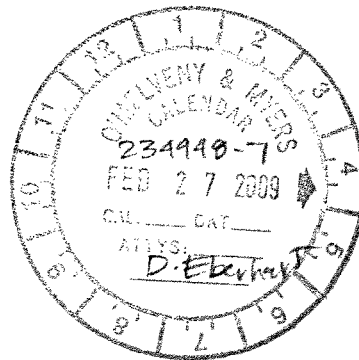


EXHIBIT 8



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6 Attorneys for Defendants Todd Dunning
and Dunning Enterprise, Inc

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

11 EBAY, INC.,

12 Plaintiff,

13 v.

14 DIGITAL POINT SOLUTIONS, INC., SHAWN
15 HOGAN, KESSLER'S FLYING CIRCUS,
16 THUNDERWOOD HOLDINGS, INC., TODD
17 DUNNING, DUNNING ENTERPRISE, INC.,
18 BRIAN DUNNING, BRIANDUNNING.COM,
AND DOES 1-20,

Defendants.

CASE NO.: CV-08-4052 JF

**DEFENDANT DUNNING
ENTERPRISE, INC.'S RESPONSES
TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION**

19 PROPOUNDING PARTY: PLAINTIFF EBAY INC.

20 RESPONDING PARTY: DEFENDANT DUNNING ENTERPRISE, INC.

21 SET NUMBER: ONE

22 Defendant Dunning Enterprise, Inc. ("DEI") hereby submits the following objections and
23 responses to the Request for Production of Documents Set One propounded by Plaintiff Ebay, Inc.
24 ("Plaintiff").
25
26
27
28

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1 GENERAL STATEMENT

2 Todd Dunning has invoked his privilege against self-incrimination pursuant to the Fifth
3 Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of
4 Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
5 section 940. Since Mr. Dunning is the sole shareholder and sole representative of DEI, and Mr.
6 Dunning declines to sign these discovery responses on behalf of DEI, counsel for DEI is signing these
7 responses pursuant to Federal Rules of Civil Procedure Rule 26(g). These responses to requests for
8 documents directed at DEI are not a waiver of Mr. Dunning's privilege.

9 Furthermore, the Federal Bureau of Investigation has seized all documents and computers,
10 disk drives, hard drives, cell phones and servers containing information potentially related to this
11 matter. Assistant United States Attorney Kyle F. Waldinger in charge of this investigation has refused
12 all requests to provide defendants with a copy of the material seized by the FBI. Those items and
13 records may contain information responsive to the requests below, but those items and records are not
14 in the possession, custody or control of defendants.

15 REQUEST FOR PRODUCTION NO. 1:

16 All documents relating to eBay, including all agreements, terms of service and terms and
17 conditions.

18 RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

19 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
20 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
21 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
22 work product doctrine. Subject to and without waiving the foregoing objections and based on a
23 reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI produced a
24 limited number of documents at the time of making its Initial Disclosures. DEI has documents that
25 may be responsive to this request that were produced to it by Commission Junction, Inc. under a
26 Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*,
27 Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, DEI is prohibited from
28

1 producing these documents at this time. DEI has no other documents in its possession, custody or
2 control that are responsive to this request.

3 REQUEST FOR PRODUCTION NO. 2:

4 All documents relating to, or Communications with, eBay or any current or former employee
5 of eBay.

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

7 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
8 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
9 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
10 work product doctrine. Subject to and without waiving the foregoing objections and based on a
11 reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI produced a
12 limited number of documents at the time of making its Initial Disclosures. DEI has documents that
13 may be responsive to this request that were produced to it by Commission Junction, Inc. under a
14 Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*,
15 Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, DEI is prohibited from
16 producing these documents at this time. DEI has no other documents in its possession, custody or
17 control that are responsive to this request.

18 REQUEST FOR PRODUCTION NO. 3:

19 All documents relating to payment of commissions or other revenue obtained by Dunning
20 Enterprise through participation in, interaction with or manipulation of eBay's Affiliate Marketing
21 Program.

22 RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

23 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
24 burdensome and oppressive. DEI further objects on the grounds that that the term "manipulation" is
25 vague, argumentative and conclusory. DEI further objects to this request on the grounds that, as
26 phrased, the request seeks documents the disclosure of which might violate the attorney-client
27 privilege and/or the work product doctrine. DEI further objects to this request on the ground that it
28 violates DEI's right to privacy, and seeks production of trade secrets or other confidential information.

1 DEI further objects on the ground that this information is equally available to Plaintiff. Subject to and
 2 without waiving the foregoing objections and based on a reasonable interpretation as to the meaning
 3 of this request, DEI responds as follows: DEI produced a limited number of documents at the time of
 4 making its Initial Disclosures. DEI has documents that may be responsive to this request that were
 5 produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission*
 6 *Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-
 7 2008 00101025. Accordingly, DEI is prohibited from producing these documents at this time. DEI
 8 has no other documents in its possession, custody or control that are responsive to this request.

9 REQUEST FOR PRODUCTION NO. 4:

10 All documents relating to eBay's Affiliate Marketing Program, including, but no limited to, all
 11 methods and technologies used by Dunning Enterprise to obtain revenue from, manipulate or
 12 otherwise interact with, eBay's Affiliate Marketing Program, including, but not limited to, all
 13 software, source code, Javascript, and HTML code.

14 RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

15 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
 16 burdensome and oppressive. DEI further objects on the grounds that that the term "manipulate" is
 17 vague, argumentative and conclusory. DEI further objects to this request on the grounds that, as
 18 phrased, the request seeks documents the disclosure of which might violate the attorney-client
 19 privilege and/or the work product doctrine. DEI further objects to this request on the ground that it
 20 seeks production of trade secrets or other confidential information. Subject to and without waiving
 21 the foregoing objections and based on a reasonable interpretation as to the meaning of this request,
 22 DEI responds as follows: DEI produced a limited number of documents at the time of making its
 23 Initial Disclosures. DEI has documents that may be responsive to this request that were produced to it
 24 by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc.*
 25 *v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025.
 26 Accordingly, DEI is prohibited from producing these documents at this time. DEI has no other
 27 documents in its possession, custody or control that are responsive to this request.

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1 REQUEST FOR PRODUCTION NO. 5:

2 All documents relating to advertisements for eBay used, or purported to be used, on any
3 website or ad network that directed or referred Users to eBay as part of eBay's Affiliate Marketing
4 Program.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

6 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
7 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
8 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
9 work product doctrine. DEI further objects to this request on the ground that it seeks production of
10 trade secrets or other confidential information. Subject to and without waiving the foregoing
11 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as
12 follows: DEI produced a limited number of documents at the time of making its Initial Disclosures.
13 DEI has documents that may be responsive to this request that were produced to it by Commission
14 Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood*
15 *Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly,
16 DEI is prohibited from producing these documents at this time. DEI has no other documents in its
17 possession, custody or control that are responsive to this request.

18 REQUEST FOR PRODUCTION NO. 6:

19 All documents reflecting the number of Users who allegedly clicked on an advertisement for
20 eBay used, or purported to be used, by Dunning Enterprise to direct or refer Users to eBay as part of
21 eBay's Affiliate Marketing Program.

22 RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

23 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
24 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
25 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
26 work product doctrine. DEI further objects to this request on the ground that it seeks production of
27 trade secrets or other confidential information. Subject to and without waiving the foregoing
28 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as

1 follows: DEI produced a limited number of documents at the time of making its Initial Disclosures.
 2 DEI has documents that may be responsive to this request that were produced to it by Commission
 3 Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood*
 4 *Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly,
 5 DEI is prohibited from producing these documents at this time. DEI has no other documents in its
 6 possession, custody or control that are responsive to this request.

7 REQUEST FOR PRODUCTION NO. 7:

8 All documents relating to methods or techniques intended to, or causing, a User's browser to
 9 load any eBay webpage, webpage content or data therefrom.

10 RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

11 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
 12 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
 13 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
 14 work product doctrine. DEI further objects to this request on the ground that it seeks production of
 15 trade secrets or other confidential information. Subject to and without waiving the foregoing
 16 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as
 17 follows: DEI produced a limited number of documents at the time of making its Initial Disclosures.
 18 DEI has documents that may be responsive to this request that were produced to it by Commission
 19 Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood*
 20 *Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly,
 21 DEI is prohibited from producing these documents at this time. DEI has no other documents in its
 22 possession, custody or control that are responsive to this request.

23 REQUEST FOR PRODUCTION NO. 8:

24 All documents sufficient to identify all advertising networks, advertising syndication services
 25 or websites used or purportedly used by Dunning Enterprise to advertise or promote eBay or to
 26 interact in any way with eBay or eBay's Affiliate Marketing Programs.

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1 RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

2 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
3 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
4 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
5 work product doctrine. DEI further objects to this request on the ground that it seeks production of
6 trade secrets or other confidential information. Subject to and without waiving the foregoing
7 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as
8 follows: DEI produced a limited number of documents at the time of making its Initial Disclosures.
9 DEI has documents that may be responsive to this request that were produced to it by Commission
10 Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood*
11 *Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly,
12 DEI is prohibited from producing these documents at this time. DEI has no other documents in its
13 possession, custody or control that are responsive to this request.

14 REQUEST FOR PRODUCTION NO. 9:

15 All documents sufficient to identify all Affiliate Marketing Programs, not including eBay's
16 Affiliate Marketing Program, with whom Dunning Enterprise obtained revenue or otherwise
17 interacted.

18 RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

19 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
20 burdensome and oppressive. DEI further objects that to the extent this request seeks documents
21 related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to
22 the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
23 evidence. DEI further objects to this request on the grounds that, as phrased, the request seeks
24 documents the disclosure of which might violate the attorney-client privilege and/or the work product
25 doctrine. DEI further objects to this request on the ground that it seeks production of trade secrets or
26 other confidential information. Subject to and without waiving the foregoing objections and based on
27 a reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not
28 have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to and/or describing methods and techniques used by any other Affiliate Marketing Program that Dunning Enterprise interacted with, participated in or manipulated.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. DEI further objects on the grounds that that the term "manipulated" is vague, argumentative and conclusory. DEI further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. DEI further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. DEI further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 11:

All documents sufficient to identify the source of any technology, technique or methods used by Dunning Enterprise to participate in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. DEI further objects on the grounds that that the term "manipulate" is vague, argumentative and conclusory. DEI further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. DEI further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. DEI further objects to this request on the ground that it seeks production of trade

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1 secrets or other confidential information. Subject to and without waiving the foregoing objections and
2 based on a reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI
3 does not have any responsive documents in its possession, custody or control.

4 REQUEST FOR PRODUCTION NO. 12:

5 All documents sufficient to identify any individuals, groups, books, manuals or other materials
6 consulted by Dunning Enterprise while developing any technology, technique or method used by
7 Dunning Enterprise to participate in, manipulate or interact with the eBay Affiliate Marketing
8 Program, or any other Affiliate Marketing Program.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

10 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
11 burdensome and oppressive. DEI further objects on the grounds that that the term "manipulate" is
12 vague, argumentative and conclusory. DEI further objects that to the extent this request seeks
13 documents related to programs other than eBay's Affiliate Marketing Program, the request is neither
14 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of
15 admissible evidence. DEI further objects to this request on the grounds that, as phrased, the request
16 seeks documents the disclosure of which might violate the attorney-client privilege and/or the work
17 product doctrine. DEI further objects to this request on the ground that it seeks production of trade
18 secrets or other confidential information. Subject to and without waiving the foregoing objections and
19 based on a reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI
20 does not have any responsive documents in its possession, custody or control.

21 REQUEST FOR PRODUCTION NO. 13:

22 All documents relating to Commission Junction, including all agreements, terms of service and
23 terms and conditions.

24 RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

25 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
26 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
27 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
28 work product doctrine. DEI further objects to this request on the ground that it seeks production of

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1 trade secrets or other confidential information. Subject to and without waiving the foregoing
2 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as
3 follows: DEI does not have any responsive documents in its possession, custody or control.

4 REQUEST FOR PRODUCTION NO. 14:

5 All documents relating to, or Communications with, Commission Junction or any current or
6 former employee of Commission Junction.

7 RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

8 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
9 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
10 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
11 work product doctrine. DEI further objects to this request on the ground that it seeks production of
12 trade secrets or other confidential information. Subject to and without waiving the foregoing
13 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as
14 follows: DEI does not have any responsive documents in its possession, custody or control.

15 REQUEST FOR PRODUCTION NO. 15:

16 All documents relating to, or Communications with, Digital Point Solutions, Inc., Kessler's
17 Flying Circus, Thunderwood Holdings, Inc., or briandunning.com.

18 RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

19 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
20 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
21 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
22 work product doctrine. DEI further objects to this request on the ground that it seeks production of
23 trade secrets or other confidential information. Subject to and without waiving the foregoing
24 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as
25 follows: DEI does not have any responsive documents in its possession, custody or control.

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1 REQUEST FOR PRODUCTION NO. 16:

2 All Communications with Brian Dunning, Todd Dunning or Shawn Hogan.

3 RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

4 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
5 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
6 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
7 work product doctrine. DEI further objects to this request on the ground that it violates privacy rights
8 of third parties. Subject to and without waiving the foregoing objections and based on a reasonable
9 interpretation as to the meaning of this request, DEI responds as follows: DEI does not have any
10 responsive documents in its possession, custody or control.

11 REQUEST FOR PRODUCTION NO. 17:

12 All documents relating to, or Communications with, Rachael Hughes, or any companies or
13 entities owned, controlled, affiliated with or used by Rachael Hughes, relating to eBay's Affiliate
14 Marketing Program including, but not limited to, any agreements with Rachael Hughes and company
15 and any technology transferred to or from Rachael Hughes and company.

16 RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

17 DEI objects to this request on the grounds that Rachel Hughes is unknown to DEI, therefore no
18 response is possible and all objections are reserved until eBay properly identifies this person or entity.

19 REQUEST FOR PRODUCTION NO. 18:

20 All documents sufficient to describe all phone numbers, email addresses, web pages, instant
21 messenger or mail accounts and social network accounts maintained, formerly maintained or
22 registered to Dunning Enterprise.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

24 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
25 burdensome and oppressive. DEI objects that this request seeks documents which are neither relevant
26 to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
27 evidence. DEI further objects to this request on the ground that it seeks production of trade secrets or
28 other confidential information. Subject to and without waiving the foregoing objections and based on

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1 a reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not
2 have possession, custody, or control of any responsive documents.

3 REQUEST FOR PRODUCTION NO. 19:

4 Documents sufficient to identify any Aliases used by Dunning Enterprise in any Internet
5 Forum at or within which Dunning Enterprise discussed any aspect of their participation in,
6 manipulation of or interaction with eBay's Affiliate Marketing Program, or any other Affiliate
7 Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet newsgroups
8 or chat rooms.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

10 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
11 burdensome and oppressive. DEI further objects on the grounds that that the term "manipulation" is
12 vague, argumentative and conclusory. DEI further objects that to the extent this request seeks
13 documents related to programs other than eBay's Affiliate Marketing Program, the request is neither
14 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of
15 admissible evidence. Subject to and without waiving the foregoing objections and based on a
16 reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not
17 have possession, custody, or control of any responsive documents.

18 REQUEST FOR PRODUCTION NO. 20:

19 Documents sufficient to identify any Internet Forum at or within which Dunning Enterprise
20 discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate
21 Marketing Programs, or any other Affiliate Marketing Programs, including, but not limited to, forums
22 such as blogs, listservs, Usenet newsgroups or chat rooms.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

24 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
25 burdensome and oppressive. DEI further objects on the grounds that that the term "manipulation" is
26 vague, argumentative and conclusory. DEI further objects that to the extent this request seeks
27 documents related to programs other than eBay's Affiliate Marketing Program, the request is neither
28 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of

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1 admissible evidence. Subject to and without waiving the foregoing objections and based on a
2 reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not
3 have possession, custody, or control of any responsive documents.

4 REQUEST FOR PRODUCTION NO. 21:

5 Documents sufficient to identify all internet service providers (ISPs) and IP addresses used by
6 Dunning Enterprise.

7 RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

8 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
9 burdensome and oppressive. DEI objects that this request seeks documents which are neither relevant
10 to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
11 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
12 interpretation as to the meaning of this request, DEI responds as follows: DEI does not have
13 possession, custody, or control of any responsive documents.

14 REQUEST FOR PRODUCTION NO. 22:

15 Documents sufficient to identify all computers, servers, electronic data storage and hosting
16 companies, entities, or facilities used by Dunning Enterprise.

17 RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

18 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
19 burdensome and oppressive. DEI objects that this request seeks documents which are neither relevant
20 to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
21 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
22 interpretation as to the meaning of this request, DEI responds as follows: To the extent that DEI was
23 a partner in Kessler's Flying Circus, which had computers and stored data, this material is currently in
24 the possession of the FBI and not available to DEI. DEI does not have possession, custody, or control
25 of any responsive documents.

26 REQUEST FOR PRODUCTION NO. 23:

27 Documents sufficient to identify any entity used or hired to maintain or restore electronic data
28 or systems relating to Dunning Enterprise's participation in, manipulation of or interaction with eBay's

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1 Affiliate Marketing Program.

2 RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

3 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
4 burdensome and oppressive. DEI further objects on the grounds that that the term "manipulation" is
5 vague, argumentative and conclusory. DEI further objects to this request on the ground that it seeks
6 production of trade secrets or other confidential information. Subject to and without waiving the
7 foregoing objections and based on a reasonable interpretation as to the meaning of this request, DEI
8 responds as follows: DEI does not have possession, custody, or control of any responsive documents.

9 REQUEST FOR PRODUCTION NO. 24:

10 Documents sufficient to identify software used to clean, reformat or erase hard-drives used by
11 Dunning Enterprise, or any equipment owned, used or maintained by Dunning Enterprise.

12 RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

13 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
14 burdensome and oppressive. DEI further objects to this request on the ground that it seeks production
15 of trade secrets or other confidential information. Subject to and without waiving the foregoing
16 objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as
17 follows: DEI does not have possession, custody, or control of any responsive documents.

18 REQUEST FOR PRODUCTION NO. 25:

19 All documents sufficient to identify all business entities or fictitious business names currently
20 or formerly maintained by Dunning Enterprise.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

22 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
23 burdensome and oppressive. DEI further objects that this request seeks documents which are neither
24 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of
25 admissible evidence. Subject to and without waiving the foregoing objections and based on a
26 reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not
27 have possession, custody, or control of any responsive documents.

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1 REQUEST FOR PRODUCTION NO. 26:

2 All documents relating to the incorporation of Dunning Enterprise.

3 RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

4 DEI objects on the ground that this request is overbroad, unduly burdensome and oppressive.
5 DEI further objects that this request seeks documents which are neither relevant to the subject matter
6 of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to
7 and without waiving the foregoing objections and based on a reasonable interpretation as to the
8 meaning of this request, DEI responds as follows: Other than the documents DEI produced as part of
9 its Initial Disclosures, DEI has no other documents in its possession, custody or control that are
10 responsive to this request.

11 REQUEST FOR PRODUCTION NO. 27:

12 All documents filed by Dunning Enterprise with any Secretary of State.

13 RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

14 DEI objects on the ground that this request is overbroad, unduly burdensome and oppressive.
15 DEI further objects that this request seeks documents which are neither relevant to the subject matter
16 of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to
17 and without waiving the foregoing objections and based on a reasonable interpretation as to the
18 meaning of this request, DEI responds as follows: Other than the documents DEI produced as part of
19 its Initial Disclosures, DEI has no other documents in its possession, custody or control that are
20 responsive to this request.

21 REQUEST FOR PRODUCTION NO. 28:

22 Documents sufficient to show the structure and organization of Dunning Enterprise and all
23 companies or other entities owned or controlled by Dunning Enterprise that were involved in or
24 interacted with any Affiliate Marketing Program.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

26 DEI objects on the ground that this request is overbroad, unduly burdensome and oppressive.
27 DEI further objects that this request seeks documents which are neither relevant to the subject matter
28 of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to

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San Francisco, California 94105

1 and without waiving the foregoing objections and based on a reasonable interpretation as to the
2 meaning of this request, DEI responds as follows: Other than the documents DEI produced as part of
3 its Initial Disclosures, DEI has no other documents in its possession, custody or control that are
4 responsive to this request.

5 REQUEST FOR PRODUCTION NO. 29:

6 Documents sufficient to identify all employees, contractors or temporary employees of
7 Dunning Enterprise, their dates of employment, duties, salary and any other compensation.

8 RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

9 DEI objects on the ground that this request is overbroad, unduly burdensome and oppressive.
10 DEI further objects that this request seeks documents which are neither relevant to the subject matter
11 of this action, nor reasonably calculated to lead to the discovery of admissible evidence. DEI further
12 objects to this request on the ground that it violates privacy rights of third parties, seeks production of
13 trade secrets or other confidential information.

14 REQUEST FOR PRODUCTION NO. 30:

15 All documents constituting Dunning Enterprise's annual, quarterly and monthly audited,
16 compiled, reviewed or unaudited financial statements, including all income statements and balance
17 sheets of Dunning Enterprise.

18 RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

19 DEI objects on the ground that this request is overbroad, unduly burdensome and oppressive.
20 DEI further objects that this request seeks documents which are neither relevant to the subject matter
21 of this action, nor reasonably calculated to lead to the discovery of admissible evidence. DEI further
22 objects to this request on the ground that it seeks production of trade secrets and confidential financial
23 information, and invades DEI's rights of privacy

24 REQUEST FOR PRODUCTION NO. 31:

25 All documents sufficient to identify all assets and financial accounts (including those outside
26 of the United States) maintained or formerly maintained by Dunning Enterprise.

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28 ///

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

DEI further objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. DEI further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. DEI further objects to this request on the ground that it violates DEI's right to privacy, and seeks production of trade secrets and confidential financial information.

REQUEST FOR PRODUCTION NO. 32:

Documents constituting Dunning Enterprise's corporate tax returns for the years 2003 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

DEI objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. DEI further objects to this request on the ground that it violates DEI's right to privacy, seeks privileged financial information, *see e.g.*, California Revenue and Taxation Code section 19542.

REQUEST FOR PRODUCTION NO. 33:

All documents relating to the transfer or assumption of any liability by Dunning Enterprise.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. DEI objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. DEI further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 34:

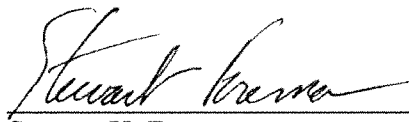
All documents relating to any insurance policies relevant to this action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

1 DEI objects on the ground that this request is vague and ambiguous, overbroad, unduly
2 burdensome and oppressive. DEI further objects to this request on the grounds that, as phrased, the
3 request seeks documents the disclosure of which might violate the attorney-client privilege and/or the
4 work product doctrine. Subject to and without waiving the foregoing objections and based on a
5 reasonable interpretation as to the meaning of this request, DEI responds as follows: DEI does not
6 have possession, custody, or control of any responsive documents.

7 Dated: February 26, 2009

FREELAND COOPER & FOREMAN LLP

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10 By: 
11 Stewart H. Foreman
12 Attorneys for Defendants Todd Dunning and
13 Dunning Enterprise, Inc.
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CERTIFICATE OF SERVICE

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action; my business address is 150 Spear Street, Suite 1800, San Francisco, California 94105.

On February 26, 2009, I served the foregoing document described as follows:

Defendant Dunning Enterprise, Inc.'s Responses to Plaintiff's First Set of Requests for Production

by placing a true and correct copy thereof enclosed in a sealed envelope addressed to the party(ies) of record whose name(s) and address(es) appear below:

SEE ATTACHED SERVICE LIST

[BY MAIL - CCP § 1013a] I caused such sealed envelope with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California, for collection and mailing to the office of addressee(s) on the date shown herein following ordinary business practice.

[HAND-DELIVERY/Personal/Messenger - CCP § 1011] I caused such envelope to be hand-delivered by a courier, who personally delivered such envelope to the office of the addressee(s) on the date herein.

[BY FACSIMILE - CCP § 1013(e)] - I caused such document(s) to be transmitted via facsimile electronic equipment transmission on the party(ies), whose name(s), address(es) and fax number(s) are listed above, on the date stated herein and at the time set forth on the attached transmission reported indicating that the facsimile transmission was complete and without error.

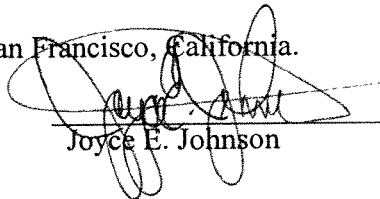
[BY FEDEX (Overnight Delivery) - CCP § 1013(c)] I caused such envelope to be delivered to the Federal Express Office in San Francisco, California, with whom we have a direct billing account, to be delivered on the next business day.

[BY E-MAIL or ELECTRONIC TRANSMISSION] . Based on a court order or agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the email addresses listed above. I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[STATE] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[FEDERAL] Service was made under the direction of a member of the bar of this Court who is admitted to practice and is not a party to this cause.

Executed on February 26, 2009, at San Francisco, California.



Joyce E. Johnson

ATTACHED SERVICE LIST

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