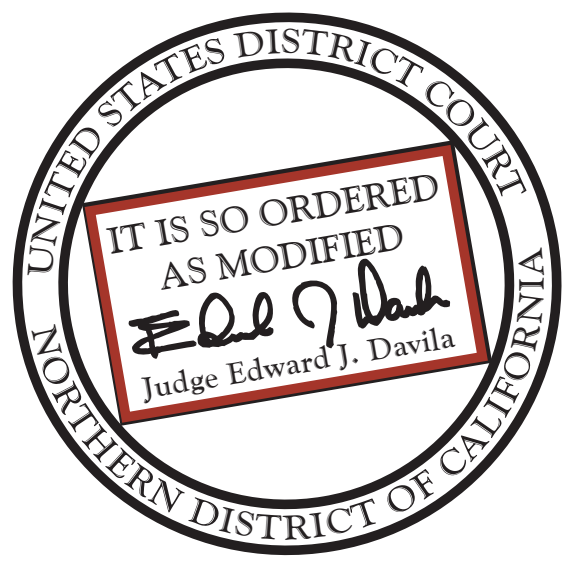


1 DAVID R. EBERHART (S.B. #195474)
 2 deberhart@omm.com
 3 SHARON M. BUNZEL (S.B. #181609)
 4 sbunzel@omm.com
 5 O'MELVENY & MYERS LLP
 Two Embarcadero Center, 28th Floor
 San Francisco, CA 94111
 Telephone: (415) 984-8700

6 Attorneys for Plaintiff
 7 EBAY INC.



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

12	EBAY INC.,)	Case No. CV 08-04052-EJD-PSG
13)	
14	Plaintiff,)	STIPULATION AND PROPOSED
15	v.)	ORDER CONTINUING CASE
16)	MANAGEMENT CONFERENCE
17	DIGITAL POINT SOLUTIONS, INC.,)	
18	SHAWN HOGAN, KESSLER'S FLYING)	
19	CIRCUS, THUNDERWOOD HOLDINGS,)	
20	INC., TODD DUNNING, DUNNING)	Judge: Hon. Edward J. Davila
21	ENTERPRISE, INC., BRIAN DUNNING,)	Dept.: Courtroom 1
22	BRIANDUNNING.COM, and DOES 1-20,)	
23	Defendants.)	

24 **THE PARTIES TO THE ABOVE-ENTITLED ACTION HEREBY STIPULATE**
 25 **PURSUANT TO CIVIL LOCAL RULES 7-12 AND 16-2:**

- 26 1. Plaintiff alleges that Defendants, as participants in eBay's affiliate marketing
 27 program, engaged in cookie stuffing intended to defraud Plaintiff. Defendants deny Plaintiff's
 28 allegations.
2. On or about October 15, 2009, Defendants moved to stay this action under *Keating*
v. Office of Thrift Supervision, 45 F.3d 322 (9th Cir. 1995), pending resolution of parallel
 criminal investigations undertaken by the United States Attorney's Office and Federal Bureau of

1 Investigation concerning the same alleged cookie stuffing scheme at issue in this civil action.

2 3. On February 25, 2010, the Court issued an Order denying, without prejudice,
3 Defendants' motions to stay this civil action. The primary basis for the denial of the motions was
4 that no indictment had been returned as to any Defendant.

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

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

14 6. Based on the foregoing, on July 28, 2010, the parties to this action stipulated and
15 moved that this civil action be stayed in its entirety as to all parties until further order by the
16 Court. The parties also stipulated and moved the Court to vacate the existing case management
17 dates, including but not limited to the fact and expert discovery cut-off dates, the pretrial
18 conference date, and the jury trial date. The parties stipulated and moved that a further case
19 management conference be set for February 11, 2011.

20 7. On August 3, 2010, the Court, pursuant to the parties' stipulation and motion,
21 stayed the case in its entirety as to all parties and vacated all existing case management dates.
22 The Court set a further case management conference for February 11, 2011 at 10:30 a.m.

23 8. Thereafter, on February 10 and August 5, 2011, pursuant to the parties' stipulation,
24 the Court entered successive orders continuing the case management conferences in light of the
25 pending criminal proceedings. After reassignment to this Court, this matter was set for further
26 case management conference on January 13, 2012 at 10:00 a.m.

27 9. The criminal cases against defendants Shawn Hogan and Brian Dunning are
28 ongoing. On November 7, 2011, the Court set trial dates for *United States v. Dunning* and

1 *United States v. Hogan* on October 23, 2012 and January 15, 2013, respectively.

2 10. The parties stipulate and request that the Court continue the case management
3 conference scheduled for January 13, 2012 10:00 a.m. until June 8, 2012, or as otherwise
4 convenient for the Court. If either or both of the criminal cases are resolved prior to the
5 rescheduled case management conference, the parties shall timely inform the Court.

6 11. Notwithstanding the foregoing, the parties further stipulate that any party may
7 move at any time to lift the current stay or to set a case management conference before June 8,
8 2012.

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1 **IT IS SO STIPULATED.**

2 DATED: December 13, 2011

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

3
4
5 By: /s/ David R. Eberhart
David R. Eberhart

6 Attorneys for Plaintiff
7 EBAY INC.

8 DATED: December 13, 2011

SEYAMACK KOURETSCHIAN
ROSS M. CAMPBELL
COAST LAW GROUP LLP

9
10 By: /s/ Ross M. Campbell
Ross M. Campbell

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

14 DATED: December 13, 2011

LEO J. PRESIADO
RUS, MILIBAND & SMITH

15
16 By: /s/ Leo J. Presiado
Leo J. Presiado

17
18 Attorneys for Defendants
19 THUNDERWOOD HOLDINGS, INC., BRIAN
DUNNING and BRIANDUNNING.COM

20 DATED: December 13, 2011

PATRICK K. MCCLELLAN
LAW OFFICE OF PATRICK K. MCCLELLAN

21
22 By: /s/ Patrick K. McClellan
Patrick K. McClellan

23
24 Attorneys for Defendant
25 KESSLER's FLYING CIRCUS
26
27
28

1 DATED: December 13, 2011

TODD DUNNING

2

By: /s/ Todd Dunning
Todd Dunning

3

4

Pro Se

5

6 DATED: December 13, 2011

DUNNING ENTERPRISE, INC.

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By: /s/ Todd Dunning
Todd Dunning

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ATTESTATION

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Pursuant to General Order No. 45X(B), I hereby attest that concurrence in the filing of this

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document has been obtained from each of the above-listed signatories.

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DATED: December 13, 2011

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

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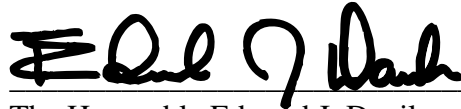
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PROPOSED ORDER

Pursuant to the foregoing stipulation, and good cause appearing therefor, IT IS HEREBY ORDERED that the case management conference scheduled for January 13, 2012 at 10:00 a.m. is VACATED. Since it appears at this time that the stay imposed in this case will continue in effect into 2013, the Clerk shall administratively close this action. The parties shall submit a joint status report apprising the court of any developments which may affect the stay no later than April 15, 2012, and shall submit a similar report every three (3) months thereafter. This Order shall not prevent either party from seeking to reopen this case and lift the stay to set a Case Management Conference or request other relief should the circumstances warrant.

IT IS SO ORDERED.

Dated: December 15, 2011



The Honorable Edward J. Davila
United States District Court Judge
Northern District of California