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7 Attorneys for Plaintiff  
and the proposed class

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 MOISES ZEPEDA, on behalf of himself and  
all others similarly situated,

13 Plaintiff,

14 vs.

15 PAYPAL, INC., a Delaware Corporation;  
16 and DOES 1 through 10, inclusive;

17 Defendants.

Case No. CV 10-02500

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

19  
20 Plaintiff, MOISES ZEPEDA ("Plaintiff"), individually and on behalf of the Class  
21 described below, by his attorneys, makes the following allegations based upon information and  
22 belief, except as to allegations specifically pertaining to Plaintiff and his counsel, which are  
23 based on personal knowledge. Plaintiff brings this action for damages and injunctive relief  
24 against Defendant, demanding a trial by jury.

25 NATURE OF THE ACTION

26 1. Plaintiff brings this class action against Defendant PAYPAL, INC. ("PayPal") to  
27 recover damages and other relief available at law and in equity on behalf of himself as well as on  
28

CLASS ACTION COMPLAINT

FILED  
2010 JUN - 7 4 3:05  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
N.D. CA. SAN JOSE

E-filing

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2. PayPal operates an online payment processing service, providing individuals and business the ability to accept payment for goods and services they sell online. PayPal represents its service as one that will allow its users easy access to their money.

## THE PARTIES

3. Plaintiff is informed and believes and thereon alleges that defendant PayPal, Inc. is a corporation doing business in the State of California. PayPal's corporate headquarters are located in Santa Clara County, California.

## JURISDICTION AND VENUE

— 2 —

1 controversy in this class action exceeds five million dollars, exclusive of interest and costs; and  
2 (2) a substantial number of the members of the proposed class are citizens of a state different  
3 from that of defendant PayPal. Personal jurisdiction is proper as PayPal is domiciled in  
4 California and has purposefully availed itself of the privilege of conducting business activities  
5 within the State of California.

6 6. Venue is proper in District pursuant to 28 U.S.C. section 1391, as a substantial  
7 part of the events giving rise to the claims asserted herein occurred in the Northern District of  
8 California.

9 7. **Intradistrict Assignment (L.R. 3-2(b)):** This action arises in Santa Clara  
10 County, in that a substantial part of the events which give rise to the claims asserted herein  
11 occurred in Santa Clara County, and Defendant has executive offices and conducts business in  
12 Santa Clara County, a county encompassed in this District.

#### 13 **FACTUAL BACKGROUND**

14 8. PayPal operates an online payment processing service. The service allows a  
15 consumer of goods or services purchased over the Internet to electronically transfer money to the  
16 seller of the goods or services. PayPal boasts 81 million active accounts (and 210 million total  
17 accounts), with over half of PayPal's total revenues are generated in the United States.

18 9. Typically, an online retailer will include a link to PayPal on their website. When  
19 the website's customer is ready to make a purchase, the customer will click the PayPal link,  
20 which will take the customer to a secure PayPal webpage. There, the customer will provide  
21 PayPal payment information. Once the payment is processed, the customer is returned to the  
22 online retailer's website.

23 10. A PayPal user who uses the service to pay for something purchased online has  
24 several payment options. According to the PayPal website "You can use your PayPal balance,  
25 bank account, or a debit or credit card."

26 11. A PayPal user who uses the service to accept payment for something sold online  
27 also has options on how to receive payment. According to the PayPal website, when selling on  
28 eBay, "[m]oney from your eBay sales appears in your PayPal account after the item sells.

1 Choose to transfer the funds to your bank account, or keep them in your PayPal balance to pay  
2 for sales costs or purchases – it’s up to you.”

3 12. Online retailer who sell products through their own websites, as opposed to sales  
4 made on eBay, have similar payment options. Money can be transferred immediately to a linked  
5 bank account or left in a PayPal account.

6 13. PayPal actively encourages sellers to leave the payments they receive in a PayPal  
7 account, asserting that “PayPal is accepted at thousands of websites, and it provides a fast, secure  
8 checkout,” thus making it easier to “spend it through PayPal.”

9 14. PayPal also offers a “PayPal Debit MasterCard Business Card [that] lets you  
10 spend the money in your PayPal account or withdraw it as cash at ATMs.”

11 15. Users of PayPal must agree to the PayPal User Agreement (“Agreement”). The  
12 Agreement states that “PayPal is only a Payment Service Provider. PayPal helps you make  
13 payments to and accept payments from third parties. PayPal is an independent contractor for all  
14 purposes, except that PayPal acts as your agent with respect to the custody of your funds only.”

15 16. PayPal encourages its users to maintain a balance in their PayPal account because  
16 PayPal keeps all interest that these balances accrue. In fact, use of PayPal is contingent on  
17 granting PayPal an irrevocable transfer “[of] any ownership right that you may have in any  
18 interest that may accrue” on the balance maintained in a PayPal account. This transfer is “in  
19 consideration for your use of” PayPal.

20 17. The Agreement lists numerous “Restricted Activities,” conduct a user agrees not  
21 to engage in while using PayPal. PayPal also has an Acceptable Use Policy, which lists further  
22 prohibited activity.

23 18. PayPal states in the Agreement that “[i]f we have reason to believe that you have  
24 engaged in any Restricted Activities, we may take various actions to protect PayPal, eBay, a  
25 User, a third party, or you from Reversals, Chargebacks, Claims, fees, fines, penalties and any  
26 other liability.” These actions include closing, suspending, or limiting access to a user’s PayPal  
27 account or holding funds “for up to 180 days if *reasonably needed* to protect against the risk of  
28 liability.”

1           19.     PayPal has a policy and practice of closing, suspending, or limiting access to its  
2 users' accounts without reason to believe that the user has engaged in a restricted activity.  
3 During this time, funds cannot be withdrawn from a user's PayPal account.

4           20.     Furthermore, despite the express language in the Agreement that PayPal will hold  
5 funds only if reasonably necessary to protect against the risk of liability, PayPal has a policy and  
6 practice of holding all funds in an account for the full 180 days whenever it makes the  
7 determination, in its sole discretion, that a PayPal user has engaged in a restricted activity.

8           21.     During this 180 day period in which users are prohibited from accessing the funds  
9 in their PayPal accounts, the funds continue to accrue interest. PayPal retains this interest.

10          22.     Plaintiff operates a business selling gift cards through eBay. Plaintiff opened an  
11 account with PayPal to process the payments made on eBay. When opening the account,  
12 Plaintiff read and relied on statements made on PayPal's website that PayPal offers quick and  
13 easy access to the payments processed by PayPal. While Plaintiff operated his business on eBay,  
14 he received no complaints and had 100% positive feedback from his customers.

15          23.     In January 2010, Plaintiff logged onto his PayPal account and received  
16 notification that his account was limited. Plaintiff followed the instructions offered by PayPal on  
17 how to reinstate his account. This included faxing proof of ownership of the gift card he sold on  
18 eBay. Soon after Plaintiff faxed the information requested by PayPal, PayPal informed Plaintiff  
19 by email that his account was being closed.

20          24.     PayPal stated that, "For the safety and security of the PayPal network, we often  
21 review accounts for potential risks. After reviewing your account, we have decided to close it  
22 because of security issues."

23          25.     PayPal then offered Plaintiff two "Disbursement options." The first option was  
24 that he could issue refunds to any of his buyers. As Plaintiff had no complaints from any buyer,  
25 he owed no refunds.

26          26.     The second option was: "Option 2. Money in your PayPal account will be held for  
27 180 days. After 180 days, we'll email you information on how to receive your funds."

28          27.     Had Plaintiff known that PayPal would automatically hold the funds in his PayPal

1 account for 180 if PayPal decided to close the account, he would not have used PayPal's  
2 services.

3 **CLASS ACTION ALLEGATIONS**

4 28. Description of the Class: Plaintiff brings this nationwide class action on behalf of  
5 himself and a Class defined as follows:

6 *All PayPal, Inc. account holders in the United States whose*  
7 *accounts were closed, suspended, or limited during or after an*  
8 *investigation by PayPal, Inc. of the account holders' activities.*

9 29. Excluded from the Class are governmental entities, Defendants, any entity in  
10 which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal  
11 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded  
12 from the Class is any judge, justice, or judicial officer presiding over this matter and the  
13 members of their immediate families and judicial staff.

14 30. Plaintiff reserves the right to modify the Class description and the Class period  
15 based on the results of discovery.

16 31. Plaintiff and the Class bring this action for equitable, injunctive and declaratory  
17 relief pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of rule 23 of the Federal Rules of Civil  
18 Procedure.

19 32. Numerosity: The proposed Class is so numerous that individual joinder of all its  
20 members is impracticable. The total number of Class members is at least in the hundreds of  
21 thousands and members of the class are geographically dispersed across the United States.  
22 While the exact number and identities of the Class members are unknown at this time, such  
23 information can be ascertained through appropriate investigation and discovery. The disposition  
24 of the claims of the Class members in a single class action will provide substantial benefits to all  
25 parties and to the Court.

26 33. Common Questions of Law and Fact Predominate: There are questions of law  
27 and fact common to the representative Plaintiff and the Class, and those questions substantially  
28 predominate over any questions that may affect individual Class members. Common questions

1 of fact and law include, but are not limited to, the following:

2 a. Whether PayPal has a practice of breaching the terms of the PayPal User  
3 Agreement, or the covenant of good faith and fair dealing, by closing, suspending, or  
4 limiting its users' accounts without reason to believe that the users engaged in activities  
5 prohibited by the agreement;

6 b. Whether PayPal has a practice of breaching the terms of the PayPal User  
7 Agreement, or the covenant of good faith and fair dealing, by holding funds in its users'  
8 accounts for 180 days without determining that such action is reasonably necessary to  
9 protect against liability;

10 c. Whether PayPal breached the terms of the PayPal User Agreement by  
11 retaining the interest generated by the funds in closed, suspended, or limited accounts;

12 d. Whether PayPal breach the fiduciary duties owed to Plaintiff and the  
13 Class;

14 e. Whether PayPal is obligated to refund the interest generated on closed,  
15 suspended, or limited accounts under theories of money had and received or unjust  
16 enrichment;

17 f. Whether PayPal owes Plaintiff and the Class an accounting of the interest  
18 accrued on their funds while their accounts were closed, suspended, or limited; and

19 f. Whether PayPal's conduct is a violation of California Business &  
20 Professions Code § 17200 *et seq.*

21 34. Typicality: Plaintiff's claims are typical of the claims of the members of the  
22 class. Plaintiff and all members of the class have been similarly affected by Defendant's  
23 common course of conduct since their printers acted in exactly the same way.

24 35. Adequacy of Representation: Plaintiff will fairly and adequately represent and  
25 protect the interests of the Class. Plaintiff has retained counsel with substantial experience in  
26 prosecuting complex and class action litigation. Plaintiff and his counsel are committed to  
27 vigorously prosecuting this action on behalf of the Class, and have the financial resources to do  
28 so. Neither Plaintiff nor his counsel have any interests adverse to those of the Class.



## CLASS ACTION COMPLAINT



1 liability.

2 43. PayPal breached the express terms of the contract by retaining interest generated  
3 by the balances contained in accounts that were closed, suspended, or limited despite the fact that  
4 the transfer of the ownership rights to the accrued interest was in consideration for the ability to  
5 use PayPal's services.

6 44. The contract also contains an implied covenant of good faith and fair dealing.  
7 The covenant of good faith and fair dealing requires that PayPal will not take action that would  
8 have the effect of injuring the right of Plaintiff and the Class to receive the benefits of the  
9 contract.

10 45. PayPal breached the implied covenant of good faith and fair dealing by closing,  
11 suspending, or limiting access to Plaintiffs' and the Class' accounts without reason to believe  
12 that Plaintiffs and the Class engaged in restricted activities.

13 46. PayPal also breached the implied covenant of good faith and fair dealing by  
14 uniformly holding Plaintiff's and the Class' funds for 180 days when not reasonably needed to  
15 protect against the risk of liability.

16 47. As a direct and proximate result of PayPal's breach of contract, Plaintiff and the  
17 Class have been damaged in an amount to be determined at trial.

18 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

19 **SECOND CAUSE OF ACTION**

20 **BREACH OF FIDUCIARY DUTY**

21 48. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
22 extent necessary, pleads this cause of action in the alternative.

23 49. PayPal acted as the agent of Plaintiff and the Class with respect to the custody of  
24 the funds held by PayPal.

25 50. As an agent, PayPal owed Plaintiff and the Class a duty to exercise skill, care,  
26 and diligence.

27 51. PayPal breached the duty to exercise skill, care, and diligence by closing,  
28 suspending, or limiting access to the accounts of Plaintiff and the Class without having reason to

1 believe Plaintiff and the Class engaged in restricted activities. PayPal further breached the duty  
2 to exercise skill, care, and diligence by holding funds in Plaintiff's and the Class' accounts for  
3 the full 180 days without determining whether such action was reasonably needed to protect  
4 against the risk of liability.

5 52. As an agent, PayPay owed Plaintiff and the Class a duty of loyalty.

6 53. PayPal breached the duty of loyalty by holding funds in Plaintiff's and the Class'  
7 accounts for the full 180 days without determining whether such action was reasonably needed to  
8 protect against the risk of liability, thereby profiting at the expense of Plaintiff and the Class.

9 54. As a direct and proximate result of PayPal's breach of fiduciary duty, Plaintiff  
10 and the Class have been damaged in an amount to be determined at trial.

11 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

12 **THIRD CAUSE OF ACTION**

13 **MONEY HAD AND RECEIVED**

14 55. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
15 extent necessary, pleads this cause of action in the alternative.

16 56. Plaintiff and the Class deposited money into their PayPal accounts.

17 57. PayPal deposits the money held in its users' accounts in interest bearing accounts.

18 58. The PayPal User Agreement between Plaintiff and the Class and PayPal transfers  
19 to PayPal the ownership rights Plaintiff and the Class have in the interest accrued on the balances  
20 held in their PayPal account. This transfer is in consideration for use of the PayPal service.

21 59. The closure, suspension, or limiting of Plaintiff's and the Class' account by  
22 PayPal prevented Plaintiff and the Class from using the PayPal service.

23 60. Where PayPal prevents Plaintiff and the Class from using the PayPal service,  
24 there is no consideration for the transfer of ownership rights to the interest accrued on the  
25 balance held in Plaintiff's and the Class' accounts, thus Plaintiff and the Class retain the  
26 ownership right of the interest accrued on their accounts.

27 61. PayPal, however, retains the interest accrued on the balances of accounts that  
28 have been closed, suspended, or limited.

1           62.     This interest is owed to Plaintiff and the Class.

2     WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

3                                 **FOURTH CAUSE OF ACTION**

4                                 **ACCOUNTING**

5           63.     Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
6     extent necessary, pleads this cause of action in the alternative.

7           64.     PayPal acted as the agent of Plaintiff and the Class with respect to the custody of  
8     the funds held by PayPal.

9           65.     PayPal owes Plaintiff and the Class interest accrued on accounts that have been  
10    closed, suspended, or limited and this amount can only be ascertained by an accounting.

11    WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

12                                 **FIFTH CAUSE OF ACTION**

13                                 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

14                                 **SECTION 17200 et seq.**

15           66.     Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
16    extent necessary, pleads this cause of action in the alternative.

17           67.     Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact  
18    and has lost money or property as a result of PayPal's actions as delineated herein.

19           68.     PayPal's actions as alleged in this complaint constitute an unfair or deceptive  
20    practice within the meaning of California Business and Professions Code section 17200 in that  
21    PayPal's actions are unfair, unlawful and/or fraudulent.

22           69.     PayPal's business practices, as alleged herein, are unfair because they offend  
23    established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or  
24    substantially injurious to its customers in that PayPal: (a) closes, suspends, or limits its users'  
25    accounts without reason to believe the users have engaged in any activities prohibited under the  
26    PayPal User Agreement; (b) holds the funds in its users' accounts for 180 days without a  
27    determination that such action is reasonably needed to protect against liability; and (c) retains the  
28    interest that accrues on its users' accounts while the users are prevented from using PayPal's

1 services. Moreover, this conduct causes substantial injury to Plaintiffs' and the Class, the  
2 injuries suffered by Plaintiff and the Class outweigh any countervailing benefits to PayPal or  
3 competition in general, and Plaintiff and the Class could not have reasonably avoided the  
4 injuries.

5 70. PayPal's business practices, as alleged herein, are unlawful because the conduct  
6 constitutes a breach of contract, breach of fiduciary duty, and unjust enrichment.

7 71. PayPal's business practices are fraudulent in that they are likely to deceive  
8 consumers into believing that they would have access to the money in their PayPal accounts  
9 unless restricting access is reasonably needed to protect against the risk of liability, when in fact,  
10 PayPal always holds the fund in closed, suspended, or limited accounts for 180 days, without  
11 regard to the reasonableness of their actions.

12 72. PayPal's alleged wrongful business acts constituted, and constitute, a continuing  
13 course of conduct of unfair competition.

14 73. PayPal's business acts and practices, as alleged herein, have caused injury to  
15 Plaintiff and the Class.

16 74. Pursuant to section 17203 of the California Business and Professions Code,  
17 Plaintiff and the Class seek an order of this court enjoining PayPal from continuing to engage in  
18 unlawful, unfair, or deceptive business practices and any other act prohibited by law, including  
19 those acts set forth in the complaint.

20 75. Plaintiffs and the Class also seek an order requiring PayPal to disgorge all ill-  
21 gotten gains and make full restitution of all moneys it wrongfully obtained from Plaintiff and the  
22 Class.

23 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

24 **SIXTH CAUSE OF ACTION**

25 **UNJUST ENRICHMENT**

26 76. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
27 extent necessary, pleads this cause of action in the alternative.

28 77. Through the actions described above, PayPal has received money belonging to

1 Plaintiff and the Class through the retention of the interest that accrued on funds held in accounts  
2 that were closed, suspended, or limited.

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

5 79. Under principles of equity and good conscience, PayPal should not be permitted  
6 to keep the full amount of money belonging to Plaintiff and the Class which PayPal has unjustly  
7 received as a result of its actions.

8 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

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**PRAYER FOR RELIEF**

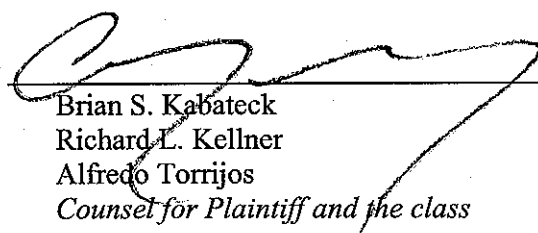
WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or judgment against the Defendant as follows:

1. Certification of the proposed class and notice thereto to be paid by Defendant;
2. Adjudge and decree that Defendant has engaged in the conduct alleged herein;
3. For restitution and disgorgement on certain causes of action;
4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For compensatory and general damages according to proof on certain causes of action;
6. For special damages according to proof on certain causes of action;
7. For both pre and post-judgment interest at the maximum allowable rate on any amounts awarded;
8. Costs of the proceedings herein;
9. Reasonable attorneys fees as allowed by statute; and
10. Any and all such other and further relief that this Court may deem just and proper.

DATED: June 4, 2010

**KABATECK BROWN KELLNER LLP**

By

  
Brian S. Kabateck  
Richard L. Kellner  
Alfredo Torrijos  
*Counsel for Plaintiff and the class*

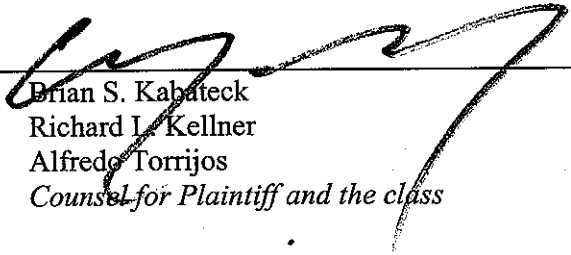
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury in the instant action.

DATED: June 4, 2010

**KABATECK BROWN KELLNER LLP**

By

  
Brian S. Kabateck

Richard L. Kellner

Alfredo Torrijos

*Counsel for Plaintiff and the class*