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ORIGINAL  
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NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

C 06 0636

RMW

SCOTT BURSESE,

Plaintiff,

v.

PAYPAL, INC., a Delaware corporation,

Defendant.

Case No.

**COMPLAINT FOR:**

1. **DISCRIMINATION IN VIOLATION OF THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT, 38 U.S.C. 4301 ET SEQ.;**
2. **DISCRIMINATION IN VIOLATION OF CALIFORNIA MILITARY AND VETERANS CODE SECTION 394 ET SEQ.;**
3. **RETALIATION IN VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5;**
4. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
5. **WRONGFUL DISCIPLINE IN VIOLATION OF PUBLIC POLICY;**  
and
6. **UNLAWFUL BUSINESS PRACTICES AND UNFAIR COMPETITION IN VIOLATION TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 1720**

**JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff Scott Bursese alleges as follows:

**I. INTRODUCTION**

Beginning in 2002 Scott Bursese worked as senior engineer of PayPal, Inc. ("PayPal"), a wholly-owned subsidiary of eBay, Inc. ("eBay"). While there, Mr. Bursese played a critical role in the design and implementation of key automated testing software that identified errors in PayPal and eBay systems. These testing programs, which are in use to this very day, have greatly improved testing efficiency, thereby saving PayPal and eBay millions of dollars.

Despite Mr. Bursese's significant work contributions, he was repeatedly discriminated against, had his character and work maligned by his superiors, and eventually, was discharged from his position at PayPal. Mr. Bursese's woes stemmed from two critical mistakes he made.

First, Mr. Bursese positioned himself as a whistleblower, bucking the entrenched "don't ask, don't tell" culture at PayPal by reporting that some of his colleagues were pirating confidential and proprietary software belonging to other companies. Because this piracy financially benefited PayPal, Mr. Bursese quickly became a *persona non grata* within the company—depicted by management as not having the company's best interests at heart. Eventually, Mr. Bursese was set up by his superiors, who falsified his work record and continually harassed and defamed him.

Mr. Bursese's second mistake was to attend training as an Officer Candidate in the Army National Guard. In 2003, he received orders to report for mandatory military training duty. This news of his temporary departure from the company was ill-received by his supervisors. Because of his military service, Mr. Bursese was denied promotional opportunities, relegated to menial tasks far beneath his job classification, had his character and work reputation maligned by superiors and was subjected to ridicule by his immediate supervisor.

Due to PayPal's campaign of discrimination, harassment and defamation against Mr. Bursese, conditions at PayPal became intolerable and he was terminated from his position there.

Mr. Bursese files suit in this Court seeking relief for PayPal's discrimination under 38 U.S.C. §§4301, *et seq.* and California Military and Veterans Code §§ 394, *et seq.*, retaliation for engaging in protected whistle blowing activities, wrongful termination and wrongful discipline in

1 violation of public policy and illegal business practices under California Business and  
2 Professions Code § 17200.

### 3 THE PARTIES

4 1. Plaintiff Scott Bursese is, at all relevant times, was a resident in San Jose,  
5 California.

6 2. Mr. Bursese was a permanent employee at PayPal, Inc. He was hired in 2002 as  
7 a software engineer. During his tenure there, Mr. Bursese, who is an Officer Candidate within  
8 the Army National Guard, was ordered by the military to report for mandatory duty.

9 3. Defendant PayPal, Inc. is a subsidiary entity to eBay, Inc., a Delaware  
10 corporation.

11 4. Plaintiff is informed and believes and on that basis alleges that PayPal is an  
12 employer within the meaning of Section 18 of the California Labor Code.

### 13 JURISDICTION AND VENUE

14 5. This is a civil action arising under 38 U.S.C. § 4323, over which this Court has  
15 original jurisdiction pursuant to 28 U.S.C. § 1331. The Court has jurisdiction over the additional  
16 claims pursuant to 28 U.S.C. § 1367.

17 6. PayPal has sufficient minimum contacts with the State of California, and is either  
18 a citizen of the State of California, or otherwise intentionally availed itself of the State of  
19 California so as to render the exercise of jurisdiction over it by this Court, consistent with  
20 traditional notions of fair play and substantial justice.

21 7. Venue is proper in this Court pursuant to 38 U.S.C. § 4323(c)(2) because the  
22 claims asserted by Mr. Bursese are based on conduct that occurred in the cities of Mountain  
23 View, California and San Jose, California, both municipalities within Santa Clara County, State  
24 of California. In addition, PayPal, Inc. employs workers, owns property, pays taxes and  
25 otherwise conducts business within the geographic confines of this Court's jurisdiction.

26 8. Pursuant to Civ. L. R. 3-2 and 3-5(b), this matter is properly assigned to the San  
27 Jose Division of the Northern District of California because a substantial part of the events which  
28 give rise to the claim occurred in Santa Clara County.

## II. FACTUAL BACKGROUND

### A. After Scott Bursese excelled in the performance of an independent consulting contract, Paypal hired him as a full-time employee.

9. In February 2002, PayPal hired Plaintiff Scott Bursese under a consultant contract to design software that would automate testing of the PayPal website. This complex assignment had been unsuccessfully attempted by several engineers, at great expense, over the course of the two previous years. PayPal sought this automated testing system in order to increase its overall efficiency and save money.

10. Mr. Bursese worked tirelessly to achieve these stated objectives. In late April 2002, while still working as an independent consultant, Mr. Bursese received high praise from, Cameron Bigger, Vice President and Director of Engineering, for his efforts on numerous occasions. In recognition of Mr. Bursese's invaluable contributions to the automated testing project, his direct supervisor, Yuriy Brodskiy and Mr. Bigger both made personal requests that Mr. Bursese's independent consultant contract be extended to allow his work to continue.

11. In June 2002, four months after Mr. Bursese began work, he completed the project. He successfully designed and implemented an automated testing prototype of the long sought-after testing system. A version of this testing system as designed by Mr. Bursese remains in use by PayPal and eBay to this day.

12. Mr. Bigger, in a department-wide email following the first audit of internal gaming financial reports in April 2002, praised Mr. Bursese's accomplishments as some of the most significant within the company for the quarter.

13. Thereafter, in the summer of 2002, after repeated requests from Mr. Bigger, Mr. Bursese accepted PayPal's offer of permanent employment. Mr. Bursese's new position at the company was as lead automation engineer, a T24 classification. As compensation for his work, Mr. Bursese received a salary of One Hundred Thousand Dollars (\$100,000.00) and a stock options package pursuant to the PayPal Stock Plan. Under this plan, Mr. Bursese was due to receive Fifteen Thousand (15,000) shares to be vested as follows: twenty-five percent (25%) after the first year, and one-forty-eighth percent (1/48%) each month thereafter.

1           14.     In addition to salary and stock compensation, Mr. Bursese was provided full  
2 health, holiday and vacation benefits.

3           15.     In August 2002, Mr. Bursese officially began his new position at PayPal.

4           16.     As the lead automation engineer, Mr. Bursese regularly received senior, highly  
5 technical assignments from Sandy Cruze, Vice President for Engineering. Mr. Bursese's duties  
6 included a whole host of managerial functions such as assigning tasks to individuals on his team,  
7 writing reports on productivity of the team, developing requisitions for new positions that needed  
8 to be filled, directing the Human Resources Department on a variety of matters concerning his  
9 team and implementing a schedule of performance.

10          17.     Mr. Bursese was commended for his exemplary leadership of his team by both  
11 Mr. Bigger and Ms. Cruze. As an individual worker, Plaintiff quickly established himself as a  
12 reliable, hard-working and trustworthy employee.

13 **B.     After beginning work as a PayPal employee, Scott Bursese discovered and reported**  
14 **two separate incidences of illegal software piracy to company officials.**

15                 **In October 2002, Mr. Bursese discovered and reported misuse by Paypal personnel**  
16                 **of software owned by Segue Software, Inc.**

17          18.     In October 2002, as Mr. Bursese attempted to log onto his computer and access  
18 computer software licensed to PayPal by Segue Software, Inc. He was denied access to the  
19 Segue software program, because, according to information transmitted by the server, there were  
20 no available licenses. It is standard for PayPal to pay for a certain number of software licenses  
21 that will allow a corresponding number of persons to access the given software at the same time.  
22 If the number of people attempting to access the software exceeds the number of licenses  
23 purchased, the server will transmit a message denying access, as occurred to Mr. Bursese that  
24 morning.

25          19.     Needing to access this software to perform his job, Mr. Bursese investigated the  
26 situation. He then discovered that the Segue software had been "spoofed" -- a practice by which  
27 someone fools the server into believing that there were more licenses available than that which  
28 were actually purchased. This "spoofing" allows for unauthorized copies to be used.

20.     Bursese informed both his manager at the time, Yuriy Brodskiy, and Mr. Bigger

1 that illegal software piracy and theft of intellectual property from other companies was going on  
2 in his department.

3 21. PayPal management reacted negatively towards Mr. Bursese after he brought this  
4 illegal practice to their attention. Various comments aired against Mr. Bursese --including  
5 statements by Mr. Brodskiy and Mr. Bigger -- accusing him of being "buddies" with Segue, and  
6 suggesting that he was being compensated by for having reported the activity. So pervasive were  
7 these comments that many other employees, including those who were not involved in the  
8 automation team heard of Mr. Bursese's "being on the take from Segue." Soon, Mr. Bursese was  
9 the butt of people's jokes regarding the actions he took.

10 **In March 2003, Mr. Bursese discovered and reported additional misuse by Paypal**  
11 **personnel of software owned by Segue Software, Inc.**

12 22. Several months later, in March 2003, Bursese noticed once again that members of  
13 automation team and engineers in other groups were using Segue software licenses without  
14 paying for them. He reported this to Mr. Brodskiy and to Ms. Cruze at a private meeting.

15 23. While expressing initial concern, neither Mr. Brodskiy nor Ms. Cruze took any  
16 immediate corrective action.

17 24. In fact, several weeks went by without any change to the illegal practices by  
18 members in Mr. Bursese's own group. So Mr. Bursese was forced to consult with Ms. Cruze  
19 once again. In response, Ms. Cruze told Mr. Bursese that she would "get around to it,"  
20 eventually.

21 25. It took several more weeks of Mr. Bursese's reminders before Ms. Cruze finally  
22 agreed to purchase more licenses of the software. In all of these interactions, Ms. Cruze became  
23 rude, obstinate and acted in an intentionally condescending manner toward Mr. Bursese.

24 26. Her actions compounded the feelings of harassment that Mr. Bursese had felt  
25 from the first incident of reporting the software piracy practices.

26 **In retaliation for his whistle blowing activities, Paypal retaliated against Mr.**  
27 **Bursese by denying him employment advancement opportunities.**

28 27. In response to his actions of pointing out company wrongdoing, Mr. Bursese

suffered very real consequences. For example, in July 2003, Mr. Bursese was passed over for promotion to automation team manager, a job he had functionally been carrying out for close to a year with great success. The person awarded this position, Paul Montgomery, was far less qualified than Mr. Bursese by an objective standard.

28. Mr. Bursese remained assigned a rating of T24, while his fellow team member Dmitri Doroshenko was promoted to a rating of T25, even though Doroshenko had fewer qualifications, had made fewer contributions to the team's work, and had effectively worked under Mr. Bursese for the past nine (9) months.

29. Yet even in the face of this retaliation and Ms. Cruze's hostility toward Mr. Bursese for engaging in whistle blowing activities, it was impossible to deny Mr. Bursese's superlative work. In July 2003, Ms. Cruze recognized Mr. Bursese's contributions to the company in a glowing performance review. In addition, Mr. Bursese received a Five Hundred Dollar (\$500) cash award for superior performance.

**C. After Mr. Bursese notified Paypal of orders requiring him to participate in a National Guard training program, Paypal management took steps to harass and discriminate against him based on his military service commitment.**

**Mr. Bursese receives order to report for military duty.**

30. Shortly thereafter, Mr. Bursese received orders from the National Guard to report for active military duty as a member of the Army National Guard, mobilized as a reserve component of the U.S. Army. These orders commanded him to report for duty in early August for a nine-week training program in South Carolina. These were mandatory orders.

31. Mr. Bursese immediately notified PayPal that he had received orders. His last day of work before reporting mandatory military duty would be August 4, 2002, with an expected date of return in early October.

**Supervisor Paul Montgomery harasses Scott Bursese in anticipation of his military leave.**

32. Mr. Bursese's new supervisor, Paul Montgomery, subjected him to repeated harassment based upon his membership in the armed forces. Mr. Montgomery made clear his opposition to the war in Iraq and the military as an institution. Mr. Montgomery made numerous

1 deprecating and belittling remarks regarding the military in the presence of Mr. Bursese and to  
2 Mr. Bursese directly.

3 33. Mr. Montgomery's harassment extended beyond verbal conduct. Prior to  
4 Plaintiff's leave of absence, Mr. Montgomery demanded that Mr. Bursese give him access to his  
5 computer "system," which had access scripts to the UNIX financial systems servers. In addition,  
6 Mr. Bursese complied with both of these requests assuming that Mr. Montgomery made them in  
7 good faith and with legitimate motivation. Later, Mr. Bursese realized that Mr. Montgomery's  
8 demand for computer access contravened company policy and was inconsistent with past  
9 practice with other employees who went out on leave.

10 34. In another instance, in preparation for Mr. Bursese's temporary leave, Mr.  
11 Montgomery compelled him to sign an individual performance plan ("IPP") for the quarter  
12 ending September 30, 2003 that did not reflect any sort of realistic goals given that Mr. Bursese  
13 would be missing nine (9) weeks of employment due to his impending military assignment. Mr.  
14 Montgomery insisted that Mr. Bursese sign the IPP at literally the last hour of the last day before  
15 his military deployment.

16 **D. After Mr. Bursese returned from military service, Paypal continued to harass and**  
17 **discriminate against him based on his whistle blowing activity and military service.**

18 **Upon his return from military service, Mr. Bursese is subjected to increasing**  
19 **harassment and mistreatment by Paypal management.**

20 35. On or about August 5, 2003, Mr. Bursese reported to Moffett Field in Mountain  
21 View, California for military deployment. For the next several weeks, Mr. Bursese participated  
22 in combat training exercises in Columbia, South Carolina.

23 36. On or about October 2, 2003, at the conclusion of his participation in the training  
24 exercises, Plaintiff telephoned his manager, Mr. Montgomery and Ms. Cruze to inform them of  
25 his intended return. On or about October 6, 2003, Mr. Bursese returned to PayPal as a software  
26 engineer, classification T24.

27 37. From the very first day of his return, Paypal management took steps to make it  
28 clear that Mr. Bursese was not welcome to return to the company.

38. Mr. Montgomery met with Mr. Bursese and informed him on his first day back



1 from military leave that "I don't know if this is going to work out." Mr. Montgomery further  
2 stated that, "I know all about what happened here in the past, and I'm willing to put that behind  
3 me, but we need to drop all those domestic issues."

4 **While Mr. Bursese was away in military service, Pal management falsely discredited**  
5 **his work for the company.**

6 39. Upon his return, Mr. Bursese made efforts to apprise himself of the team's  
7 developments during his absence.

8 40. In so doing, Mr. Bursese quickly noted that the computer and most of the files he  
9 had entrusted to Mr. Montgomery's care had been altered while he was away.

10 41. Specifically, at the time he left for military duty, almost half of all the code  
11 (Automated TC's, framework, API's) was written by Plaintiff and had his name on it. But when  
12 he returned, he found that a substantial portion of this code had been falsely attributed to  
13 someone else, with the result that the extent of his contribution would appear far less significant  
14 when upper management ran reports against the automation. When confronted with this,  
15 Mr. Montgomery admitted having misattributed Mr. Bursese's work deliberately.

16 **Mr. Bursese was excluded from his previous work functions, and assigned menial**  
17 **tasks discordant with his employment classification level.**

18 42. Mr. Montgomery refused to recredit this work-product to Mr. Bursese. Plaintiff  
19 understood that such actions could affect him materially within the company, costing him  
20 bonuses or promotions and, in fact, threatening his very job.

21 43. Although Mr. Bursese returned to a T24 classification, Mr. Montgomery  
22 effectively changed Mr. Bursese's work responsibilities in a dramatic fashion. Mr. Montgomery  
23 excluded Mr. Bursese from technical lead and architect functions that he had previously  
24 performed, including a key performance project, and instead assigned him an overwhelming load  
25 of tasks of a type previously given to only the most junior developers.

26 44. After Mr. Bursese returned, Mr. Montgomery also gave him both competing and  
27 mutually exclusive directives, making it impossible for him to accomplish the goals set before  
28 him.

**PayPal management increases its harassment and mistreatment of Mr. Bursese.**

45. In communication with Mr. Bursese's superiors and subordinates, Mr. Montgomery continued to systematically discredit Mr. Bursese's current and past work.

46. During various group meetings, Mr. Montgomery was openly rude, terse and deprecating to Mr. Bursese, singling him out for unwarranted harsh treatment, misrepresenting his accomplishments as being far less valuable than they actually were, or failing to acknowledge them at all.

47. For example, at one group meeting, bonus compensation was discussed for team members for their collective accomplishments during the Summer Quarter, 2003. Mr. Montgomery went out of his way to tell everyone that "all those who were actually here" would be getting a bonus. By this statement, it was understood by Mr. Bursese and other attendees to the meeting that Mr. Montgomery was singling out Mr. Bursese for not being deserving of a bonus, because of his military service.

48. Subsequently, all other members from Mr. Bursese's team were awarded a monetary bonus for the team's collective work in the Summer Quarter, 2003. Mr. Bursese received no bonus. Other team members openly discussed Mr. Montgomery's decision to deny Mr. Bursese a bonus.

49. Throughout this period, management continued to deride Mr. Bursese and thwarted his attempts to transfer or seek a promotion within the company.

50. One clear example of this occurred in November 2003 as Plaintiff attempted to pursue a promotion not within the company but at eBay, PayPal's parent corporation. This position of T25 staff engineer, for which Mr. Bursese was eminently qualified, was one for which Mr. Bursese had been specifically recruited just months earlier.

51. However, prior to being able to formally apply for this position, company policy dictated that Mr. Bursese needed first to obtain permission from his immediate supervisors. Things being what they were between Mr. Bursese and Mr. Montgomery, Mr. Bursese sought the approval of Ms. Cruze. Ms. Cruze declined to give her consent, however, stating that she must first get Mr. Montgomery's permission.

1           52.     When Mr. Bursese approached Mr. Montgomery to get said permission,  
2 Mr. Montgomery told him that he was “a live and let live kind of guy.” In the context of the  
3 conversation, Mr. Bursese understood Mr. Montgomery’s comments to mean that even though  
4 he was trying to push Mr. Bursese out of the company, Mr. Montgomery might be amenable to  
5 letting him transfer to a different division.

6           53.     Mr. Bursese’s hopes of garnering Mr. Montgomery’s approval vanished moments  
7 later when Mr. Montgomery made his approval contingent upon Mr. Bursese’s completion of a  
8 whole set of tasks -- so numerous and difficult as to make it impossible for him to accomplish.

9           54.     As a direct result of Mr. Montgomery’s efforts, Mr. Bursese was unable to secure  
10 a promotion with parent company eBay, even though he was exceptionally qualified for the  
11 position and, in fact, had been actively recruited for it prior to taking his leave of absence to  
12 serve in the military.

13 **E.     Scott Bursese discovers and reports two more incidences of intellectual property**  
14 **theft**

15 **Mr. Bursese discovered and reported additional theft of Segue software by PayPal**  
16 **personnel.**

17           55.     In October 2003, Mr. Bursese encountered yet another case of software piracy by  
18 PayPal. Eight (8) Segue Software licenses, worth about Fifty Thousand Dollars (\$50,000), were  
19 being used without the requisite payment to Segue. Bursese once again reported this to his  
20 superiors, now Mr. Montgomery and Ms. Cruze.

21           56.     His flagging these violations were once more met with disdain and opprobrium  
22 doled out by his supervisors.

23           57.     Just as before, Mr. Bursese had to repeatedly remind management of these daily  
24 misuses before any purchase orders were subsequently issued to purchase more licenses.

25 **Mr. Bursese discovers theft by PayPal personnel of AutoDesk Corporation software.**

26           58.     Upon his return from his military leave, Mr. Bursese began to learn the changes in  
27 the testing system that were made by his team during his absence. Specifically, Dmitri  
28 Doroshenko, one of Mr. Bursese’s colleagues, had added a database for storing test data to the  
automation system. At the time, this addition was hailed as a major accomplishment by

management at PayPal. In fact, it was highlighted as a significant advancement and a major development of the quarter.

59. It was not long after Mr. Bursese first delved into the code for the database storage component, that he noticed entire pieces of code that were designed to accomplish things that had no apparent practical use at either PayPal or eBay. Mr. Bursese asked Mr. Doroshenko about this code.

60. At first, Mr. Doroshenko was unresponsive. Eventually, though, he admitted that the piece of code was older and was written for an entirely different project. But, he added, it worked in the PayPal system, so Mr. Bursese shouldn't question it.

61. Mr. Bursese accepted Mr. Doroshenko's response and returned to work.

62. Later, as Mr. Bursese was working, he came across sections of data base code implemented by Mr. Doroshenko that were marked "company confidential" and "property of" AutoDesk Corporation, where Mr. Doroshenko had worked prior to coming to PayPal.

63. When questioned about this, Mr. Doroshenko was unable to offer a coherent explanation.

64. At this point, Mr. Bursese immediately contacted Ms. Cruze and showed her the pirated files.

65. In response, Ms. Cruze commanded that Mr. Bursese show her every single instance within the code where such words denoting that the information was property of AutoDesk Corporation appeared.

66. Thereafter, Ms. Cruze made repeated inquires to Mr. Bursese on several occasions directing him to show her if he came across any other instances where such intellectual property was attributed to AutoDesk Corporation.

67. Despite this reporting, during Mr. Bursese's remaining days at PayPal, there was no apparent change in status for Mr. Doroshenko, nor any apparent attempt to remedy the situation. The plagiarized code continued to be used on a daily basis for automation runs, and was replicated every time an engineer on the automation team wrote a new automated testing suite of either PayPal or eBay.

1           68.     On or about November 9, 2003, Mr. Bursese's vesting process was completely  
2 stopped. This materially affected Mr. Bursese, because he attempted to make transactions with  
3 his stock options, but could not trade them. As it turns out, Mr. Bursese's employer had  
4 restricted Mr. Bursese's access to stock -- even that which had already vested.

5           **PayPal management's final acts of sabotaging Scott Bursese's work record at**  
6           **PayPal.**

7           69.     Notwithstanding his discovery of illegal activities within his own team, Mr.  
8 Bursese continued to work to benefit PayPal. Mr. Montgomery ratcheted up the pressure on Mr.  
9 Bursese, after Mr. Bursese's disclosure of the theft of AutoDesk's code. He also took additional  
10 steps to obstruct Mr. Bursese's ability to succeed at PayPal.

11          70.     During the last sixty (60) days of his employment at PayPal, while he was  
12 working on a coding project late one night, Mr. Bursese's computer brought up a message in MS  
13 Word indicating that Mr. Montgomery was utilizing MS Word file sharing capacity to make  
14 changes in Mr. Bursese's individual performance plan for the current quarter.

15          71.     Mr. Montgomery manufactured Mr. Bursese's demise in yet another way -- by  
16 fabricated and falsifying Plaintiff's work record. One of many examples that proves this point  
17 occurred when, without conferring or even informing Mr. Bursese, his supervisor Mr.  
18 Montgomery was making retroactive changes in specific goals in the performance plan that were  
19 in direct conflict with what he had instructed Bursese to be working on. These changes, covertly  
20 inserted well into the quarter, would make it possible for Mr. Montgomery to convince human  
21 resources and upper management that Mr. Bursese was unfit for his job.

22          **F.     PayPal terminates Scott Bursese.**

23          72.     In December 2003, Mr. Montgomery told Bursese that after discussions with  
24 upper management and the human resources department, PayPal had decided to terminate  
25 Bursese's employment on the basis of alleged poor performance. Mr. Montgomery then told  
26 Mr. Bursese that unless he resigned from the company, he would be summarily fired without any  
27 severance. Given Mr. Montgomery's threat, Mr. Bursese, who had just become a father, had no  
28 choice but to accede to Mr. Montgomery's demand. On December 16, 2003, Bursese signed a

1 “separation agreement” under which PayPal would pay him Twenty-Five Thousand Dollars  
2 (\$25,000) and provide six months of medical benefits in return for his resignation and a general  
3 release of all claims.

4 73. After waiting more than two months for the Twenty-Five Thousand Dollars  
5 (\$25,000) payment, Bursese emailed PayPal vice president for human resources Sal Giambanco,  
6 asking when he might expect to receive the payment. In an email copied to Mr. Bursese the  
7 same day, Mr. Giambanco referred Bursese’s request to a subordinate. Months went by, without  
8 Bursese receiving either the promised payment or any further communication from PayPal  
9 regarding it. Accordingly, Bursese rescinded the December 2003 separation agreement in a  
10 January 24, 2005 letter to John D. Muller, PayPal’s general counsel. Months went by, without  
11 any reply from Mr. Muller or anyone else at PayPal.

12 74. On May 27, 2005, Michael Hurley, Mr. Bursese’s former counsel, wrote to  
13 PayPal regarding Mr. Bursese’s unlawful termination by PayPal.

14 75. On June 7, 2005, eighteen (18) months after the “separation agreement” was  
15 executed, Mr. Hurley received a letter from eBay senior employment counsel Laurie Chambers,  
16 purporting to be a response to Mr. Hurley’s May 27 letter, enclosing a payroll check to Bursese  
17 in the amount of Eighteen Thousand Dollars (\$18,000) minus deductions. Ignoring the fact that  
18 Bursese had rescinded the December 2003 separation agreement, Ms. Chambers made it clear  
19 that she hoped to “resolve the matter” in this way. On June 10, Mr. Hurley wrote to Mr. Muller  
20 rejecting Ms. Chambers’ offer, returning the check and inviting PayPal to discuss informal  
21 resolution of Mr. Bursese’s claims. PayPal has never replied to Mr. Hurley’s June 10 letter.

22 76. Bursese’s January 24, 2005 rescission of the December 2003 agreement was in  
23 fact fully effective under Civil Code §§ 1689(b)(2) and (4).

## 24 **CAUSES OF ACTION**

### 25 **FIRST CAUSE OF ACTION** 26 **Discrimination in Violation of the Uniformed Services** 27 **Employment and Reemployment Right Act** 28 **(42 U.S.C. 4301)**

77. Plaintiff incorporates and realleges all of the foregoing paragraphs, as though

1 fully set forth herein.

2 78. Because Plaintiff was ordered to active military duty, his PayPal employment was  
3 subject to statutory protection under the federal Uniformed Services Employment and  
4 Reemployment Rights Act, 38 USC §§ 4301-4333. Under these statutes, PayPal was required to  
5 reinstate Mr. Bursese to the same position he would have held but for his military leave, and was  
6 prohibited from discriminating against him in any way because of his military leave. Bursese's  
7 military service was longer than 31 days, but did not exceed 5 years. Therefore PayPal was  
8 prohibited from terminating his employment except for cause for 180 days after his return to  
9 work.

10 79. Although Bursese returned to work under the same job title, and in the same  
11 position on the organization chart, these superficial formalities were insufficient to conceal the  
12 fact that all of the senior technical leadership functions he had previously performed were now  
13 assigned to others, and he was only assigned tasks appropriate for junior developers. In falsely  
14 attributing Bursese's past work to others, in sabotaging his computer, in relentlessly demeaning  
15 him and subjecting him to unfounded criticism, and finally forcing him out of the company under  
16 threat of discharge on pretextual grounds, PayPal discriminated against him on the basis of his  
17 military service.

18 80. Plaintiff gave adequate notice prior to the commencement of his military leave.

19 81. Plaintiff reported back to work within the statutory time frame.

20 82. Defendant willfully acted to harass and discriminate against Plaintiff based upon  
21 his military status.

22 **SECOND CAUSE OF ACTION**  
23 **Discrimination in Violation of the Uniformed Services**  
24 **Employment and Reemployment Right Act**  
**(Cal. Mil. And Vet. Code §§ 394, et seq.),**

25 83. Plaintiff incorporates and realleges all of the foregoing paragraphs, as though  
26 fully set forth herein.

27 84. California Military and Veterans Code §§ 394, et seq. provide protections to  
28 individuals serving the National Guard from discrimination in employment based on said status.

1 No private employer or officer or agent of any company may restrict or terminate any collateral  
2 benefit to an individual's employment due to his or her military service.

3 85. Plaintiff's employment, duties, responsibilities, standing and compensation were  
4 severely restricted and terminated based upon his military status, as facts herein allege.

5 **THIRD CAUSE OF ACTION**  
6 **Retaliation for Engaging in Protected Whistle blowing Activities**  
7 **(Cal. Labor Code § 1102.5)**

8 86. Plaintiff incorporates and realleges all of the foregoing paragraphs, as though  
9 fully set forth herein.

10 87. California Labor Code § 1102.5 protects employees from retaliation for engaging  
11 in whistle blowing activities.

12 88. On numerous occasions, Plaintiff reported unlawful company practices that could  
13 harm shareholders, investors, employees and/or the general public.

14 **FOURTH CAUSE OF ACTION**  
15 **Wrongful Termination in Violation of Public Policy**

16 89. Plaintiff incorporates and realleges all of the foregoing paragraphs, as though  
17 fully set forth herein.

18 90. California law recognizes a common law cause of action for the tort of wrongful  
19 termination of an employee who loses his job because he has protested his employer's violation  
20 of an important public policy as reflected in state or federal statutes or regulations. *Green v.*  
21 *Ralee Engineering Company*, 19 Cal. 4th 66 (1998). Federal public policy protecting intellectual  
22 property rights is clearly reflected in the provisions of Article I § 8 of the U.S. Constitution and  
23 in the copyright protections set forth in 17 U.S.C. §§ 101, *et seq.*, in particular 17 U.S.C. §§ 106  
24 and 501. California public policy protecting businesses from unfair practices by competitors is  
25 clearly reflected in the provisions of Business and Professions Code §§ 17200, *et seq.*

26 91. In repeatedly reporting ongoing software piracy to his superiors, Plaintiff acted in  
27 a manner completely consistent with these important public policies. Plaintiff contends that  
28 shortly after he again protested pirated Segue software in October 2003, Paul Montgomery  
retaliated by stripping him of significant assignments and isolating him from the rest of the



1 automation team. The excuse offered for forcing Plaintiff out of the company -- poor  
2 performance -- is a transparent pretext. Plaintiff's performance far surpassed the performance of  
3 others in the team who remain employed to this day, including those responsible for the  
4 misappropriation of competitors' software.

5 92. Plaintiff's status as a whistle blower gave rise to the termination.

6 93. Plaintiff has been severely damage by being discharged by Defendant, as stated  
7 herein.

8  
9 **FIFTH CAUSE OF ACTION**  
**Wrongful Discipline in Violation of Public Policy**

10 94. Plaintiff incorporates and realleges all of the foregoing paragraphs, as though  
11 fully set forth herein.

12 95. Plaintiff was disciplined and reprimanded by Defendant on numerous occasions  
13 in violation of public policy.

14 96. Defendant failed to promote Plaintiff due to his whistle blowing activities.

15 97. Defendant reccredited Plaintiff's work on multiple occasions in violation of public  
16 policy.

17 **SIXTH CAUSE OF ACTION**  
**Illegal Business Practices**  
**(Bus. And Prof. Code § 17200)**

18  
19 98. Plaintiff incorporates and realleges all of the foregoing paragraphs, as though  
20 fully set forth herein.

21 99. Defendant waged a campaign of unfair competition and unlawful and unfair  
22 business practices which resulted in Plaintiff's receiving less wages than he had rightfully  
23 earned.

24 100. Defendant gained considerable economic advantage over its competitors by  
25 forcing Plaintiff to use pirated software at various points throughout his employment for PayPal.

26 101. Defendant's tortuous actions in wrongfully terminating and disciplining Plaintiff  
27 in violation of public policy constitute an unlawful and unfair business practice under California  
28 Business and Professions Code § 17200.

102. As a direct and proximate result of Defendant's deliberate and unlawful conduct, Plaintiff has suffered and continues to suffer, general and specific damages, involving wage loss and other expenses subject and according to proof at trial.

Wherefore Plaintiff prays for relief against Defendants as set forth below.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

1. For compensatory, general, and special damages against the Defendant as the law provides;
2. For restitution and disgorgement of profits to the fullest extent of the law;
3. For an injunction ordering Defendants to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in this Complaint;
4. For back wages plus interest owed to Plaintiff;
5. For a Court order prohibiting Defendant from retaliating against Plaintiff for having brought this action;
6. For exemplary, punitive and liquidated damages against Defendant in an amount sufficient to deter and to make an example of said Defendant as the law provides;
7. Prejudgment interest at the maximum rate;
8. For attorneys' fees and costs; and
9. For such other relief as the Court finds just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of the claims raised herein.

Dated: January 30, 2006

GONZALEZ & LEIGH, LLP

By: 

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