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13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN JOSE DIVISION**

16 EBAY INC.,

17 Plaintiff,

18 v.

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

26 Defendants.

Case No. C 08-04052 JF PVT

**DECLARATION OF COLLEEN M.
 KENNEDY IN SUPPORT OF EBAY
 INC.'S MOTION TO COMPEL
 RESPONSES TO REQUESTS FOR
 PRODUCTION,
 INTERROGATORIES AND
 REQUESTS FOR ADMISSION
 FROM DIGITAL POINT
 SOLUTIONS, INC. AND SHAWN
 HOGAN**

Hearing Date: November 3, 2009
 Time: 10:00 a.m.
 Judge: Hon. Patricia V. Trumbull

1 I, Colleen M. Kennedy, declare as follows:

2 1. I am a member of the Bar of the State of California and am associated with
3 the law firm of O'Melveny & Myers LLP, counsel for eBay Inc. in this matter. I submit
4 this Declaration in support of eBay's Motion to Compel Responses to Requests for
5 Production, Interrogatories and Requests for Admission from Digital Point Solutions, Inc.
6 ("DPS, Inc.") and Shawn Hogan ("Defendants"). I have personal knowledge of the facts
7 set forth in this declaration and, if called to testify as a witness, could and would do so
8 under oath.

9 2. Counsel for eBay have engaged in meet and confer discussions with
10 Defendants' counsel regarding the issues raised in the accompanying Motion, both
11 through correspondence and during telephonic discussions on August 27 and September
12 18, 2009. We were unable to reach agreement on the issues addressed in this Motion.

13 3. During our meet and confer discussions, Defendants' counsel has
14 represented that DPS, Inc. never conducted business with eBay, and that any interaction
15 with eBay was undertaken by Mr. Hogan and/or a sole proprietorship called "Digital Point
16 Solutions" that existed prior to DPS, Inc.'s incorporation.

17 4. Section III.A of eBay's Motion seeks to compel responses to the following
18 discovery requests propounded by eBay:

- 19 • Requests for Production No. 1-29, 34-35 and 37 to Shawn Hogan.

20 5. Section III.B of eBay's Motion seeks to compel responses to the following
21 discovery requests propounded by eBay:

- 22 • Requests for Production No. 1-29, 34-35 and 37 to Shawn Hogan; and
23 • Requests for Production No. 1-29, 33-34 and 36 to DPS, Inc.

24 6. Section III.C of eBay's Motion seeks to compel responses to the following
25 requests propounded by eBay:

- 26 • Interrogatories No. 1-2 to DPS, Inc.;
27 • Requests for Admission No. 1-23 to DPS, Inc.; and
28 • Requests for Production No. 1-8, 13-14 and 23 to DPS, Inc.

1 7. The listed responses requested in Sections III.A and III.B include one of the
2 requests in eBay's Second Set of Requests for Production, as well as each of the requests
3 in eBay's First Set of Requests for Production except for those that seek documents
4 relating to Defendants' financial assets, financial statements and/or tax returns. eBay
5 continues to meet and confer with Defendants regarding these requests and will file a
6 separate motion to compel responses to those requests, if necessary.

7 8. Attached hereto as Exhibit 1 is a chart setting forth each of the requests to
8 which eBay seeks to compel responses, along with Defendants' objections and/or
9 responses thereto, pursuant to Civil L.R. 37-2.

10 9. Attached hereto as Exhibit 2 is a true and correct copy of DPS, Inc.'s
11 Supplemental Responses to eBay's First Set of Interrogatories, dated September 23, 2009.

12 10. Attached hereto as Exhibit 3 is a true and correct copy of DPS, Inc.'s
13 Supplemental Responses to eBay's First Set of Requests for Admission, dated September
14 23, 2009.

15 11. Attached hereto as Exhibit 4 is a true and correct copy of DPS, Inc.'s
16 Supplemental Responses to eBay's First Set of Requests for Production and
17 accompanying document production, dated September 23, 2009.

18 12. Attached hereto as Exhibit 5 is a true and correct copy of Shawn Hogan's
19 Responses to eBay's First Set of Requests for Production, dated March 12, 2009.

20 13. Attached hereto as Exhibit 6 is a true and correct copy of the Joint Case
21 Management Statement, dated September 14, 2009.

22 14. Attached hereto as Exhibit 7 is a true and correct copy of an email from
23 Ross Campbell to Colleen Kennedy, dated September 10, 2009.

24 15. Attached hereto as Exhibit 8 is a true and correct copy of DPS, Inc.'s
25 Motion to Dismiss eBay's First Amended Complaint, dated October 27, 2008.

26 16. Attached hereto as Exhibit 9 is a true and correct copy of DPS, Inc.'s
27 Motion to Dismiss eBay's Second Amended Complaint, dated April 27, 2009.

28 17. Attached hereto as Exhibit 10 is a true and correct copy of an email from

1 Ross Campbell to Colleen Kennedy dated, September 25, 2009.

2 18. Attached hereto as Exhibit 11 is a true and correct copy of eBay's Notice of
3 Subpoena and Amended Subpoena to NetHere, dated June 9, 2009.

4 19. Attached hereto as Exhibit 12 is a true and correct copy of a letter from
5 Andy Taubman to David Sepanik, dated June 19, 2009.

6 20. Attached hereto as Exhibit 13 is a true and correct copy of a letter from
7 Andy Taubman to Colleen Kennedy, dated August 17, 2009.

8 21. Attached hereto as Exhibit 14 is a true and correct copy of eBay's First Set
9 of Requests for Admission to DPS, Inc., dated January 22, 2009.

10 22. Attached hereto as Exhibit 15 is a true and correct copy of DPS, Inc.'s initial
11 Responses to eBay's First Set of Interrogatories, dated March 12, 2009.

12 23. Attached hereto as Exhibit 16 is a true and correct copy of DPS, Inc.'s initial
13 Responses to eBay's First Set of Requests for Admission, dated March 12, 2009.

14 24. Attached hereto as Exhibit 17 is a true and correct copy of DPS, Inc.'s initial
15 Responses to eBay's First Set of Requests for Production, dated March 12, 2009.

16 25. Attached hereto as Exhibit 18 is a true and correct copy of an email from
17 Colleen Kennedy to Seyamack Kouretchian and Ross Campbell, dated September 18,
18 2009.

19
20 I declare under penalty of perjury under the laws of the United States and the State
21 of California that the foregoing is true and correct. Signed on this 29th day of September,
22 2009 in San Francisco, California.

23 /s/ Colleen M. Kennedy

24 Colleen M. Kennedy