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 8 and DIGITAL POINT SOLUTIONS, INC.

9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN JOSE DIVISION**

12	EBAY, INC.,	)	Case No. CV 08-04052 JF PVT
)	
13	Plaintiff,	)	DEFENDANTS DIGITAL POINT
		)	SOLUTIONS, INC. AND SHAWN
14	v.	)	HOGAN’S REQUEST FOR JUDICIAL
		)	NOTICE IN SUPPORT OF PARTIAL
15	DIGITAL POINT SOLUTIONS, INC., SHAWN	)	MOTION TO DISMISS FOR FAILURE
	HOGAN, KESSLER’S FLYING CIRCUS,	)	TO STATE A CLAIM
16	THUNDERWOOD HOLDINGS, INC., TODD	)	[FRCP RULE 12(b)(6)]
	DUNNING, DUNNING ENTERPRISE, INC.,)	
17	BRIAN DUNNING, BRIANDUNNING.COM,)	
	and Does 1-20,	)	Date: December 12, 2008
18		)	Time: 9:00 a.m.
		)	Dept.: Courtroom 3
19	Defendants.)	
)	
20)	

21
 22 **I. SUMMARY OF REQUEST**

23 Defendants DIGITAL POINT SOLUTIONS, INC. and SHAWN HOGAN, in support of their
 24 partial motion to dismiss Plaintiff EBAY, INC.’s First Amended Complaint pursuant to Federal Rule of
 25 Civil Procedure 12(b)(6), request that the Court take judicial notice of the following certified records of
 26 the California Secretary of State, true and correct copies of which are attached hereto:

27 //./

1 EXHIBIT

DESCRIPTION

2 1.

Certified Records of the California Secretary of State consisting of
the Articles of Incorporation of Digital Point Solutions, Inc., filed
3 May 14, 2007 (certified on October 3, 2008).

4 The Court should take judicial notice of Exhibit 1 under Federal Rule of Evidence 201.

5 **II. JUDICIAL NOTICE IS PROPER**

6 A court may take judicial notice of matters of public record without converting a motion to
7 dismiss into a motion for summary judgment. *MGIC Indem. Corp. v. Weisman* (9th Cir. 1986) 803 F.2d
8 500, 504. In that regard, certified public records kept by the Secretary of State, including a corporation’s
9 articles of incorporation, “fall directly into the category of items that the Ninth Circuit generally
10 considers proper for judicial notice.” *Grassmueck v. Barnett* (W.D. Wash. 2003) 281 F. Supp. 2d 1227,
11 1232. As such, courts may take judicial notice of such articles as part of a 12(b)(6) motion without
12 converting the motion into summary judgment. *Id.* Under Rule 201(d), “A court shall take judicial
13 notice if requested by a party and supplied with the necessary information.”

14 Based on the above, Defendants respectfully request that the Court take judicial notice of the
15 certified records of the Secretary of State set forth in Exhibit 1 hereto.

16 DATED: October 27, 2008

s/Seyamack Kouretchian
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