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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LUKE KNOWLES,

Plaintiff,

v.

EBAY, INC., et al.,

Defendants.

No. C 12-5211 PJH

**ORDER GRANTING MOTIONS  
TO DISMISS**

Defendants' motions to dismiss the complaint for failure to state a claim came on for hearing before this court on March 6, 2013. Plaintiff Luke Knowles appeared by his counsel Matthew T. Hurst, James Mills, and Matthew T. Heffner. Defendants eBay, Inc. and eBay Insurance Service, Inc. appeared by their counsel Fred R. Puglisi. Defendant Brown & Brown of Missouri, Inc. appeared by its counsel Joseph E. Addiego. Defendant Fireman's Fund Insurance Company appeared by its counsel Jodi K. Swick and Eric J. Knapp. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby GRANTS the motion as follows and for the reasons stated at the hearing.

1. The second cause of action for negligence, which is asserted against eBay Insurance Service, Inc., and Brown and Brown of Missouri, Inc., only, is DISMISSED with leave to amend to allege facts supporting the elements of the claim – in particular duty and breach – as to each of those two defendants.

2. The third cause of action for rescission and the fifth cause of action for unjust enrichment are DISMISSED with prejudice, as neither is an independent cause of action.

3. The fourth cause of action for illusory contract, the sixth cause of action for

1 unconscionable contract, and the seventh cause of action for unilateral mistake are  
2 DISMISSED with leave to amend to state a single cause of action for breach of contract or  
3 other contract-related claim, as it is not clear whether plaintiff is asserting that there was or  
4 was not a contract to which he was a party or third-party beneficiary. Each defendant's role  
5 must be specifically identified.

6         4.       The § 17200 claim is DISMISSED with leave to amend to allege facts  
7 supporting the claim of "unlawful" and "unfair" business practices, as those terms have  
8 been construed by the courts, as to each defendant. In particular, plaintiff must identify the  
9 predicate law which he claims has been violated, and must identify the alleged "unfair"  
10 practices and explain why they are unfair.

11         5.       The first amended complaint must specify facts supporting each cause of  
12 action, as to each defendant. No new parties may be added and no new claims or theories  
13 may be pled unless plaintiff first obtains leave of court.

14         6.       The first amended complaint shall be filed no later than April 3, 2013.  
15 Defendants' response shall be filed no later than May 1, 2013.

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17 **IT IS SO ORDERED.**

18 Dated: March 7, 2013



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PHYLLIS J. HAMILTON  
United States District Judge

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