IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

eBay Domestic Holdings, Inc., Plaintiff, v. Craig Newmark and James Buckmaster, Defendants, - and - craigslist, Inc., Nominal Defendant.	)	C.A No. 3705-CC **Public Version** **April 29, 2008**

VERIFIED COMPLAINT

eBay Domestic Holdings, Inc. ("Plaintiff" or "eBay"), for its complaint against defendants Craig Newmark ("Newmark") and James Buckmaster ("Buckmaster") and nominal defendant craigslist, Inc. (the "Company"), alleges as follows:

NATURE OF THE ACTION

1. In this direct and derivative action, eBay seeks equitable and legal relief against Newmark and Buckmaster, the only two directors and controlling stockholders of the Company, for breaching their fiduciary duties of care, loyalty, and good faith by implementing certain self-dealing transactions challenged herein which were designed specifically to benefit themselves to the detriment of eBay, the third and only other stockholder in the Company. eBay seeks to rescind the transactions challenged herein and a declaration that they are void or unenforceable. eBay brings certain of the claims in this action directly on its own behalf and certain of the claims in this action derivatively on behalf of the Company.

THE PARTIES

A. Plaintiff

2. eBay is the record owner of REDACTED shares of common stock of the Company, which, prior to the actions challenged herein, comprised 28.4% of the Company's outstanding stock and 25.01% of its stock on a fully diluted basis.[1] eBay is a wholly owned subsidiary of eBay Inc. eBay Inc. was founded in 1995 and is composed of online marketplaces for the sale of goods and services as well as other online commerce platforms, online payment services, and online communication offerings to individuals and businesses.

B. Defendants

3. Newmark and Buckmaster (together, "Defendants") are the controlling stockholders of the Company and the only two members of the Company's board of directors (the "Board"). As noted, eBay is the only other holder of the Company's outstanding stock.

4. Newmark is the Company's Secretary and Chairman of the Board and, before the Dilutive Issuance described below, owned REDACTED of the Company's outstanding stock and REDACTED of the Company's stock on a fully diluted basis. Newmark founded the www.craigslist.org website (the "Website") in 1995. The Website provides a network of online classifieds websites in the United States and internationally, where users connect locally to find

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[1] Newmark, Buckmaster, and eBay are the only holders of Company common stock. However, as referenced in paragraph 16 herein, the Company adopted a stock incentive plan in 2005, REDACTED The "fully diluted" percentages referenced herein reflect the ownership that Newmark, Buckmaster, and eBay would have if all outstanding options were exercised.

jobs, housing, goods, services, romance, activities, information, and advice. According to the "Factsheet" on the Company's Website, the Website (i) receives more than nine billion page views per month and ranks seventh in English-language user page views among websites in the United States, (ii) receives more than two million new job listings per month, and (iii) is visited by more than 25 million users in the United States every month.

5. Buckmaster is the Company's President, CEO, and CFO and, before the Dilutive Issuance described below, owned REDACTED of the Company's outstanding stock and REDACTED of the Company's stock on a fully diluted basis.

C. The Company

6. The Company is a privately held Delaware corporation with its principal place of business at 1381 9th Avenue, San Francisco, California 94122. The Company's revenues are generated predominantly from fees charged for job postings on the Website in ten of the largest metropolitan areas in the United States.

EBAY'S PURCHASE OF AN INTEREST IN THE COMPANY

7. In or about September 1999, Newmark and REDACTED formed 1010 Cole Street, Inc. ("1010"), the predecessor to the Company. Thereafter, Buckmaster was hired by the Company and received shares in 1010.

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8. In or about April 2004, as tension arose between and Defendants regarding corporate governance matters at the Company, eBay commenced discussions regarding the possibility of acquiring REDACTED interest in 1010.

9. Newmark, Buckmaster, and 1010 actively participated in these negotiations, providing eBay with due diligence material and reviewing eBay's letter of intent with . and ultimately became involved in facilitating a series of transactions

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10. On August 9, 2004, eBay, eBay Inc., Newmark, Buckmaster, and 1010 entered into a Shareholders' Agreement which, among other things: (i) imposed certain transfer restrictions and rights of first refusal on the 1010 shares held by eBay, Newmark, and Buckmaster; and (ii) granted eBay informational, reporting and inspection rights and the right to approve certain transactions directly or through a director designated by eBay.

11. The Shareholders' Agreement provided that, if eBay Inc. engaged in "Competitive Activity," certain rights and obligations of the parties thereunder would terminate, including (i) eBay's right of first refusal to purchase equity securities sold or issued by the Company or to purchase the shares of Newmark or Buckmaster should either attempt to sell his shares, and (ii) Newmark and Buckmaster's right of first refusal to purchase eBay's shares should eBay attempt to sell its shares. Under this latter provision, if Defendants or the Company issued a notice that eBay Inc. had engaged in Competitive Activity as defined in the Shareholders' Agreement, eBay's minority, non-control interest could be sold without Company, Board, or Defendants' consent and over their collective objection.

12. Concurrently, Newmark and Buckmaster entered into a voting agreement ("Voting Agreement") pursuant to which they agreed to vote their shares to elect one designated representative for each of them to the Board.

BACKGROUND EVENTS LEADING UP TO THE CHALLENGED TRANSACTIONS

13. On October 18, 2004, 1010 was merged into the Company. The Shareholders' Agreement continued in effect, applying to the Company, rather than 1010, and the common stock held by the stockholders in 1010 converted into common stock in the Company.

14. On January 10, 2005, Newmark and Buckmaster approved resolutions appointing eBay's designee, Pierre Omidyar, the founder and chairman of the board of directors of eBay Inc., to the Board.

15. On April 26, 2005, the Company filed an Amended and Restated Certificate of Incorporation (the "Charter") with the Delaware Secretary of State, reflecting certain changes to the capital structure of the Company.

16. On June 30, 2005, the Board approved a craigslist, Inc. 2005 stock incentive plan (the "Plan"), reserving shares of the Company's common stock for issuance of option grants to REDACTED employees of the Company.

17. On November 21, 2005, Mr. Omidyar resigned as eBay's designee on the Board (the "Designee") and Joshua Silverman, then eBay Inc.'s Vice President, New Ventures-Europe, was elected to serve as the Designee.

18. In early 2005, eBay Inc. launched Kijiji.com, an online classifieds website in select non-English speaking markets. eBay Inc. provided updates to the Company about Kijiji and eBay Inc.'s other international online classifieds businesses, including Marktplaats (eBay Inc.'s classifieds website in The Netherlands), from shortly after eBay's 2004 investment in the Company through eBay Inc.'s U.S. launch of Kijiji in 2007.

19. In a letter from Buckmaster dated June 29, 2007 (the date of the launch of Kijiji in certain United States markets), the Company gave eBay notice pursuant to Section 8.3(e) of the Shareholders' Agreement that eBay had engaged in Competitive Activity by virtue of its domestic Kijiji operations.

20. Thus, as a result of the June 29, 2007 notice of Competitive Activity, under the Shareholders' Agreement, eBay's shares immediately ceased being subject to a right of first refusal by Newmark and Buckmaster and thereupon became transferable without Board, Company, or Defendants' consent.

21. The notice of Competitive Activity, however, did not (to the best of eBay's knowledge) affect the continuing rights and obligations of Newmark and Buckmaster under the Shareholders' Agreement, including their right of first refusal with one another with respect to their shares in the Company, as well as the reciprocal voting provisions of their Voting Agreement.

22. Even though Silverman had not been associated with eBay Inc.'s classifieds businesses in Europe since June 2006, as a matter of good corporate governance, eBay notified the Company in early July 2007 (within a week after the notice of Competitive Activity) that Silverman had resigned as eBay's Designee on the Board to alleviate any perception of competitive concerns associated with Silverman's prior experience. Concurrently with Silverman's resignation, eBay designated Thomas Jeon, eBay Inc.'s competition counsel, to be its new Board Designee, since he had recently joined eBay Inc. as an employee and had not been, and would not be, involved in any manner with eBay Inc.'s classifieds businesses.

23. At that time, eBay could still elect one director to the Board because the Charter provided that directors would be elected through cumulative voting. Accordingly, as a

holder of more than 25% of the outstanding stock, eBay would always be able to elect one board member at any election in which all three of the Company's directors were up for election.

24. The Company never responded to eBay's request to replace Silverman with Jeon on the Board. Instead, Newmark and Buckmaster engaged in a series of clandestine transactions designed to ensure that eBay would not be able to elect a director, and to either impose new transfer restrictions on eBay or dilute its interests, and to dilute the interests of the employee holders of Company stock options.

NEWMARK AND BUCKMASTER SEEK A BUYOUT OF EBAY'S SHARES

25. On July 12, 2007, less than two weeks after Newmark and Buckmaster lost their right of first refusal over eBay's shares, Buckmaster sent an email to Meg Whitman, then President and CEO of eBay Inc., expressing "negative" feelings toward eBay's launch of Kijiji in certain markets in the United States and stating that "we are no longer comfortable having eBay as a shareholder, and wish to explore options for our repurchase, or for otherwise finding a new home for these shares."

26. One week later, on July 19, 2007, Newmark appeared on the Charlie Rose television show and stated: "craigslist is a community service;" "we don't owe investors anything;" "at investment conferences, people keep asking [Buckmaster], how are you going to make lots more money? And we say, 'hey not interested' because once you are living well, and maybe providing for your future, what's the point in more;" and "I couldn't even tell you how much money we are making; I don't know." *See* Charlie Rose, A conversation with craigslist.org founder, Craig Newmark, *available at* http://www.charlierose.com/shows/2007/07/19/1/a-conversation-with-craigslist-com-founder-craig-newmark (last visited April 18, 2008).

27. On July 23, 2007, Ms. Whitman responded to Buckmaster's July 12 email indicating that eBay had taken steps to "completely firewall off the operations relating to our Kijiji offering" from the corporate management of its equity investment in the Company and that "we are so happy with our relationship with [the Company], that we could neither imagine doing anything to disturb our personal rapport with you or [Newmark] nor parting with our shareholding in [the Company] under any foreseeable circumstances. Quite to the contrary, we would welcome the opportunity to acquire the remainder of [the Company] we do not already own whenever you and [Newmark] feel it would be appropriate."

28. eBay had no interest in liquidating its holdings in the Company, particularly in a private sale to insiders, given the Company's long-term potential. The Company's rapidly growing revenues, coupled with impressive user metrics applicable to the Website, promise to make the Company a highly valued enterprise. Indeed, certain industry commentators have speculated that the value of the Company could be in the range of several billion dollars, thereby making eBay's minority stake highly valuable.

NEWMARK AND BUCKMASTER CRAFT A PLAN TO DILUTE AND DISENFRANCHISE EBAY[2]

29. On October 15, 2007, Newmark and Buckmaster, having failed to appoint eBay's new Designee, met as a Board with the Company's outside counsel, Edward Wes, without giving any notice to eBay. The minutes of this meeting vaguely refer to "corporate governance issues" and the "potential threat of an unwelcome takeover that would harm

[2] On February 26, 2008, eBay requested books and records related to the Transactions (as defined further below) pursuant to 8 *Del. C.* § 220 (the "220 Demand"). On March 19, 2008, the Company responded by producing certain documents without objection (the "220 Documents").

investors' interests." The minutes further note that the Board discussed adopting a poison pill, staggering the Board, and amending the bylaws of the Company to address these alleged concerns.

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Such justifications apply to public companies where there are blocs of shares that can be put together. Nothing REDACTED , explains how a poison pill would benefit a privately held corporation where the only two Board members own a majority of the shares, the two controlling stockholders and Board members have a right of first refusal on each other's shares (to the best of eBay's knowledge), and a single stockholder holds all of the other outstanding shares.

31. The Board met again on October 25, 2007, again without eBay's knowledge. Once again, Mr. Wes attended the meeting. The minutes reflect that "corporate governance issues" were discussed, this time including a "Right of First Refusal Agreement" and a "Statement of Rights." Neither the minutes nor the 220 Documents reflect any discussion of the specific terms of these plans, or their economic effect on the stockholders of the Company or

the employee option holders. Nor do the minutes or the 220 Documents reflect that drafts of these plans were shared with the directors.

NEWMARK AND BUCKMASTER APPROVE A SERIES OF SELF-DEALING AND SELF-INTERESTED TRANSACTIONS DETRIMENTAL TO EBAY

32. In December 2007 and January 2008, without prior notice to or involvement of eBay, Newmark and Buckmaster approved a series of self-interested, self-dealing transactions detrimental to eBay's interests as a minority stockholder in the Company.

A. Newmark and Buckmaster Grant Themselves Expansive Indemnification and Advancement Rights.

33. First, on December 17, 2007, another two-person Board meeting was held, with counsel to the Company again in attendance. Newmark and Buckmaster approved reciprocal self-dealing indemnification agreements granting extremely broad indemnification and advancement rights to one another (the "Indemnification Agreements"). The 12-page Indemnification Agreements went much further than the advancement and indemnification rights reflected in the Company's then-existing Charter.

34. Section 3(a) of each Indemnification Agreement provides that in the event of joint liability with the Company, the "Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and Company hereby waives and relinquishes any right of contribution it may have against Indemnitee."

35. Section 5 provides that all advances from the Company are "unsecured and interest free." Section 11, however, requires the Company to grant Newmark and Buckmaster security for its obligations pursuant to the Indemnification Agreements upon the

request of Newmark and Buckmaster and approval by the Board (that Newmark and Buckmaster control).

36. Section 6 adopts "procedures and presumptions" for determining entitlement to indemnification that are highly favorable to Newmark and Buckmaster. Section 6(b) provides that if Newmark and Buckmaster are required to show entitlement to indemnification, they may choose among three methods for doing so, one of which consists of obtaining an opinion from self-selected legal counsel, with only limited objection rights for the Company, and another of which consists of approval by stockholders (of whom Newmark and Buckmaster comprise a majority). Sections 6(d) and (e) create presumptions, which may only be overcome by clear and convincing evidence, that Newmark and Buckmaster are "entitled to indemnification" and that "Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company."

37. Section 7(d) provides that Newmark and Buckmaster are entitled to advancement and indemnification of any expenses incurred in seeking a judicial adjudication of their rights under the Indemnification Agreements "regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery."

38. Section 7(e) precludes the Company from asserting in any judicial proceeding that "the procedures and presumptions of this Agreement are not valid, binding and enforceable."

39. In addition, the resolutions approving the Indemnification Agreements rotely state that their purpose was to "attract and retain qualified officers and directors" (although the resolutions state only that "Shareholders," rather than the directors who adopted the

resolution, reached this conclusion). On information and belief, however, there was no risk that Newmark and Buckmaster, who collectively owned over REDACTED of the Company before their approval of the Indemnification Agreements, would have left their positions as officers and directors of the Company if the turbo-charged Indemnification Agreements were not adopted. No reference is made in any of the 220 Documents to any request by Newmark and Buckmaster that the substantial benefits included in the new Indemnification Agreements be provided in order to induce them to remain at the Company. In fact, in June 2007, Newmark publicly disavowed any intent to sell or leave the Company, stating that "death is my exit strategy." *See* Mark Rose, "Death is My Exit Strategy, Says Craig Newmark," (June 1, 2007), *available at* http://www.prblognews.com/2007/06/01/death-is-my-exit-strategy-says-craig-newmark. Newmark later cited the story with approval in his own blog, calling it a "good summary." *See* "Death is My Exit Strategy, Says Craig Newmark," cnewmark: craig from craigslist indulges himself (June 2, 2007), *available at* http://www.cnewmark.com/2007/06/death-is-my-exi.html.

B. Newmark and Buckmaster Approve a Coercive Plan to Implement a ROFR Agreement and Receive Dilutive Issuances.

40. On January 1, 2008, with no further meeting or discussion, with no financial advice or third-party expert input, and, again, without any notice to or involvement of eBay, Newmark and Buckmaster acted by written consent to authorize a dilutive stock issuance premised on: a Right of First Refusal Agreement (the "ROFR"); a Statement of Rights (the "Poison Pill"); a Second Amended and Restated Certificate of Incorporation of the Company (the "Charter Amendment"); and Amended and Restated Bylaws (the "Bylaw Amendment") (together, the "Transactions").

41. The ROFR, once agreed to by a stockholder, gives the Company a right of first refusal should such stockholder desire to transfer its shares to a third party. Given that the Company has only three stockholders, the ROFR is nothing but a thinly disguised effort to strip eBay of its ability to exercise its right to sell its stock to anyone not controlled by Newmark and Buckmaster.

42. In what Newmark and Buckmaster characterize as an "inducement" to enter into the ROFR, Newmark and Buckmaster authorized the issuance of one "reorganization share" of common stock in the Company for every five shares of common stock owned by a stockholder who agrees to enter into the ROFR.

43. Newmark and Buckmaster immediately entered into the ROFR and received the "reorganization shares," thereby diluting eBay to 24.85% of the outstanding shares of the Company and diluting the employee option holders by a proportionate amount (the "Dilutive Issuance").

44. The Dilutive Issuance provided no value to the Company, but robbed eBay of valuable economic and non-economic rights. eBay's economic position was diluted immediately by 13%, thereby causing eBay's post-dilution stake to fall below the significant 25% ownership threshold (as described above). Article IX of both the Charter and Charter Amendment permits cumulative voting and provides that an affirmative vote of the holders of at least 75% of the voting power of the outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors is necessary to amend or repeal Article IX. Pre-dilution, with a 28.4% stake, eBay could elect one director if three directors were up for election and block a vote to eliminate cumulative voting; once diluted, however, eBay lost its ability to elect a director under such circumstances and lost the benefit of the requirement that its

consent be obtained prior to any amendments to Article IX. Acquiescing to the ROFR is, then, the only way for eBay to maintain its pre-dilution ownership position and preserve these valuable rights.

45. Executing such a document would have markedly different effects on eBay than it had on Newmark and Buckmaster. eBay is a minority stockholder whose shares have not been subject to a right of first refusal since the June 29, 2007 notice of competitive activity was sent, while Newmark and Buckmaster are inside controlling stockholders who (based on information and belief) remain bound to each other by a pre-existing right of first refusal under the terms of the Shareholders' Agreement. Moreover, in Section 3.3(b) of the ROFR, Newmark and Buckmaster exempted transfers to their heirs, trusts established by them, and charitable organizations. eBay, by contrast, as a for-profit company, receives no benefit from these exceptions, which are drafted for individual estate planning purposes.

46. Newmark's and Buckmaster's self-styled "inducement" presents eBay with two equally unacceptable options: (i) eBay can submit to the ROFR, surrendering the liquidity of its shares and thereby substantially impairing the value of its shares (and making the Company that Newmark and Buckmaster control the only potential purchaser for its shares) or (ii) eBay can refuse to submit to the ROFR, and suffer substantial dilution and lose important minority stockholder protections.

47. The additional shares issued to Defendants from the Dilutive Issuance increased the ownership of Newmark and Buckmaster from

REDACTED Newmark and Buckmaster made no attempt to calculate how much these additional shares were worth, or how the issuance would injure either the minority stockholder or the employees who hold options. Although the Board received no

financial or other expert advice, it nonetheless resolved – with the corporate equivalent of a shrug - **REDACTED** Nor was there any explanation in the 220 Documents of how a right of first refusal provides any benefit to a company with only three stockholders, two of whom control the enterprise and comprise the entire Board.

C. Newmark and Buckmaster Further Injure eBay with a Poison Pill.

48. Contemporaneous with the Dilutive Issuance, acting in their capacity as 100% of the Board, Newmark and Buckmaster also adopted the Poison Pill and declared a dividend of special rights (the "Rights").

49. The Poison Pill gives stockholders a Right for each outstanding share of the Company's common stock.

50. Each Right entitles its holder to purchase from the Company two shares of common stock, or a "Unit," at a purchase price of $0.0001 per Unit. The Rights are exercisable if: (i) a person or group of affiliated or associated persons acquires beneficial ownership of 15% or more of the outstanding common stock of the Company (*i.e.*, Newmark, Buckmaster, or eBay sells his or its shares, or if eBay is acquired by a third party) or (ii) if a current stockholder who currently owns more than 15% of the Company (*i.e.*, Newmark, Buckmaster, or eBay) acquires additional stock in the Company. Under either circumstance, such person or entity is an "Acquiring Person" and its Rights become null and void.

51. Under the Poison Pill, at any time until ten business days following the date that an entity becomes an Acquiring Person, the Company may redeem the Rights in whole or amend the Poison Pill to establish an expiration date. The Board may also generally amend any provision of the Poison Pill prior to the time that an entity becomes an Acquiring Person, but after that date, the provisions of the Poison Pill may only be amended in limited circumstances.

52. The Poison Pill is, by its terms, manifestly designed to inhibit eBay from selling its shares to any buyer other than Newmark, Buckmaster, or the Company they control. The standard reason for adopting a poison pill – preventing an acquiror from gaining control without negotiating with the board – is plainly inapplicable, as the only two Board members own 71% of the outstanding stock.

53. While the provisions of the Poison Pill apply to Newmark and Buckmaster, there are key differences in how they apply to eBay. Newmark and Buckmaster specifically carved out transfers that they might make from triggering the Poison Pill. Section 1(r) of the Poison Pill, like Section 3.3(b) of the ROFR, defines Newmark's and Buckmaster's heirs by will or intestate succession, trusts established for estate planning purposes and any beneficiary under such trust, and charitable organizations with federal tax exempt status under Section 501(c)(3) of the Internal Revenue Code as "Permitted Successors" under the Poison Pill so that such transfers can be accomplished without triggering the Poison Pill.

54. The Poison Pill, like the ROFR, uniquely disadvantages eBay by deterring, if not defeating, any efforts by eBay to sell its minority stake other than to the Defendants or the Company they control. And, unlike a rights plan adopted by a public company, this action provides no value to the Company by preventing accumulations of control – the two Board members own a majority of the shares and eBay already owns the entire outstanding minority stake. The only effect of this plan is to make Newmark, Buckmaster, or the Company they control the only possible acquirors of eBay's shares.

D. Newmark and Buckmaster Amend the Charter and Bylaws to Nullify the Benefits of Cumulative Voting to eBay.

55. Newmark and Buckmaster also approved a Charter Amendment (at the same time as the Poison Pill and the Dilutive Issuance) making a number of substantial changes to the Charter, as well as a Bylaw Amendment implementing those changes.

56. Article VII of the Charter was amended to allow the number of directors constituting the Board to be fixed by resolution of the Board or by the stockholders at the annual meeting. The Charter previously provided that the number of directors shall be as specified in the Company's Bylaws.

57. Article VIII of the Charter was amended, in a manner that seems to conflict with new Article VII, to provide that the "number of directors of the corporation shall be fixed, and may be increased or decreased from time to time, exclusively by resolution approved by the affirmative vote of a majority of the whole Board of Directors."

58. Most significantly, Article VIII of the Charter was changed to implement a classified Board, dividing the directors into three classes, which are to be maintained as equally as possible. Class I is to be elected in 2008; Class II is to be elected in 2009; and Class III is to be elected in 2010, with each director's term lasting three years. According to the Charter Amendment, Newmark is the (only) Class I Director; Buckmaster is the (only) Class II director; and the Class III director is to be appointed at a later date.

59. Once again, the Charter Amendment uniquely disadvantages eBay. One of the few minority stockholder benefits eBay has enjoyed, and that is built into the Charter implemented around the time eBay purchased its shares, was the right to cumulative voting. Newmark's and Buckmaster's decision to implement a classified Board through the Charter Amendment eviscerates the effect of cumulative voting and its concomitant protection of

minority rights. If the number of directors is set at three, then only one director will be elected each year, so that cumulative voting will not guarantee any seat to minority stockholders, regardless of the size of their stake.

60. The Bylaw Amendment is part and parcel of the self-interested Transactions and further implements Newmark's and Buckmaster's interference with eBay's right to cumulative voting by amending Section 3.3 of the Bylaws to reflect the implementation of the classified Board effected by the Charter Amendment.

NEWMARK AND BUCKMASTER PRESENT THE TRANSACTIONS AS A FAIT ACCOMPLI

61. Because Newmark and Buckmaster rejected eBay's most recently proposed Designee (Newmark and Buckmaster failed to advise eBay of this fact until the Company provided notice of the Transactions), eBay did not receive notice of the Transactions in advance of Newmark's and Buckmaster's decision to implement them.

62. On January 3, 2008, Newmark and Buckmaster disclosed the Transactions to eBay in a letter, but only after the Transactions had been approved and executed. The ROFR was already executed by Buckmaster on behalf of the Company in his capacity as CEO and had already been signed and accepted by Newmark and Buckmaster as stockholders. Thus, eBay had already been diluted under the Dilutive Issuance and stripped of important minority protections before it received any notice of the Transactions.

63. The Transactions separately, collectively, and uniquely harm eBay. eBay is a minority stockholder in the Company, subject to the actions of Newmark and Buckmaster, who control the Board and a majority of the Company's voting power. Through the Transactions, Newmark and Buckmaster have methodically acted to disadvantage eBay for their

own direct benefit. They have stripped eBay of valuable rights, strengthened their own rights, and diluted eBay's position in the Company, thereby substantially diminishing the value of eBay's minority stake.

64. Not coincidentally, Newmark and Buckmaster preceded all of these actions with (i) a statement that they no longer want eBay as a stockholder, (ii) an offer to buy out eBay, and (iii) the execution of expansive Indemnification Agreements, in an attempt to insulate themselves from the consequences of their actions. In sum, Defendants' actions are a thinly disguised stratagem to force eBay to sell its shares to them (or the Company they control) at a below market price.

DEMAND FUTILITY

65. eBay brings Counts I and II as derivative claims on behalf of the Company.

66. To the extent required, demand on the Board pursuant to Court of Chancery Rule 23.1 with respect to Counts I and II (and, to the extent any other claims are deemed derivative) is excused as futile because Newmark and Buckmaster constitute all of the directors, and they are not able to properly consider a demand.

67. As alleged with particularity herein, Newmark and Buckmaster are self-interested and conflicted with respect to the conduct challenged herein, which was approved by them and directly and materially benefits them.

68. In addition, as alleged with particularity herein, the Transactions were not the product of a proper exercise of business judgment or the duty of loyalty and good faith and were so one-sided that no business person of ordinary sound judgment could conclude that the Company received adequate consideration in exchange.

COUNT I
(BREACH OF FIDUCIARY DUTIES IN CONNECTION
WITH THE INDEMNIFICATION AGREEMENTS)

69. eBay repeats and realleges the allegations set forth above as if fully set forth herein.

70. Newmark and Buckmaster owe fiduciary duties of loyalty, care, and good faith to the stockholders of the Company, including eBay.

71. Newmark and Buckmaster breached their fiduciary duties by approving the self-dealing Indemnification Agreements.

72. The Indemnification Agreements were approved by self-interested directors, without any approval by disinterested directors, an independent committee, or disinterested stockholders, and personally benefit Newmark and Buckmaster.

73. The Indemnification Agreements are not entirely fair, were adopted in subjective bad faith, and were motivated by intent to harm eBay as evidenced by the Transactions approved by them at approximately the same time.

74. eBay is entitled to rescission of the Indemnification Agreements, or rescissory damages, a declaration that the Indemnification Agreements are void, unenforceable, and the product of a breach of fiduciary duty, and an Order compelling Newmark and Buckmaster to disgorge any monies received pursuant to the Indemnification Agreements.

COUNT II
(WASTE IN CONNECTION WITH THE INDEMNIFICATION AGREEMENTS)

75. eBay repeats and re-alleges the allegations set forth above as if fully set forth herein.

76. Newmark and Buckmaster owe fiduciary duties of loyalty, care, and good faith to the stockholders of the Company, including eBay.

77. Newmark and Buckmaster breached their fiduciary duties by approving the self-dealing Indemnification Agreements.

78. The Indemnification Agreements constitute a waste of corporate assets because they are so one-sided that no business person of ordinary sound judgment could conclude that the Company received adequate consideration and because they were not necessary to induce Newmark or Buckmaster to remain as directors and officers.

79. The Indemnification Agreements were adopted in subjective bad faith and were motivated by an intent to harm eBay as evidenced by the other components of the Transactions approved by them at approximately the same time.

80. eBay is entitled to a declaration that the Indemnification Agreements are void and unenforceable and an Order compelling Newmark and Buckmaster to disgorge any monies received pursuant to the Indemnification Agreements.

COUNT III
(BREACH OF FIDUCIARY DUTIES IN CONNECTION WITH THE ROFR AND DILUTIVE ISSUANCE)

81. eBay repeats and re-alleges the allegations set forth above as if fully set forth herein.

82. Newmark and Buckmaster owe fiduciary duties of loyalty, care, and good faith to the stockholders of the Company, including eBay.

83. Newmark and Buckmaster breached their fiduciary duties by approving the ROFR and Dilutive Issuance.

84. The ROFR and Dilutive Issuance were approved by self-interested directors, without any approval by disinterested directors; an independent committee, or disinterested stockholders, or the advice of a financial advisor or other expert, and personally benefit Newmark and Buckmaster to the detriment of eBay.

85. The ROFR and Dilutive Issuance are not entirely fair, were adopted in subjective bad faith, and were motivated by an intent to harm eBay and, thereby, benefit Newmark and Buckmaster by effectively transferring important voting and economic rights from eBay to Newmark and Buckmaster. Moreover, Newmark's and Buckmaster's approval of the ROFR and the Dilutive Issuance is an attempt to inequitably coerce eBay to submit to the ROFR.

86. eBay is entitled to rescission of the ROFR and Dilutive Issuance, or rescissory damages, and a declaration that the ROFR and Dilutive Issuance are void.

COUNT IV
(VIOLATION OF 8 *DEL. C.* § 152 IN CONNECTION
WITH THE DILUTIVE ISSUANCE)

87. eBay repeats and re-alleges the allegations set forth above as if fully set forth herein.

88. 8 *Del. C.* § 152 requires that consideration benefiting the corporation be paid in exchange for the issuance of shares.

89. No valid consideration was paid in exchange for the shares issued in the Dilutive Issuance, as the ROFR was intended to benefit Newmark and Buckmaster, not the Company.

90. Newmark's and Buckmaster's judgment in approving the Dilutive Issuance was tainted by their material self-interest in the ROFR and the Dilutive Issuance.

91. eBay is entitled to rescission of the Dilutive Issuance, or rescissory damages, and a declaration that the Dilutive Issuance is void.

COUNT V
(VIOLATION OF 8 *DEL. C.* § 202 IN CONNECTION WITH THE ROFR)

92. eBay repeats and re-alleges the allegations set forth above as if fully set forth herein.

93. 8 *Del. C.* § 202 (b) provides that transfer restrictions shall not be binding unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

94. eBay has not agreed to or voted in favor of the transfer restrictions.

95. Newmark and Buckmaster have attempted to wrongfully coerce eBay into submitting to the unreasonable transfer restrictions reflected in the ROFR.

96. The product of inequitable coercion is not an agreement or vote in favor of a transfer restriction pursuant to 8 *Del. C.* § 202 (b).

97. In addition, the transfer restrictions, conceived without involvement by eBay and coercively imposed upon eBay, serve no reasonable or legitimate purpose, particularly in the context of a privately held company controlled by two stockholders who comprise the entire Board.

98. eBay is entitled to a declaration that the restrictions included in the ROFR would be void and unenforceable if eBay executed the ROFR to avoid the dilution it would otherwise suffer.

COUNT VI
(BREACH OF FIDUCIARY DUTIES IN CONNECTION WITH THE POISON PILL)

99. eBay repeats and re-alleges the allegations set forth above as if fully set forth herein.

100. Newmark and Buckmaster owe fiduciary duties of loyalty, care, and good faith to the stockholders of the Company, including eBay.

101. Newmark and Buckmaster breached their fiduciary duties by approving the Poison Pill.

102. The Poison Pill was approved by self-interested directors, without any approval by disinterested directors, an independent committee, or disinterested stockholders, and personally benefits Newmark and Buckmaster.

103. The Poison Pill was adopted in subjective bad faith and motivated by an intent to harm eBay and benefit Newmark and Buckmaster.

104. eBay is entitled to rescission of the Poison Pill, or rescissory damages, and a declaration that the Poison Pill is void, unenforceable, and the product of a breach of fiduciary duty and that any Rights issued pursuant to the Poison Pill are void and unenforceable.

COUNT VII
(BREACH OF FIDUCIARY DUTIES IN CONNECTION
WITH THE CHARTER AMENDMENT AND BYLAW AMENDMENT)

105. eBay repeats and re-alleges the allegations set forth above as if fully set forth herein.

106. Newmark and Buckmaster owe fiduciary duties of loyalty, care, and good faith to the stockholders of the Company, including eBay.

107. The Charter Amendment and Bylaw Amendment improperly foreclose eBay from using cumulative voting rights to elect a director.

108. Newmark and Buckmaster breached their fiduciary duties by approving the Charter Amendment and Bylaw Amendment.

109. The Charter Amendment and Bylaw Amendment were approved by self-interested directors, without any approval by disinterested directors, an independent committee, or disinterested stockholders, and personally benefit Newmark and Buckmaster.

110. The Charter Amendment is not entirely fair, was adopted in subjective bad faith and motivated by an intent to harm eBay, and was approved for the primary purpose of interfering with eBay's voting rights.

111. The Bylaw Amendment is not entirely fair, was approved to implement the self-dealing, bad-faith Charter Amendment, and was approved for the primary purpose of interfering with eBay's voting rights.

112. eBay is entitled to rescission of the Charter Amendment and Bylaw Amendment, or rescissory damages, and a declaration that the Charter Amendment and Bylaw Amendment are void, unenforceable, and the product of a breach of fiduciary duty and that any actions taken pursuant to the Second Amended and Restated Certificate of Incorporation and amended Bylaws are void and unenforceable.

WHEREFORE, eBay respectfully requests that this Court enter an Order:

A. Rescinding the Indemnification Agreements, or awarding rescissory damages, declaring that the Indemnification Agreements are void, unenforceable, and the product of a breach of fiduciary duty, and compelling Newmark and Buckmaster to disgorge any monies received pursuant to the Indemnification Agreements;

B. Rescinding the ROFR and Dilutive Issuance, or awarding rescissory damages, or declaring that the ROFR and Dilutive Issuance are void and the product of a breach of fiduciary duty and that any shares issued pursuant to the ROFR are void;

C. Declaring the ROFR unenforceable against eBay, to the extent that eBay executes the ROFR in order to avoid severe economic harm;

D. Rescinding the Poison Pill, or awarding rescissory damages, and declaring that the Poison Pill is void, unenforceable, and the product of a breach of fiduciary duty and that any Rights issued pursuant to the Poison Pill are void and unenforceable;

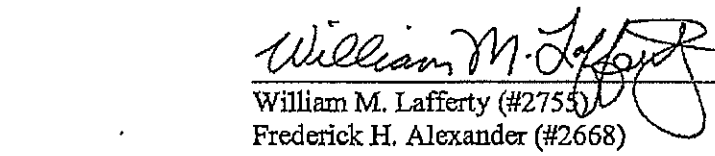
E. Rescinding the Charter Amendment, or awarding rescissory damages, and declaring that the Charter Amendment is void, unenforceable, and the product of a breach of fiduciary duty and that any actions taken pursuant to the Second Amended and Restated Certificate of Incorporation are void;

E. Rescinding the Bylaw Amendment, or awarding rescissory damages, and declaring that the Bylaw Amendment is void, unenforceable, and the product of a breach of fiduciary duty and that any actions taken pursuant to the Bylaw Amendment are void and unenforceable;

F. Awarding eBay the expenses (including attorneys' fees) and costs incurred in this action; and

G. Granting such further and other relief as this Court shall deem appropriate.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP



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April 22, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2008, I electronically filed and caused to be served by LexisNexis E-filing the foregoing **VERIFIED COMPLAINT -- REDACTED PUBLIC VERSION** upon the following counsel of record:

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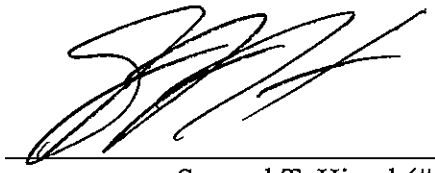

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