

## **EXHIBIT 2**

**From:** pkellymc@pacbell.net [mailto:pkellymc@pacbell.net]  
**Sent:** Wednesday, February 10, 2010 12:11 PM  
**To:** Kennedy, Colleen  
**Subject:** Re: eBay v. DPS, et al. - discovery order

I am out of the office but will call you when I get back in this afternoon

Sent via BlackBerry from T-Mobile

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**From:** "Kennedy, Colleen" <CKennedy@OMM.com>  
**Date:** Wed, 10 Feb 2010 11:16:56 -0800  
**To:** Patrick K. McClellan <pkellymc@pacbell.net>  
**Cc:** Eberhart, David <DEberhart@OMM.com>; Bunzel, Sharon M. <sbunzel@omm.com>  
**Subject:** RE: eBay v. DPS, et al. - discovery order

Pat,

To the contrary: my characterization of our conversation is utterly accurate. And, as you know, your call was made only in response to eBay's ongoing efforts (which began immediately after the January 12 order was issued) to ascertain when KFC would comply. Further, it necessarily follows from the fact that you were apparently unaware of the scope of KFC's obligations under the order that KFC has made no efforts to comply. Given that the order has already been pending for nearly a month--and eBay's discovery has been pending for over a year, a further 15-day delay is unacceptable. I therefore must again insist that we meet and confer telephonically regarding KFC's compliance with the order. Your refusal to participate in a meet-and-confer conference is grounds for sanctions under Civil L.R. 37-1(a). Please let me know your availability for a call tomorrow.

Colleen

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**From:** Patrick K. McClellan [mailto:pkellymc@pacbell.net]  
**Sent:** Wednesday, February 10, 2010 9:31 AM  
**To:** Kennedy, Colleen  
**Subject:** RE: eBay v. DPS, et al. - discovery order

Colleen:

You are aware that your characterization of our conversation is quite inaccurate. I did not tell you that KFC had made no efforts to comply with Judge Fogel's Order, and in fact contacted you in our effort to comply. The rhetoric notwithstanding, KFC will provide responses within fifteen (15) days.

PKM

**From:** Kennedy, Colleen [mailto:CKennedy@OMM.com]  
**Sent:** Wednesday, February 10, 2010 9:19 AM  
**To:** pkellymc@pacbell.net  
**Cc:** Eberhart, David; Bunzel, Sharon M.  
**Subject:** eBay v. DPS, et al. - discovery order

Pat,

During our phone conversation yesterday, you indicated that Kessler's Flying Circus ("KFC") has made no effort to comply with Judge Fogel's January 12 order. Moreover, despite the fact that the order has been in effect for nearly a month, you stated that you had not yet assessed KFC's responsibilities under that order and requested that I provide eBay's views regarding those responsibilities. Putting aside the astounding fact that you have made no effort to comply with a court order, here are eBay's views of KFC's responsibilities pursuant to that order:

- KFC must provide supplemental responses to eBay's First Set of Interrogatories; and
- KFC must provide supplemental responses to eBay's First and Second Set of Requests for Production Nos. 1-28, 32-33 and 35-36, including by exercising any and all rights KFC may have to obtain documents from Rackspace US, Inc. that may be responsive to those Requests for Production.

At the January 29 hearing, which I recognize you chose not to attend, Judge Fogel made clear that his January 12 order is in effect and requires defendants to produce discovery promptly. KFC has had nearly a month to comply, and we must insist that it do so immediately. In addition, please let me know when you can be available tomorrow to meet and confer telephonically regarding KFC's compliance with the order pursuant to Civil L.R. 37-1(a).

Best regards,  
Colleen

**Colleen Kennedy**  
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