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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 REPLY IN SUPPORT OF ITS
 MOTION TO COMPEL REQUESTS
 FOR PRODUCTION,
 INTERROGATORIES, AND
 REQUESTS FOR ADMISSION
 FROM DEFENDANTS BRIAN
 DUNNING, THUNDERWOOD
 HOLDINGS, INC.,
 BRIANDUNNING.COM AND
 KESSLER'S FLYING CIRCUS**

Hearing Date: November 13, 2009
 Time: 10:00 a.m.
 Courtroom: 5
 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 associated with the
3 law firm of O'Melveny & Myers LLP, counsel for eBay Inc. in this matter. I submit this
4 Declaration in support of eBay's Reply in support its Motion to Compel Responses to
5 Requests for Production, Interrogatories and Requests for Admission From Defendants
6 Brian Dunning, Thunderwood Holdings, Inc., BrianDunning.com and Kessler's Flying
7 Circus (collectively, the "BD Defendants"). I have personal knowledge of the facts set
8 forth in this declaration and, if called to testify as a witness, could and would do so under
9 oath.

10 2. Counsel for eBay have engaged in a number of meet-and-confer discussions
11 with the BD Defendants' counsel regarding the discovery propounded by eBay, through
12 both correspondence and telephonic discussions. Throughout the meet-and-confer
13 process, the BD Defendants' counsel never raised any objection that they claimed would
14 prevent them from responding to eBay's discovery, other than their objections based on
15 the Fifth Amendment privilege that are addressed in eBay's motion to compel and their
16 objections to eBay's requests for production of the BD Defendants' financial records.
17 eBay's requests for the BD Defendants' financial records are the subject of ongoing meet
18 and confer discussions.

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 30th day of October,
22 2009 in San Francisco, California.

23 /s/ Colleen M. Kennedy

24 Colleen M. Kennedy