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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 CASE NO.

15 **COMPLAINT:**
16 **(CLASS ACTION)**

17 LENA EVANS, RONI SHEMTOV, and
SHBADAN AKYLBKOV, individually and
on behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 PAYPAL, INC., a Delaware Corporation; and
21 DOES 1-25, inclusive,

22 Defendants.

- 1. CONVERSION
- 2. CIVIL RICO 18 U.S.C. § 1964(c)
- 3. VIOLATION OF THE ELECTRONIC FUNDS TRANSFER ACT 15 U.S.C. §1693 ET SEQ.
- 4. BREACH OF WRITTEN CONTRACT;
- 5. BREACH OF FIDUCIARY DUTY;
- 6. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §17200
- 7. UNJUST ENRICHMENT;
- 8. DECLARATORY RELIEF;
- 9. ACCOUNTING

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**CLASS ACTION
DEMAND FOR JURY TRIAL**

Plaintiffs LENA EVANS, RONI SHEMTOV, and SHBADAN AKYLBKOV (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, through their undersigned counsel, alleges for their Class Action Complaint against Defendant, PAYPAL, INC., (“Defendant”) based upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including the investigation conducted by their counsel, as follows:

I. NATURE OF THE ACTION

1. Plaintiffs bring this class action against Defendant PAYPAL, INC. ("PayPal") to recover damages and other relief available at law and in equity on behalf of themselves, as well as on behalf of the members of the class defined herein, to rectify PayPal's inequitable and unconscionable conduct detailed herein.

2. This action stems from Defendant’s widespread business practice of unilaterally seizing funds from its clients’ financial accounts, without cause and without any fair or due process.

3. PayPal places a "hold" on *Plaintiffs' own funds* in their *own PayPal accounts*. PayPal has failed to inform Plaintiffs and members of the class of the reason(s) for the actions PayPal has taken, even telling Plaintiffs and members of the class that they will "have to get a subpoena" to learn the simple information as to why PayPal was holding, and denying Plaintiffs, access to their own money.

4. PayPal excuses its unlawful seizure based on an alleged violation of its Acceptable Use Policy (“AUP”) without stating in what way Plaintiffs’ use of their PayPal accounts violates the AUP, and without even bothering to provide Plaintiffs with a copy of the AUP at or around the time that Plaintiffs began using PayPal.

5. PayPal’s application of an unlawful and unenforceable liquidated damages clause, which is a contract of adhesion, without any causal connection to any damages PayPal actually suffered, as a justification for its wholesale seizure of the entire balance of

1 Plaintiffs' PayPal accounts, and transferring said balance to PayPal's own account, for
2 PayPal's own use, is inequitable and unconscionable, amounting to nothing less than a
3 conversion of funds which do not belong to PayPal.

4 6. Defendant operates the immensely popular PayPal online payment platform. As part
5 of this platform, users such as Plaintiffs and the proposed class members maintain account
6 balances which includes funds the users have transferred into the PayPal platform as well as
7 money sent to the users by customers and other users. These funds belong to the users, not
8 Defendant.

9 7. Nevertheless, Defendant has adopted a business practice of unilaterally seizing some
10 or all of its users' funds when Defendant merely suspects the user in question violated
11 Defendant's AUP, which is a set of restrictions Defendant places on certain transactions
12 made through the PayPal platform.

13 8. Upon information and belief, Defendant seizes these funds without first obtaining
14 any conclusive determination of actual breaches by the users of the AUP – indeed,
15 Defendant does so without even conducting a reasonable investigation to determine whether
16 any violation occurred.

17 9. Rather, Defendant has adopted a business policy of “shooting first and asking
18 questions later” – taking the money for itself and only afterwards, and occasionally,
19 interacting with the users to determine whether the seizure was appropriate.

20 10. Moreover, the amounts that Defendant seizes bear no relationship to any actual
21 damages suffered by Defendant. Rather, Defendant arbitrarily seizes amounts based on a
22 liquidated damages provision buried in Defendant's User Agreement which has no
23 connection to the actual damages suffered by Defendant – indeed, which is often used where
24 Defendant has suffered *no* damages whatsoever.

25 11. PayPal violates its own Agreement by failing to provide adequate notice to users
26 whose accounts have had holds placed on them. When PayPal informs individuals whose
27 funds are being held of the holds, it does not inform such users why such funds are being
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1 held, how they can obtain a release of the hold, and/or how they can avoid future holds
2 being placed on their accounts.

3 12. The Agreement requires PayPal to, at a minimum, provide notice to such users of
4 any hold placed on their accounts that includes both the reason for the hold and an
5 opportunity to request restoration of access to the held funds. PayPal's "notice" falls far short
6 of what is required. As a result, Plaintiffs have no idea why their money is "held" by PayPal.

7 13. PayPal seizes the money permanently after the 180-day hold period ends, without
8 notice and without explanation.

9 14. PayPal's user agreement and acceptable use policy cannot be used as a
10 "license to steal." There is no equitable or legal argument which condones theft.

11 **II. JURISDICTION AND VENUE**

12 15. This Court has jurisdiction over this action pursuant to the Class Action
13 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action where a
14 substantial number of the members of the proposed class of plaintiffs are citizens of a state
15 different from Defendant and the aggregated amount in controversy exceeds \$5,000,000,
16 exclusive of interest and costs.

17 16. This Court has personal jurisdiction over Defendant because it maintains its
18 principal place of business in the State of California, and regularly solicits and conducts the
19 business at issue in this Complaint within the State of California.

20 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because a
21 substantial part of the events giving rise to the claims asserted herein occurred in the
22 Northern District of California, and specifically the County of Santa Clara, where Defendant
23 is headquartered and where Defendant conducts extensive business.

24 18. This Court has original subject-matter jurisdiction pursuant to 18 U.S.C. §
25 1964(c) and 28 U.S.C. § 1331 because this action arises, in part, under the Federal Racketeer
26 Influenced and Corrupt Organizations Act ("Federal RICO").
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1 19. This Court has jurisdiction over Plaintiffs’ related state and common law
2 claims pursuant to the doctrine of supplemental jurisdiction, 28 U.S.C. § 1367.

3 20. This Court further has personal jurisdiction over Defendants under 28 U.S.C.
4 § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S.
5 District Court, that Court may cause parties residing in another district to be summoned to
6 that district if the “ends of justice require” it.

7 21. Defendants purposefully directed conduct at this forum with respect to their
8 scheme to unlawfully seize monies from user accounts of Plaintiffs and the Class members,
9 and to convert and divert those monies for its own use by transferring those monies into
10 PayPal’s own accounts, under the guise of purported violations of its Acceptable Use Policy
11 (“AUP”) where, in fact, there is no evidence that Plaintiffs and Class members committed
12 any illegal acts in the use of their PayPal accounts.

13 22. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2) because a
14 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred within
15 this judicial district. Venue is further proper in this District pursuant to 18 U.S.C. § 1965(a)
16 because Defendants conduct and/or transact their affairs in this District given each
17 Defendant’s participation in the Enterprise, as alleged below.

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19 **III. THE PARTIES**

20 23. Plaintiff Lena Evans (“Evans”) is a natural person who resides in San Diego,
21 California. Ms. Evans is a member of the putative class defined herein, and has been a
22 PayPal user for over 22 years since she opened her Ebay account in or around August of
23 1999.

24 24. Plaintiff Roni Shemtov is a natural person who resides in Los Angeles, California.
25 Ms. Shemtov is a member of the putative class defined herein, and has been a PayPal user
26 since 2014.
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