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1 2 3 4 5 6 7 8	Stewart H. Foreman (CSB #61149) Daniel T. Bernhard (CSB #104229) FREELAND COOPER & FOREMAN LLP 150 Spear Street, Suite 1800 San Francisco, California 94105 Telephone: (415) 541-0200 Facsimile: (415) 495-4332 Email: foreman@freelandlaw.com bernhard@freelandlaw.com Attorneys for Defendants Todd Dunning and Dunning Enterprise, Inc. UNITED STATES DIST	RICT COURT
9	FOR THE NORTHERN DISTRICT OF CALIFORNIA	
10	SAN JOSE DIVISION	
11		
12	EBAY, INC.,	CASE NO.: CV-08-4052 JF
13 San Francisco, California 94105 91, 021 12 13 14 105 14 14 15 14 14 15 14 14 14 15 14 14 15 14 14 15 14 14 15 14 14 15 14 14 14 15 14 14 14 15 14 14 14 15 14 14 14 14 15 14 14 14 14 14 14 14 15 14 14 14 14 14 14 14 14 14 14 14 14 14	Plaintiff, v. DIGITAL POINT SOLUTIONS, INC., SHAWN HOGAN, KESSLER'S FLYING CIRCUS, THUNDERWOOD HOLDINGS, INC., TODD DUNNING, DUNNING ENTERPRISE, INC., BRIAN DUNNING, BRIANDUNNING.COM, and DOES 1-20, Defendants.	NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO FED. R. CIV. PROC. 12(b) BY DEFENDANTS TODD DUNNING AND DUNNING ENTERPRISE, INC.Date:December 12, 2008 Time:Date:December 12, 2008 South First Street San Jose, CA 95113
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21	TO THE PARTIES AND THEIR COUNSEL OF RECORD:	
22	Please take notice that on December 12, 2008, at 9:00 a.m. before The Honorable Jeremy	
23	Fogel in Courtroom Number 3, 5th Floor, Federal Court House located at 280 South First Street, San	
24 25	Jose, California 95113, defendants Todd Dunning and Dunning Enterprise, Inc. will and hereby do	
23 26	move the Court for an order dismissing the First Amended Complaint filed by plaintiff eBay, Inc. pursuant to Federal Rule of Civil Procedure 12(b)(1), (3) and (6).	
27	pursuant to redefat Rule of crivit riocedure $12(0)(1)$, (3) and (6).	
28	NOTICE OF MOTION AND MOTION TO DISMISS F PURSUANT TO FED. R. CIV. PROC. 12(b) BY DEFE DUNNING ENTERPRISE, INC.	

This Motion is based on the following: (1) there is no federal question on which to base jurisdiction in this Court; (2) the First Amended Complaint fails to state any claim on which relief can be granted by this Court; (3) venue in this Court is improper under 28 U.S.C. Section 1391; and (4) the First Amended Complaint makes claims that are substantially identical to those made in a pending action filed by eBay's agent, Commission Junction, Inc., against these defendants in the Superior Court of the State of California, County of Orange.

This Motion is based upon this Notice and Motion, the attached Memorandum of Points and Authorities, the accompanying Request for Judicial Notice, and the Declaration of Stewart H. Foreman In Support thereof. Defendants Todd Dunning and Dunning Enterprise, Inc. request that this Court grant their Motion to Dismiss the First Amended Complaint.

Dated: October 27, 2008

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By:

/s/ STEWART H. FOREMAN Attorneys for Defendants Todd Dunning and Dunning Enterprise

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MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO FED. R. CIV. PROC. 12(b) BY DEFENDANTS TODD DUNNING AND DUNNING ENTERPRISE, INC.

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