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10 Attorneys for Defendants, SHAWN HOGAN
 11 and DIGITAL POINT SOLUTIONS, INC.

12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN JOSE DIVISION**

12 EBAY, INC.,)	Case No. CV 08-04052 JF PVT
)	
13 Plaintiff,)	STIPULATION, MOTION FOR
14 v.)	ADMINISTRATIVE RELIEF, AND
)	[PROPOSED] ORDER STAYING CIVIL
15 DIGITAL POINT SOLUTIONS, INC.,)	ACTION
16 SHAWN HOGAN, KESSLER’S FLYING)	
17 CIRCUS, THUNDERWOOD HOLDINGS,)	
18 INC., TODD DUNNING, DUNNING)	
19 ENTERPRISE, INC., BRIAN DUNNING,)	Judge: Hon. Jeremy Fogel
20 BRIANDUNNING.COM, and DOES 1-20,)	Dept.: Courtroom 3
)	
21 Defendants.)	
)	
)	

22 **THE PARTIES TO THE ABOVE-ENTITLED ACTION HEREBY STIPULATE TO**
 23 **AND MOVE FOR THE FOLLOWING RELIEF PURSUANT TO CIVIL LOCAL RULE 7-**
 24 **11:**

- 25 1. Plaintiff alleges that Defendants, as participants in eBay’s affiliate marketing
 26 program, engaged in cookie stuffing intended to defraud Plaintiff.
- 27 2. Defendants previously moved to stay this action under *Keating v. Office of Thrift*
 28 *Supervision* (9th Cir. 1995) 45 F.3d 322, pending the resolution of parallel criminal investigations
 undertaken by the United States Attorney’s Office and Federal Bureau of Investigation.

1 3. On February 25, 2010, the Court issued an Order denying, without prejudice,
2 Defendants' motions to stay this civil action. The primary basis for the denial of the motions was
3 that no indictment had been returned as to any Defendant. During the hearing on Defendants'
4 motions to stay, the Court stated that "[i]f there's an indictment, then we have to recalibrate the
5 entire case." (1/29/10 Tr. 18.)

6 4. Defendants Shawn Hogan and Brian Dunning were indicted on June 24, 2010.
7 *United States v. Hogan*, CR 10-0495 JF (N.D. Cal. June 24, 2010); *United States v. Dunning*, CR
8 10-0494 JF (N.D. Cal. June 24, 2010). The indictments are based on the same alleged cookie
9 stuffing scheme at issue in this civil action.

10 5. On June 29, 2010, the United States filed a Notice of Related Case stating that
11 defendants Shawn Hogan and Brian Dunning in the instant action are alleged to have engaged in
12 the same cookie stuffing scheme that is the subject of the indictments. On July 7, 2010, the Court
13 issued an order finding that the instant civil action and the aforementioned criminal cases are
14 related.

15 6. Based on the foregoing, all parties to this action hereby stipulate and move that
16 this civil action be stayed in its entirety as to all parties until further order by the Court.

17 7. The parties further stipulate and move that the Court vacate the existing case
18 management dates, including but not limited to the fact and expert discovery cut-off dates, the
19 pretrial conference date, and the jury trial date. The parties also stipulate and move that a further
20 case management conference be set for February 11, 2011, approximately six months from the date
21 of this stipulation, or as otherwise convenient for the Court.

22
23 **IT IS SO STIPULATED.**

24 DATED: July 28, 2010

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

25
26 By: /s/ David R. Eberhart
27 David R. Eberhart

28 Attorneys for Plaintiff EBAY, INC.

1 DATED: July 28, 2010

SEYAMACK KOURETSCHIAN
ROSS M. CAMPBELL
COAST LAW GROUP LLP

3 By: /s/ Ross M. Campbell
4 Ross M. Campbell

5 Attorneys for Defendants SHAWN HOGAN and
6 DIGITAL POINT SOLUTIONS, INC.

7
8 DATED: July 28, 2010

LEO J. PRESIADO
RUS, MILIBAND & SMITH

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

11 Attorneys for Defendants THUNDERWOOD
12 HOLDINGS, INC., BRIAN DUNNING and
13 BRIANDUNNING.COM

14 DATED: July 28, 2010

PATRICK K. MCCLELLAN
LAW OFFICE OF PATRICK K. MCCLELLAN

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

18 Attorneys for Defendant KESSLER's FLYING
19 CIRCUS

20
21 DATED: July 28, 2010

TODD DUNNING

22 /s/ Todd Dunning

23 *Pro Se*

24
25 DATED: July 28, 2010

DUNNING ENTERPRISE, INC.

27 By: /s/ Todd Dunning

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ORDER

Pursuant to the foregoing stipulation and motion, and good cause appearing therefor, IT IS HEREBY ORDERED that 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 10:30 am.

IT IS SO ORDERED.

Dated: 7/30/10



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