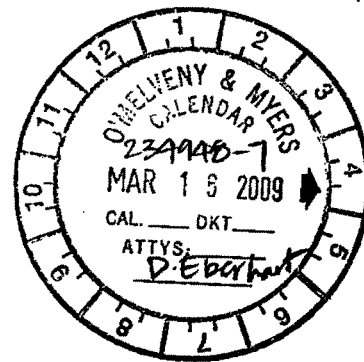


# **EXHIBIT 12**



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

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

15 EBAY, INC., )  
16 )  
17 Plaintiff, )  
18 )  
19 v. )  
20 DIGITAL POINT SOLUTIONS, INC., SHAWN )  
21 HOGAN, KESSLER'S FLYING CIRCUS, )  
22 THUNDERWOOD HOLDINGS, INC., TODD )  
23 DUNNING, DUNNING ENTERPRISE, INC., )  
24 BRIAN DUNNING, BRIANDUNNING.COM, )  
25 and Does 1-20, )  
26 Defendants. )  
27 )  
28 )

Case No. CV 08-04052 JF PVT  
**DEFENDANT DIGITAL POINT SOLUTION, INC.'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION (SET ONE)**

22 PROPOUNDING PARTY: Plaintiff EBAY, INC.

23 RESPONDING PARTY: Defendant DIGITAL POINT SOLUTIONS, INC.

24 SET NUMBER: One

25  
26 Defendant DIGITAL POINT SOLUTIONS, INC. ("Defendant") hereby responds to the Plaintiff  
27 EBAY, INC.'s ("Plaintiff's") First Set of Requests for Admission, as follows:  
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### I. PRELIMINARY STATEMENT

Defendant SHAWN HOGAN ("Mr. Hogan") has asserted his privilege against self-incrimination under the Fifth Amendment to the United States Constitution (*United States v. Balsys* (1998) 524 U.S. 666, 672; *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77); the Federal Rules of Evidence, Rule 501; the California Constitution, Article 1, Section 15; and California Evidence Code section 940. The provision of any responses by Defendant hereunder shall not be construed to be a waiver of the same.

Defendant further objects because conducting discovery is premature and inappropriate at this time. FBI Special Agent Melanie Adams and Assistant United States Attorney Kyle F. Walding inform that Defendant is the subject of a grand jury investigation and that it is anticipated that criminal charges will be filed. Upon the transfer of this action to the appropriate forum, Defendant intends to seek a stay of this action (and/or any other appropriate relief), including a stay of all discovery in this matter, pending the resolution of any potential criminal proceedings and/or until the statute of limitations on any such criminal proceedings has run. To the extent Mr. Hogan determines that there is no longer a threat of criminal prosecution and/or elects to withdraw his assertion of the privilege against self-incrimination, Defendant expressly reserves the right to supplement these responses accordingly (in whole or in part), and to object to the use or disclosure of the following responses for any purpose whatsoever.

Defendant further objects to the subject interrogatories in that Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was granted with leave to amend as to Plaintiff's claims under the Racketeer Influenced and Corrupt Organizations Act and other fraud-based claims and discovery is therefore premature. *Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 178 (5th Cir. 1997) (in fraud cases, the requisite elements must be adequately laid out "before access to the discovery process is granted." (emphasis in original)).

Defendant further objects to the definitions set forth in Plaintiff's requests as compound, vague and ambiguous; these objections further include, but are not limited to, the following: "DPS" is overbroad, unduly burdensome and oppressive in that it purports to apply to third parties collectively and/or individually, to information subject to the attorney-client privilege, and purports to seek responses from Mr. Hogan as phrased. "eBay" is further unduly burdensome and oppressive in that the phrases "eBay's internationally operated websites," and "any and all divisions, subdivisions, departments or

1 subsidiaries of eBay” reference information that is within Plaintiff’s control and/or is unknown to  
 2 Defendant. Defendant further objects because the term “Cookie Stuffing” is vague and ambiguous  
 3 Defendant incorporates each of the foregoing objections in Defendant’s responses below.

## 4 **II. RESPONSES**

### 5 **REQUEST FOR ADMISSION NO. 1**

6 Admit that DPS conducted business with eBay prior to May 14, 2007.

#### 7 **Response to Request for Admission No. 1:**

8 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
 9 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
 10 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
 11 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
 12 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
 13 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
 14 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
 15 POINT SOLUTIONS, INC. conducted business with Plaintiff at any time.

### 16 **REQUEST FOR ADMISSION NO. 2**

17 Admit that DPS conducted business with eBay during at least some portion of 2006.

#### 18 **Response to Request for Admission No. 2:**

19 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
 20 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
 21 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
 22 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
 23 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
 24 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
 25 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
 26 POINT SOLUTIONS, INC. conducted business with Plaintiff at any time.

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1 **REQUEST FOR ADMISSION NO. 3**

2 Admit that DPS conducted business with eBay during at least some portion of 2005.

3 **Response to Request for Admission No. 3:**

4 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
5 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
6 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
7 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
8 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
9 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
10 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
11 POINT SOLUTIONS, INC. conducted business with Plaintiff at any time.

12 **REQUEST FOR ADMISSION NO. 4**

13 Admit that DPS conducted business with eBay during at least some portion of 2004.

14 **Response to Request for Admission No. 4:**

15 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
16 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
17 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
18 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
19 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
20 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
21 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
22 POINT SOLUTIONS, INC. conducted business with Plaintiff at any time.

23 **REQUEST FOR ADMISSION NO. 5**

24 Admit that DPS conducted business with eBay during at least some portion of 2003.

25 **Response to Request for Admission No. 5:**

26 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
27 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
28 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the

1 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
2 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
3 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
4 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
5 POINT SOLUTIONS, INC. conducted business with Plaintiff at any time.

6 **REQUEST FOR ADMISSION NO. 6**

7 Admit that DPS participated in an eBay Affiliate Marketing Program or programs.

8 **Response to Request for Admission No. 6:**

9 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
10 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
11 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
12 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
13 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
14 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
15 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
16 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs.

17 **REQUEST FOR ADMISSION NO. 7**

18 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
19 utilized software programs and/or code that caused some Users' computers to access an eBay website  
20 without the User's knowledge.

21 **Response to Request for Admission No. 7:**

22 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
23 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
24 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
25 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
26 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
27 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
28 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL

1 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
2 denies this request.

3 **REQUEST FOR ADMISSION NO. 8**

4 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
5 utilized software programs and/or code that caused some Users' computers to access an eBay web server  
6 without the User's knowledge.

7 **Response to Request for Admission No. 8:**

8 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
9 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
10 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
11 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
12 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
13 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
14 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
15 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
16 denies this request.

17 **REQUEST FOR ADMISSION NO. 9**

18 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
19 utilized software programs and/or code that redirected a User to an eBay website without the User  
20 knowingly clicking an Advertisement Link.

21 **Response to Request for Admission No. 9:**

22 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
23 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
24 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
25 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
26 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
27 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
28 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL

1 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
2 denies this request.

3 **REQUEST FOR ADMISSION NO. 10**

4 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
5 utilized software programs and/or code that redirected a User to an eBay web server without the User  
6 knowingly clicking an Advertisement Link.

7 **Response to Request for Admission No. 10:**

8 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
9 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
10 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
11 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
12 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
13 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
14 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
15 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
16 denies this request.

17 **REQUEST FOR ADMISSION NO. 11**

18 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
19 utilized software programs and/or code that performed Cookie Stuffing.

20 **Response to Request for Admission No. 11:**

21 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
22 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
23 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
24 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
25 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
26 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
27 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
28 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis



1 denies this request.

2 **REQUEST FOR ADMISSION NO. 12**

3 Admit that DPS used methods, techniques and/or technological measures to avoid detection by  
4 eBay of certain aspects of how DPS interacted with eBay's Affiliate Marketing Program or programs.

5 **Response to Request for Admission No. 12:**

6 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
7 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
8 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
9 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
10 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
11 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
12 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
13 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any  
14 such methods, techniques or measures.

15 **REQUEST FOR ADMISSION NO. 13**

16 Admit that DPS used methods, techniques and/or technological measures to avoid detection by  
17 Commission Junction of certain aspects of how DPS interacted with eBay's Affiliate Marketing Program  
18 or programs.

19 **Response to Request for Admission No. 13:**

20 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
21 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
22 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
23 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
24 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
25 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
26 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
27 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any  
28 such methods, techniques or measures.

1 **REQUEST FOR ADMISSION NO. 14**

2 Admit that DPS utilized methods, techniques and/or technological measures to avoid detection  
3 by eBay of Cookie Stuffing caused by DPS.

4 **Response to Request for Admission No. 14:**

5 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
6 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
7 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
8 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
9 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
10 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
11 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
12 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any  
13 such methods, techniques or measures.

14 **REQUEST FOR ADMISSION NO. 15**

15 Admit that DPS utilized methods, techniques and/or technological measures to avoid detection  
16 by Commission Junction of Cookie Stuffing caused by DPS.

17 **Response to Request for Admission No. 15:**

18 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
19 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
20 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
21 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
22 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
23 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
24 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
25 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any  
26 such methods, techniques or measures.

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1 **REQUEST FOR ADMISSION NO. 16**

2 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
3 utilized software and/or code to determine the geographic location of a User.

4 **Response to Request for Admission No. 16:**

5 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
6 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
7 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
8 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
9 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
10 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
11 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
12 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
13 denies this request.

14 **REQUEST FOR ADMISSION NO. 17**

15 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
16 utilized software and/or code to determine whether a User was located in San Jose, CA.

17 **Response to Request for Admission No. 17:**

18 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
19 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
20 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
21 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
22 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
23 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
24 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
25 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
26 denies this request.

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1 **REQUEST FOR ADMISSION NO. 18**

2 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
3 utilized software and/or code to determine whether a User was located in Santa Barbara, CA.

4 **Response to Request for Admission No. 18:**

5 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
6 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
7 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
8 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
9 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
10 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
11 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
12 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
13 denies this request.

14 **REQUEST FOR ADMISSION NO. 19**

15 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
16 utilized software and/or code that would disable or not engage DPS's Cookie Stuffing technology if a  
17 User's computer was located in San Jose, CA.

18 **Response to Request for Admission No. 19:**

19 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
20 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
21 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
22 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
23 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
24 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
25 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
26 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
27 denies this request.

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1 **REQUEST FOR ADMISSION NO. 20**

2 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
3 utilized software and/or code that would disable or not engage DPS's Cookie Stuffing technology if a  
4 User's computer was located in Santa Barbara, CA.

5 **Response to Request for Admission No. 20:**

6 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
7 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
8 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
9 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
10 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
11 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
12 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
13 POINT SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis  
14 denies this request.

15 **REQUEST FOR ADMISSION NO. 21**

16 Admit that DPS received commissions from eBay, whether directly or through Commission  
17 Junction, that were based, in whole or in part, on Users whose computers were directed to eBay's website  
18 without the User's knowledge.

19 **Response to Request for Admission No. 21:**

20 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
21 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
22 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
23 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
24 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
25 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
26 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
27 POINT SOLUTIONS, INC. received any commissions from eBay at any time.

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1 **REQUEST FOR ADMISSION NO. 22**

2 Admit that DPS received commissions from eBay, whether directly or through Commission  
3 Junction, that were based, in whole or in part, on Users who had never actually clicked on a  
4 DPS-sponsored eBay advertisement link.

5 **Response to Request for Admission No. 22:**

6 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
7 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
8 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
9 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
10 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
11 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
12 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
13 POINT SOLUTIONS, INC. received any commissions from eBay at any time.

14 **REQUEST FOR ADMISSION NO. 23**

15 Admit that DPS received commissions from eBay, whether directly or through Commission  
16 Junction, that were based, in whole or in part, Cookie Stuffing caused by DPS.

17 **Response to Request for Admission No. 23:**

18 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
19 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
20 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
21 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
22 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
23 Defendant incorporates the above Preliminary Statement herein by reference in full. Subject to and  
24 without waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL  
25 POINT SOLUTIONS, INC. received any commissions from eBay at any time.

26 **REQUEST FOR ADMISSION NO. 24**

27 Admit that DPS engaged in Cookie Stuffing with the intent to defraud eBay.

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1 Response to Request for Admission No. 24:

2       Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
3 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
4 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
5 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
6 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
7 Defendant incorporates the above Preliminary Statement herein by reference in full.

8 **REQUEST FOR ADMISSION NO. 25**

9       Admit that DPS defrauded eBay.

10 Response to Request for Admission No. 25:

11       Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
12 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Defendant further objects to  
13 this request on the grounds that Mr. Hogan has invoked his privilege against self incrimination under the  
14 Fifth Amendment to the United States Constitution; the Federal Rules of Evidence, Rule 501; the  
15 California Constitution, Article 1, Section 15; and California Evidence Code section 940. Further,  
16 Defendant incorporates the above Preliminary Statement herein by reference in full.

17 DATED: March 12, 2009

COAST LAW GROUP LLP

18  
19  
20 By: 

Ross M. Campbell

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