

Reverend Michael Malott
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Marietta, GA 30062
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
N.D. DIST. OF CA., S.J.

Reverend Michael Malott, et al *
Plaintiff *

v. *

Ebay Incorporated *
Defendant *

COMPLAINT
Plaintiff demands trial by jury

CASE NO.
C07 05945 PVT

C/PVT

JURISDICTION

Plaintiff Reverend Michael Malott is a United States citizen, residing in the State of Georgia, whose residence is: 3376 Preakness Court, Marietta, Georgia 30062.

Defendant EBay Incorporated is a Delaware for profit corporation, whose principle place of business and headquarters are located at 2145 Hamilton Avenue, San Jose, California 95125.

The matter in controversy exceeds the sum of \$100,000.00 exclusive of interest and costs.

Venue in this district is proper under 28 USC 1391 & 15 USC 15, 22, & 26. Defendant transacts business and its principal place of business is in this district.

Intradistrict Assignment: Assignment to the San Jose division of this court is proper because defendant's headquarters are in San Jose, pursuant to Northern District of California, Rule 3-2(e), because this action arises in the county of Santa Clara, assignment to the San Jose division is proper.

The matter of this court is invoked pursuant to 28 U.S.C. 1332. Venue lies in this court and this cause resides in Federal Courts because EBay is a resident of California.

Plaintiff Reverend Michael Malott, individually and on behalf of a class of all those similarly situated, brings this action for damages, under applicable Federal Law, State law and the Anti-Trust Laws of the United States, demanding a trial by jury, and complaining and alleging upon personal knowledge, as to their own actions and upon information and belief with respect to all other allegations, as follows;

INTRODUCTION

This action results from the negligence, unfair business practices, and tort actions of defendant EBay and plaintiff also alleges antitrust violations under Section 2 of the Sherman Act. Plaintiff alleges that by use of illegal tie-in's and steering practices,

defendant has acted, through various abusive methods, to maintain its monopoly in the online auction market. This court has jurisdiction of the federal antitrust law claims under 28 USC 1331, 1337, 2201 and 2202.

EBay has created unfair methods of competition in commerce, which is directly resulting in consumers having to pay more for services by depriving them of the benefit of competition. EBay utilizes its nationwide monopoly of the on line auction market to monopolize the available forms of payment sellers may use on EBay. EBay restricts which payment methods its sellers advertise in listings and bans sellers from accepting cash, checks, wire transfer services (i.e. Western Union) and services which compete with Paypal, including Google. In fact, in January of 2007, EBay eliminated buyer protection for all non-Paypal transactions and simultaneously doubled coverage for transactions in which Paypal was used. Clearly EBay forces sellers to use Paypal and blocks all competitive forms of payment.

As a direct and proximate result, actual and potential competition has been restrained and buyers are forced to use Paypal and pay artificially inflated and supra competitive fees. Before EBay acquired Paypal, Paypal itself made formal complaints to government agencies regarding EBay's practices. EBay sellers are unjustly suspended or have their auctions removed from the EBay site if they offer to accept any other form of payment other than Paypal (*see Malone v. EBay, U.S. District Court, Northern District of California, CAN 07-01882-JF*) and (*Farmer et al v. EBay, U.S. District Court, Northern*

District of California, CAN C-07-02209) In fact, one EBay seller had all 950 items he had listed removed because he offered to accept other forms of payment other than Paypal. Additionally, EBay did not return his listing fees for any of these auctions. A common practice of EBay and the subject matter of many complaints found on the internet.

EBay unjustly suspends accounts without any justifiable or reasonable cause of those who they consider to be "trouble makers" who voice their opinions of EBay's trade practices, file lawsuits against EBay or something equally egregious. Those who criticize EBay on EBay blogs have their posts removed and are subsequently suspended from EBay trading.

EBay improperly rounds off charges on its customers invoices to their advantage, another illegal EBay practice.

EBay allows third parties to freely shut down people's auctions without just cause or proper authority. In fact, anyone can shut down another sellers auction by merely making an allegation to EBay that they control the rights to the item being sold or that they control the trademark or copyright. EBay makes no factual investigation to affirm that such claims are just and valid.

EBay makes it impossible for members to contact representatives of their company unless done by email through EBay's "Trust & Safety" link, said emails go unanswered and

automatically generate automated responses which most of the time, have nothing to do with the subject matter of customers inquires.

At present, an internet search of "EBay Lawsuits" yields approximately 3, 300, 000 hits and "Paypal Lawsuits" yields approximately 1,170,000 hits.

EBay and Paypal use deceptive practices in failing to properly register themselves as foreign corporations with the Secretary of State's, Corporations offices in many states and use deceptive names to avoid having lawsuits filed against them in various states. For instance, in Georgia, both EBay and Paypal are not properly registered in this state as foreign corporations. There is an EBay Real Estate and the listing for EBay Inc. was withdrawn back in 2000. Paypal lists themselves as Paypal Insurance Services. As a result, lawsuits which are filed in this state are challenged by these companies claiming that service upon such registered agents is improper because they claim they are unassociated corporations. Thus, serve EBay Real Estate and they come back stating it is a separate entity and claim service was not proper and motion for dismissal for improper service. EBay and Paypal both know, if they were properly registered that service of process would be enacted upon their registered agents all day long by angry and cheated consumers who have been outright harmed as a direct and proximate result of EBay and Paypal's unethical and illegal practices.

In plaintiff's case, Paypal has illegally allocated funds directly from plaintiff's personal bank account without consent and illegally charge plaintiff's Paypal Buyer Credit revolving charge account, owned by General Electric, the sum of over \$220 defendant claimed plaintiff owed in seller fees.

Plaintiff has been injured by EBay's deceptive and unfair trade practices which has now resulted in the loss of plaintiff's livelihood and the ability to generate funds for plaintiff's non-profit children's charity by the inability to list auctions or access account information. Plaintiff has been injured by EBay's anticompetitive practices, because as a seller on EBay and Paypal account holder, plaintiff has been forced to pay artificially inflated and supracompetitive fees to defendant, EBay.

FIRST CAUSE OF ACTION

Embezzlement

3.

Plaintiff is a legally ordained minister and single parent of his three year old child who suffers from autism. Plaintiff due to his child's medical condition cannot work outside his home and makes his sole livelihood through the use of defendant's internet site, EBay.

Plaintiff is also the founder and director of the children's charity, Instruments for the Youth, which also greatly benefited from the use of plaintiff's EBay account.

4.

Plaintiff has maintained a perfect account with defendant since May of 2007 and has maintained that account in a satisfactory manner and made all payments on time upon becoming due.

5.

On 20 August, 2007, plaintiff's account was wrongfully and negligently terminated by defendant.

6.

Defendant claimed that plaintiff owed funds for another account which plaintiff has absolutely no knowledge to, nor legal liability to.

7.

Plaintiff disputed this and defendant negligently and maliciously refused to act.

8.

As a direct and proximate result of defendant's actions, plaintiff has suffered losses and damages, including but not limited to, loss of income, loss of opportunity and damages to reputation.

9.

Defendant has negligently and wrongfully put plaintiff and plaintiff's son's welfare in immediate peril as a direct and proximate result of their actions.

10.

Plaintiff in an attempt to keep his livelihood and attempt to keep his account open, was forced to pay defendant the sum of Two Hundred Twenty Dollars and Sixty Nine Cents which defendant was not entitled to, nor plaintiff liable to pay

11.

Defendant through their actions directly placed plaintiff in a position where he had no alternative but to allow defendant to embezzle these funds from him in plaintiff's attempt to maintain a livelihood for he and his son.

12.

Said funds were needed by plaintiff to support himself and his child and defendant directly through their negligence compromised the welfare and safety of plaintiff and his three year old child by cutting off plaintiff's only source of income and has a direct and proximate cause of defendant's actions, plaintiff has suffered damages.

12(a).

That after payment of said funds, defendant still maliciously and negligently failed to reinstate plaintiff's account.

SECOND CAUSE OF ACTION

Interference with Business

13.

Plaintiff re-alleges and incorporates paragraphs 1 through 12(a) above

14.

Defendant has negligently denied plaintiff his right to compete in the marketplace

15.

Defendant has negligently and maliciously interfered with contract

16.

Defendant has maliciously and negligently destroyed plaintiff's ability to continue trade and continue to make a livelihood on Ebay after defendant acting in complete bad faith denied plaintiff access to any part of his sales records, seller account, and as a direct and proximate result, plaintiff had no way to complete sales, ship items, answer buyer inquiries, etc.

17.

Defendant unjustly terminated plaintiff's only source of revenue without any valid justification or cause.

18.

Defendant has negligently and wrongfully interfered with plaintiff's ability to make a livelihood for he and his son.

19.

On November 19, 2007, plaintiff's Ebay account was again interrupted and suspended indefinitely by defendant, when defendant claimed plaintiff had listed an item which

infringed on the trademark rights of Ferrari. This item, a Ferrari Racing jacket was obtained directly with the assistance and cooperation of Ferrari themselves from the Ferrari Racing team, RISI Competition.

20.

Plaintiff and representatives of Ferrari have repeatedly advised defendant of the error and defendant negligently has failed to re-instate plaintiff's Ebay account.

21.

THEREFORE, defendant negligently suspended plaintiff's Ebay account and has negligently failed to reinstate said account and plaintiff has suffered damages, including a complete loss of livelihood and the inability to use this account to benefit plaintiff's charity which has indirectly affected needy and sick children.

21(a).

Defendant has unfairly and unjustly terminated plaintiff's legal right to fair trade.

THIRD CAUSE OF ACTION

Deceptive Trade Practices

22.

Plaintiff re-alleges and incorporates paragraphs 1 through 21 above

23.

Defendant is engaged in bad faith, illegal, unfair and deceptive trade practices as defined by the Cal. Bus. And Prof. Code. and has a well documented reputation for judgments being entered against them for said practices.

24.

Plaintiff has suffered loss and damages as a direct and proximate result of defendant's deceptive trade practices.

25.

That defendant deceptively and acting in bad faith obscures and hides information from consumers to protect itself from liability for their deceptive trade practices, and to avoid addressing consumer issues and complaints.

26.

That defendant avoids listing any phone or contact numbers, so that consumers are unable to contact them or act upon their negligent and deceptive practices.

FORTH CAUSE OF ACTION

Breach of Contract

27.

Plaintiff re-alleges and incorporates paragraphs 1 through 26 above

28.

Defendant had a contractual duty to plaintiff

29.

Defendant breached their contractual obligation and plaintiff suffered losses and damages as a direct and proximate result of defendant's breach.

FIFTH CAUSE OF ACTION

Antitrust Violations

30.

Plaintiff re-alleges and incorporates paragraphs 1 through 29 above

31.

Plaintiff alleges that by use of illegal tie-in's and steering practices, defendant has acted, through various abusive methods, to maintain its monopoly in the online auction market.

32.

EBay has created unfair methods of competition in commerce, which is directly resulting in consumers having to pay more for services by depriving them of the benefit of competition.

33.

EBay utilizes its nationwide monopoly of the on line auction market to monopolize the available forms of payment sellers may use on EBay.

34.

EBay restricts which payment methods its sellers advertise in listings and bans sellers from accepting cash, checks, wire transfer services (i.e. Western Union) and services which compete with Paypal, including Google.

35.

Actual and potential competition has been restrained and buyers are forced to use Paypal and pay artificially inflated and supra competitive fees.

36.

The activities of defendant EBay, as described herein, were within the flow of, and substantially affected, interstate commerce.

37.

In fact, on September 02, 2007 plaintiff made a formal complaint against defendant with the United States Department of Justice. This is known to defendant and an investigator has advised plaintiff that his complaint is one of several and that their department is currently conducting an active investigation against defendant.

38.

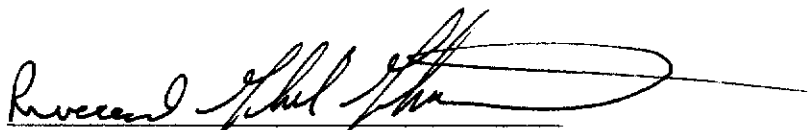
Plaintiff respectfully requests to exercise his right to trial by jury

WHEREAS, plaintiff prays this court find against the defendant and that defendant be liable to plaintiff as follows;

A) That this court immediately issue an order that defendant without delay immediately issue an injunctive order to reinstate plaintiff's account on EBay

- B) That defendant pay all actual losses suffered by plaintiff as a direct and proximate result of defendant's negligence.
- C) That defendant be liable for punitive damages in an amount to be determined by jury.
- D) The return of all fees unjustly embezzled by defendant
- E) All costs of this litigation
- F) And any other judgment and remedies this court deem appropriate, proper, and just in this matter

RESPECTFULLY SUBMITTED this 21st day of November, 2007

A handwritten signature in cursive script, appearing to read "Reverend Michael Malott", with a long horizontal flourish extending to the right.

Reverend Michael Malott

Plaintiff