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Attorneys for Plaintiff eBay Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

EBAY INC.,

Plaintiff,

v.

DIGITAL POINT SOLUTIONS, INC.,  
SHAWN HOGAN, KESSLER'S  
FLYING CIRCUS, THUNDERWOOD  
HOLDINGS, INC., TODD DUNNING,  
DUNNING ENTERPRISE, INC., BRIAN  
DUNNING, BRIANDUNNING.COM,  
and DOES 1-20,

Defendants.

Case No. C 08-04052 JF

**STIPULATED PROTECTIVE  
ORDER**

1           1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation would be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order does not  
7 confer blanket protections on all disclosures or responses to discovery and that the  
8 protection it affords extends only to the limited information or items that are entitled  
9 under the applicable legal principles to treatment as confidential. The parties further  
10 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order  
11 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5  
12 sets forth the procedures that must be followed and reflects the standards that will be  
13 applied when a party seeks permission from the court to file material under seal.

14           2.     DEFINITIONS

15           2.1     Party: any party to this action, including all of its officers, directors,  
16 employees, consultants, retained experts, and outside counsel (and their support staff).

17           2.2     Disclosure or Discovery Material: all items or information,  
18 regardless of the medium or manner generated, stored, or maintained (including, among  
19 other things, testimony, transcripts, or tangible things) that are produced or generated in  
20 disclosures or responses to discovery in this matter.

21           2.3     "Confidential" Information or Items: information (regardless of how  
22 generated, stored or maintained) or tangible things that qualify for protection under  
23 standards developed under F.R.Civ.P. 26(c).

24           2.4     "Highly Confidential – Attorneys' Eyes Only" Information or Items:  
25 extremely sensitive "Confidential Information or Items" whose disclosure to another Party  
26 or nonparty would create a substantial risk of serious injury that could not be avoided by  
27 less restrictive means.

28           2.5     Receiving Party: a Party that receives Disclosure or Discovery

1 Material from a Producing Party.

2           2.6 Producing Party: a Party or non-party that produces Disclosure or  
3 Discovery Material in this action.

4           2.7 Designating Party: a Party or non-party that designates information  
5 or items that it produces in disclosures or in responses to discovery as “Confidential” or  
6 “Highly Confidential — Attorneys’ Eyes Only.”

7           2.8 Protected Material: any Disclosure or Discovery Material that is  
8 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

9           2.9 Outside Counsel: attorneys who are not employees of a Party but  
10 who are retained to represent or advise a Party in this action.

11           2.10 House Counsel: attorneys who are employees of a Party.

12           2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as  
13 well as their support staffs).

14           2.12 Expert: a person with specialized knowledge or experience in a  
15 matter pertinent to the litigation who has been retained by a Party or its counsel to serve as  
16 an expert witness or as a consultant in this action and who is not a past or a current  
17 employee of a Party or of a competitor of a Party’s and who, at the time of retention, is  
18 not anticipated to become an employee of a Party or a competitor of a Party’s. This  
19 definition includes a professional jury or trial consultant retained in connection with this  
20 litigation.

21           2.13 Professional Vendors: persons or entities that provide litigation  
22 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
23 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their  
24 employees and subcontractors.

25           3. SCOPE

26           The protections conferred by this Stipulation and Order cover not only Protected  
27 Material (as defined above), but also any information copied or extracted therefrom, as  
28 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,

1 conversations, or presentations by parties or counsel to or in court or in other settings that  
2 might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed  
5 by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
6 or a court order otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for  
9 Protection. Each Party or non-party that designates information or items for protection  
10 under this Order must take care to limit any such designation to specific material that  
11 qualifies under the appropriate standards. A Designating Party must take care to designate  
12 for protection only those parts of material, documents, items, or oral or written  
13 communications that qualify – so that other portions of the material, documents, items, or  
14 communications for which protection is not warranted are not swept unjustifiably within  
15 the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
17 are shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*,  
18 to unnecessarily encumber or retard the case development process, or to impose  
19 unnecessary expenses and burdens on other parties), expose the Designating Party to  
20 sanctions.

21 If it comes to a Party's or a non-party's attention that information or items that it  
22 designated for protection do not qualify for protection at all, or do not qualify for the level  
23 of protection initially asserted, that Party or non-party must promptly notify all other  
24 parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided  
26 in this Order (see, *e.g.*, second paragraph of section 5.2(a), below), or as otherwise  
27 stipulated or ordered, material that qualifies for protection under this Order must be  
28 clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of  
3 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at  
5 the top of each page that contains protected material. If only a portion or portions of the  
6 material on a page qualifies for protection, the Producing Party also must clearly identify  
7 the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
8 specify, for each portion, the level of protection being asserted (either  
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

10 A Party or non-party that makes original documents or materials available for  
11 inspection need not designate them for protection until after the inspecting Party has  
12 indicated which material it would like copied and produced. During the inspection and  
13 before the designation, all of the material made available for inspection shall be deemed  
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
15 has identified the documents it wants copied and produced, the Producing Party must  
16 determine which documents, or portions thereof, qualify for protection under this Order,  
17 then, before producing the specified documents, the Producing Party must affix the  
18 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected Material. If  
20 only a portion or portions of the material on a page qualifies for protection, the Producing  
21 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
22 markings in the margins) and must specify, for each portion, the level of protection being  
23 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
24 EYES ONLY”).

25 When a non-party produces information in documentary form, and regardless of  
26 whether the Producing Party designates any of that material for protection under this  
27 Order, the documents shall be provisionally deemed “HIGHLY CONFIDENTIAL –  
28 ATTORNEYS’ EYES ONLY” for the first 30 days following the Producing Party’s

1 production of documents. If any Party asserts that any of the documents produced by the  
2 non-party qualify for protection under this Order, that Party shall, before the end of the  
3 30-day period, notify the other Parties that such designations will be made and produce  
4 copies of any such documents with the appropriate legend (“CONFIDENTIAL” or  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) according to the terms of  
6 this Order. The Receiving Party shall thereafter destroy all previously-produced copies of  
7 such protected documents and replace them with the copies that have been designated for  
8 protection. In the absence of such designation, the documents will cease to be deemed  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the end of the 30-day  
10 period.

11 (b) for testimony given in deposition or in other pretrial or trial  
12 proceedings, that the Party or non-party offering or sponsoring the testimony identify on  
13 the record, before the close of the deposition, hearing, or other proceeding, all protected  
14 testimony, and further specify any portions of the testimony that qualify as “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to identify  
16 separately each portion of testimony that is entitled to protection, and when it appears that  
17 substantial portions of the testimony may qualify for protection, the Party or non-party  
18 that sponsors, offers, or gives the testimony may invoke on the record (before the  
19 deposition or proceeding is concluded) a right to have up to 30 days to identify the  
20 specific portions of the testimony as to which protection is sought and to specify the level  
21 of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are  
23 appropriately designated for protection within the 30 days shall be covered by the  
24 provisions of this Stipulated Protective Order.

25 Transcript pages containing Protected Material must be separately bound by the  
26 court reporter, who must affix to the top of each such page the legend  
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as  
28 instructed by the Party or nonparty offering or sponsoring the witness or presenting the

1 testimony.

2 (c) for information produced in some form other than  
3 documentary, and for any other tangible items, that the Producing Party affix in a  
4 prominent place on the exterior of the container or containers in which the information or  
5 item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
6 ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant  
7 protection, the Producing Party, to the extent practicable, shall identify the protected  
8 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential –  
9 Attorneys’ Eyes Only.”

10 When a non-party produces information in non-documentary form, and regardless  
11 of whether the Producing Party designates any of that material for protection under this  
12 Order, the material shall be provisionally deemed “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY” for the first 30 days following the Producing Party’s  
14 production. If any Party asserts that any of the material produced by the non-party  
15 qualifies for protection under this Order, that Party shall, before the end of the 30-day  
16 period, notify the other Parties of the designation claimed by that Party. If only portions  
17 of the information or item warrant protection, the Producing Party, to the extent  
18 practicable, shall identify the protected portions, specifying whether they qualify as  
19 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL– ATTORNEYS’ EYES ONLY.”  
20 In the absence of such designation, the documents will cease to be deemed “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the end of the 30-day period.

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
23 failure to designate qualified information or items as “Confidential” or “Highly  
24 Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the Designating  
25 Party’s right to secure protection under this Order for such material. If material is  
26 appropriately designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes  
27 Only” after the material was initially produced, the Receiving Party, on timely notification  
28 of the designation, must make reasonable efforts to assure that the material is treated in

1 accordance with the provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Unless a prompt challenge to a Designating  
4 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
5 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a  
6 Party does not waive its right to challenge a confidentiality designation by electing not to  
7 mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
9 Designating Party's confidentiality designation must do so in good faith and must begin  
10 the process by conferring directly (in voice to voice dialogue; other forms of  
11 communication are not sufficient) with counsel for the Designating Party. In conferring,  
12 the challenging Party must explain the basis for its belief that the confidentiality  
13 designation was not proper and must give the Designating Party an opportunity to review  
14 the designated material, to reconsider the circumstances, and, if no change in designation  
15 is offered, to explain the basis for the chosen designation. A challenging Party may  
16 proceed to the next stage of the challenge process only if it has engaged in this meet and  
17 confer process first.

18 6.3 Judicial Intervention. A Party that elects to press a challenge to a  
19 confidentiality designation after considering the justification offered by the Designating  
20 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil  
21 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in  
22 detail the basis for the challenge. Each such motion must be accompanied by a competent  
23 declaration that affirms that the movant has complied with the meet and confer  
24 requirements imposed in the preceding paragraph and that sets forth with specificity the  
25 justification for the confidentiality designation that was given by the Designating Party in  
26 the meet and confer dialogue.

27 The burden of persuasion in any such challenge proceeding shall be on the  
28 Designating Party. Until the court rules on the challenge, all parties shall continue to



1 afford the material in question the level of protection to which it is entitled under the  
2 Producing Party's designation.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that  
5 is disclosed or produced by another Party or by a non-party in connection with this case  
6 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
7 Material may be disclosed only to the categories of persons and under the conditions  
8 described in this Order. When the litigation has been terminated, a Receiving Party must  
9 comply with the provisions of section 11, below (FINAL DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a  
11 location and in a secure manner that ensures that access is limited to the persons  
12 authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
14 otherwise ordered by the court or permitted in writing by the Designating Party, a  
15 Receiving Party may disclose any information or item designated CONFIDENTIAL only  
16 to

17 (a) the Receiving Party's Outside Counsel of record in this action,  
18 as well as employees of said Counsel to whom it is reasonably necessary to disclose the  
19 information for this litigation and who have signed the "Agreement to Be Bound by  
20 Protective Order" that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House  
22 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
23 litigation and who have signed the "Agreement to Be Bound by Protective Order"  
24 (Exhibit A);

25 (c) experts (as defined in this Order) of the Receiving Party to  
26 whom disclosure is reasonably necessary for this litigation and who have signed the  
27 "Agreement to Be Bound by Protective Order" (Exhibit A);

28 (d) the Court and its personnel;

1 (e) court reporters, their staffs, and professional vendors to whom  
2 disclosure is reasonably necessary for this litigation and who have signed the “Agreement  
3 to Be Bound by Protective Order” (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom  
5 disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by  
6 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to  
7 depositions that reveal Protected Material must be separately bound by the court reporter  
8 and may not be disclosed to anyone except as permitted under this Stipulated Protective  
9 Order.

10 (g) the author of the document or the original source of the  
11 information.

12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
13 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
14 writing by the Designating Party, a Receiving Party may disclose any information or item  
15 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

16 (a) the Receiving Party’s Outside Counsel of record in this action,  
17 as well as employees of said Counsel to whom it is reasonably necessary to disclose the  
18 information for this litigation and who have signed the “Agreement to Be Bound by  
19 Protective Order” that is attached hereto as Exhibit A;

20 (b) House Counsel of a Receiving Party (1) who has no  
21 involvement in competitive decision-making or in patent prosecutions involving any  
22 affiliate marketing program, (2) to whom disclosure is reasonably necessary for this  
23 litigation, and (3) who has signed the “Agreement to Be Bound by Protective Order”  
24 (Exhibit A);

25 (c) Experts (as defined in this Order) (1) to whom disclosure is  
26 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound  
27 by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in  
28 paragraph 7.4, below, have been followed;

1 (d) the Court and its personnel;

2 (e) court reporters, their staffs, and professional vendors to whom  
3 disclosure is reasonably necessary for this litigation and who have signed the “Agreement  
4 to Be Bound by Protective Order” (Exhibit A); and

5 (f) the author of the document or the original source of the  
6 information.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
8 IN OTHER LITIGATION.

9 If a Receiving Party is served with a subpoena or an order issued in other litigation  
10 that would compel disclosure of any information or items designated in this action as  
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”  
12 the Receiving Party must so notify the Designating Party, in writing (by fax, if possible)  
13 immediately and in no event more than three court days after receiving the subpoena or  
14 order. Such notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who caused  
16 the subpoena or order to issue in the other litigation that some or all the material covered  
17 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving  
18 Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the  
19 other action that caused the subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the  
21 existence of this Protective Order and to afford the Designating Party in this case an  
22 opportunity to try to protect its confidentiality interests in the court from which the  
23 subpoena or order issued. The Designating Party shall bear the burdens and the expenses  
24 of seeking protection in that court of its confidential material – and nothing in these  
25 provisions should be construed as authorizing or encouraging a Receiving Party in this  
26 action to disobey a lawful directive from another court.

27 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

28 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed

1 Protected Material to any person or in any circumstance not authorized under this  
2 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
3 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
4 copies of the Protected Material, (c) inform the person or persons to whom unauthorized  
5 disclosures were made of all the terms of this Order, and (d) request such person or  
6 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached  
7 hereto as Exhibit A.

8 10. FILING PROTECTED MATERIAL.

9 Without written permission from the Designating Party or a court order secured  
10 after appropriate notice to all interested persons, a Party may not file in the public record  
11 in this action any Protected Material. A Party that seeks to file under seal any Protected  
12 Material must comply with Civil Local Rule 79-5.

13 11. FINAL DISPOSITION.

14 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty  
15 days after the final termination of this action, each Receiving Party must return all  
16 Protected Material to the Producing Party. As used in this subdivision, “all Protected  
17 Material” includes all copies, abstracts, compilations, summaries or any other form of  
18 reproducing or capturing any of the Protected Material. With permission in writing from  
19 the Designating Party, the Receiving Party may destroy some or all of the Protected  
20 Material instead of returning it. Whether the Protected Material is returned or destroyed,  
21 the Receiving Party must submit a written certification to the Producing Party (and, if not  
22 the same person or entity, to the Designating Party) by the sixty day deadline that  
23 identifies (by category, where appropriate) all the Protected Material that was returned or  
24 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,  
25 compilations, summaries or other forms of reproducing or capturing any of the Protected  
26 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy  
27 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
28 work product, even if such materials contain Protected Material. Any such archival

1 copies that contain or constitute Protected Material remain subject to this Protective Order  
2 as set forth in Section 4 (DURATION), above.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of  
5 any person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
7 Protective Order no Party waives any right it otherwise would have to object to disclosing  
8 or producing any information or item on any ground not addressed in this Stipulated  
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
10 evidence of any of the material covered by this Protective Order.

11  
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 DATED: 6/23/09

  
\_\_\_\_\_  
Attorneys for Plaintiff

14 DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for Defendant

15 DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for Defendant

16 DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for Defendant

17 DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for Defendant

18  
19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Jeremy Fogel  
United States District Judge

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9 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
10 evidence of any of the material covered by this Protective Order.

11  
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 DATED: \_\_\_\_\_ Attorneys for Plaintiff

14 DATED: \_\_\_\_\_ Attorneys for Defendant

15 DATED: \_\_\_\_\_ Attorneys for Defendant

16 DATED: June 23, 2009 Stewart Warner, Foreman LLP  
17 Freeland Cooper  
18 Attorneys for Defendants TODD DUNNING  
+ DUNNING ENTERPRISE, INC.

19 DATED: \_\_\_\_\_ Attorneys for Defendant

20  
21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: \_\_\_\_\_  
23 The Honorable Jeremy Fogel  
24 United States District Judge

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10 evidence of any of the material covered by this Protective Order.

11

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 DATED: \_\_\_\_\_  
14 Attorneys for Plaintiff

15 DATED: \_\_\_\_\_  
16 Attorneys for Defendant

17 DATED: \_\_\_\_\_  
18 Attorneys for Defendant

19 DATED: \_\_\_\_\_  
20 Attorneys for Defendant

21 DATED: 6/23/09  
22 *[Signature]* RUS, MILIBAND / SMITH, APC  
23 Attorneys for Defendant  
24 Thunderwood Holdings, Inc., Brian Dunning  
25 and Briandunning.com

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 DATED: \_\_\_\_\_  
28 The Honorable Jeremy Fogel  
United States District Judge

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8 or producing any information or item on any ground not addressed in this Stipulated  
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
10 evidence of any of the material covered by this Protective Order.

11  
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 DATED: \_\_\_\_\_ Attorneys for Plaintiff

14 DATED: 6/23/09 \_\_\_\_\_  
15 *[Signature]* Attorneys for Defendants SHAWN HOGAN and  
DIGITAL POINT SOLUTIONS, INC.

16 DATED: \_\_\_\_\_ Attorneys for Defendant

17 DATED: \_\_\_\_\_ Attorneys for Defendant

18 DATED: 6/23/09 \_\_\_\_\_  
19 *[Signature]* RUS, MILIBAND / SMITH, APC  
20 Attorneys for Defendants  
Thunderwood Holdings, Inc., Brian Dunning  
and Briandunning.com

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: \_\_\_\_\_  
23 The Honorable Jeremy Fogel  
24 United States District Judge

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7 Protective Order no Party waives any right it otherwise would have to object to disclosing  
8 or producing any information or item on any ground not addressed in this Stipulated  
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
10 evidence of any of the material covered by this Protective Order.

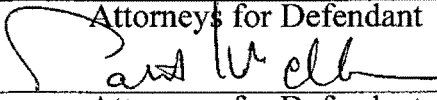
11  
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 DATED: \_\_\_\_\_  
14 Attorneys for Plaintiff

15 DATED: \_\_\_\_\_  
16 Attorneys for Defendant

17 DATED: \_\_\_\_\_  
18 Attorneys for Defendant

19 DATED: \_\_\_\_\_  
20 Attorneys for Defendant

21 DATED: 6-24-09  
22   
23 Attorneys for Defendant KESSLER'S  
FLYING CIRCUS

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 DATED: 6-  
26 The Honorable Jeremy Fogel  
27 United States District Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Northern  
District of California on \_\_\_\_\_ [date] in the case of *eBay Inc. v. Digital Point  
Solutions, Inc., et al.*, Case No. CV-08-4052 JF. I agree to comply with and to be bound  
by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of  
contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity except in  
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this  
action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with this  
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]