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**IN THE UNITED STATES DISTRICT COURT
FOR THE 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 ENTERPRISES, INC., BRIAN
DUNNING, BRIANDUNNING.COM,
and DOES 1-20,

Defendants.

Case Number C 08-4052 JF (PVT)

**ORDER¹ SUSTAINING
OBJECTIONS TO DISCOVERY
ORDER**

RE: Docket No. 166

Plaintiff eBay, Inc. ("eBay") moved to compel responses to requests for production, interrogatories, and requests for admission from all of the Defendants. In an order dated November 19, 2009 ("Order"), Magistrate Judge Trumbull granted eBay's motion as to Defendant Dunning Enterprise, Inc. ("DEI"), but deferred ruling on eBay's motion as to

¹ This disposition is not designated for publication in the official reports.

1 Defendants Thunderwood Holdings, Inc. (“THI”), BrianDunning.com, Kessler’s Flying Circus
2 (“KFC”), Shawn Hogan, and Digital Point Solutions, Inc. (“DPS”) pending the receipt of updated
3 information regarding a pending criminal investigation involving these Defendants. eBay objects
4 to the Order on several grounds. For the reasons discussed below, the Court concludes that the
5 objections are well-taken.

6 I. BACKGROUND

7 No party disputes Judge Trumbull’s description of the relationships between the various
8 parties. The Defendants include both individuals—Todd Dunning (“Todd”), Brian Dunning
9 (“Brian”), and Shawn Hogan (“Hogan”) (collectively, the “Individual Defendants”)—and
10 entities—DEI, BrianDunning.com, THI, KFC, and DPS (collectively, the “Entity Defendants”).

11 As Judge Trumbull explained:

12 Defendants Brian Dunning and Todd Dunning are brothers. Defendant Brian
13 Dunning is the founder and sole shareholder of the corporation known as
14 Thunderwood Holdings, Inc. Defendant Todd Dunning is an owner and shareholder
15 in the corporation known as Dunning Enterprise, Inc. The two corporations,
16 Thunderwood Holdings, Inc. and Dunning Enterprise, Inc., did business together as
17 Kessler’s Flying Circus.

18 ...

19 BrianDunning.com is not a corporation but rather the name under which business
20 has been conducted.

21 (Order 2:15-20; 4:9-10.) Hogan “is the sole officer, sole shareholder and sole director for the
22 corporation known as Digital Point Systems, Inc.” (*Id.* at 5:12-13.)

23 II. LEGAL STANDARD

24 Where, as here, the magistrate judge’s ruling addresses a non-dispositive matter, the
25 district judge will modify or set aside “any portion of the magistrate judge’s order found to be
26 clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A).

27 III. DISCUSSION

28 Judge Trumbull deferred ruling on eBay’s motion to compel further discovery from THI,
BrianDunning.com, KFC, and DPS based on the following findings and conclusions: that Brian
“is the only person who can respond to discovery propounded on Thunderwood Holdings, Inc.,

1 BrianDunning.com and effectively, Kessler’s Flying Circus” (Order 4:6-8); that “there does not
2 appear to be any other [DPS] corporate personnel [other than Hogan] who could be designated to
3 otherwise respond to discovery” (Order 5:24-25); that the Individual Defendants “ha[ve] been
4 advised by the U.S. Attorney’s Office in the Northern District of California that [they are] the
5 subject[s] of an ongoing criminal investigation involving the same allegations as those made in
6 the operative complaint in the above-captioned civil action” (*Id.* at 5;14-17); and that all three
7 Individual Defendants have invoked their Fifth Amendment rights against self-incrimination.

8 eBay argues that this decision is both contrary to law and clearly erroneous. eBay also
9 argues that Judge Trumbull erred in failing to address its motion to compel the Individual
10 Defendants to produce responsive documents that they previously had produced to the
11 government.

12 **1. Deferral of ruling on motions regarding the Entity Defendants**

13 **A. Contrary to law**

14 Judge Trumbull acknowledged that unlike individual defendants, “[a] collective entity
15 such as a partnership or corporation may not claim the [Fifth Amendment] privilege.” (Order
16 3:17 (citing *Braswell v. United States*, 487 U.S. 99, 104 (1988)).) She also recognized that “[t]he
17 corporation is obliged to ‘appoint an agent who could without fear of recrimination, furnish such
18 requested information as was available to the corporation.’” (*Id.* at 3:27-28 (citing *United States*
19 *v. Kordel*, 397 U.S. 1, 9 (1970) (internal citation and footnote omitted)).) However, the Order
20 relies upon *Kordel* for the proposition that “where no one can answer the interrogatories
21 addressed to the corporation without subjecting himself to ‘real and appreciable’ risk of self-
22 incrimination, . . . the appropriate remedy would be a protective order under Rule 30(b),
23 postponing civil discovery until termination of the criminal action.” *Kordel*, 397 U.S. at 9. This
24 reasoning necessarily implies that Brian and Hogan—both of whom are targets of a criminal
25 investigation—are the only individuals who could respond for the respective Entity Defendants
26 they control.

27 eBay contends that the Order misapplies *Kordel*. It points out that “multiple cases []
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1 require a collective entity to designate an agent to respond to discovery, even if that agent does
2 not have first-hand knowledge of the information requested.” (Pl.’s Obj. 7:5-7.) Among the
3 cases cited by eBay are two cases from the Northern District of Illinois that explicitly recognize
4 that a corporation’s attorney may serve as an agent where all other corporate individuals are
5 foreclosed from doing so. *See City of Chicago v. Reliable Truck Parts Co.*, No. 88 C 1458, 1989
6 WL 32923, at *3-4 (N.D. Ill. Mar. 31, 1989); *Cent. States v. Carstensen Freight Lines, Inc.*, No.
7 96 C 6252, 1998 WL 413490, at *4-5 (N.D. Ill. July 17, 1998).

8 eBay also contends that the Order is contrary to law because the Individual Defendants are
9 required to produce responsive documents on behalf of the Entity Defendants even if they are the
10 only possible agents: “[a] custodian’s production of documents on behalf of a collective entity **is**
11 **the act of the entity** and, as such, does not ‘amount to testifying’ by the custodian in a way that
12 implicates the custodian’s Fifth Amendment privilege.” (Pl.’s Obj. 7:21-23 (citing *United States*
13 *v. Blackman*, 72 F.3d 1418, 1427 (9th Cir. 1995) (emphasis in original)).) eBay argues that this
14 principle applies even where the custodian is the sole representative of the entity.

15 Next, eBay asserts that the Order is contrary to law “to the extent that it relied on
16 defendants’ unsupported ‘selection of documents’ theory.” (Pl.’s Obj. 8:14-15.) According to
17 eBay, Defendants argued before Judge Trumbull that the Individual Defendants would
18 incriminate themselves if they selected documents for production on their own behalf, but “the
19 Order appears to have applied that notion to production by the entities.” (*Id.* at 8:17-18.) eBay
20 cites the following passage from the Order: “[D]efendant Hogan is the only person who could
21 otherwise respond to discovery propounded on the corporation To require Mr. Hogan’s
22 counsel to produce responsive documents without any assistance from defendant Hogan is
23 untenable.” (Order 5:26-6:4.) eBay contends that this reasoning contradicts the established case
24 law establishing that production of documents by a corporate custodian is not testimonial.
25 Moreover, eBay argues that the cases cited by Defendants do not support the “selection of
26 documents” theory because the cases “simply recognize the general principle that the ‘act of
27 production’ by individuals (on their own behalf) is testimonial and incriminating where the
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1 government cannot independently identify and authenticate the documents at issue.” (Pl.’s Obj.
2 9:13-16.)

3 Finally, eBay objects to the Order’s reliance upon *Medina v. Argent Mortgage Co.*, No. 05-
4 CV-2905 RS, 2006 WL 1305230 (N.D. Cal. May 11, 2006). It points out that *Medina* addressed
5 only the appropriateness of a stay and “contained no analysis or discussion of whether a
6 corporation could refuse to provide discovery in an ongoing case based on the Fifth Amendment
7 privilege of a representative.” (Pl.’s Obj. 7 n.3.)

8 Although Defendants disagree with eBay’s legal analysis,² they rely heavily principally
9 upon Judge Trumbull’s application of *Kordel* and do not attempt to distinguish the cases cited by
10 eBay that hold that corporate defendants in situations such as that presented here must appoint an
11 agent even if the agent has no first-hand knowledge of the entity’s operations.

12 **B. Clearly erroneous**

13 eBay also argues that the Order was “based on several clear errors of fact and false
14 assumptions.” (Pl.’s Obj. 10:14-15.) First, it claims that the Order should have acknowledged
15 the existence of documents provided by third-party Rackspace to counsel for Brian, THI, and
16 BrianDunning.com. It asserts that these documents should be produced and that the Order does
17 not justify counsel’s withholding of them. The BD Defendants contend that the Order
18 specifically addressed the documents from Rackspace by finding that “eBay may move to compel
19 further discovery from third parties, including the co-location corporations known as Rackspace
20 US, Inc. and NetHere, Inc.” (Order 6:7-9.) In addition, the TD Defendants argue that they have
21 no access to documents held by Rackspace because they are not authorized on any account there.
22 eBay claims in its reply that Defendants’ representations regarding the Rackspace discovery are
23 false and again asserts that the documents are in the possession of counsel for the BD Defendants.

24 eBay also claims that the Order fails to recognize that KFC and DPS already have provided
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26 ²Defendants filed responses as three separate groups: Todd and DEI (“the TD
27 Defendants”); Brian, THI, and KFC (“BD Defendants”); and Hogan and DPS (“DPS
28 Defendants”).

1 substantive discovery responses, KFC in the form of responses to requests for admissions and
2 DPS in the form of supplemental responses to all three types of discovery. Both Defendants
3 provided this discovery under the signatures of their attorneys. According to eBay, the Order fails
4 to account for this previous production or to explain how it is “consistent with an inability to
5 respond without implicating the individuals’ Fifth Amendment rights.” (Pl.’s Obj. 11:21-22.)
6 eBay also contends that the Order assumes incorrectly that DPS refused to provide any discovery
7 based upon Hogan’s assertion of his Fifth Amendment privilege. eBay claims that DPS did not
8 refuse categorically to provide discovery, and that eBay’s motion as to DPS in fact was “an effort
9 to obtain complete responses that were not improperly [sic] limited by DPS, Inc.’s objections to
10 the definition of ‘DPS’ in eBay’s requests.” (*Id.* at 11:18-19.)

11 The BD Defendants argue that the documents they provided earlier pertained to an earlier
12 version of the complaint that was dismissed, were unverified, were not at issue in eBay’s motion
13 to compel, and “were made with the express notification to eBay that Brian Dunning was not
14 involved in the preparation of the response or the information contained therein.” (BD Defs.’
15 Resp. 15:3-4.) eBay contends that none of these facts justifies withholding discovery now and
16 that these very facts demonstrate that KFC can provide discovery without incriminating any
17 Individual Defendants.

18 The DPS Defendants claim that eBay’s argument regarding previous discovery is “without
19 merit” because the documents provided were DPS’s corporate formation documents and because
20 they “do not refer or relate to Plaintiff or its affiliate marketing program” but rather serve to
21 establish that Hogan is the “sole shareholder, officer, and director of the corporation.” (DPS
22 Defs.’ Resp. 10:16-17.) eBay argues that the documents nonetheless demonstrate that further
23 production from DPS is possible “with or without Hogan’s involvement.” (Pl.’s Reply 11:28.)

24 eBay next claims that the Order treats KFC inconsistently. It argues that while Judge
25 Trumbull deferred ruling on the motion to compel production from KFC on the theory that Brian
26 was the only person who could answer for the entity, she found that Todd or Todd’s wife could
27 act on behalf of KFC in consenting to the release of discovery from third-party Rackspace.

1 According to eBay, “[t]hese factual contradictions cannot be squared and undermine the Order’s
2 conclusion that only the individuals asserting the Fifth Amendment could respond for KFC.”
3 (Pl.’s Obj. 12:2-3.)

4 eBay asserts that the Order’s finding that ““Brian Dunning is the only person who can
5 respond to discovery on’ KFC is demonstrably false.” (*Id.* at 12:4-5 (citing Order 4:6-8).) It
6 contends both that the finding is inconsistent with KFC’s previous substantive discovery
7 responses and that because Judge Trumbull found that Todd may act on behalf of KFC as DEI’s
8 agent, “Brian Dunning is equally capable of acting as the agent of THI (the other general partner
9 in KFC).” (*Id.* at 12:8-10.) Defendants offer no response to these points.

10 Next, eBay argues that the Order’s conclusion that Todd’s wife is capable of consenting,
11 on behalf of KFC, to the release of responsive documents from Rackspace should apply equally
12 with respect to her capacity to respond to all discovery on behalf of KFC. In response, the BD
13 Defendants argue that “[r]esponding to discovery is fundamentally different than having the mere
14 capacity to sign a waiver on behalf of KFC as a partner of KFC. There was no finding, and eBay
15 offered no evidence, that Todd Dunning’s wife was involved in KFC to the extent she would
16 have any knowledge of the information requested by eBay by it [sic] discovery requests.” (BD
17 Defs.’ Resp. 14:21-24.)

18 Judge Trumbull granted eBay’s motion to compel further discovery from DEI because,
19 “[u]nlike the other corporate defendants, Todd Dunning and his wife are shareholders in” DEI
20 and Todd’s wife serves as the secretary for DEI so that she “has been able to respond to discovery
21 propounded on” DEI. (Order 4:27-28; 5:1-2.) eBay claims that the final clear error in the Order
22 is its failure to apply this same reasoning to the other Entity Defendants where “[t]here has been
23 no showing that Mrs. Dunning—despite being a shareholder of DEI—has any more knowledge
24 regarding DEI’s business than do any of the defendants’ attorneys” and where “Todd Dunning
25 and DEI have emphasized Mrs. Dunning’s limited knowledge.” (Pl.’s Obj. 12:22-26.) “If Mrs.
26 Dunning can select responsive documents on DEI’s behalf without assistance from the individual
27 defendants, any one of the defendants’ attorneys is certainly capable of doing so for the other
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1 entities, as demonstrated by DPS, Inc.’s previous production of documents.” (*Id.* at 12:28-13:3.)

2 **C. Analysis**

3 Recognizing that Fifth Amendment issues in civil cases inherently are difficult, this Court
4 respectfully declines, for several reasons, to adopt Judge Trumbull’s decision to defer ruling on
5 eBay’s motion to compel further discovery from the KFC, THI, BrianDunning.com, and DPS
6 Defendants. First, and most importantly, the Order overreads *Kordel*. The relevant language from
7 that case is as follows:

8 The respondents press upon us the situation where no one can answer the
9 interrogatories addressed to the corporation without subjecting himself to a ‘real and
10 appreciable’ risk of self-incrimination. For present purposes *we may assume* that in
11 such a case the appropriate remedy would be a protective order under Rule 30(b),
12 postponing civil discovery until termination of the criminal action. *But we need not*
13 *decide this troublesome question.* For the record before us makes clear that even
14 though the respondents had the burden of showing that the Government’s
15 interrogatories were improper, they never even asserted, let alone demonstrated, that
16 there was no authorized person who could answer the interrogatories without the
17 possibility of compulsory self-incrimination.

18 *Kordel*, 397 U.S. at 8-9 (emphasis added) (footnotes omitted). Because it is clear that *Kordel* did
19 not decide the “troublesome question” the respondents “press[ed] upon” it, it does not establish
20 the principle for which the Order cites it. None of the other cases cited by Defendants or in the
21 Order are on point.

22 Rather, the case law is consistent with *Kordel*’s recognition, to which the Order itself
23 refers, that a corporation is required to “appoint an agent who could, without fear of self-
24 incrimination, furnish such requested information as was available to the corporation.” *Id.* at 8
25 (footnote omitted). To the extent that the Order holds that corporations or other collective
26 entities need not meet this requirement when they are comprised of or controlled by a single
27 individual, this Court concludes that the Order is contrary to law.

28 Defendants’ argument that discovery may not be compelled because there are no
individuals with sufficient knowledge to respond on behalf of the entities is unavailing. As
several courts have recognized,

[t]he Federal Rules do not contemplate that the corporate officer or employee
responding to the interrogatories have first-hand personal knowledge of the facts

1 reflected in the answers. . . . The Federal Rules simply require that the corporation
2 select an agent who can “gather and obtain from books, records, other officers or
employees, or other sources, the information necessary to answer the interrogatories
3 . . .

4 *Cent. States*, 1998 WL 413490 at *4 (citation omitted); *see also* *Reliable Truck Parts*, 1989 WL
5 32923 at *3 (“The appointed agent need not have ‘first-hand personal knowledge’ of the facts
6 reflected in the answers.”). As eBay argues, the agent can be the Entity Defendants’ counsel,
7 even, as is the case here, where the same counsel represents both the entities and the individuals.
8 The court in *Reliable Truck Parts* faced this exact situation and concluded that:

9 The individual defendants, by choosing to maintain the same counsel as the
10 corporation, have themselves created the situation they call “absurd”—that the lawyer
11 as agent for the corporation would be answering interrogatories and producing
documents based upon information provided by the individual defendants. Suffice
it to say that the choice of counsel shouldn’t be a weapon to frustrate the pleading or
discovery processes:

12 Defense counsel urge, however, that they face a conflict between
13 representing the corporate defendants and their “duty to keep
14 employees informed of their right to refuse to answer.” The short
15 answer to that contention is that corporate counsel should not
16 represent individual employees if there is any conflict, as
17 innumerable cases have held.

18 *In Re Folding Carton Antitrust Litigation*, 76 F.R.D. [417, at] 419 [(D.C. Ill. 1977)].
19 *Reliable Truck Parts*, 1989 WL 32923 at *4; *see also* 8 Wright, Miller & Marcus, *Federal*
20 *Practice and Procedure* at 276 (“In any event the case [in which no one can answer
21 interrogatories on behalf of a corporation without subjecting himself or herself to a risk of self-
22 incrimination] is unlikely ever to arise since Rule 33(a) allows *any agent of the corporation,*
23 *even its attorney,* to answer interrogatories on behalf of a corporation.” (emphasis added)).

24 The record in this case supports the conclusion that discovery from these Entity
25 Defendants need not involve infringement upon the Individual Defendants’ Fifth Amendment
26 rights against self-incrimination. For example, there is no reason that Todd’s wife cannot
27 respond to discovery propounded on KFC when she is able to do so for DEI, an entity as to which
28 her knowledge is equally limited. In addition, the fact that KFC and DPS already have provided
substantive discovery—and that KFC has done so explicitly *without* Brian’s assistance—

1 demonstrates not only that they can continue to do so but also that the other Entity Defendants
2 can do so as well.

3 **2. Failure to address motions regarding the Individual Defendants**

4 eBay's motions to compel were not limited to discovery from the Entity Defendants but
5 also sought to compel production from the Individual Defendants of documents previously
6 provided to the government. eBay argues that the Order's failure to address this request at all
7 contravenes controlling authority that this material must be produced. "Because eBay's motion to
8 compel production by the individuals only of responsive documents already obtained from them
9 by the government—i.e., documents whose existence and location were a foregone conclusion to
10 the government—the production would not further incriminate defendants." (Pl.'s Obj. 5:1-4.)

11 The TD Defendants do not address the Order's alleged failure to address the issue, but
12 argue that the government has not obtained any documents from Todd and that he cannot retrieve
13 any documents the government has obtained from Brian. The BD Defendants contend that Judge
14 Trumbull did not ignore the issue and point to the briefing and length of oral argument as proof of
15 this fact. In attempting to explain the Order's treatment of this aspect of eBay's motion, the BD
16 Defendants argue that:

17 Judge Trumbull either (1) concluded that the act of producing the documents
18 requested by eBay would be testimonial and, as such, violative of Mr. Dunning [sic]
19 Fifth Amendment rights, or (2) . . . a stay of this action (or at least of discovery) is
required pending resolution of the criminal proceeding against Mr. Dunning. Either
way, Judge Trumbull got it right.

20 (BD Defs.' Resp. 4:22-27.) As eBay correctly argues in its reply, however, "the Order makes no
21 mention of the first possible 'conclusion' and . . . the latter 'conclusion' was not before Judge
22 Trumbull." (Pl.'s Reply 7:8-9.)

23 The BD Defendants also contend that Brian's production of any documents is testimonial
24 and would be testimonial here because it would provide information regarding "the scope and
25 extent of [Brian's] relationship to the documents," which are not a "foregone conclusion" of the
26 government's seizure of the documents. eBay argues, however, that, while producing documents
27 can be testimonial, it is not necessarily testimonial in all situations. eBay also argues that there is
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1 no case law to support the BD Defendants’ argument that the “foregone conclusion” analysis
2 requires that the government know of an individual’s relationship to certain documents in
3 addition to knowing of the documents’ existence and location.

4 As another possible justification for the denial of eBay’s motion to compel production of
5 documents already in government possession, the BD Defendants contend that eBay’s requests
6 infer the existence of the alleged “cookie stuffing” scheme such that Brian’s production in
7 response to the requests “would necessarily be admitting to incriminating facts such as his receipt
8 of money based on the manipulation of eBay’s Affiliate Program, his knowledge of technology
9 and techniques to manipulate eBay’s Affiliate Program, and his knowledge of software used to
10 erase electronic records and information.” (BD Defs.’ Resp. 8:5-8.) eBay, however, notes that
11 the production requested “would provide no information regarding which documents related to
12 which of eBay’s requests and, contrary to defendants’ arguments, not all of eBay’s requests are
13 even arguably incriminating.” (Pl.’s Reply 7:17-19.)

14 Finally, the BD Defendants claim that they do not have access to the documents seized by
15 the government and that the government has refused to return them. Moreover, they contend that
16 any documents held by Rackspace can and should be retrieved from Rackspace with the consent
17 of Todd or his wife and that “Brian Dunning has no obligation as to the Rackspace documents.”
18 (BD Defs.’ Resp. 8:24.)

19 The DPS Defendants make similar arguments. In addition, they argue that eBay “ignores
20 the fact that each particular document request requires an affirmative, corresponding response”
21 and that “any indication that responsive documents exist would result in a tacit admission based
22 on the scope of the request (i.e. that materials were used for a particular purpose, such as to
23 ‘manipulate’ or ‘interact’ with Plaintiff’s affiliate marketing program).” (DPS Defs.’ Resp.
24 14:17-20 (emphasis in original).) eBay contends that the DPS Defendants could accompany each
25 document they produce in the future with the same statement that they did when producing
26 documents on behalf of DPS: “Defendant agrees to produce all responsive documents within its
27 possession, custody or control” and that this statement would not implicate Hogan’s Fifth
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1 Amendment rights.

2 This Court concludes that Judge Trumbull should have addressed the merits of eBay's
3 motion as to the Individual Defendants. As to the substance of the motions, the Court concludes
4 that Defendants must produce the documents already in the government's possession to the extent
5 that such production is physically possible. While the Fifth Amendment prohibits compelling
6 acts that are testimonial and incriminating, *Fed. Sav. & Loan Ins. Corp. v. Rodrigues*, 717 F.
7 Supp. 1424, 1425 (N.D. Cal. 1998), Defendants cannot incriminate themselves merely by turning
8 over information already in the hands of the government agents investigating them. *Henry v.*
9 *Sneiders*, 490 F.2d 315 (9th Cir. 1974) (rejecting a claim of Fifth Amendment protection of
10 defendant's records because "even if the records were incriminating, their disclosure in the civil
11 case would not have tended to incriminate the defendant. Any incriminating information was
12 already in the hands of the prosecuting authorities."). To the extent Defendants believe that
13 selecting the documents corresponding to a given specific discovery request would itself be an act
14 protected by the Fifth Amendment, eBay has indicated that it is willing to accept the documents
15 "en masse," (Pl.'s Reply 10 n.4 (citing 11/13/09 Hearing Tr. at 53:16-17)).

16 IV. CONCLUSION

17 For the foregoing reasons, eBay's objections will be SUSTAINED.³ Accordingly, the
18 Court hereby modifies the Order as follows:

- 19 1. eBay's motions to compel production, interrogatories, and requests for admissions
20 from KFC, THI, BrianDunning.com, and DPS are granted; and

21 //

23 ³ eBay also argued that Judge Trumbull's assumption that document discovery would not
24 advance the litigation was clearly erroneous. Because the Court sustains its objections on other
25 grounds, it need not reach this issue.

26 In addition, as eBay argues in its reply, the TD Defendants' response primarily raises their
27 own objections to the Order. Pursuant to Federal Rule of Civil Procedure 72(a), the TD
28 Defendants had fourteen days to file their objections. Because they failed to do so, the Court will
not consider them. Fed. R. Civ. Pro. 72(a) ("A party may not assign as error a defect in the order
not timely objected to.").

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2. eBay's motions to compel all Defendants to produce all responsive documents previously produced to the government is granted. |

IT IS SO ORDERED.

DATED: 1/12/10



JEREMY FOGEL
United States District Judge