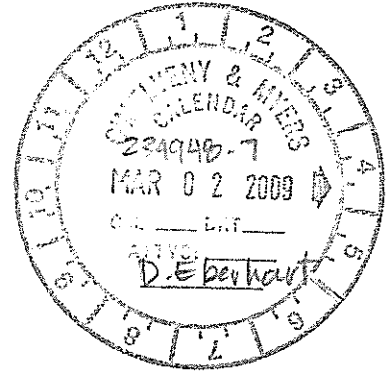


EXHIBIT 3



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8 Attorney for Defendant KESSLER'S FLYING CIRCUS

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

11 EBAY INC.,) Case No. 08-4052
12)
13 Plaintiff,) KESSLER'S FLYING CIRCUS'
14 vs.) RESPONSE TO PLAINTIFF'S FIRST
15) SET OF REQUESTS FOR PRODUCTION
16 DIGITAL POINTS SOLUTIONS, INC.,)
17 SHAWN HOGAN; KESSLER'S FLYING)
18 CIRCUS; THUNDERWOOD HOLDINGS,)
19 INC.; TODD DUNNING; DUNNING)
20 ENTERPRISES, INC.; BRIAN DUNNING;)
21 BRIANDUNNING.COM; and DOES 1-20,)
22)
23 Defendants.)
24)
25)
26)
27)
28)

20 PROPOUNDING PARTY: PLAINTIFF EBAY INC.
21 RESPONDING PARTY: DEFENDANT KESSLER'S FLYING CIRCUS
22 SET NUMBER: ONE

1 Defendant Kessler's Flying Circus ("KFC" or "Defendant KFC") hereby submits the
2 following objections and responses to the First Set of Requests for Production propounded by
3 Plaintiff Ebay, Inc. ("Plaintiff").

4 GENERAL STATEMENT

5 Defendants' Motions to Dismiss Plaintiff's First Amended Complaint were granted by Order
6 filed herein on February 24, 2009. The Order dismissed Plaintiff's complaint with leave to amend
7 and no amended complaint has been filed. There is no pending complaint in existence against
8 defendant KFC.

9 Defendants Todd Dunning and Brian Dunning (the "Dunnings") have invoked their privilege
10 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
11 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
12 California Constitution, and California Evidence Code section 940. Defendant Kessler's Flying
13 Circus is a partnership comprised of two corporate partners, Defendants KFC and Thunderwood
14 Holdings, Inc. The sole shareholder and representative of KFC is Defendant Todd Dunning. The sole
15 shareholder and representative of Thunderwood Holdings, Inc. is Brian Dunning. Since the Dunnings
16 are the sole shareholders and sole authorized representatives of KFC and Thunderwood Holdings, Inc.
17 respectively, and the only persons who can verify discovery responses on behalf of Defendant KFC,
18 Defendant KFC cannot provide any verified responses without compromising the Dunnings' right
19 against self-incrimination. Should either Todd Dunning or Brian Dunning determine that there is no
20 longer the threat of potential criminal prosecution and elect to withdraw his privilege against self-
21 incrimination in the future, Defendant KFC expressly reserves the right to supplement its responses.

22 Furthermore, the Federal Bureau of Investigation has seized all documents and computers,
23 disk drives, hard drives, cell phones and servers containing information potentially related to this
24 matter. Assistant United States Attorney Kyle F. Waldinger in charge of this investigation has
25 refused all requests to provide defendants with a copy of the material seized by the FBI. Those items
26 and records may contain information responsive to the requests below, but those items and records are
27 not in the possession, custody or control of defendants.
28

1 REQUEST FOR PRODUCTION NO. 1:

2 All documents relating to eBay, including all agreements, terms of service and terms and
3 conditions.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

5 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
6 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
7 Defendant KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly
8 burdensome and oppressive. KFC 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, KFC responds as follows: KFC produced a
12 limited number of documents at the time of making its Initial Disclosures. KFC 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, KFC is prohibited from
16 producing these documents at this time. KFC has no other documents in its possession, custody or
17 control that are responsive to this request.

18 REQUEST FOR PRODUCTION NO. 2:

19 All documents relating to, or Communications with, eBay or any current or former employee
20 of eBay.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

22 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
23 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
24 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
25 and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks
26 documents the disclosure of which might violate the attorney-client privilege and/or the work product
27 doctrine. Subject to and without waiving the foregoing objections and based on a reasonable
28

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

8 REQUEST FOR PRODUCTION NO. 3:

9 All documents relating to payment of commissions or other revenue obtained by KFC through
10 participation in, interaction with or manipulation of eBay's Affiliate Marketing Program.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

12 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
13 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
14 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
15 and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague,
16 argumentative and conclusory. KFC further objects to this request on the grounds that, as phrased,
17 the request seeks documents the disclosure of which might violate the attorney-client privilege and/or
18 the work product doctrine. KFC further objects to this request on the ground that it violates KFC's
19 right to privacy, and seeks production of trade secrets or other confidential information. KFC further
20 objects on the ground that this information is equally available to Plaintiff. Subject to and without
21 waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this
22 request, KFC responds as follows: KFC produced a limited number of documents at the time of
23 making its Initial Disclosures. KFC has documents that may be responsive to this request that were
24 produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission*
25 *Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-
26 2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC
27 has no other documents in its possession, custody or control that are responsive to this request.
28

1 REQUEST FOR PRODUCTION NO. 4:

2 All documents relating to eBay's Affiliate Marketing Program, including, but no limited to, all
3 methods and technologies used by KFC to obtain revenue from, manipulate or otherwise interact
4 with, eBay's Affiliate Marketing Program, including, but not limited to, all software, source code,
5 Javascript, and HTML code.

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

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

22 REQUEST FOR PRODUCTION NO. 5:

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

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1 RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

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

16 REQUEST FOR PRODUCTION NO. 6:

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

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

21 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
22 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
23 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
24 and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks
25 documents the disclosure of which might violate the attorney-client privilege and/or the work product
26 doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or
27 other confidential information. Subject to and without waiving the foregoing objections and based on
28 a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced

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

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1 REQUEST FOR PRODUCTION NO. 8:

2 All documents sufficient to identify all advertising networks, advertising syndication services
3 or websites used or purportedly used by KFC to advertise or promote eBay or to interact in any way
4 with eBay or eBay's Affiliate Marketing Programs.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

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

20 REQUEST FOR PRODUCTION NO. 9:

21 All documents sufficient to identify all Affiliate Marketing Programs, not including eBay's
22 Affiliate Marketing Program, with whom KFC obtained revenue or otherwise interacted.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

24 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
25 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
26 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
27 and oppressive. KFC further objects that to the extent this request seeks documents related to
28

1 programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject
2 matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC
3 further objects to this request on the grounds that, as phrased, the request seeks documents the
4 disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC
5 further objects to this request on the ground that it seeks production of trade secrets or other
6 confidential information. Subject to and without waiving the foregoing objections and based on a
7 reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not
8 have any responsive documents in its possession, custody or control.

9
10 REQUEST FOR PRODUCTION NO. 10:

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

13 RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

14
15 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
16 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
17 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
18 and oppressive. KFC further objects on the grounds that that the term "manipulated" is vague,
19 argumentative and conclusory. KFC further objects that to the extent this request seeks documents
20 related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to
21 the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
22 evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks
23 documents the disclosure of which might violate the attorney-client privilege and/or the work product
24 doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or
25 other confidential information. Subject to and without waiving the foregoing objections and based on
26 a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not
27 have any responsive documents in its possession, custody or control.

1 REQUEST FOR PRODUCTION NO. 11:

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

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

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

17 REQUEST FOR PRODUCTION NO. 12:

18 All documents sufficient to identify any individuals, groups, books, manuals or other materials
19 consulted by KFC while developing any technology, technique or method used by KFC to participate
20 in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing
21 Program.

22 RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

23 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
24 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
25 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
26 and oppressive. KFC further objects on the grounds that that the term "manipulate" is vague,
27 argumentative and conclusory. KFC further objects that to the extent this request seeks documents
28

1 related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to
2 the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
3 evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks
4 documents the disclosure of which might violate the attorney-client privilege and/or the work product
5 doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or
6 other confidential information. Subject to and without waiving the foregoing objections and based on
7 a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not
8 have any responsive documents in its possession, custody or control.

9 REQUEST FOR PRODUCTION NO. 13:

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

12 RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

13 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
14 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
15 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
16 and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks
17 documents the disclosure of which might violate the attorney-client privilege and/or the work product
18 doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or
19 other confidential information. Subject to and without waiving the foregoing objections and based on
20 a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not
21 have any responsive documents in its possession, custody or control.

22 REQUEST FOR PRODUCTION NO. 14:

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

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

26 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
27 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
28

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

8 REQUEST FOR PRODUCTION NO. 15:

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

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

12 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
13 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
14 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
15 and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks
16 documents the disclosure of which might violate the attorney-client privilege and/or the work product
17 doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or
18 other confidential information. Subject to and without waiving the foregoing objections and based on
19 a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not
20 have any responsive documents in its possession, custody or control.

21 REQUEST FOR PRODUCTION NO. 16:

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

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

24 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
25 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
26 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
27 and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks
28

1 documents the disclosure of which might violate the attorney-client privilege and/or the work product
2 doctrine. KFC further objects to this request on the ground that it violates privacy rights of third
3 parties. Subject to and without waiving the foregoing objections and based on a reasonable
4 interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any
5 responsive documents in its possession, custody or control.

6 REQUEST FOR PRODUCTION NO. 17:

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

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

12 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
13 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
14 KFC objects to this request on the grounds that Rachel Hughes is unknown to KFC, therefore no
15 response is possible and all objections are reserved until eBay properly identifies this person or entity.

16 REQUEST FOR PRODUCTION NO. 18:

17 All documents sufficient to describe all phone numbers, email addresses, web pages, instant
18 messenger or mail accounts and social network accounts maintained, formerly maintained or
19 registered to KFC.

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

21 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
22 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
23 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
24 and oppressive. KFC objects that this request seeks documents which are neither relevant to the
25 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
26 evidence. KFC further objects to this request on the ground that it seeks production of trade secrets or
27 other confidential information. Subject to and without waiving the foregoing objections and based on
28

1 a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC 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 KFC in any Internet Forum at or within
5 which KFC discussed any aspect of their participation in, manipulation of or interaction with eBay's
6 Affiliate Marketing Program, or any other Affiliate Marketing Programs, including, but not limited to,
7 forums such as blogs, listservs, Usenet newsgroups or chat rooms.

8 RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

9 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
10 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
11 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
12 and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague,
13 argumentative and conclusory. KFC further objects that to the extent this request seeks documents
14 related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to
15 the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
16 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
17 interpretation as to the meaning of this request, KFC responds as follows: KFC does not have
18 possession, custody, or control of any responsive documents.

19 REQUEST FOR PRODUCTION NO. 20:

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

24 RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

25 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
26 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
27 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
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1 and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague,
2 argumentative and conclusory. KFC further objects that to the extent this request seeks documents
3 related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to
4 the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
5 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
6 interpretation as to the meaning of this request, KFC responds as follows: KFC does not have
7 possession, custody, or control of any responsive documents.

8 REQUEST FOR PRODUCTION NO. 21:

9 Documents sufficient to identify all internet service providers (ISPs) and IP addresses used by
10 KFC.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

12 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
13 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
14 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
15 and oppressive. KFC objects that this request seeks documents which are neither relevant to the
16 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
17 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
18 interpretation as to the meaning of this request, KFC responds as follows: KFC does not have
19 possession, custody, or control of any responsive documents.

20 REQUEST FOR PRODUCTION NO. 22:

21 Documents sufficient to identify all computers, servers, electronic data storage and hosting
22 companies, entities, or facilities used by KFC.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

24 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
25 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
26 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
27 and oppressive. KFC objects that this request seeks documents which are neither relevant to the
28

1 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
2 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
3 interpretation as to the meaning of this request, KFC responds as follows: To the extent that KFC
4 was a partner in Kessler's Flying Circus, which had computers and stored data, this material is
5 currently in the possession of the FBI and not available to KFC. KFC does not have possession,
6 custody, or control of any responsive documents.

7 REQUEST FOR PRODUCTION NO. 23:

8 Documents sufficient to identify any entity used or hired to maintain or restore electronic data
9 or systems relating to KFC's participation in, manipulation of or interaction with eBay's Affiliate
10 Marketing Program.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

12 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
13 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
14 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
15 and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague,
16 argumentative and conclusory. KFC further objects to this request on the ground that it seeks
17 production of trade secrets or other confidential information. Subject to and without waiving the
18 foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC
19 responds as follows: KFC does not have possession, custody, or control of any responsive
20 documents.

21
22 REQUEST FOR PRODUCTION NO. 24:

23 Documents sufficient to identify software used to clean, reformat or erase hard-drives used by
24 KFC, or any equipment owned, used or maintained by KFC.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

26 Defendant KFC objects to this request on the grounds that Plaintiff's First
27 Amended Complaint has been dismissed and there is no pending complaint in existence against
28

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

7 REQUEST FOR PRODUCTION NO. 25:

8 All documents sufficient to identify all business entities or fictitious business names currently
9 or formerly maintained by KFC.

10 RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

11 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
12 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
13 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
14 and oppressive. KFC further objects that this request seeks documents which are neither relevant to
15 the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
16 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
17 interpretation as to the meaning of this request, KFC responds as follows: KFC does not have
18 possession, custody, or control of any responsive documents.

19 REQUEST FOR PRODUCTION NO. 26:

20 All documents filed by KFC with any Secretary of State.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

22 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
23 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
24 Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to
25 the meaning of this request, KFC responds as follows: Other than the documents KFC produced as
26 part of its Initial Disclosures, KFC has no other documents in its possession, custody or control that
27 are responsive to this request.
28

1 REQUEST FOR PRODUCTION NO. 27:

2 Documents sufficient to show the structure and organization of KFC and all companies or
3 other entities owned or controlled by KFC that were involved in or interacted with any Affiliate
4 Marketing Program.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

6 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
7 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
8 KFC objects on the ground that this request is overbroad, unduly burdensome and oppressive. KFC
9 further objects that this request seeks documents which are neither relevant to the subject matter of
10 this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and
11 without waiving the foregoing objections and based on a reasonable interpretation as to the meaning
12 of this request, KFC responds as follows: Other than the documents KFC produced as part of its
13 Initial Disclosures, KFC has no other documents in its possession, custody or control that are
14 responsive to this request.

15 REQUEST FOR PRODUCTION NO. 28:

16 Documents sufficient to identify all employees, contractors or temporary employees of KFC,
17 their dates of employment, duties, salary and any other compensation.

18 RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

19 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
20 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
21 KFC objects on the ground that this request is overbroad, unduly burdensome and oppressive. KFC
22 further objects that this request seeks documents which are neither relevant to the subject matter of
23 this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further
24 objects to this request on the ground that it violates privacy rights of third parties, seeks production of
25 trade secrets or other confidential information.

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27 ///

28

1 REQUEST FOR PRODUCTION NO. 29:

2 All documents constituting KFC's annual, quarterly and monthly audited, compiled, reviewed
3 or unaudited financial statements, including all income statements and balance sheets of KFC.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

5 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
6 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
7 KFC objects on the ground that this request is overbroad, unduly burdensome and oppressive. KFC
8 further objects that this request seeks documents which are neither relevant to the subject matter of
9 this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further
10 objects to this request on the ground that it seeks production of trade secrets and confidential financial
11 information, and invades KFC's rights of privacy

12 REQUEST FOR PRODUCTION NO. 30:

13 All documents sufficient to identify all assets and financial accounts (including those outside
14 of the United States) maintained or formerly maintained by KFC.

15 RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

16 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
17 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
18 KFC further objects on the ground that this request is vague and ambiguous, overbroad, unduly
19 burdensome and oppressive. KFC further objects that this request seeks documents which are neither
20 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of
21 admissible evidence. KFC further objects to this request on the ground that it violates KFC's right to
22 privacy, and seeks production of trade secrets and confidential financial information.

23 REQUEST FOR PRODUCTION NO. 31:

24 Documents constituting KFC's corporate tax returns for the years 2003 to the present.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

26 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
27 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.

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

5 REQUEST FOR PRODUCTION NO. 32:

6 All documents relating to the transfer or assumption of any liability by KFC.

7 RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

8 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
9 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
10 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
11 and oppressive. KFC objects that this request seeks documents which are neither relevant to the
12 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
13 evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks
14 documents the disclosure of which might violate the attorney-client privilege and/or the work product
15 doctrine. Subject to and without waiving the foregoing objections and based on a reasonable
16 interpretation as to the meaning of this request, KFC responds as follows: KFC does not have
17 possession, custody, or control of any responsive documents.

18 REQUEST FOR PRODUCTION NO. 33:

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

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

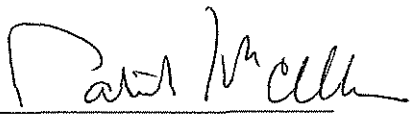
21 Defendant KFC objects to this request on the grounds that Plaintiff's First Amended
22 Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.
23 KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome
24 and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks
25 documents the disclosure of which might violate the attorney-client privilege and/or the work product
26 doctrine. Subject to and without waiving the foregoing objections and based on a reasonable
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interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

DATED: February 25, 2009

LAW OFFICE OF PATRICK K. McCLELLAN

BY: 

PATRICK K. Mc CLELLAN
Attorney for Defendant
Kessler's Flying Circus

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2600 Michelson Drive, Suite 700, Irvine, California 92612.

On February 25, 2009, I served the document(s) described as KESSLER'S FLYING CIRCUS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION on the interested parties in this action.

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

David R. Eberhart, Esq.
O'Melveny & Meyers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111

Ronald Rus, Esq.
Rus, Miliband & Smith
2211 Michelson Drive, Ste 700
Irvine, CA 92612

Stewart H. Foreman, Esq.
Freeland Cooper & Foreman, LLP
150 Spear Street, Ste 1800
San Francisco, CA 94105

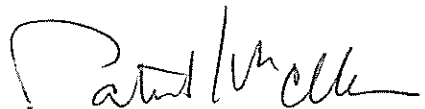
BY MAIL

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on February 25, 2009, at Irvine, CA.

PATRICK K. McClellan
Type or print name)


(Signature)