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9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN JOSE DIVISION**

12 EBAY INC.,
 13 Plaintiff,
 14 v.
 15 DIGITAL POINT SOLUTIONS, INC.,
 16 SHAWN HOGAN, KESSLER'S
 17 FLYING CIRCUS, THUNDERWOOD
 18 HOLDINGS, INC., TODD DUNNING,
 19 DUNNING ENTERPRISE, INC., BRIAN
 20 DUNNING, BRIANDUNNING.COM,
 21 and DOES 1-20,
 22 Defendants.

Case No. C 08-04052 JF PVT

**[PROPOSED] ORDER SUSTAINING
 PLAINTIFF EBAY INC.'S
 OBJECTIONS TO MAGISTRATE
 JUDGE'S ORDER OF NOVEMBER
 19, 2009 ON EBAY'S MOTIONS TO
 COMPEL**

Hearing Date: None Set
 Time: None Set
 Courtroom: 3
 Judge: Hon. Jeremy Fogel

1 On December 3, 2009, Plaintiff eBay Inc. filed timely objections to Magistrate
2 Judge Patricia V. Trumbull's November 19, 2009 Order Granting in Part and Deferring
3 Ruling in Part on Plaintiff eBay, Inc.'s Two Motions to Compel. Based upon review of
4 the papers filed and oral argument presented, and for good cause appearing:

5 **IT IS HEREBY ORDERED** that Plaintiff eBay Inc.'s Objections to the Order are
6 SUSTAINED. The Order is hereby set aside to the extent it denied and/or deferred ruling
7 on Plaintiff eBay Inc.'s two motions to compel. The Court therefore hereby GRANTS
8 Plaintiff's motions and ORDERS:

- 9 1. that Defendant Kessler's Flying Circus's objections to eBay's
10 Interrogatories on the grounds of the Fifth Amendment are stricken and
11 Kessler's Flying Circus shall provide supplemental responses to those
12 interrogatories within 15 days of this Order;
- 13 2. that Defendants Thunderwood Holdings, Inc.'s and BrianDunning.com's
14 objections to eBay's Interrogatories and Requests for Admission on the
15 grounds of the Fifth Amendment are stricken and those Defendants shall
16 provide supplemental responses to those interrogatories and requests for
17 admission within 15 days of this Order;
- 18 3. that, notwithstanding their continuing invocations of their Fifth Amendment
19 rights, within 15 days of this Order Defendants Brian Dunning and Todd
20 Dunning shall produce all documents responsive to eBay's First and Second
21 Sets of Requests for Production that were previously obtained by the FBI;
- 22 4. that Defendants Brian Dunning, Todd Dunning, Kessler's Flying Circus,
23 Thunderwood Holdings, Inc., and BrianDunning.com shall exercise any and
24 all rights that they may have to obtain documents from Rackspace US, Inc.
25 that may be responsive to eBay's First and Second Sets of Requests for
26 Production and, as otherwise compelled by this Order or as previously set
27 forth in discovery responses or agreed by the parties, produce documents
28 responsive to those requests for production within 15 days of this Order;

- 1 5. that, notwithstanding his continuing invocations of his Fifth Amendment
2 rights, within 15 days of this Order Defendant Shawn Hogan shall produce
3 all documents responsive to eBay’s First and Second Sets of Requests for
4 Production that were previously obtained by the FBI, including but not
5 limited to any such documents that may be within his control at third party
6 NetHere, Inc.;
- 7 6. that Defendant Digital Point Solutions, Inc. shall conduct a diligent search
8 for and produce all documents responsive to eBay’s First and Second Set of
9 Requests for Production within 15 days of this Order, including by
10 exercising any and all rights that it may have to obtain documents from third
11 party NetHere, Inc.; and
- 12 7. that Defendant Digital Point Solutions, Inc.’s objections to eBay’s
13 Interrogatories No. 1-2, Requests for Admission No. 1-23 and Requests for
14 Production No. 1-8, 13-14 and 23 on the grounds that the definition of
15 “DPS” is overbroad, unduly burdensome and oppressive are stricken and
16 Digital Point Solutions, Inc. shall provide supplemental responses to those
17 requests, including information regarding “DPS” as defined by eBay, within
18 15 days of this Order.

19
20 IT IS SO ORDERED.

21
22
23
24 DATED: _____

Honorable Jeremy Fogel
United States District Judge