

1 DAVID R. EBERHART (S.B. #195474)  
 2 deberhart@omm.com  
 3 SHARON M. BUNZEL (S.B. #181609)  
 4 sbunzel@omm.com  
 5 NORA M. PUCKETT (S.B. #248743)  
 6 npuckett@omm.com  
 7 O'MELVENY & MYERS LLP  
 8 Two Embarcadero Center, 28th Floor  
 9 San Francisco, CA 94111  
 10 Telephone: (415) 984-8700  
 11 Facsimile: (415) 984-8701

12 Attorneys for Plaintiff eBay Inc.

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.,  
 24 BRIAN DUNNING,  
 25 BRIANDUNNING.COM, and DOES 1-  
 26 20,

27 Defendants.

Case No. C 08-4052 JF PVT

**JOINT CASE MANAGEMENT  
 STATEMENT AND [PROPOSED]  
 ORDER**

Conference Date: August 6, 2010  
 Time: 10:30 a.m.  
 Judge: Hon. Jeremy Fogel

1 This Case Management Statement and Proposed Order is jointly submitted by  
2 plaintiff eBay Inc. and defendants Digital Point Solutions, Inc., Shawn Hogan,  
3 Thunderwood Holdings, Inc., Brian Dunning, Briandunning.com, and Kessler's Flying  
4 Circus, and those parties request that the Court adopt it as its Case Management Order in  
5 this case. Those parties, through undersigned counsel, have met and conferred on the  
6 matters contained herein. eBay was unsuccessful in its attempts to contact the remaining  
7 defendants, who are proceeding Pro Se, prior to filing this Case Management Statement  
8 and Proposed Order.

9 **I. JURISDICTION AND SERVICE**

10 There have been no changes since the previous Joint Case Management Statement.

11 **II. FACTS**

12 There have been no changes since the previous Joint Case Management Statement.

13 **III. LEGAL ISSUES**

14 There have been no changes since the previous Joint Case Management Statement.

15 **IV. PENDING AND ANTICIPATED MOTIONS**

16 On June 24, 2010, Defendants Shawn Hogan and Brian Dunning were indicted.  
17 *United States v. Hogan*, CR 10-0495 JF (N.D. Cal. June 24, 2010); *United States v.*  
18 *Dunning*, CR 10-0494 JF (N.D. Cal. June 24, 2010). The indictments were based on the  
19 same alleged cookie stuffing scheme at issue in this civil action. On June 29, 2010, the  
20 United States filed a Notice of Related Case stating that defendants Shawn Hogan and  
21 Brian Dunning in the instant action were alleged to have engaged in the same cookie  
22 stuffing scheme that is the subject of the indictments. On July 7, 2010, the Court issued an  
23 order finding that the instant civil action and the aforementioned criminal cases are related.

24 On July 20, 2010, Defendants Thunderwood Holdings, Inc., Brian Dunning,  
25 BrianDunning.com, and Kessler's Flying Circus filed a motion to stay this civil action as  
26 against those Defendants pending resolution of the indictment and attendant criminal  
27 proceeding against defendant Brian Dunning. Footnote 2 of that motion indicated that the  
28 other defendants were not in agreement regarding the propriety of a stay. On July 21,

1 2010, this Court set a case management conference for August 6, 2010 at 10:30 a.m.

2 On July 27, 2010, all parties jointly stipulated and moved that this civil action be  
3 stayed in its entirety as to all parties until further ordered by the Court. The parties further  
4 stipulated and moved that the Court vacate the existing case management dates, including,  
5 but not limited to, the fact and expert discovery cut-off dates, the pretrial conference date,  
6 and the jury trial date. The parties also stipulated and moved that a further case  
7 management conference be set for February 11, 2011, approximately six months from the  
8 date of the stipulation, or as otherwise convenient for the Court. That joint stipulation and  
9 motion remain pending as of the filing of this Case Management Conference Statement.  
10 Defendants Thunderwood Holdings, Inc., Brian Dunning, BrianDunning.com, and  
11 Kessler's Flying Circus will withdraw their pending motion to stay once the Court signs the  
12 joint stipulation and order staying the case.

13 **V. AMENDMENT OF PLEADINGS**

14 There have been no changes since the previous Joint Case Management Statement.

15 **VI. EVIDENCE PRESERVATION**

16 There have been no changes since the previous Joint Case Management Statement.

17 **VII. DISCLOSURES**

18 There have been no changes since the previous Joint Case Management Statement.

19 **VIII. DISCOVERY PLAN**

20 As discussed in section IV above, in light of the indictments of defendants Shawn  
21 Hogan and Brian Dunning, all parties jointly stipulated and moved that this civil action be  
22 stayed in its entirety as to all parties until further ordered by the Court. Should the Court  
23 grant the requested stay, all currently pending discovery obligations and disputes will be  
24 held in abeyance until the lifting of the stay by this Court and the parties will revisit the  
25 discovery schedule at that time.

26 **IX. RELATED CASES**

27 There have been no changes since the previous Joint Case Management Statement.  
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1 **X. RELIEF**

2 There have been no changes since the previous Joint Case Management Statement.

3 **XI. SETTLEMENT AND ADR**

4 There have been no changes since the previous Joint Case Management Statement.

5 **XII. MAGISTRATE JUDGE**

6 There have been no changes since the previous Joint Case Management Statement.

7 **XIII. OTHER REFERENCES**

8 There have been no changes since the previous Joint Case Management Statement.

9 **XIV. NARROWING OF ISSUES**

10 There have been no changes since the previous Joint Case Management Statement.

11 **XV. EXPEDITED SCHEDULE**

12 There have been no changes since the previous Joint Case Management Statement.

13 **XVI. SCHEDULING**

14 As discussed in section IV above, the parties have stipulated and moved that a  
15 further case management conference be set for February 11, 2011, approximately six  
16 months from the date of the stipulation, or as otherwise convenient for the Court.

17 **XVII. TRIAL**

18 There have been no changes since the previous Joint Case Management Statement.

19 **XVIII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR**  
20 **PERSONS**

21 There have been no changes since the previous Joint Case Management Statement.

22 Dated: July 30, 2010

DAVID R. EBERHART  
SHARON M. BUNZEL  
NORA M. PUCKETT  
O'MELVENY & MYERS LLP

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26 By: /s/ David R. Eberhart  
David R. Eberhart

27 *Attorneys for Plaintiff*  
28 eBay Inc.

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Dated: July 30, 2010

SEYAMACK KOURETSCHIAN  
COAST LAW GROUP, LLP

By: /s/ Ross Campbell  
Ross Campbell

*Attorneys for Defendants*  
Digital Point Solutions, Inc. and Shawn  
Hogan

Dated: July 30, 2010

LEO J. PRESIADO  
RUS, MILIBAND & SMITH, A  
PROFESSIONAL CORPORATION

By: /s/ Leo J. Presiado  
Leo J. Presiado

*Attorneys for Defendants*  
Thunderwood Holdings, Inc., Brian  
Dunning and BrianDunning.com

Dated: July 30, 2010

PATRICK K. MCCLELLAN  
LAW OFFICE OF PATRICK K.  
MCCLELLAN

By: /s/ Patrick K. McClellan  
Patrick K. McClellan

*Attorney for Defendant*  
Kessler's Flying Circus

**ATTESTATION**

Pursuant to General Order No. 45 X(B), I hereby attest that concurrence in the  
filing of this document has been obtained from each of the above-listed signatories.

By: /s/ David R. Eberhart  
David R. Eberhart

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**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order are hereby adopted by this Court as the Case Management Order for the case, and the parties are ordered to comply with this Order. This action is stayed in its entirety as to all parties until further order by the Court. The Court hereby vacates all existing case management dates. A further case management conference will be held on February 11, 2011 at \_\_\_\_\_.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Jeremy Fogel  
United States District Court Judge  
Northern District of California

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