.

**COUNT V:**

**VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200**

74. eBay realleges each and every allegation set forth in Paragraphs 1 through 73, inclusive, and incorporates them by reference herein.

75. Amazon, by and through the unlawful conduct of its reps, violated Cal. Pen Code § 502(c)(3) and, in doing so, engaged in unlawful business acts and practices in violation of the Unfair Competition Law (“UCL”).

76. Amazon and its reps engaged in fraudulent business acts and practices by, among other things, fraudulently gaining use of eBay's M2M system by agreeing to eBay's User Agreement without intending to comply with its terms; thereafter using eBay's M2M system to send communications designed to solicit eBay member-sellers to move to Amazon, in violation of the User Agreement; inducing eBay member-sellers to breach their User Agreements with eBay; and using deceptive techniques to evade detection of the scheme by eBay.

77. As a direct and proximate result of the above mentioned acts in violation of section 17200, eBay has suffered harm. These acts were a substantial factor in causing this harm.

78. eBay is informed and believes, and on that basis alleges, Amazon has been unjustly enriched at eBay's expense.

79. eBay has suffered irreparable harm as a result of Amazon's activities and will continue to suffer irreparable injury that cannot be adequately remedied at law.

## PRAAYER FOR RELIEF

WHEREFORE eBay prays that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief, including but not limited to an Order:

1. Permanently enjoining Defendants, their subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and

1 employees and all other persons acting in concert or in participation with them from  
2 misusing the M2M system or eBay platform to solicit eBay member-sellers;

- 3 2. Awarding eBay monetary relief, including damages sustained by eBay in an amount  
4 to be determined at trial;
- 5 3. Restitution of Defendant's unlawful proceeds, including an accounting of any and  
6 all revenue derived from any sellers recruited as a result of Defendant's scheme  
7 described herein;
- 8 4. Awarding eBay punitive and exemplary damages in such amount as may be awarded  
9 at trial;
- 10 5. Awarding attorneys' fees;
- 11 6. Awarding interest according to law; and
- 12 7. Awarding such other and further relief as this Court may deem just and proper.

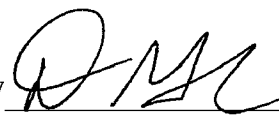
13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand a trial by jury on all issues so triable.  
15  
16

17 DATED: October 17, 2018

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

19  
20 By



David M. Grable  
Attorneys for eBay Inc.