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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  
 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 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 Inc.'s Reply in Support of its Objections to Magistrate  
5 Judge's Order of November 19, 2009 on eBay Inc.'s motions to compel. I have personal  
6 knowledge of the facts set forth in this declaration and, if called to testify as a witness,  
7 could and would do so under oath.

8 2. I have been the principal point of contact with counsel for defendants Todd  
9 Dunning and Dunning Enterprise, Inc. (the "TD Defendants") regarding all discovery  
10 issues, including those raised in eBay's motion to compel against the TD Defendants.  
11 Since the November 13, 2009 hearing before Magistrate Judge Trumbull on eBay's  
12 motions to compel, counsel for the TD Defendants has not communicated with counsel for  
13 eBay in any way with regard to either 1) providing a supplemental declaration from Todd  
14 Dunning stating that he has not provided documents to the government, or 2) reaching a  
15 stipulation that the provision of such a declaration would not constitute a waiver of Todd  
16 Dunning's Fifth Amendment privilege.

17  
18 I declare under penalty of perjury under the laws of the United States and the State  
19 of California that the foregoing is true and correct. Signed on this 30th day of December,  
20 2009 in San Francisco, California.

21 /s/ Colleen M. Kennedy

22 Colleen M. Kennedy