

# EXHIBIT 13

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CIRCUS and TODD DUNNING

Calendared:	JHE	✓
Reviewed:	MAG	
	WRL	
	MJB	
	PJM	
	RCM	
	EAC	
	LL	
	JA	
	HR	✓

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ORANGE, CENTRAL BRANCH

10 COMMISSION JUNCTION, INC.

11 Plaintiff,

12 v.

13 THUNDERWOOD HOLDINGS, INC. dba  
14 KESSLER'S FLYING CIRCUS; TODD  
15 DUNNING; BRIAN DUNNING; and DOES 1  
through 50, inclusive,

16 Defendants.

CASE NO.: 30-2008 00101025

Assigned for All Purposes to Judge  
Randell L. Wilkinson Department C25

**DEFENDANT KESSLER'S FLYING  
CIRCUS'S RESPONSES TO  
PLAINTIFF'S REQUEST FOR THE  
IDENTIFICATION, PRODUCTION  
AND COPYING OF DOCUMENTS,  
SET ONE**

18 PROPOUNDING PARTY: Plaintiff COMMISSION JUNCTION, INC.

19 RESPONDING PARTY: Defendant KESSLER'S FLYING CIRCUS

20 SET NUMBER: ONE (1)

21 Defendant Kessler's Flying Circus ("Defendant" or "KFC") responds to plaintiff Commission  
22 Junction, Inc.'s ("Plaintiff" or "CJI") Request For The Identification, Production and Copying of  
23 Documents, Set One, pursuant to Code of Civil Procedure § 2031.210, et seq., as follows:

**GENERAL OBJECTIONS**

25 1. Defendant objects to each document request to the extent that it seeks information that  
26 is not relevant to the subject matter of this matter or reasonably calculated to lead to the discovery of  
27 admissible evidence. Specifically, and without limiting the generality of this objection, Defendant  
28

1 objects on relevancy grounds to each document request to the extent each request seeks document that  
 2 are beyond the subject matter of the complaint, and the alleged contract and related payments,  
 3 between Defendant and Plaintiff.

4 2. Defendant objects to each document request on the grounds that it seeks documents  
 5 that are not in the possession, custody and/or control of this Defendant.

6 3. Defendant objects to each document request on the grounds that it is overly broad and  
 7 burdensome to produce the requested documents.

8 4. Defendant objects to each document request on the grounds that it is ambiguous and  
 9 unintelligible, and therefore, Defendant cannot identify documents in order to respond to the request.

10 5. Defendant objects to each document request to the extent that it incorporates by  
 11 reference the definitions contained in Plaintiff's document request and these definitions purport to  
 12 require information that is beyond the scope and obligations of California Code of Civil Procedure  
 13 § 2031.010, et seq.

14 6. Defendant objects to each document request to the extent that it seeks production of  
 15 documents that are protected by the attorney-client privilege and/or attorney work product doctrine, or  
 16 seek to obtain documents that are confidential and not subject to disclosure, absent an appropriate  
 17 protective order between the parties.

18 7. All responses herein are made to the best of Defendant's present knowledge and belief.  
 19 Defendant has not yet completed discovery, trial preparation, or investigation of the facts underlying  
 20 this action, and consequently gives the following responses without prejudice to their right to produce  
 21 documents as they subsequently discover additional facts or develop analyses. Accordingly,  
 22 responses provided herein are provided subject to the express qualification that Defendant may yet  
 23 discover facts relating to the subject matter of Plaintiff's Document Requests, which may alter  
 24 Defendant's position with respect to one or more of its responses to these requests.

25 8. Documents that are responsive to more than one document request will only be  
 26 produced once. Defendant will produce these documents for inspection at its offices at a reasonable  
 27 time, or will make reasonable arrangements to produce copies for Plaintiff.  
 28

**SPECIFIC RESPONSES**

Subject to and without waiving any of the foregoing General Objections, which are incorporated by reference into each and every one of the following responses, Defendant responds to the specific requests as follows:

**REQUEST FOR PRODUCTION NO. 1:**

Any and all written agreements or contracts between YOU and CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

KFC does not have in its possession, custody or control a written agreement or contract with CJI.

**REQUEST FOR PRODUCTION NO. 2:**

Any and all written agreements or contracts between YOU and THI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

KFC incorporates by reference General Objection Nos. 1 and 3. Without waiving these objections, KFC is not aware of the existence of any written agreements relating to the subject matter of this complaint.

**REQUEST FOR PRODUCTION NO. 3:**

Any and all written agreements or contracts between YOU and TODD.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

KFC incorporates by reference General Objection Nos. 1 and 3. Without waiving these objections, KFC is not aware of the existence of any written agreements relating to the subject matter of this complaint.

**REQUEST FOR PRODUCTION NO. 4:**

Any and all written agreements or contracts between YOU and BRIAN.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

KFC incorporates by reference General Objection Nos. 1 and 3. Without waiving these objections, KFC is not aware of the existence of any written agreements relating to the subject matter of this complaint.

**REQUEST FOR PRODUCTION NO. 5:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by YOU to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

KFC does not have possession, custody or control of copies of all written communications. KFC will produce copies of those documents in its possession, custody or control which are number KFC000001 - 10.

**REQUEST FOR PRODUCTION NO. 6:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by THI to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

KFC incorporates by reference General Objection Nos. 1 and 2. Without waiving these objections, KFC is not aware of the existence of any such writings or written communications relating to the subject matter of this complaint. In addition, KFC does not have possession custody or control of documents of THI.

**REQUEST FOR PRODUCTION NO. 7:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by BRIAN to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

KFC incorporates by reference General Objection Nos. 1 and 2. Without waiving these objections, KFC is not aware of the existence of any such writing or written communications relating to the subject matter of this complaint except for the documents identified in response to request number 5. In addition, KFC does not have possession custody or control of documents of BRIAN.

**REQUEST FOR PRODUCTION NO. 8:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by TODD to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

KFC incorporates by reference General Objection Nos. 1 and 2. Without waiving these objections, KFC is not aware of the existence of any such writing or written communications relating to the subject matter of this complaint except for the documents identified in response to request number 5. In addition, KFC does not have possession custody or control of documents of TODD.

**REQUEST FOR PRODUCTION NO. 9:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by CJI to YOU.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

KFC does not have possession, custody or control of copies of all written communications. KFC will produce copies of those documents in its possession, custody or control with document numbers KFC 000001 – 10.

**REQUEST FOR PRODUCTION NO. 10:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by THI to YOU.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

KFC incorporates by reference General Objection Nos. 1 and 3. Without waiving these objections, KFC is not aware of the existence of any such writings or written communications relating to the subject matter of this complaint.

**REQUEST FOR PRODUCTION NO. 11:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by BRIAN to YOU.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

KFC incorporates by reference General Objection Nos. 1 and 3. Without waiving these objections, KFC is not aware of the existence of any such writings or written communications relating to the subject matter of this complaint except for the documents identified in response to request number 5.

**REQUEST FOR PRODUCTION NO. 12:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION sent by TODD to YOU.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

KFC incorporates by reference General Objection Nos. 1 and 3. Without waiving these objections, KFC is not aware of the existence of any such writings or written communications relating to the subject matter of this complaint except for the documents identified in response to request number 5.

**REQUEST FOR PRODUCTION NO. 13:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect the terms, negotiation, execution, and creation/drafting of any and all agreements and/or contracts, written



and/or oral, entered into between KFC (on the one hand) and CJI (on the other hand).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

KFC does not have in its possession, custody or control any documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 14:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect the terms, negotiation, execution, and creation/drafting of any and all agreements and/or contracts, written and/or oral, entered into between THH (on the one hand) and CJI (on the other hand).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

KFC does not have in its possession, custody or control any documents responsive to this request. In addition, KFC does not have possession custody or control of documents of THH.

**REQUEST FOR PRODUCTION NO. 15:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect the terms, negotiation, execution, and creation/drafting of any and all agreements and/or contracts, written and/or oral, entered into between BRIAN (on the one hand) and CJI (on the other hand).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

KFC does not have in its possession, custody or control any documents responsive to this request. In addition, KFC does not have possession custody or control of documents of BRIAN.

**REQUEST FOR PRODUCTION NO. 16:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect the terms, negotiation, execution, and creation/drafting of any and all agreements and/or contracts, written and/or oral, entered into between TODD (on the one hand) and CJI (on the other hand).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

KFC does not have in its possession, custody or control any documents responsive to this request. In addition, KFC does not have possession custody or control of documents of TODD.

**REQUEST FOR PRODUCTION NO. 17:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of KFC that reference telephone calls to or from CJI employees, officers, and/or agents; including, but limited to, payment

1 records, memoranda, invoices, notes, files, cell phone logs, cell phone invoices, and/or computer  
2 records.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

4 KFC does not have in its possession, custody or control all documents, if any, responsive to  
5 this request. KFC will produce copies of those emails in its possession, custody or control with  
6 document identification numbers KFC000001 - 10.

7 **REQUEST FOR PRODUCTION NO. 18:**

8 Any and all WRITINGS and/or WRITTEN COMMUNICATION of THI that reference  
9 telephone calls to or from CJI employees, officers, and/or agents; including, but limited to, payment  
10 records, memoranda, invoices, notes, files, cell phone logs, cell phone invoices, and/or computer  
11 records.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

13 KFC incorporates by reference General Objections Nos. 1, 2 & 3. Without waiving these  
14 objections, KFC does not have in its possession, custody or control any documents responsive to this  
15 request. In addition, KFC does not have possession custody or control of documents of THI.

16 **REQUEST FOR PRODUCTION NO. 19:**

17 Any and all WRITINGS and/or WRITTEN COMMUNICATION of TODD that reference  
18 telephone calls to or from CJI employees, officers, and/or agents; including, but limited to, payment  
19 records, memoranda, invoices, notes, files, cell phone logs, cell phone invoices, and/or computer  
20 records.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

22 KFC incorporates by reference General Objections Nos. 1, 2 & 3. Without waiving these  
23 objections, KFC does not have in its possession, custody or control all documents, if any, responsive  
24 to this request except for documents KFC000001 - 10. In addition, KFC does not have possession  
25 custody or control of documents of TODD.

26 **REQUEST FOR PRODUCTION NO. 20:**

27 Any and all WRITINGS and/or WRITTEN COMMUNICATION of BRIAN that reference  
28 telephone calls to or from CJI employees, officers, and/or agents; including, but limited to, payment



records, memoranda, invoices, notes, files, cell phone logs, cell phone invoices, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

KFC incorporates by reference General Objections Nos. 1, 2 & 3. Without waiving these objections, KFC does not have in its possession, custody or control all documents, if any, responsive to this request except for documents KFC000001 - 10. In addition, KFC does not have possession custody or control of documents of BRIAN.

**REQUEST FOR PRODUCTION NO. 21:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of KFC employees, officers, and/or agents that reference communications to or from CJI employees, officers, and/or agents; including, but limited to, letters, email, memoranda, invoices, notes, files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these objections, KFC does not have possession, custody or control of copies of all documents responsive to this request. KFC will produce copies of those emails in its possession, custody or control with document identification numbers KFC000001 - 10.

**REQUEST FOR PRODUCTION NO. 22:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of THI employees, officers, and/or agents that reference communications to or from CJI employees, officers, and/or agents; including, but limited to, letters, email, memoranda, invoices, notes, files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these objections, KFC does not have in its possession, custody or control any documents responsive to this request. In addition, KFC does not have possession custody or control of documents of THI.

**REQUEST FOR PRODUCTION NO. 23:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of BRIAN's employees, officers, and/or agents that reference communications to or from CJI employees, officers, and/or agents; including, but limited to, letters, email, memoranda, invoices, notes, files, and/or computer

1 records.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

3 KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these  
4 objections, KFC does not have in its possession, custody or control documents responsive to this  
5 request. In addition, KFC does not have possession custody or control of documents of BRIAN.

6 **REQUEST FOR PRODUCTION NO. 24:**

7 Any and all WRITINGS and/or WRITTEN COMMUNICATION of TODD employees,  
8 officers, and/or agents that reference communications to or from CJI employees, officers, and/or  
9 agents; including, but limited to, letters, email, memoranda, invoices, notes, files, and/or computer  
10 records.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

12 KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these  
13 objections, KFC does not have possession, custody or control of copies of documents responsive to  
14 this request. KFC will produce copies of those emails in its possession, custody or control bearing  
15 document identification numbers KFC000001 - 10. In addition, KFC does not have possession  
16 custody or control of documents of TODD.

17 **REQUEST FOR PRODUCTION NO. 25:**

18 Any and all KFC email to or from CJI employees, officers, and/or agents; including, but  
19 limited to, memoranda, invoices, notes, files, print-outs of computer files, and/or computer records.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

21 KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these  
22 objections, KFC does not have possession, custody or control of copies of all documents responsive to  
23 this request. KFC will produce copies of those emails in its possession, custody or control bearing  
24 document identification numbers KFC000001 - 10.

25 **REQUEST FOR PRODUCTION NO. 26:**

26 Any and all THI email to or from CJI employees, officers, and/or agents; including, but  
27 limited to, memoranda, invoices, notes, files, print-outs of computer files, and/or computer records.

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

9

1 KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these  
 2 objections, KFC does not have in its possession, custody or control any documents responsive to this  
 3 request. In addition, KFC does not have possession custody or control of documents of THI.

4 **REQUEST FOR PRODUCTION NO. 27:**

5 Any and all BRIAN email to or from CJI employees, officers, and/or agents; including, but  
 6 limited to, memoranda, invoices, notes, files, print-outs of computer files, and/or computer records.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

8 KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these  
 9 objections, KFC does not have in its possession, custody or control any documents responsive to this  
 10 request. In addition, KFC does not have possession custody or control of documents of BRIAN.

11 **REQUEST FOR PRODUCTION NO. 28:**

12 Any and all TODD email to or from CJI employees, officers, and/or agents; including, but  
 13 limited to, memoranda, invoices, notes, files, print-outs of computer files, and/or computer records.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

15 KFC incorporates by reference General Objection Nos. 1 & 3. Without waiving these  
 16 objections, KFC does not have possession, custody or control of copies of all documents responsive to  
 17 this request. KFC will produce copies of those emails in its possession, custody or control bearing  
 18 document identification numbers KFC000001 - 10. In addition, KFC does not have possession  
 19 custody or control of documents of TODD.

20 **REQUEST FOR PRODUCTION NO. 29:**

21 Any and all KFC email that refers to, references, and/or discusses CJI or its employees,  
 22 officers, and/or agents; including, but limited to, memoranda, invoices, notes, files, print-outs of  
 23 computer files, and/or computer records.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

25 KFC incorporates by reference General Objection Nos. 1, 3 & 4. Without waiving these  
 26 objections, KFC does not have possession, custody or control of copies of all documents responsive to  
 27 this request. KFC will produce copies of those emails in its possession, custody or control bearing  
 28 document identification numbers KFC000001 - 10.

10

**REQUEST FOR PRODUCTION NO. 30:**

Any and all KFC email that refers to, references, and/or discusses THI or its employees, officers, and/or agents; including, but limited to, memoranda, invoices, notes, files, print-outs of computer files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. Without waiving these objections, KFC does not have in its possession, custody or control any documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 31:**

Any and all KFC email that refers to, references, and/or discusses TODD or his employees, officers, and/or agents; including, but limited to, memoranda, invoices, notes, files, print-outs of computer files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. Without waiving these objections, KFC does not have in its possession, custody or control any documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 32:**

Any and all KFC email that refers to, references, and/or discusses BRIAN or his employees, officers, and/or agents; including, but limited to, memoranda, invoices, notes, files, print-outs of computer files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. Without waiving these objections, KFC does not have in its possession, custody or control any documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 33:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of KFC that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI including, but limited to, memoranda, reports, invoices, notes, files, print-outs of computer files, and/or computer records.

11

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. Specifically, KFC cannot determine what documents are described as "writings or written communications of KFC that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI."

**REQUEST FOR PRODUCTION NO. 34:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of THI that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI including, but limited to, memoranda, reports, invoices, notes, files, print-outs of computer files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. Specifically, KFC cannot determine what documents are described as "writings or written communications of THI that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI." In addition, KFC does not have possession custody or control of documents of THI.

**REQUEST FOR PRODUCTION NO. 35:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of TODD that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI including, but limited to, memoranda, reports, invoices, notes, files, print-outs of computer files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. Specifically, KFC cannot determine what documents are described as "writings or written communications of TODD that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI." In addition, KFC does not have possession, custody or control of documents of TODD.

**REQUEST FOR PRODUCTION NO. 36:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION of BRIAN that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI including, but limited to, memoranda, reports, invoices, notes, files, print-outs of computer files, and/or computer records.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. Specifically, KFC cannot



determine what documents are described as “writings or written communications of BRIAN that consist of, refer to, reference, and/or discuss any and all financial records regarding CJI.” In addition, KFC does not have possession, custody or control of documents of BRIAN.

**REQUEST FOR PRODUCTION NO. 37:**

Any and all invoices sent by CJI to KFC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such invoices and does not have possession, custody or control of any responsive documents.

**REQUEST FOR PRODUCTION NO. 38:**

Any and all invoices sent by CJI to THI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such invoices and does not have possession, custody or control of any responsive documents. In addition, KFC does not have possession custody or control of documents of THI.

**REQUEST FOR PRODUCTION NO. 39:**

Any and all invoices sent by CJI to TODD.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such invoices and does not have possession, custody or control of any responsive documents. In addition, KFC does not have possession custody or control of documents of TODD.

**REQUEST FOR PRODUCTION NO. 40:**

Any and all invoices sent by CJI to BRIAN.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such invoices and does not have possession, custody or control of any responsive documents. In addition, KFC does not have possession custody or control of documents of BRIAN.

**REQUEST FOR PRODUCTION NO. 41:**

Any and all invoices sent by KFC to CJI.

13



**RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

KFC is not aware of any such invoices.

**REQUEST FOR PRODUCTION NO. 42:**

Any and all invoices sent by THI to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such invoices. In addition, KFC does not have possession custody or control of documents of THI.

**REQUEST FOR PRODUCTION NO. 43:**

Any and all invoices sent by TODD to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such invoices. In addition, KFC does not have possession custody or control of documents of TODD.

**REQUEST FOR PRODUCTION NO. 44:**

Any and all invoices sent by BRIAN to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such invoices. In addition, KFC does not have possession custody or control of documents of BRIAN.

**REQUEST FOR PRODUCTION NO. 45:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by KFC to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such documents.

**REQUEST FOR PRODUCTION NO. 46:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by THI to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

14

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such documents. In addition, KFC does not have possession custody or control of documents of THI.

**REQUEST FOR PRODUCTION NO. 47:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by TODD to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such documents. In addition, KFC does not have possession custody or control of documents of TODD.

**REQUEST FOR PRODUCTION NO. 48:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by BRIAN to CJI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such documents. In addition, KFC does not have possession custody or control of documents of BRIAN.

**REQUEST FOR PRODUCTION NO. 49:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by CJI to KFC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

KFC will produce documents, if any, responsive to this request to the extent that it has possession, custody or control over documents showing payments made by CJI to KFC.

**REQUEST FOR PRODUCTION NO. 50:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by CJI to THI.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such documents except to the extent that documents responsive to Request No. 49 are also

responsive to this request. In addition, KFC does not have possession custody or control of documents of THI.

**REQUEST FOR PRODUCTION NO. 51:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by CJI to TODD.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such documents except to the extent that documents responsive to Request No. 49 are also responsive to this request. In addition, KFC does not have possession custody or control of documents of TODD.

**REQUEST FOR PRODUCTION NO. 52:**

Any and all WRITINGS and/or WRITTEN COMMUNICATION which reflect any payments made by CJI to BRIAN.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

KFC incorporates by reference General Objection Nos. 1, 3 & 4. KFC is not aware of any such documents except to the extent that documents responsive to Request No. 49 are also responsive to this request. In addition, KFC does not have possession custody or control of documents of BRIAN.

Dated: May 13, 2008

FREELAND COOPER & FOREMAN LLP

By:



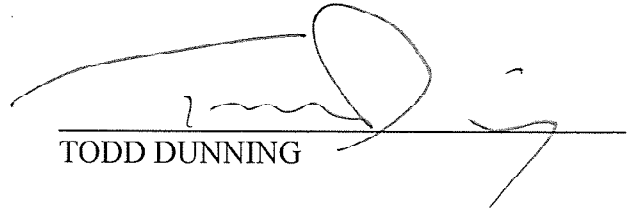
STEWART H. FOREMAN  
Attorneys for Defendants  
KESSLER'S FLYING CIRCUS  
and TODD DUNNING

**VERIFICATION**

I, Todd Dunning, declare:

I am a partner of Defendant Kessler's Flying Circus and make this verification on its behalf. I have read the foregoing **DEFENDANT KESSLER'S FLYING CIRCUS'S RESPONSES TO PLAINTIFF'S REQUEST FOR THE IDENTIFICATION, PRODUCTION AND COPYING OF DOCUMENTS, SET ONE** and know its contents, and am informed and believe the matters therein stated are true, and on that basis state they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of May, 200~~7~~<sup>8</sup> at Santa Ana, California.

  
TODD DUNNING

FREELAND COOPER & FOREMAN LLP

150 Spear Street, Suite 1800  
San Francisco, California 94105

**PROOF 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 May 19, 2008, I served the foregoing document described as follows:

**DEFENDANT KESSLER'S FLYING CIRCUS'S RESPONSES TO PLAINTIFF'S REQUEST  
FOR THE IDENTIFICATION, PRODUCTION AND COPYING OF DOCUMENTS, SET  
ONE**

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:

John H. Ernster, Esq.  
Phil J. Montoya, Esq.  
ERNSTER LAW OFFICES, P.C.  
70 South Lake Avenue, Suite 750  
Pasadena, California 91101  
Telephone: (626) 844-8800  
Facsimile: (626) 844-8944  
Attorneys for Plaintiff  
COMMISSION JUNCTION, INC.

Ronald Rus, Esq.  
Leo J. Presiado, Esq.  
RUS, MILIBAN & SMITH  
2600 Michelson Drive  
Irvine, California 92612  
Telephone: (949) 752-7100  
Facsimile: (949) 252-1514  
Attorneys for Defendant  
BRIAN DUNNING and THUNDERWOOD  
HOLDINGS, INC.

Scott Patrick Barlow, Esq.  
General Counsel  
4353 Park Terrace Drive  
Westlake Village, California 91361  
Telephone: (818) 575-4500  
Facsimile: (818) 575-4500  
Attorneys for Plaintiff  
COMMISSION JUNCTION, INC.

X [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

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transmission was unsuccessful.

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

Executed on May 19, 2008, at San Francisco, California.

Rosemary Morris

**FREELAND COOPER & FOREMAN LLP**

150 Spear Street, Suite 1800  
San Francisco, California 94105



----- Original Message -----

**From:** Brian Dunning

**To:** Todd Dunning

**Sent:** Wednesday, May 30, 2007 6:09 PM

**Subject:** Re: Reminder: ebay US program changes on June 1st

Should not affect us, does it?

On May 30, 2007, at 6:51 PM, Todd Dunning wrote:

----- Original Message -----

**From:** eBay

**To:** todd@dunningmarketing.com

**Sent:** Wednesday, May 30, 2007 5:37 PM

**Subject:** Reminder: ebay US program changes on June 1st

Dear Karine ,

This is a reminder that at midnight on June 1<sup>st</sup> the eBay US Affiliate Program Terms will change. Here is a brief overview of the new Program Terms:

- *\$25.00-\$35.00 per Active Registration*  
A registration is active when the user places a bid on eBay within 30 days of their initial registration.
- *Between 50% and 75% of eBay's revenue on all Winning Bids*  
The eBay program pays on ALL Winning Bids or Buy It Nows (BINs) within 7 days of an affiliate action.
- *New Paid Search Terms and Conditions*  
Beginning June 1, 2007, the eBay US Affiliate Program will no longer allow paid search traffic from Google.com, Yahoo.com, MSN.com, nor from any of their content networks, such as Google AdSense, Yahoo! Publisher Network, and MSN ContentAds to be linked directly to the eBay.com, eBay Express, or eBay Store domains.

**KFC000001**

For more detail on the Program Term and Terms & Conditions changes, please see the message dated May 15th, or follow this link <http://affiliates.ebay.com/odcs/custom.htm?template=Payout>. Publishers do not need to take any steps to move to the new Program Terms containing the updated Terms & Conditions regarding Paid Search Restrictions. If the new Terms & Conditions are not agreeable to you, then you are required to proactively end your affiliate relationship with eBay via the CJ Account Manager interface within 7 days. eBay and Commission Junction are very excited with this change and feel that this will provide an additional avenue of success for publishers.

Sincerely,

The eBay.com Affiliate Team

Commission Junction, a division of ValueClick, Inc.

177 Steuart Street, Suite 600 . San Francisco, CA 94105

d: 415.808.1932 | f: 415.808.1901 | e: [pkoura@cj.com](mailto:pkoura@cj.com)

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<http://mx5.cj.com/tmo/98665/1416641>

E-mail message checked by PC Tools Spyware Doctor (5.0.0.186)

Database version: 5.07410

<http://www.pctools.com/spyware-doctor/>

KFC000002

----- Original Message -----

**From:** Brian Dunning

**To:** Todd Dunning

**Sent:** Wednesday, May 30, 2007 6:08 PM

**Subject:** Re: Techcrunch ad

Have to remove "sponsored by eBay". They have required us to change this wording in the past to "Buy & Sell on eBay."

On May 30, 2007, at 6:44 PM, Todd Dunning wrote:

Can you send this to CK for approval? This would be cut into 3 pieces of course including sponsor and tracker. It would go here: <http://www.techcrunch.com>

We're gonna spend \$20K so let's make sure there are no conflicts. I think Techcrunch is running CJ ads too.

---

Todd Dunning  
(949) 395-2309  
[todd@dunningmarketing.com](mailto:todd@dunningmarketing.com)  
<techcrunch.gif>

**E-mail message checked by PC Tools Spyware Doctor (5.0.0.186)**

**Database version: 5.07410**

**<http://www.pctools.com/spyware-doctor/>**

**KFC000003**

----- Original Message -----

**From:** Brian Dunning

**To:** Todd Dunning

**Sent:** Tuesday, May 15, 2007 4:00 PM

**Subject:** Re: ebay US program changes on June 1st

Well - Nothing wrong with that !!!!

On May 15, 2007, at 4:59 PM, Todd Dunning wrote:

----- Original Message -----

**From:** eBay

**To:** todd@dunningmarketing.com

**Sent:** Tuesday, May 15, 2007 4:52 PM

**Subject:** ebay US program changes on June 1st

Dear Karine ,

We want to inform you of two important changes that will affect the eBay US affiliate program beginning June 1, 2007.

**1. Price Increase**

We are excited to announce a Payment Structure change that will dramatically increase your payout as an eBay Affiliate!

The main objectives of the price change are to:

- Encourage partners to increase promotional efforts with higher tiers
- Reward the launch and growth of new, innovative business models

**KFC000004**

Below is the detailed payout structure that will take effect June 1<sup>st</sup> for the eBay US affiliate program:

#### Monthly ACRU Tiers

Total ACRUs

Compensation per ACRU

0-49

\$25.00

50-1,999

\$28.00

2,000-29,999

\$31.00

30,000+

\$35.00

#### Monthly Revenue Share Tiers

Total Revenue (\$)

% of Revenue

\$0-\$99.99

50.00%

\$100-\$4,999.99

55.00%

\$5,000-\$199,999.99

60.00%

\$200,000-\$699,999.99

65.00%

\$700,000-\$2,999,999.99

70.00%

\$3,000,000 +

**KFC000005**

75.00%

Please visit our hub pages for more information: <http://affiliates.ebay.com/payout>

## 2. Terms and Conditions Update for Paid Search Campaigns

eBay's US Affiliate Compensation Section 1.0 will be updated on June 1st as follows:

a. **Search Engines.** You will not be compensated for paid search traffic purchased from Google.com, Yahoo.com, MSN.com, nor from any of their content networks, such as Google AdSense, Yahoo! Publisher Network, and MSN ContentAds, if it is linked directly to the eBay.com, eBay Express, or eBay Store domains (not "Commission Earning Activity"). The change in policy is limited to the eBay.comUS program, and to the three search engines stated above. Linking to a non eBay domain is allowed.

Please note that: 1) Program Terms with the new Terms & Conditions will automatically take effect on June 1. 2) Publishers **do not need to take any steps** to move to the new Program Terms containing the updated Special Terms & Conditions, and 3) If the Special Terms & Conditions are not agreeable to you, then you are required to proactively end your affiliate relationship with ebay.com via the CJ Account Manager interface.

The eBay US Affiliate Team is dedicated to a program that fosters innovation and new opportunities for all partners. We're excited by the price increase, and look forward to your continued success!

The eBay US Affiliate Team

<http://mx5.cj.com/tmo/96337/1416641>

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**KFC000006**



navigate to the mail settings page located within the MAIL tab. You may opt-out of receiving messages from this specific advertiser through their advertiser detail page.

----- Original Message -----

**From:** Brian Dunning

**To:** Joshua McClung

**Cc:** Todd Dunning ; Andrea Bardakos

**Sent:** Tuesday, January 02, 2007 10:30 AM

**Subject:** Re: eBay US Account Management Replacement

Hi Josh! Welcome.

I'm going to be out of town at conferences a lot over the next 3 weeks, but as soon as we can find a good day, Todd & I would like to come up to SB and meet you, maybe grab a lunch.

Talk soon.... :)

- Brian

On Jan 2, 2007, at 10:25 AM, Andrea Bardakos wrote:

Hi Brian/Todd!

How are you! How's the knee, Brian?

Happy New Years!!! Did you do anything fun!?!?

I wanted to introduce you to Josh McClung. He will be the new eBay US Program Manager going forward. I will be transitioning to my new role this week and will be training Josh for his new role on the eBay team as of today.

**KFC000007**

Josh's direct line is 805-730-8123 and his email is [jmcclung@cj.com](mailto:jmcclung@cj.com).

Thanks and let us know if you have any questions!

Andrea

---

**Andrea Bardakos-Riley** | *Program Manager - Strategic Accounts*

Commission Junction, a ValueClick company

530 East Montecito St. | Santa Barbara, CA 93103

p 805 730 8000 | d 805 730 8161

[abardakos@cj.com](mailto:abardakos@cj.com)

Any disclosure, copying, distribution, posting or use of the contents of this information is prohibited and may be unlawful. This e-mail may contain proprietary or confidential information and is for the sole use of the intended recipient(s). Thank you.

**KFC000008**

ERNSTERSUBPOENA00589

----- Original Message -----

**From:** Brian Dunning

**To:** Todd Dunning

**Sent:** Tuesday, May 29, 2007 6:28 PM

**Subject:** Re: Dumb network quality email

Thanks, I'll take care of it.

On May 29, 2007, at 7:56 PM, Todd Dunning wrote:

Somebody clueless is allowed to email us:

Dear Brian Dunning,

Commission Junction is currently investigating your account and has the following inquiries regarding your promotional methods:

I noticed that many of your referring URLs are coming from different blogs, are you the owner? If you are the owner that's fine but I also noticed that some of them contain objectionable content pictures so you need to be careful not to post our links on the same page.

Please respond by replying to this specific e-mail within five days of delivery date. If you are reading this notice through your CJ Account Manager (Mail tab) and do not have access to the e-mail notice, please respond using Ask a Question, available through the "Contact Us" link available in account manager, and include this original message. Failure to respond may result in Commission Junction exercising its right to terminate the Commission Junction Publisher Service Agreement upon 15 days of this written notice.

Sincerely,

Network Quality

**KFC000009**

Todd Dunning  
(949) 395-2309  
[todd@dunningmarketing.com](mailto:todd@dunningmarketing.com)

----- Original Message -----

**From:** Brian Dunning  
**To:** [Todd Dunning](mailto:Todd Dunning)  
**Sent:** Saturday, December 30, 2006 3:46 PM  
**Subject:** Re: Also...

On Dec 30, 2006, at 3:37 PM, Todd Dunning wrote:

1. Make sure the posts do not look like spam. You're not using the little text randomizer i sent you. I'll make you another if you will use it. The reason to use the randomizer is that they could just grep all your identical text.

Can't really do that, this was one of CJ's conditions of getting a clean bill of health from Dr. McCoy. They wanted to make sure we were posting only the same legit code provided by the MySpaceMaps.info site.

Anyway if MySpace decided to kill all the ads for MySpaceMaps, they'd just search for MySpaceMaps instead of for the complete posting code. They're smart enough to know that some people will tweak it, and they do.

2. If the widget is in flash will that help solve this myspace problem?

I can't see that it would make any difference in this case. If people are complaining about being spammed with the widget, they're not upset because it's HTML instead of Flash.

**KFC000010**

# PROOF 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 May 19, 2008, I served the foregoing document described as follows:

## **DEFENDANT KESSLER'S FLYING CIRCUS'S RESPONSES TO PLAINTIFF'S REQUEST FOR THE IDENTIFICATION, PRODUCTION AND COPYING OF DOCUMENTS, SET ONE**

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:

John H. Ernster, Esq.  
Phil J. Montoya, Esq.  
ERNSTER LAW OFFICES, P.C.  
70 South Lake Avenue, Suite 750  
Pasadena, California 91101  
Telephone: (626) 844-8800  
Facsimile: (626) 844-8944  
Attorneys for Plaintiff  
COMMISSION JUNCTION, INC.

Ronald Rus, Esq.  
Leo J. Presiado, Esq.  
RUS, MILIBAN & SMITH  
2600 Michelson Drive  
Irvine, California 92612  
Telephone: (949) 752-7100  
Facsimile: (949) 252-1514  
Attorneys for Defendant  
BRIAN DUNNING and THUNDERWOOD  
HOLDINGS, INC.

Scott Patrick Barlow, Esq.  
General Counsel  
30699 Russell Ranch Rd., Suite 250  
Westlake Village, California 91361  
Telephone: (818) 575-4510  
Facsimile: (818) 575-4505  
Attorneys for Plaintiff  
COMMISSION JUNCTION, INC.

☒ [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.

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☐ [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

18

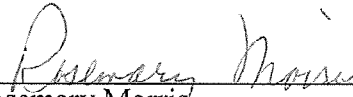
DEFENDANT KESSLER'S FLYING CIRCUS'S RESPONSE TO PLAINTIFF'S REQUEST FOR IDENTIFICATION, PRODUCTION AND COPYING OF DOCUMENTS, SET ONE  
CASE NO. 30-2008 00101025

{00116496-1}

transmission was unsuccessful.

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

Executed on May 19, 2008, at San Francisco, California.

  
Rosemary Morris

FREELAND COOPER & FOREMAN LLP

150 Spear Street, Suite 1800  
San Francisco, California 94105



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MAY 21 2008