

EXHIBIT O

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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 
14 Attorneys for Plaintiff

15 DATED: _____
16 Attorneys for Defendant

17 DATED: _____
18 Attorneys for Defendant

19 DATED: _____
20 Attorneys for Defendant

21 DATED: _____
22 Attorneys for Defendant

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 DATED: _____
25 The Honorable Jeremy Fogel
26 United States District Judge
27
28

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

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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: _____
14 Attorneys for Plaintiff

15 DATED: _____
16 Attorneys for Defendant

17 DATED: _____
18 Attorneys for Defendant

19 DATED: June 23, 2009 Freeland Cooper & Korman LLP
20 Attorneys for Defendants DOO DUNNING
+ DUNNING ENTERPRISE, INC.

21 DATED: _____
22 Attorneys for Defendant

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 DATED: _____
25 The Honorable Jeremy Fogel
26 United States District Judge
27
28

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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: _____ Attorneys for Defendant

17
18
19 DATED: 6/23/09 [Signature] RUS, MILIBAND / SMITH, AAK
20 Attorneys for Defendant
21 Thunderwood Holdings, Inc., Brian Dunning
22 and Briandunning.com

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 DATED: _____
25 The Honorable Jeremy Fogel
26 United States District Judge
27
28

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2 as set forth in Section 4 (DURATION), above.

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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: _____
14 Attorneys for Plaintiff

15 DATED: 6/23/09 _____
16 Attorneys for Defendants SHAWN HOGAN and
DIGITAL POINT SOLUTIONS, INC.

17 DATED: _____
18 Attorneys for Defendant

19 DATED: _____
20 Attorneys for Defendant

21 DATED: 6/23/09 _____
22 FLO RUS, MILIBAND / SMITH, AAK
23 Attorneys for Defendants
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

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

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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: _____ Attorneys for Defendant

15 DATED: _____ Attorneys for Defendant

16 DATED: _____ Attorneys for Defendant

17 DATED: 6-24-09 _____
18 *Paul W. Ell*
19 Attorneys for Defendant *KESSEKIS*
20 *FLYING CIRCUS*

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: 6 - June 26, 2009 _____
23 *Patricia V. Trumbull*
24 The Honorable JXXXXXXXXXX Patricia V. Trumbull
25 United States XXXXXX Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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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]