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E-FILED on 02/07/09

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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12 Theresa Bradley, Psy.D.,

No. C-08-03924 RMW

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Plaintiff,

ORDER TO SHOW CAUSE

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v.

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PayPal, Inc.,

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Defendant.

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At the January 23, 2009 hearing for PayPal's motion to dismiss, PayPal argued that although the complaint states that Paypal violated federal law, the supporting allegations fail to state a federal claim. For the reasons stated below, the court finds that no diversity jurisdiction exists and orders plaintiff to show cause why her complaint should not be dismissed for lack of subject matter jurisdiction.

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District courts have jurisdiction in civil actions where there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a). Generally, the amount in controversy is determined from the face of the pleadings. *See Pachinger v. MGM Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir.1986). The sum claimed by the plaintiff controls so long as the claim is made in good faith. *See St. Paul Mercury Indem. Co.*, 303 U.S. at 288, 58 S.Ct. 586. "To justify dismissal, 'it must appear to a legal certainty that the claim is really for less than the jurisdictional amount.'" *Budget Rent-A-Car*, 109 F.3d at 1473 (quoting *St. Paul Mercury Indem. Co.*, 303 U.S. at 289, 58 S.Ct. 586).

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Crum v. Circus Circus, 231 F.3d 1129, 1131 (9th Cir. 2000).


A case may be dismissed when a limitation on damages makes it impossible for the plaintiff to meet the amount-in-controversy requirement. *Pachinger v. MGM, Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 364 (9th Cir. 1986). PayPal's User Agreement provides in Subsection 14.6:

Limitations on Liability. In no event shall we, our parent, employees or our supplies be liable for lost profits or any special incidental or consequential damages arising out of or in connection with our web site, our service, or this agreement (however arising, including negligence). . . . Our liability, and the liability of our parent, employees, and suppliers, to you or any third parties in any circumstance is limited to the actual amount of direct damages.

Def.'s Reply ISO Mot. to Dismiss Ex. A, pg 23. Because plaintiff has apparently suffered just \$1500 in direct damages, her case does not meet the amount in controversy needed for diversity jurisdiction. Even if the "Limitation on Liability" provision is for some reason unenforceable, plaintiff cannot claim damages in excess of \$75,000 in good faith. Therefore, diversity jurisdiction does not exist.

Defendant's contention that the complaint fails to allege a claim for relief based upon a federal question appears to have merit. The court therefore orders plaintiff to show cause in writing why the complaint should not be dismissed for failure properly allege a claim involving a federal question. Plaintiff shall file papers making such a showing by February 27, 2009. Defendant shall file any opposition by March 6, 2009 and plaintiff may reply by March 13, 2009. The matter will then be submitted on the papers unless the court orders a hearing.

DATED: 02/07/09



RONALD M. WHYTE
United States District Judge

