

EXHIBIT 23

RONALD RUS, #67369
rrus@rusmiliband.com
LEO J. PRESIADO, #166721
lpresiado@rusmiliband.com
RUS, MILIBAND & SMITH
A Professional Corporation
2211 Michelson Drive, Seventh Floor
Irvine, California 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514
Attorneys for Defendants
THUNDERWOOD HOLDINGS, INC.,
BRIAN DUNNING, and BRIANDUNNING.COM

STEWARD H. FOREMAN, #61149
foreman@freelandlaw.com
DANIEL T. BERNHARD, #104229
bernhard@freelandlaw.com
FREELAND COOPER & FOREMAN LLP
150 Spear Street, Suite 1800
San Francisco, California 94105
Telephone: (415) 541-0200
Facsimile: (415) 495-4332
Attorneys for Defendants, TODD DUNNING AND DUNNING ENTERPRISES, INC.

PATRICK K. McCLELLAN, #077352
pkellymc@pacbell.net
LAW OFFICES OF PATRICK K. McCLELLAN
2211 Michelson Drive, Suite 700
Irvine, California 92612
Telephone: (949) 261-7615
Facsimile: (949) 851-2772
Attorney for Defendant, KESSLER'S FLYING CIRCUS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EBAY INC.,)	CASE NO. CV-08-4052 JF
)	
Plaintiff,)	CONSOLIDATED INITIAL
)	DISCLOSURES OF DEFENDANTS
vs.)	BRIAN DUNNING,
)	BRIANDUNNING.COM,
DIGITAL POINT SOLUTIONS, INC.;)	THUNDERWOOD HOLDINGS, INC.,
SHAWN HOGAN; KESSLER'S FLYING)	TODD DUNNING, DUNNING
CIRCUS; THUNDERWOOD HOLDINGS,)	ENTERPRISES, INC., AND KESSLER'S
INC.; TODD DUNNING; DUNNING)	FLYING CIRCUS
ENTERPRISES, INC.; BRIAN DUNNING;)	
BRIANDUNNING.COM; and DOES 1-20,)	
)	
Defendants.)	

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendants Brian Dunning, Thunderwood Holdings, Inc. Briandunning.com, Todd Dunning, Dunning Enterprises, Inc. and Kessler's Flying Circus (collectively, "Dunning Defendants") submit the following initial disclosures. These initial disclosures are based on information reasonably available to the Dunning Defendants at this time. The Dunning Defendants' investigation, trial preparation and review of documents related to this matter is continuing. Accordingly, the Dunning Defendants reserve the right under the Federal Rules of Civil Procedure to supplement these disclosures should additional information become available through further investigation, discovery or otherwise. In making these statements and the disclosures, the Dunning Defendants are not waiving and reserve any and all applicable defenses.

A. Witnesses

The Dunning Defendants identify the individuals and entities listed on the attached Exhibit "A," pursuant to Rule 26(a)(1)(A). The identification of a name as part of this initial disclosure is not, and should not be interpreted as, a statement by the Dunning Defendants that named individuals will appear as witnesses at trial. The inclusion of a name is not, and should not be interpreted as, a waiver of any attorney-client or other privilege that may apply. Further, the absence of a name from the list provided by the Dunning Defendants is not, and should not be interpreted as, a statement by the Dunning Defendants that an individual does not have relevant knowledge and will not appear as a witness at trial.

The Dunning Defendants anticipate that there may be other witnesses, including present and former employees of eBay, Inc. and Commission Junction, Inc. or third parties whose identities and scope of knowledge are not currently known to the Dunning Defendants and who may have information relevant to the Dunning Defendants' defenses. As discovery and the Dunning Defendants' investigation progress, the Dunning Defendants will supplement this disclosure to the extent required by the Federal Rules of Civil Procedure and any applicable local rules.

B. Documents

As indicated in the Joint Case Management Statement to be filed in this action,

1 the FBI has seized all of the Dunning Defendants' records and has refused to return them
 2 and/or allow the Dunning Defendants to make copies. Such documents may be used by the
 3 Dunning Defendants to support its defenses in this action. The Dunning Defendants will
 4 produce a copy of all documents produced by Commission Junction, Inc. in the Related
 5 State Court Action to the extent Plaintiff is not already in possession of such documents and to
 6 the extent such production is not in violation of the Stipulated Protective Order entered in the
 7 Related State Court Action. In addition, all documents produced by Defendants Todd Dunning
 8 and Dunning Enterprises, Inc. in the Related State Court Action will be produced.

9 The above-referenced identification of documents is not, and should not be
 10 interpreted as, a statement by the Dunning Defendants that the identified documents will be
 11 used as an exhibit at trial or as an admission as to the authenticity or admissibility of any
 12 document. Further, the absence of a document, data compilation or tangible thing from the
 13 documents identified by the Dunning Defendants is not and should not be interpreted as a
 14 statement by the Dunning Defendants that such items are not relevant and will not be used as
 15 exhibits at trial. As discovery and the Dunning Defendants' investigation and trial preparation
 16 progress, the Dunning Defendants will supplement this disclosure to the extent required by the
 17 Federal Rules of Civil Procedure.

18 C. Damages

19 The Dunning Defendants have not yet made claims for damages in this action.

20 D. Insurance

21 At this time, the Dunning Defendants are not aware of any available insurance.

23 DATED: January 8, 2009

RUS, MILIBAND & SMITH
 A Professional Corporation


26 By: 

LEO J. PRESIADO

Attorneys for Defendants THUNDERWOOD
 HOLDINGS, INC., BRIAN DUNNING, and
 BRIANDUNNING.COM

1 DATED: January 8, 2009

FREELAND COOPER & FOREMAN, LLP

2
3 By: 
4 STEWART H. FOREMAN
5 Attorneys for Defendants TODD DUNNING
and DUNNING ENTERPRISES, INC.

6 DATED: January 8, 2009

LAW OFFICES OF PATRICK K. McCLELLAN

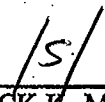
7
8 By: 
9 PATRICK K. McCLELLAN
10 Attorneys for Defendants KESSLER'S
11 FLYING CIRCUS
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "A"

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Case No. CV-08-4052 JF

1. Brian Dunning
c/o RUS, MILIBAND & SMITH, APC
2211 Michelson Drive
Seventh Floor
Irvine, CA 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514

Subject of information: Brian Dunning has information regarding
Defendants' defenses to the claims alleged by Plaintiff.

2. Todd Dunning
c/o Stewart H. Foreman
Freeland, Cooper & Foreman, LLP
150 Spear Street, Suite 1800
San Francisco, CA 94105
Telephone: (949) 541-0200
Facsimile: (949) 495-4332

Subject of information: Todd Dunning has information regarding
Defendants' defenses to the claims alleged by Plaintiff.

3. George Yuhba
Daniel Powell
David Kruszewski
Mark Gefteas
Carlos Hurtado
Dan Sweeney
Tori Johnson
June Shie
Mark Stannard
Jelena Petrovic
Jennifer Burnett
Jo O'Brien
Jennifer Lovette
Dave Osman
Scott Barlow

///

///

Kerri Pollard
c/o Phil J. Montoya, Jr., Esq.
Ernster Law Offices, P.C.
70 South Lake Avenue, Suite 750
Pasadena, CA 91101
Telephone: (626) 844-8800
Facsimile: (626) 844-8944

Subject of information: These individuals were identified by Commission Junction, Inc. ("CJI") as employees of CJI having knowledge of the claims alleged by CJI in the related State Court Action. These individuals may or may not have information regarding Defendants' defenses to the claims alleged by Plaintiff.

4. Dan Burkhardt
Bei Lu
Christine Kim
Andrea Kaye
Andreas Fvchs
Caroline Malifaud
Sara Carter
Dan Serpico
Lily Shen
Jarrod Schwarz
Jeerasrin Rakchart
Chad Wehrmaker
Michelle Fang

Subject of information: These individuals were identified by CJI as employees of eBay, Inc. having knowledge of the claims alleged by CJI in the related Sate Court Action. These individuals may or may not have information regarding Defendants' defenses to the claims alleged by Plaintiff.

5. George Conlow
60 Oakland Street Ext.
Natick, MA 01760
(508) 545-1425

Jeff Ransdell
103 Burton Circle
Santa Barbara, CA 93101
(805) 568-1535

Ben Kopetti
41 SE 75th Avenue
Portland, OR 97215
(503) 333-6752

///

1 Peter Bexelius
2 2230 SW Sunset Dr.
3 Portland, OR 97239
(805) 450-6126

4 Todd Miller
5 78 Brandon St.
6 Goleta, CA 93117
Home: (805) 968-5016

7 Andrea Bardakos
8 325 West Figueroa Street
9 Santa Barbara, CA 93101
(805) 680-8018

10 Joshua McLung
11 P.O. Box 37
12 Summerland, CA 93067
(805) 259-8423

13 Ida Gustafsson
14 Spangavagen 27
15 Bromma
16 168 75
Sweden

17 Chris Squire
18 Mediaplex

19 Andrew Way
20 18 Humphrey Rd Apt B
21 Montecito, CA 93108
(805) 680-6426

22 Terance Kinsky
23 639 Ricardo Ave
24 Santa Barbara, CA 93109
(805) 560-0724

25 Subject of information: These individuals were identified by CJI as
26 having knowledge of the claims alleged by CJI in the related Sate Court Action. These
27 individuals may or may not have information regarding Defendants' defenses to the claims
28 alleged by Plaintiff.