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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CV 10 2046 PVT

RONYA OSMAN and BRIAN PATTEE,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs. ((

PAYPAL, INC. and E-BAY INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Ronya Osman and Brian Pattee, individually and on behalf of the Class described below, by their attorneys, make the following allegations pursuant to the investigation of counsel and based upon information and belief, except as to allegations specifically pertaining to Plaintiffs and counsel, which are based on personal knowledge.

I. OVERVIEW OF THE ACTION

1. This class action challenges PayPal's fraudulent practices of "holding" funds for up to 180 days in the accounts of entities and consumers that collect payments for product and

1 service sales through the PayPal system.

2 2. PayPal systematically and arbitrarily has frozen funds in PayPal accounts of
3 Plaintiffs and the putative Class for up to 180 days (sometimes even over 300 days) without
4 providing any explanation or factual basis for its actions. PayPal has use of the “frozen” funds
5 during the hold period.

6 3. The amounts PayPal holds for 180 days (or more) before release may range from
7 a few dollars up to over a thousand dollars for each Class member. All the while PayPal keeps
8 the interest generated by the funds owed to Plaintiffs and the Class.

9 4. Class members who inquire of PayPal as to the reasons behind PayPal’s actions
10 are told PayPal will not explain its actions absent a subpoena. In other words, PayPal holds
11 money belonging to Plaintiffs and the Class and tells them they have to get a subpoena or court
12 order just to discover the reason why PayPal is denying Plaintiffs and the Class access to their
13 own money.

14 5. This case is *not* about PayPal’s right to hold funds for appropriate reasons.
15 Rather, this case is about the systematic and arbitrary manner in which the freezing is done and
16 the lack of information shared with affected customers in contravention of PayPal’s contractual
17 and common law duties.

18 **II. JURISDICTION AND VENUE**

19 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). This is a class action
20 involving more than 100 class members. Members of the Class are citizens of a state different
21 from Defendant, and the amount in controversy, in the aggregate, exceeds the sum of \$5 million
22 exclusive of interest and costs.

23 7. Defendant PayPal is a Delaware corporation, has its principal place of business in
24 San Jose, California, transacts business in this District, has subjected itself to this Court’s

1 jurisdiction through such activity, and a substantial part of the events and omissions giving rise
2 to the claim occurred in this District.

3 8. As an independent basis for venue, Defendant's User Agreement contains a forum
4 selection clause mandating venue within Santa Clara County, California. *See* PayPal's User
5 Agreement, attached as Exhibit 1. Accordingly, venue is proper in this District under 28 U.S.C.
6 § 1391.

7 **III. INTRADISRICT ASSIGNMENT**

8 9. The actions giving rise to plaintiffs' claims emanate from PayPal's principal place
9 of business, which is located in San Jose, California. Accordingly, commencement and
10 assignment of this action to the San Jose Division is proper pursuant to Civil L.R. 3-2(e).

11 **IV. PARTIES**

12 10. Plaintiff Ronya Osman is a natural person and resident of New Jersey, who has
13 been using PayPal as a seller since approximately 2007. On December 19, 2009, Plaintiff
14 received a notification that PayPal was holding the funds in her account for 180 days. PayPal is
15 currently holding approximately \$1,500 of Plaintiff's funds.

16 11. Plaintiff Brian Pattee is a natural person and resident of Georgia, who has been
17 using PayPal as a seller since approximately 1999. On or about September 2009, Plaintiff
18 received a notification that PayPal was holding funds in his account for 180 days. PayPal held
19 approximately \$750 of Plaintiff's funds, and released the funds on or about March 12, 2010.

20 12. As stated, defendant PayPal is a Delaware corporation with its principal place of
21 business in San Jose, California. PayPal is owned by eBay Inc., the largest online auction site in
22 the world, and where a substantial amount of the goods for which the funds owed to the Class
23 and subject to the 180 day hold originated.

24 13. Defendant eBay Inc. is a Delaware corporation with its principal place of business

1 in San Jose, California. eBay Inc. is the parent company of PayPal.

2 **V. FACTS**

3 14. eBay is the dominant online auction website, with a virtual monopoly over the
4 online auction industry. eBay has more than 90 million active users globally, making it the
5 world's largest online marketplace. When consumers want to purchase a product through an
6 online auction, they overwhelmingly choose eBay as the auction website.

7 15. In light of the popularity of eBay, many thousands of people started businesses for
8 the sole purpose of utilizing eBay's auction site to conduct business. In 2006, a study by
9 ACNielsen found that 1.3 million people make a primary or secondary source of income on
10 eBay, with over 630,000 people located in the United States. In 2009, there was \$60 billion
11 worth of goods sold on eBay, which is about \$2,000 every *second*.

12 16. In October 2002, eBay acquired PayPal, an online payment service whereby
13 individuals and businesses send and receive payments online by means of credit cards and bank
14 transfers.

15 17. Previously, buyers of items through eBay auctions used a wide variety of methods
16 to transmit payments to auction sellers; however, this changed when eBay acquired PayPal.

17 18. Once eBay acquired PayPal, it began to market and advertise PayPal as the
18 "preferred method of payment" to buyers using the eBay online auction site. Buyers were
19 encouraged to buy items from sellers that accepted payment via PayPal because it was
20 represented to be the safest and most secure method to transmit money. eBay also explained to
21 users that by using PayPal they were provided with additional coverage up to the full purchase
22 price of the item.

23 19. In response to eBay's push to get buyers to look for sellers accepting payments
24 via PayPal, thousands of companies switched over to make PayPal the preferred method of

1 payment in accordance with eBay's buyers' preference for PayPal.

2 20. PayPal has more than 81 million registered accounts worldwide, and is now one
3 of the leading ways to pay online.

4 21. Recently, in opportune timing with the poor state of the economy, PayPal started
5 holding funds in sellers' accounts by placing reserves on accounts and/or limiting and/or
6 suspending seller's accounts and holding the funds in the accounts for 180 days (collectively
7 referred to as "holding funds").

8 22. PayPal placed holds on the funds of users who sell on eBay as well as those who
9 use PayPal as a method of payment on a website other than eBay. The practice is known to be
10 widespread.

11 23. PayPal's practice of placing holds on users' accounts has met widespread
12 disappointment and anger from consumers around the country, as evidenced by the numerous
13 websites created to protest PayPal's holding of funds. See, e.g., www.letsuepaypal.com,
14 www.paypalsucks.com, www.screw-paypal.com, www.aboutpaypal.org,
15 www.paypalwarning.com. Typical comments on these websites include:

- 16 • "I'm from Northern California. They're holding around \$18,000 of mine hostage
17 for 180 days as of a few days ago. I'm not going to let them get away with this.
18 I've uploaded every document under the sun and after jumping through their
19 hoops they decided to keep my money anyways. I'm an honest seller with 100%
20 positive feedback and ZERO charge backs. I am in complete shock right now at
21 their treatment." Taken from www.letsuepaypal.com.
- 22 • "HELP!!!! PayPal has placed a reserve on my business account FOR NO
23 REASON. I am a Top Rated Platinum Power Seller on eBay. I have an excellent
24 seller rating and on Dec 19 PayPal informed me they have a "new" policy. They
are holding funds in "incase" there is a claim open against me. I was not notified
any prior to this new action taking place. They are now holding \$1,500 of MY
money. They said I must keep \$634 in the account. ON TOP OF THAT they will
hold 8% of all of my daily sales. I have closed my eBay business and I am loosing
ALOT of money. They will not release the money. I am so scared they will never
release it. I need this money to pay my rent! I am a single mother who works, go
to college and had a decent business online. THIS IS CRAZY! Also, the women
from PayPal that I spoke with was extremely rude. She basically told me too bad,
take out a business loan." Taken from www.letsuepaypal.com.

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- “I also received an email from Paypal wanting me to send a paper copy of my personal or business bank account, name and addresses of my Merchants, copy of Income Tax report, something else I did not understand as well as supply tracking info for numerous items including Bigcrumbs who only pay and do not require a shipment. Also I was asked to give permission for them to do a credit check to make sure I have enough assets in case there is ever a chargeback. When I called the person that sent the email --Regina Berringer-Merchant Risk Analyst II and asked what I had done wrong the reply was nothing, it is a computer that is picking out accounts it deems as High Risk. After arguing with her for a long time [she hung up on me once] she said she was now making it her personal decision to cap my sales at 10,000 per month. When I asked to speak with a Supervisor or manager I was told that was not possible but she would ask one to call me which of course has still not happened. I also like many of you am a top rated platinum powerseller with 100% feedback near perfect ratings and have not had any disputes, claims or chargebacks against me and have been on ebay for nearly 7 years.” Taken from www.letsuepaypal.com.
 - “I’ve been using paypal as my transactions processor for 3 years or so, and have been pretty active the entire time, since I sell a lot of stuff on multiple sites. Anyways, During January 2010, i sold 150 items for under \$20 on ebay... not one single issue and apx 130 of the 150 had already left positive feedback. not a single negative feedback, chargeback, or problem whatsoever. Everyone's happy. Except me. I wake up Friday morning (January 29, 2010), planning to transfer the funds to my bank account, since all sales for the month had been completed... Low and behold, my Paypal account is frozen. Paypal is asked for inventory descriptions, vendor invoices, and receipts. I sent Paypal my vendor invoice (sales agreement), inventory listed of all the details. Nope.... After providing what they wanted, now they want more, and stuff there is no way I can provide, like written rights for being a reseller of the products by the manufacturer and even copies of my vendors contracts and sale agreements with their supplier (illegal as sin). What? I don't need rights to resell what i purchased wholesale from a distributor and Paypal sure does NOT have the right to require me to get a copy of my vendors contracts with their supplier. Needless to say, it's now a paypal horror story on the tune of \$2,455.63. It took them 1 whole day to say they will hold my money for 180 days.... Great way to start off 2010....” Taken from www.paypalsucks.com.
 - “For no reason these [expletive] have decided to freeze all funds in my account for 180 days for no reason whatsoever...their excuse “report of suspicious activity”. Taken from www.aboutpaypal.org.

20 24. PayPal informed account holders of the hold on their funds through use of a form

21 email which provided no information as to why there was going to be a reserve placed on their

22 account and/or why their account was going to be limited/suspended for a period of time up to

23 180 days.

24 25. The email informs the users that their funds are being held for the following non-

1 explanatory reasons: “excessive risk involved”, “security issues”, or “suspicious activity”. None
2 of these terms is defined in the PayPal User Agreement, and no further explanation is given.

3 26. When PayPal users inquired into the reasons behind why their account had a hold
4 placed on it by contacting PayPal’s Resolution Center, as required by the User Agreement, users
5 were met with non-responsive and unhelpful customer service employees, “canned” responses,
6 and/or a litany of requests for additional documentation, including social security numbers, and
7 other personal information.

8 27. Even after users provide the additional documents, PayPal continues to withhold
9 information regarding why the hold was placed, providing only a form email stating that they are
10 unable to provide more information as to why there is a hold on the users’ accounts: “If you
11 would like to obtain copies of the information we reviewed in deciding to place a limitation on
12 your account, you will need to obtain a court order or subpoena.”

13 28. During the holding period, money is permitted to enter into the accounts, but
14 users are unable to access the funds at any time until the holding period expires, up to 180 days.

15 29. Additionally, once funds are returned, PayPal retains the interest that accrued
16 while Plaintiffs and the Class were frozen from their accounts.

17 30. As a result of PayPal’s actions, Plaintiffs and the Class have suffered damages,
18 and eBay and PayPal have been enriched in the form of interest on the money held in the
19 accounts without reason.

20 31. PayPal has not provided any real explanation as to why the accounts have a hold
21 placed on them, and does not provide PayPal users with any guidance or criteria so that they can
22 select customers and conduct transactions in a way to avoid PayPal’s hold policies.

23 32. PayPal has left Plaintiffs and the Class with no opportunity to obtain access to
24 their funds prior to the expiration of the hold period, let alone understand the reasons for the hold

1 to be able to prevent a hold, in the form of a reserve or a limitation/cancellation of their account,
2 from being placed on their accounts in the future.

3 **How PayPal Works**

4 33. PayPal is an online payment service whereby individuals and businesses send and
5 receive payments over the internet by means of credit cards and bank transfers.

6 34. PayPal performs payment processing for online sales, auction sites, and other
7 commercial users. It allows an individual to transfer money electronically through a bank
8 account, credit card account, or PayPal account to another's PayPal account.

9 35. The majority of PayPal users fund their accounts with a credit card, although
10 PayPal is also set up to process other funding methods like debit cards and electronic checks. A
11 typical seller can receive payments by buyers using credit cards through PayPal about 70% of the
12 time and through other funding methods up to 30% of the time.

13 36. When a buyer sends payments through PayPal using a credit card, the buyer has
14 to sign into his or her secured PayPal account, input the credit card information including the
15 secure code on the back of the credit card, and verify his or her information.

16 37. Once a buyer authorizes the credit card payment through PayPal, the respective
17 credit card company runs its security check before making the funds available to PayPal. The
18 funds are then transferred from the buyer's account to the seller's account within seconds
19 through PayPal. These funds have already been authorized by the credit card company, and
20 therefore do not prevent a risk to PayPal. Nevertheless, PayPal then holds those funds by placing
21 reserves on the account or limiting/cancelling accounts for up to 180 days.

22 38. For other forms of payment through PayPal such as electronic checks PayPal
23 utilizes what it calls "eCheck" and, even though PayPal represents these transactions clear the
24 sender's bank typically in three to five business days, PayPal continues to hold these funds for up

1 to 180 days before release.

2 PayPal's User Agreement

3 39. When a person opens a PayPal account, he or she is required to agree to the
4 express terms of the PayPal User Agreement, attached as Exhibit 1. As with most internet-based
5 businesses, an individual must accept the terms of a User Agreement on the registration
6 webpage. This is commonly known as a "clickwrap agreement" and is a contract of adhesion.

7 40. Further showing the inequities of PayPal's User Agreement ("Agreement")
8 PayPal states: "We may Amend this Agreement at any time by posting a revised version on our
9 website. The revised version will be effective at the time we post it."

10 41. PayPal has reserved for itself the ability to place a hold of up to 180 days on the
11 accounts of Plaintiffs and the Class, but only in accordance with Section 10.4 of the Agreement:

12 If we have reason to believe that you have engaged in any Restricted Activities,
13 we may take various actions to protect PayPal, eBay, a User, a third party, or you
14 from Reversals, Chargebacks, Claims, fees, fines penalties and any other liability.
The actions we may take include but are not limited to the following: * * * (e) We
may hold your funds for up to 180 days if reasonably needed to protect against the
risk of liability.

15 42. "Restricted Activities" are defined and delineated in Section 9 of the User
16 Agreement, which provides that PayPal users will not participate in the follow activities:

- 17 • Breach this Agreement, the Commercial Entity Agreement, the Acceptable Use
18 Policy or any other agreement or policy that you have agreed to with PayPal;
- 19 • Violate any law, statute, ordinance, or regulation (for example, those governing
financial services, consumer protections, unfair competition, anti-discrimination or
false advertising);
- 20 • Infringe PayPal's or any third party's copyright, patent, trademark, trade secret or
other intellectual property rights, or rights of publicity or privacy;
- 21 • Sell counterfeit goods.
- 22 • Act in a manner that is defamatory, trade libelous, threatening or harassing;
- 23 • Provide false, inaccurate or misleading information;
- 24 • Send or receive what we reasonably believe to be potentially fraudulent funds;
- Refuse to cooperate in an investigation or provide confirmation of your identity or
any Information you provide to us;

- 1 • Attempt to double dip during the course of a dispute by receiving or attempting to receive funds from both PayPal and the seller, bank, or credit card issuer for the same transaction;
- 2 • Use an anonymizing proxy;
- 3 • Control an Account that is linked to another Account that has engaged in any of these Restricted Activities.
- 4 • Conduct your business or use the Services in a manner that results in or may result in complaints, Disputes, Claims, Reversals, Chargebacks, fees, fines, penalties and other liability to PayPal, a User, a third party or you;
- 5 • Have a credit score from a credit reporting agency that indicates a high level of risk associated with your use of the Services;
- 6 • Use your Account or the Services in a manner that PayPal, Visa, MasterCard, American Express, Discover or any other electronic funds transfer network reasonably believes to be an abuse of the card system or a violation of card association or network rules;
- 7 • Allow your Account to have a negative Balance;
- 8 • Provide yourself a cash advance from your credit card (or help others to do so);
- 9 • Access the Services from a country that is not included on PayPal's permitted countries list;
- 10 • Disclose or distribute another User's Information to a third party, or use the Information for marketing purposes unless you receive the Users express consent to do so;
- 11 • Send unsolicited email to a User or use the Services to collect payments for sending, or assisting in sending, unsolicited email to third parties;
- 12 • Take any action that imposes an unreasonable or disproportionately large load on our infrastructure;
- 13 • Facilitate any viruses, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or Information;
- 14 • Use any robot, spider, other automatic device, or manual process to monitor or copy our website without our prior written permission;
- 15 • Use any device, software or routine to bypass our robot exclusion headers, or interfere or attempt to interfere, with our website or the Services;
- 16 • Take any action that may cause us to lose any of the services from our internet service providers, payment processors, or other suppliers;
- 17 • Use the Service to test credit card behaviors.

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20 However, *PayPal has failed to identify any of these Restricted Activities* to Plaintiffs and the
21 Class as the reason for holding funds.

22 43. Likewise, PayPal has also reserved for itself the ability to place a reserve on the
23 accounts of Plaintiffs and the Class, which is found in Section 10.7 of the User Agreement:

24 If you receive Purchase Payments, PayPal, in its sole discretion, may place a

1 Reserve on funds held in your Premier or Business Account when PayPal believes
2 there may be a high level of risk associated with your Account. If PayPal places a
3 Reserve on funds in your Account, they will be shown as "pending" in your
4 PayPal Balance. If your Account is subject to a Reserve, PayPal will provide you
5 with notice specifying the terms of the Reserve. The terms may require that a
certain percentage of the amounts received into your Account are held for a
certain period of time, or that a certain amount of money is held in reserve, or
anything else that PayPal determines is necessary to protect against the risk
associated with your Account. PayPal may change the terms of the Reserve at any
time by providing you with notice of the new terms.

6 "High level of risk" is not defined and PayPal refuses to explain to Plaintiffs and
7 members of the Class how their accounts present risk or how they can alter what they do
8 to minimize risk.

9 44. PayPal's User Agreement requires PayPal to provide its customers with
10 adequate notice regarding any adverse actions PayPal takes with regard to its customers
11 or limitations it places on such customers' accounts. For example, Section 10.5 of the
12 Agreement states: "If we limit access to your Account, we will provide you with notice of
13 our actions and the opportunity to request restoration access if appropriate." Likewise,
14 PayPal's document entitled "PayPal Payment Holds" states that "if your payments are
15 held, PayPal will provide you with notice specifying the terms." Nevertheless, PayPal
16 has failed to provide adequate notice to Plaintiffs and the Class regarding the holds
17 placed on their accounts.

18 **PayPal's Treatment of Sellers**

19 45. PayPal has left Plaintiffs and the Class with no opportunity to obtain access to
20 their funds prior to the 180 day hold, let alone understand the reasons for the hold to be able to
21 prevent a hold from being placed on their accounts in the future.

22 46. PayPal's systematic and arbitrary holding of funds in PayPal accounts of
23 Plaintiffs and the putative class for up to 180 days without providing any explanation or factual
24 basis for its actions has damaged Plaintiffs and the Class.

1 **VI. CLASS ACTION ALLEGATIONS**

2 47. Plaintiffs brings this class action for [generic or list all the types of equitable,
3 injunctive and declaratory relief, as well as monetary relief pursuant to Rule 23 on behalf of the
4 following class:

5 **Nationwide class:** All persons and entities whose funds have been
6 held by PayPal for up to 180 days.

7 **Natural persons class:** All persons whose funds have been held
8 by PayPal for up to 180 days.

9 Excluded from the Class are PayPal and Ebay; any entity in which it has a controlling interest;
10 any of its parents, subsidiaries, affiliates, officers, directors, employees and members of their
11 immediate families; and members of the federal judiciary.

12 48. The members of the Class are readily ascertainable but are so numerous that
13 joinder is impracticable. The exact number and names of the members of the Class are presently
14 unknown to Plaintiffs, but can be ascertained readily through appropriate discovery. Plaintiffs
15 believe that there are thousands of members of the Class whose names and addresses may be
16 readily discovered upon examination of the records in the custody and control of PayPal.

17 49. There are questions of law and fact common to the Class. Defendant pursued a
18 common course of conduct toward the Class as alleged. This action arises out of a common
19 nucleus of operative facts. Common questions include but are not limited to:

20 (a) Whether PayPal held electronically transferred funds in an
21 unlawful manner;

22 (b) Whether Plaintiffs and the Class entered into a contract with
23 PayPal by agreeing to its User Agreement;

24 (c) Whether PayPal breached its User Agreement by holding funds
without real reason;

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- (d) Whether Defendant's conduct constitutes deceptive, unfair and/or oppressive conduct as defined under the California Unfair Business Practices Act (CUBPA) (Cal. Bus. & Prof. Code §17200 *et seq.*);
- (e) Whether Defendant was unjustly enriched by its scheme at the expense of Plaintiffs and the Class;
- (f) Whether Plaintiffs and Class have been damaged, and if so, in what amount; and
- (g) Whether Plaintiffs and the Class are entitled to restitution of all monies acquired by Defendant from Plaintiffs and the Class and the general public as a result of Defendant's unlawful, unfair or fraudulent business practices?

50. Plaintiffs' claim is typical of the claims of other members of the Class. Plaintiffs use Defendant's services as a seller, and Plaintiffs have money being held by Defendant pursuant to its policy to hold funds.

51. Plaintiffs will fairly and adequately represent and protect the interests of the Class, and common issues of law and fact predominate.

52. Plaintiffs have retained counsel competent and experienced in prosecuting complex consumer class actions.

53. Class certification is appropriate because Defendant has acted, or refused to act, on grounds generally applicable to the Class, making class-wide equitable, injunctive, declaratory and monetary relief appropriate. In addition, the prosecution of separate actions by or against individual members of the Class would create a risk of incompatible standards of conduct for Defendant and inconsistent or varying adjudications for all parties. A class action is superior to other available methods for the fair and efficient adjudication of this action.

1. **VII. CALIFORNIA'S SUBSTANTIVE LAW APPLIES TO THE PROPOSED**
2. **NATIONWIDE CLASS**

3. 54. California's substantive laws apply to the proposed Nationwide Class, as defined
4. herein, and Plaintiffs properly brings this Complaint in this District.

5. 55. The Agreement provides, "shall be governed in all respects by the laws of the
6. State of California, without regard to conflict of law provisions". Exhibit 1 section 14.3.

7. 56. Also, California's substantive laws may be constitutionally applied to the claims
8. of Plaintiffs and the Nationwide Class under the Due Process Clause, 14th Amend., § 1, and the
9. Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. California has significant
10. contact, or significant aggregation of contacts, to the claims asserted by Plaintiffs and all Class
11. members, thereby creating state interests that ensure that the choice of California state law is not
12. arbitrary or unfair.

13. 57. Defendant's United States headquarters and principal place of business is located
14. in California. Defendant also owns property and conducts substantial business in California, and
15. therefore California has an interest in regulating Defendant's conduct under its laws. Defendant's
16. decision to reside in California and avail itself of California's laws, and to engage in the
17. challenged conduct from and emanating out of California, renders the application of California
18. law to the claims herein constitutionally permissible.

19. 58. California is also the State from which Defendant's alleged misconduct emanated.
20. This conduct similarly injured and affected all Plaintiffs and Class members residing in the
21. United States. For instance, Defendant's officers are located in California. More specifically,
22. California has the following significant contacts to the claims of Plaintiffs and Class members:

23. (a) California serves as the headquarters for PayPal's marketing in the
24. United States and provides all consumer support;

1 (b) Upon information and belief, all corporate decisions regarding
2 PayPal's User Agreement and other policies were directed by, or
3 emanated from, PayPal representatives working in California or
4 directly reporting to superiors situated in California.

5 59. The application of California laws to the Nationwide Class is also appropriate
6 under California's choice of law rules because California has significant contacts to the claims of
7 the Plaintiffs and the proposed Nationwide Class, and California has a greater interest in
8 applying its laws here than any other interested state.

9 **VIII. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **(Violations of the California Unfair Business Practices Act
12 and California Consumers Legal Remedies Act)
13 On Behalf of the Nationwide Class**

14 60. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set
15 forth herein.

16 61. At all times relevant hereto, there was in full force and effect the California
17 Consumers Legal Remedies Act (CCLRA), Cal. Civ. Code § 1750, *et seq.*, and the California
18 Unfair Business Practices Act (CUBPA), California Business and Professions Code § 17200, *et*
19 *seq.*, which prohibit deceptive, fraudulent and unfair business acts and practices.¹

20 62. Plaintiffs and other Class members are consumers within the meaning of the
21 CCLRA and CUBPA given that Defendant's business activities involve trade or commerce, are
22 addressed to the consumer market generally, and otherwise implicate consumer protection

23 ¹ If the California act does not apply to non-California class members, then the consumer fraud
24 claims of absent, non-California Class members are brought under the consumer protection statute(s) of
their respective states. *See e.g.*, Fla. Stat. Ann. § 501.201 *et seq.* (Florida); 815 ILCS § 505/1 *et seq.*
(Illinois); Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); Mo. Rev. Stat. § 407.010 *et seq.* (Missouri);
N.Y. Gen. Bus. Law. § 349 *et seq.* (New York); N.C. Gen. Stat. § 75-1 *et seq.* (North Carolina); Ohio
Rev. Code Ann. § 1345.01 *et seq.* (Ohio); Wash. Rev. Code § 19.86.010 *et seq.* (Washington)

1 concerns.

2 63. Defendant intended that Plaintiffs and the Class would rely on its deception by
3 utilizing PayPal to collect payments from buyers, and not challenging holds of their funds in
4 violation of the User Agreement, unaware of the material facts described above. This conduct
5 constitutes consumer fraud, an unfair business practice and violation of the CUBPA. Had
6 Plaintiffs known that Defendant would arbitrarily hold their funds for up to 180 days, Plaintiffs
7 would have not used PayPal's services and would have used alternative methods of accepting
8 payments.

9 64. Defendant's failure to explain its payment hold policy, along with its promises of
10 funds being immediately made available is likely to deceive the Class. Defendant has thus
11 committed deceptive acts or practices within the meaning of the CUBPA by engaging in the acts
12 and practices alleged herein.

13 65. Defendant's conduct alleged herein is further unfair insofar as it offends public
14 policy; is so oppressive that the consumer has little alternative but to submit; and causes
15 consumers substantial injury. In addition, Defendant's conduct violates the legislative policies
16 underlying the Electronic Funds Transfer Act. Defendant's conduct also constitutes unlawful
17 acts in violation of the CUBPA based on Defendant's breaches of contract and the covenant of
18 good faith and fair dealing as well as its violations of the Electronic Funds Transfer Act.

19 66. The acts and practices of Defendants as described above were intended to deceive
20 Plaintiff and the Class members as described herein and have resulted and will result in damages
21 to Plaintiff and the Class members. These actions violated and continue to violate the CCLRA in
22 at least the following respects:

23 (a) In violation of § 1770(a)(5) of the CLRA, Defendants' acts and practices
24 constitute representations that the Service has characteristics, uses and/or

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benefits which it does not;

(b) In violation of § 1770(a)(7) of the CLRA, Defendants' acts and practices constitute representations that the Service is of a particular quality which it is not; and

(c) In violation of § 1770(a)(9) of the CLRA, Defendants' acts and practices constitute the advertisement of the service in question without the intent to sell them as advertised.

67. Defendant's conduct adversely affects the public interest and is a proximate cause of injury and money damages to Plaintiffs and the Class in an amount to be proven at trial. Defendant is liable to Plaintiffs and the Class for all appropriate damages allowed under the law, costs and attorneys' fees, including as private attorney generals under Cal. Code Civ. Proc. §1021.5.

68. WHEREFORE, Plaintiffs Osman and Pattee, individually and on behalf of the California Class described herein, pray for relief as more fully set forth below.

SECOND CAUSE OF ACTION
(Conversion)
On Behalf of the Nationwide Class

69. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set forth herein.

70. At all times relevant hereto, funds which were the legal property of Plaintiffs and other members of the putative class were in the possession and under the control of Defendants. Defendants, through the conduct alleged herein, intentionally and wrongfully deprived Plaintiffs, and other members of the proposed class, of their funds which were rightfully theirs.

71. As a direct and proximate result of Defendants' conduct, Plaintiffs and other members of the proposed class have suffered, and will continue to suffer, damages in an amount

1 to be determined at trial, ascertainable from information and records in the Defendant's
2 possession or control.

3 WHEREFORE, Plaintiffs Osman and Pattee, individually and on behalf of the Class
4 described herein, pray for relief as more fully set forth below.

5 **THIRD CAUSE OF ACTION**
6 **(Breach of Contract)**
7 **On Behalf of the Nationwide Class**

8 72. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set
9 forth herein.

10 73. PayPal requires all users to agree to the User Agreement upon creation of a
11 PayPal account. Plaintiffs and the other members of the Class agreed to these one-sided,
12 unbargained-for terms.

13 74. Plaintiffs and the Class, as parties to the PayPal User Agreement, are entitled
14 under the agreement to PayPal's good faith efforts to resolve disputes and under California
15 contract law.

16 75. PayPal breached its contractual promises to Plaintiffs and the Class by placing
17 reserves on their accounts and/or a hold on their funds for up to 180 days without reason or in
18 accordance with any terms of the User Agreement.

19 76. PayPal further breached its contractual promise to provide Plaintiffs and the Class
20 with adequate notice regarding any holds placed on their accounts by failing to provide such
21 notice.

22 77. PayPal additionally breached its contractual promises to engage in good faith
23 efforts to resolve seller disputes in accordance with its User Agreement, which PayPal has failed
24 to do and has, instead, told users to "get a subpoena".

78. By reason of PayPal's breach of contract, Plaintiffs and the Class were unable to

1 access their money held by PayPal, and also lost the interest that the funds generated during the
2 account freeze, for up to 180 days.

3 79. As a result of PayPal's conduct, Plaintiffs and the Class sustained damages in an
4 amount to be determined by this Court, including interest on all held funds and reasonable
5 attorneys' fees.

6 WHEREFORE, Plaintiffs Osman and Pattee, individually and on behalf of the Class
7 described herein, pray for relief as more fully set forth below.

8 **FOURTH CAUSE OF ACTION**
9 **(Violation of the Implied Covenant of Good Faith and Fair Dealing)**
10 **On Behalf of the Nationwide Class**

11 80. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set
12 forth herein.

13 81. California recognizes the implied covenant of good faith and fair dealing.

14 82. PayPal's conduct frustrated sellers' rights under the User Agreement by failing to
15 reasonably address seller concerns about the holding of funds and related matters so that sellers
16 could solve such problems quickly and cost-effectively.

17 83. In so doing, PayPal violated the implied covenant of good faith and fair dealing,
18 and the Plaintiffs and the Class are entitled to remedies under contract and tort law for
19 compensatory damages, punitive damages, litigation and other permissible costs, reasonable
20 attorneys' fees, other damages to account for the interest that accrued from the funds at issue,
21 and any reasonable interest above that amount, and injunctive relief including specific
22 performance to compel PayPal to act in accordance with the implied covenant of good faith and
23 fair dealing.

24 WHEREFORE, Plaintiffs Osman and Pattee, individually and on behalf of the Class
described herein, pray for relief as more fully set forth below.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
On Behalf of the Nationwide Class

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3 84. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set
4 forth herein.

5 85. Plaintiffs and the members of the putative class have a fiduciary relationship with
6 Defendant who has been repositied with a confidential relationship wherein Defendant controls
7 the disbursement of funds owned by Plaintiffs and the class and is imbued with discretion in
8 exercising that control.

9 86. The relationship between Plaintiffs and PayPal is confidential in nature in that
10 PayPal is obligated not to publicly disclose Plaintiffs' financial information and is provided with
11 a large amount of extremely sensitive financial and personal information.

12 87. PayPal dominates Plaintiffs and the class because it has all the information about
13 why it, in its sole discretion, has frozen funds in an account, and it can take such action prior to
14 giving notice.

15 88. As experienced by Plaintiffs and the thousands of internet posters, PayPal
16 exercises its discretion in an arbitrary manner that serves to further its own interests over that of
17 Plaintiffs and the class.

18 89. As described in detail above, PayPal has breached its fiduciary duty by holding
19 the funds of Plaintiffs and the class without explanation or permitted justification.

20 90. Plaintiffs and the class have been damaged by lost use of the frozen funds.

21 WHEREFORE, Plaintiffs Osman and Pattee, individually and on behalf of the Class
22 described herein, pray for relief as more fully set forth below.
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SIXTH CAUSE OF ACTION
(Violation of The Electronic Funds Transfer Act, 15 U.S.C. § 1693 et seq.)
On Behalf of the Natural Persons Class

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3 91. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set
4 forth herein.

5 92. PayPal's actions as set forth herein violate the Electronic Funds Transfer Act
6 ("EFTA").

7 93. The EFTA "provide[s] a basic framework establishing the rights, liabilities, and
8 responsibilities of participants in electronic fund transfer systems." 15 U.S.C. §1693(b).

9 94. An "'electronic fund transfer' means any transfer of funds, other than a
10 transaction originated by check, draft, or similar paper instrument, which is initiated through an
11 electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct,
12 or authorize a financial institution to debit or credit an account." 15 U.S.C. §1693(a)(6).

13 95. PayPal's receipt of funds electronically from buyers to sellers constitutes an
14 electronic fund transfer. PayPal's deposit of funds into sellers' accounts also constitutes an
15 electronic fund transfer.

16 96. A "financial institution" includes people "who, directly or indirectly, hold[] an
17 account belonging to a consumer". 15 U.S.C. §1693(a)(8).

18 97. A "consumer" is "a natural person". 15 U.S.C. §1693(a)(5).

19 98. PayPal is a financial institution within the meaning of the EFTA, and Plaintiffs
20 and the Class are consumers protected by the EFTA.

21 99. The EFTA provides that "The terms and conditions of electronic fund transfers
22 involving a consumer's account shall be disclosed at the time the consumer contracts for an
23 electronic fund transfer service...". 15 U.S.C. §1693(c)(a). Such disclosures include "(3) the type
24 and nature of electronic fund transfers which the consumer may initiate, including any

1 limitations on the frequency or dollar amount of such transfers...; (4) any charges for electronic
2 fund transfers or for the right to make such transfers.” 15 U.S.C. §1693(c)(a)(3)-(4).

3 100. The EFTA further provides that “an error consists of (6) a consumer’s request for
4 additional information or clarification concerning an electronic fund transfer.” 15 U.S.C.
5 §1693(f)(f). If a consumer documents an alleged error in his or her account, and the financial
6 institution determines that there was an error, “it shall promptly, but in no event more than one
7 business day after such determination, correct the error...including the crediting of interest
8 where applicable.” 15 U.S.C. §1693(f)(b).

9 101. If the financial institution determines that there was no error, “it shall deliver or
10 mail to the consumer an explanation of its findings within 3 business days after the conclusion of
11 its investigation, and upon request of the consumer promptly deliver or mail to the consumer
12 reproductions of all documents which the financial institution relied on to conclude that such
13 error did not occur.” 15 U.S.C. §1693(f)(d).

14 102. Plaintiffs and the Class have requested from PayPal additional information or
15 clarification concerning electronic fund transfers of money into their accounts that is
16 subsequently held by PayPal. PayPal has refused to provide Plaintiffs and the Class without any
17 explanation or reasons for the failure to fully transfer the money into their accounts, in violation
18 of the EFTA.

19 103. Financial institutions are “liable to a consumer for all damages proximately
20 caused by (10)the financial institution’s failure to make an electronic fund transfer, in accordance
21 with the terms and conditions of an account, in the correct amount or in a timely manner when
22 properly instructed to do so by the consumer.” 15 U.S.C. §1693(h)(a)(1). Furthermore, “no
23 writing or other agreement between a consumer and any other person may contain any provision
24 which constitutes a waiver of any right conferred or cause of action created by this subchapter.”

1 15 U.S.C. §1693(l).

2 WHEREFORE, Plaintiffs Osman and Pattee, individually and on behalf of the Class
3 described herein, pray for relief as more fully set forth below.

4 **SEVENTH CAUSE OF ACTION**
5 **(Unjust Enrichment (Alternative Claim))**
6 **On Behalf of the Nationwide Class**

7 104. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set
8 forth herein.

9 105. Plaintiffs and the putative Class have conferred benefits on Defendant by
10 Defendant's wrongful holding of their funds and collecting interest upon said funds.

11 106. Defendant knowingly and willingly held these monetary benefits from Plaintiffs
12 and the Class.

13 107. Under these circumstances, it is inequitable for Defendant to retain these benefits
14 at the expense of Plaintiffs and the Class.

15 108. Defendant has been unjustly enriched at the expense of and detriment to Plaintiffs
16 and the Class by wrongfully collecting money to which Defendant, in equity, is not entitled.

17 109. Plaintiffs and the Class are entitled to recover from Defendant all amounts
18 wrongfully collected and improperly retained by Defendant, plus interest thereon.

19 110. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs and
20 the Class have suffered injury and are entitled to reimbursement, restitution and disgorgement
21 from Defendant of the benefits conferred by Plaintiffs and the Class.

22 111. Plaintiffs and the Class have no adequate remedy at law.

23 112. Plaintiffs seek to obtain a pecuniary benefit for the Class in the form of all
24 reimbursement, restitution and disgorgement from Defendant. Plaintiffs' counsel are entitled to
recover their reasonable attorneys' fees and expenses as a result of the conference of a pecuniary

1 benefit on behalf of the Class, and will seek an award of such fees and expenses at the
2 appropriate time.

3 113. As a direct and proximate result of Defendant's misconduct as set forth above,
4 Defendant has been unjustly enriched.

5 WHEREFORE, Plaintiffs Osman and Pattee, individually and on behalf of the Class
6 described herein, pray for relief as more fully set forth below.

7 **EIGHTH CAUSE OF ACTION**
8 **(Declaratory Relief Pursuant To 28 U.S.C. § 2201)**
9 **On Behalf of the Nationwide Class**

10 114. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully set
11 forth herein.

12 115. There is an actual controversy between PayPal and the Class concerning the
13 holding of funds in Plaintiffs' and the Class's PayPal accounts.

14 116. Pursuant to 28 U.S.C. § 2201 this Court may "declare the rights and legal
15 relations of any interested party seeking such declaration, whether or not further relief is or could
16 be sought."

17 117. PayPal has wrongfully held funds that rightfully belong to Plaintiffs and the Class
18 without reason and keeping interest accrued upon said funds, and has refused to abide by the
19 terms of its User Agreement, as described herein.

20 118. Accordingly, Plaintiffs seeks a declaration that PayPal is wrongfully holding
21 funds and retaining the interest accrued upon said funds in violation of its User Agreement.

22 WHEREFORE, Plaintiffs, individually and on behalf of the Class of persons described
23 herein, pray for an Order as follows:

24 A. Finding that this action satisfies the prerequisites for maintenance as a class action
set forth in Fed. R. Civ. P. 23(a) and (b)(3), and certifying the Class defined

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herein;

- B. Designating Plaintiffs as representatives of the Class and their counsel as Class counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against Defendant;
- D. Awarding Plaintiffs and members of the Class their individual damages and attorneys' fees and allowing costs, including interest thereon; damages as permitted under 15 U.S.C. §1693(m)(a)(1)(B) and (3); and/or restitution and equitable relief;
- E. Compelling Defendant to release the funds it is holding, and to reimburse Plaintiffs and the Class interest accrued upon held funds;
- F. Compelling Defendant to establish a program to provide Plaintiffs and the Class explanations as to why their funds are held, and what can be done to regain access to their funds and prevent such holds in the future; and
- G. Granting such further relief as the Court deems just.

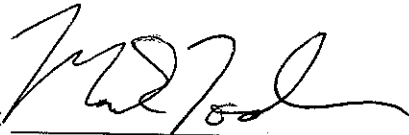
1 **IX. JURY DEMAND**

2 Plaintiffs demand a trial by jury on all issues so triable.

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4 Dated: May 12, 2010

Respectfully Submitted,

5 **Ronya Osman and Brian Pattee**

6
7 By: 
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