1 2 3 4 5 6 7 8 9		DISTRICT COURT
10	NORTHERN DISTRICT OF CALIFORNIA	
10	SAN JOSI EBAY INC.,	E DIVISION
12		Case No. C 08-04052 JF PVT
13	Plaintiff,	DECLARATION OF DAVID R. EBERHART IN SUPPORT OF EBAY
14	V.	INC.'S MOTION FOR DISCOVERY SANCTIONS AGAINST BRIAN
15	DIGITAL POINT SOLUTIONS, INC., SHAWN HOGAN, KESSLER'S FLYING CIRCUS, THUNDERWOOD	DUNNING, BRIANDUNNING.COM, THUNDERWOOD HOLDINGS, INC., AND KESSLER'S FLYING
16	HOLDINGS, INC., TODD DUNNING, DUNNING ENTERPRISE, INC., BRIAN	CIRCUS
17	DUNNING, BRIANDUNNING.COM, and DOES 1-20,	Hearing Date: April 2, 2010 Time: 9:00 a.m.
18	Defendants.	Courtroom: 3
19		Judge: Hon. Jeremy Fogel
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1 I, David R. Eberhart, declare as follows:

I am a member of the Bar of the State of California and a partner in the law
 firm of O'Melveny & Myers LLP, counsel for eBay Inc. in this matter. I submit this
 Declaration in support of eBay's Motion For Discovery Sanctions Against Brian Dunning,
 BrianDunning.com, Thunderwood Holdings, Inc. ("THI"), and Kessler's Flying Circus
 ("KFC") (collectively, the "BD/KFC Defendants"). I have personal knowledge of the
 facts set forth in this declaration and, if called to testify as a witness, could and would do
 so under oath.

9 2. On January 29, 2010, Sharon Bunzel and I appeared on behalf of eBay at the 10 Case Management Conference and hearing on the motions to stay and strike. Patrick 11 McClellan, counsel for KFC, did not attend the hearing. Immediately following the 12 conclusion of the hearing, I began a conversation with Ross Campbell, counsel for Digital 13 Point Solutions, Inc. and Shawn Hogan. This conversation began in the courtroom and 14 continued as Mr. Campbell and I slowly walked toward the hallway. During the 15 conversation, Mr. Campbell and I discussed his proposed timeline for his clients' 16 compliance with this Court's January 12, 2010 order (the "Order"). Although Mr. 17 Campbell had originally committed to provide the discovery to eBay within three weeks 18 from the date of the Order, during this January 29 conversation he raised the possibility 19 that his clients may need an additional week to comply. I communicated to him that eBay 20 would consider such an extension if and when requested, but no agreement was reached 21 with regard to this additional week. Following this discussion, Mr. Campbell did not 22 contact me to request this additional week for compliance, although he subsequently 23 committed to provide the discovery by February 16, 2010.

3. Leo Presiado, counsel for Brian Dunning, BrianDunning.com and THI, did
not take part in my conversation with Mr. Campbell; I was not even aware at the time that
Mr. Presiado was able to overhear the full substance of our conversation, if that is what
happened. In any event, my conversation with Mr. Campbell made no mention of and did
not concern Mr. Presiado's clients.

1	4. Following the conclusion of my conversation with Mr. Campbell, I began a
2	separate conversation with Mr. Presiado. He informed me that he would turn over to
3	eBay the documents previously produced to him by Rackspace US, Inc. in response to
4	eBay's subpoena by the following Wednesday, February 3, 2010. Mr. Presiado said that
5	he was still assessing when his clients would be able to provide the remaining discovery
6	responses required by the Order. I did not discuss with Mr. Presiado any extension of
7	time for his clients to comply with the Order, and I never granted Mr. Presiado's clients
8	any extension of time to comply with the Order. At no time did I discuss with all defense
9	counsel a joint date for compliance or a joint extension of time to comply with the Order,
10	and I never granted any extension that would apply to all defendants.
11	EBAY'S REQUEST FOR ATTORNEYS' FEES

EBAY'S REQUEST FOR ATTORNEYS' FEES

12 5. eBay seeks to recover an award of reasonable expenses and attorneys' fees 13 caused by the BD/KFC Defendants' violations of the Order.

- 14 6. Attached hereto as **Exhibit A** is a true and correct copy of a spreadsheet that 15 details the fees incurred by eBay as a result of counsel's efforts to meet and confer with 16 the BD/KFC Defendants regarding their failure to comply with the Order and to prepare 17 this Motion for Discovery Sanctions. The spreadsheet includes 6 columns: date of entry, 18 timekeeper, billing rate, description of entry, hours spent on each entry and total fees. 19 This information was taken from billing records at O'Melveny & Myers LLP that are 20 maintained in the regular course of business. I have reviewed and approved all of the time 21 entries submitted in Exhibit A.
- 22 7. At the bottom of Exhibit A, I have calculated the total fees that eBay seeks 23 to recover. Based on this calculation, the total amount of fees sought by eBay for having 24 to file this Motion for Discovery Sanctions is \$39,545.50.

25 8. Exhibit A does not include time that O'Melveny & Myers spent on this 26 Motion today, February 26, 2010. If the BD/KFC Defendants oppose this motion, I will 27 submit a supplemental declaration that includes time spent today, as well as time spent in 28 drafting eBay's Reply in Support of its Motion for Discovery Sanctions.

1	9. The following persons worked on the Motion for Sanctions: David
2	Eberhart, Sharon Bunzel, Colleen Kennedy, Flora Vigo, Jean Niehaus and Michael
3	O'Donnell. I am a partner, and my hourly rate for this matter is \$700 per hour. Sharon
4	Bunzel is also a partner, and her hourly rate for this matter is \$650 per hour. Colleen
5	Kennedy is a counsel, and her hourly rate for this matter is \$565 per hour. Flora Vigo and
6	Jean Niehaus are associates, and their hourly rates for this matter are \$480 and \$395 per
7	hour, respectively. Michael O'Donnell is a case manager, and his hourly rate for this
8	matter is \$310 per hour.
9	10. I am generally familiar with the standard billing rates among San Francisco
10	law firms. The billing rates in Exhibit A are within the customary prevailing rates at other
11	large law firms in San Francisco and are customary for what O'Melveny & Myers charges
12	other clients.
13	
14	I declare under penalty of perjury under the laws of the United States and the State
15	of California that the foregoing is true and correct. Signed on this 26th day of February,
16	2010 in San Francisco, California.
17	/s/ David R. Eberhart
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