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

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 14  
 15  
 16 LENA EVANS, RONI SHEMTOV, and  
 17 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.

CASE NO.

**COMPLAINT:**  
**(CLASS ACTION)**

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

**CLASS ACTION  
DEMAND FOR JURY TRIAL**

1  
2  
3 Plaintiffs LENA EVANS, RONI SHEMTOV, and SHBADAN AKYLBEKOV (collectively,  
4 “Plaintiffs”), individually and on behalf of all others similarly situated, through their undersigned  
5 counsel, alleges for their Class Action Complaint against Defendant, PAYPAL, INC.,  
6 (“Defendant”) based upon personal knowledge as to themselves and their own acts and experiences,  
7 and, as to all other matters, upon information and belief, including the investigation conducted by  
8 their counsel, as follows:

9 **I. NATURE OF THE ACTION**

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

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

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

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

26 5. PayPal’s application of an unlawful and unenforceable liquidated damages clause,  
27 which is a contract of adhesion, without any causal connection to any damages PayPal  
28 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  
28

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").  
27  
28

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.

18  
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.

1           25. Plaintiff Shbadan Akylbekov operates businesses located in Chicago, Illinois. Mr.  
2 Akylbekov is a member of the putative class defined herein and has been a PayPal user since  
3 March of 2016.

4           26. Defendant Paypal, Inc. is a Delaware corporation. Upon information and belief, its  
5 corporate headquarters are located at 2211 North First Street, San Jose, California 95131.  
6 *See* <https://www.paypal.com/in/webapps/mpp/about>.

7           27. The true names and/or capacities, whether individual, corporate, associate or  
8 otherwise, of Does 1 through 25, inclusive, are unknown to Plaintiffs at this time, and  
9 Plaintiffs therefore sue said Defendants by such fictitious names. Plaintiffs are informed and  
10 believe and thereupon allege that each of the Defendants fictitiously named herein as a DOE  
11 is legally responsible, negligently or in some other actionable manner, for the events and  
12 happenings hereinafter referred to, and thereby proximately and legally caused the injuries  
13 and damages to Plaintiffs as hereinafter alleged. Plaintiffs will ask leave of court to amend  
14 this Complaint to insert the true names and/or capacities of such fictitiously named  
15 Defendants when the same have been ascertained.

16 **IV. FACTUAL BACKGROUND**

17 **A. The PayPal Financial Platform**

18           28. Defendants operate PayPal, an immensely popular digital payments platform with  
19 an estimated 325 million active account holders worldwide.

20           29. Through Defendants' platform, users make online money transfers to other users,  
21 serving as an electronic alternative to traditional paper methods such as cash, checks and  
22 money orders. The company further operates as a payment processor for online vendors,  
23 auction sites and other commercial users.

24           30. As part of the functionality of Defendants' platform, users may maintain a PayPal  
25 balance account where funds are kept until used or transferred by the account holder. As  
26 with traditional banks, PayPal users can transfer funds into their PayPal balance accounts  
27 from other banking sources. In addition, they can receive payments to their PayPal accounts  
28

1 from other users or third parties. Vendors and service providers in particular have the option  
2 of receiving payments from their customers directly to their PayPal accounts.

3 31. When obtaining a PayPal user account, each user is purportedly required to indicate  
4 they agree to Defendant's "User Agreement." The User Agreement is a dense document  
5 which in its current form spreads over nearly seventy pages when downloaded as a PDF. See  
6 <https://www.paypalobjects.com/marketing/ua/pdf/US/en/ua-092121.pdf>.

7 32. The current version of the User Agreement is 65 pages and can be found at the  
8 following link: <https://www.paypal.com/us/webapps/mpp/ua/useragreement-full>

9 "The user agreement will be effective for all users as of December 10, 2021."

10 33. Moreover, the User Agreement is presented as a "take it or leave it" agreement with  
11 no opportunity for users to negotiate portions before registering their accounts. Although the  
12 User Agreement has been amended throughout the relevant time period, at all relevant times  
13 the User Agreement constituted a lengthy contract of adhesion with no opportunity for  
14 users' revisions.

15 34. PayPal's actions are all the more unreasonable in light of the fact it is attempting to  
16 invoke a contract term in a classic contract of adhesion. The language upon which  
17 PayPal relies is contained in a form contract that is viewed online. It is provided on a take it  
18 or leave it basis.

19 35. There is a tremendous disparity in bargaining power, as a predominant portion of  
20 members of the Class need to be able to accept payment via PayPal in order to sell goods.

21 36. To interpret the ambiguous language upon which PayPal apparently relies in  
22 PayPal's favor is against all equity and contrary to prevailing rules of contractual  
23 construction.

24 37. Indeed, PayPal's behavior violates the covenant implicit in all contracts - but more  
25 so, implicit in contracts of adhesion such as the PayPal User Agreement - to act and deal in  
26 good faith.

1           38. Among the terms in the User Agreement is a provision stating that “[i]f [the user]  
2 violated our Acceptable Use Policy, then you’re also responsible for damages to PayPal  
3 caused by your violation of this policy.”

4           39. The provision goes on to state that:

5           “If you are a seller and receive funds for transactions that violate the  
6 Acceptable Use Policy, then in addition to being subject to the above actions you  
7 will be liable to PayPal for the amount of PayPal’s damages caused by your  
8 violation of the Acceptable Use Policy. You acknowledge and agree that \$2,500.00  
9 U.S. dollars per violation of the Acceptable Use Policy is presently a reasonable  
10 minimum estimate of PayPal’s actual damages - including, but not limited to,  
11 internal administrative costs incurred by PayPal to monitor and track violations,  
12 damage to PayPal’s brand and reputation, and penalties imposed upon PayPal by  
13 its business partners resulting from a user’s violation - considering all currently  
14 existing circumstances, including the relationship of the sum to the range of harm  
15 to PayPal that reasonably could be anticipated because, due to the nature of the  
16 violations of the Acceptable Use Policy, actual damages would be impractical or  
17 extremely difficult to calculate. PayPal may deduct such damages directly from any  
18 existing balance in any PayPal account you control.”

19           40. The AUP itself is not included in the User Agreement, but rather is a separate  
20 document that users must access via a hyperlink or otherwise located on Defendant’s  
21 website.

22           41. These provisions explicitly only allow for Defendant to collect damages if there has  
23 been a violation of the AUP – not merely a suspected violation, or an alleged violation.  
24 Moreover, even where there is an actual violation, users are expressly only liable to  
25 Defendant for Defendant’s “damages” caused by said violation.

26           42. Nevertheless, Defendants routinely engage in “self-help” under the cover of this  
27 provision by withdrawing money – sometimes entire account balances – from its users’  
28 accounts and transferring those funds to itself based merely on *suspected* or *alleged*



1 violations of the AUP. Upon information and belief, Defendants do so without first  
2 conducting any reasonable investigation to determine whether an actual violation of the  
3 AUP occurred, much less obtaining a final judgment or court order confirming the purported  
4 breach of the parties' agreement. Indeed, Defendants often decline to even contact the user  
5 in question to obtain an explanation for the activity before seizing the funds.

6 43. Moreover, Defendants routinely deduct sums from its users' balances which have  
7 no correlation to any damages actually suffered by Defendants – indeed, Defendants do so  
8 even if it suffered no demonstrable damages whatsoever.

9 44. To make matters worse, Defendants offer no reasonable way for users to challenge  
10 Defendants' actions or to obtain any due process from Defendants. As noted above,  
11 Defendants routinely act without first contacting the user in question or allowing them any  
12 opportunity to explain or dispute whether the activity is in violation of the AUP. And once a  
13 user becomes aware of Defendants' actions, they are often unable to obtain any assistance  
14 through Defendants' mediocre customer support. Even if the user is able to reach a live  
15 customer support employee of Defendants, the employee is typically either unable or  
16 unwilling to provide any meaningful information about the seizure or a reasonable means of  
17 challenging Defendants' decision.

18 **B. Allegations Specific To Named Plaintiffs**

19 ***1. Lena Evans***

20  
21 45. Ms. Evans has been using the PayPal platform for over 22 years. She began using  
22 PayPal when she opened her Ebay account in or around August of 1999.

23 46. She uses PayPal for buying and selling varied items (used and new articles of  
24 clothing), mostly on Ebay.

25 47. She also uses PayPal for her non-profit organization (“Poker League of Nations” --  
26 also known as “PLON”) which helps women with various needs (veterans, breast cancer,  
27 child custody and other varied needs).

28 48. She also uses PayPal to exchange money for a poker league she owns and manages.

1           49. Without any advance warning, on or about November 22, 2020, Ms. Evans learned  
2 that her PayPal account was frozen.

3           50. On or about May 22, 2021, Ms. Evans learned that PayPal seized \$26,984.00 from  
4 her PayPal account without ever telling Ms. Evans why.

5           51. Ms. Evans emailed PayPal a number of times, but she never received any response.  
6 She also tried calling PayPal a number of times, but was never able to reach a live person.

7  
8           **2.       *Roni Shemtov***

9           52. Ms. Shemtov has been using PayPal since 2014, to sell yoga clothing on Ebay.

10          53. In March of 2017, Ms. Shemtov learned that PayPal froze her account.

11          54. Ms. Shemtov made multiple attempts to reach a live PayPal employee on the  
12 telephone, but the employees she reached told her that her account was frozen and closed,  
and then hung up on her. She was never given any reason why her account was terminated.

13          55. At some point she learned that between March 24, 2017 and December 27, 2017,  
14 PayPal was investigating her, but she did not know why.

15          56. Six months later, in September of 2017, Ms. Shemtov learned that PayPal seized  
\$10,000 from her PayPal account.

16          57. On or about November 26, 2019, Ms. Shemtov learned that PayPal seized another  
17 \$32,351.87 from her PayPal account. A true and correct copy of a screenshot evidencing the  
18 amount and date of the seizure is attached hereto as **Exhibit "1"** (\$32,351.87, entitled a  
19 "Transfer," on November 26, 2019).

20          58. Ms. Shemtov did not use her PayPal account for any transaction after she learned  
21 that PayPal seized money from her account other than checking the balance of her account.  
22 When she checked the balance in her account, Ms. Shemtov learned that she had a zero  
balance.

23          59. Ms. Shemtov sent a letter to PayPal's lawyer after learning her name was Cassandra  
24 Knight, to PayPal's address, listed as "2211 N. 1st St, San Jose, CA. 95131-2021" -- at the  
25 following website: <https://apps.calbar.ca.gov/attorney/Licensee/Detail/175696>.

26          60. Ms. Shemtov did not receive any response from PayPal's lawyer, Cassandra Knight.

27          61. She tried calling PayPal and spoke with a different person on at least three different  
28 occasions. One person told Ms. Shemtov that she violated PayPal's Acceptable Use Policy

1 (“AUP”) by using the same IP address and computer that other PayPal users used --  
2 notwithstanding that other PayPal users had different names, social security numbers and  
3 addresses than Ms. Shemtov.

4 62. Another person told Ms. Shemtov that she violated PayPal’s AUP by having and  
5 using multiple PayPal accounts, which is not true, Ms. Shemtov has only ever had and used  
6 one PayPal account.

7 63. A third person employed by PayPal told Ms. Shemtov that she violated PayPal’s  
8 AUP by selling her yoga clothing at 20-30% below the retail price, which is not relevant.  
9 She was selling authentic merchandise. It was her decision to set the price for the items of  
10 clothing which she was selling.

11 64. All the reasons PayPal employees gave Ms. Shemtov for freezing her account and  
12 for seizing \$42,737 from her PayPal account are ludicrous.

13 65. Ms. Shemtov was sent an IRS form dated 9/1/2020, stating that she owed taxes on  
14 this \$42,737 which PayPal seized from her!

15 66. Ms. Shemtov believes that she ended up having to pay approximately \$1,000 in  
16 taxes on money that PayPal seized from her.

### 17 3. *Shbadan Akylbekov*

18 67. Mr. Akylbekov began using PayPal on May 16, 2016, opening an account for his  
19 personal use.

20 68. His wife, Aigerim Tobokelova, opened a separate PayPal account in the name of  
21 her wholly owned company, Azyk Logistics, Inc., in or around January of 2020. Azyk  
22 Logistics, Inc. performs truck repair services, owns and rents trucks, and uses trucks for  
23 interstate hauling.

24 69. On January 4, 2020, Mr. Akylbekov began using the Azyk Logistics PayPal  
25 account for the sale of Hyaluron Pens. He is the CEO of Hyaluron Pen Store, LLC, a  
26 company that was created on June 12, 2020.

27 70. A Hyaluron Pen is a biologic injectable using hyaluronic acid, which is a beauty  
28 product for the treatment of facial wrinkles and acne scars. The device is manufactured by a  
Korean company. It has the European equivalent of FDA approval. While not yet approved  
by the FDA the product is very popular.

71. Mr. Akylbekov also operates a real estate business.

1           72. About 2-3 months after Mr. Akylbekov started using PayPal for the sale of  
2 Hyaluron Pens he began hearing from customers that they were not able to complete their  
3 transactions using PayPal. It was only then that Mr. Akylbekov learned that PayPal had  
4 limited his account without informing him.

5           73. PayPal did not give him any explanation for limiting his account. He was told by  
6 someone from PayPal that his funds would be held in his account for 180 days, after which  
7 they would be made available to him for transfer to his bank account.

8           74. He received payments for Hyaluron Pens until March 4, 2020, after which his  
9 PayPal account was limited.

10           75. On May 3, 2021, Mr. Akylbekov sent an email message to PayPal referring to a  
11 telephone conversation with PayPal customer service representative Maria Patricia, stating  
12 as follows:

13           “To whom it may concern from PayPal,

14           We have received your message from the BBB complaint we have filed.

15           We just have a couple more questions.

16           1. Our account was put on limitations on March 4, 2020. We were told to  
17 wait 180 days to hear back about our account and were informed that  
18 we would be able to transfer the money out. However, on August 4, 2020, without  
19 any warning the money was transferred to PayPal and we were never notified of this  
20 transfer or the decision that PayPal came down to. The very last transaction was done  
21 by PayPal on August 4, 2020 where the funds of \$172,206.43 was transferred to  
22 PayPal. We want to know why our funds were emptied to PayPal.

23           2. We called and talked to your customer service and account limitation  
24 team after our account was limited, we were given no answer other than  
25 to wait 180 days for PayPal to come to a decision and that we would  
26 receive an email once that 180 days passed. It’s been over 180 days and  
27 ever since the 180 days we've been calling PayPal trying to figure out  
28 what solution you guys came down to and we haven’t heard anything.  
We didn’t receive that email that was promised to us and we want to  
know why we didn’t receive this email.

          3. We finally heard on May 3, 2021, when we talked to your customer  
service team, Maria Patricia, who informed us why our account was  
closed, and where the funds of \$172,206.43 that PayPal took was. She  
informed us that from our transaction history that after the August  
4,2020, that withhold amount of \$172,206.43, some of the money was  
refunded back to our customers and some of the amount was used for  
“damages caused by us to PayPal from the user policy that we broke.

1  
2 From our side, the only transaction that we could see was the one of  
3 August 4, 2020 and nothing after that. We were informed that she will download  
4 those transactions she could see and send it to us but  
5 when we received the email there was no attachment.  
6 We contacted multiple times trying to receive this attachment of our transaction  
7 history of where that \$172,206.43 went to. We haven't received anything yet, so we  
8 are demanding that we get a copy of this transaction of PayPal refunding that  
9 \$172,206.43 to our customers and exactly how much PayPal is keeping for the  
10 damage.

11  
12 4. We are also receiving calls saying that our account is at a negative  
13 balance of \$127.25 because of a refund of a customer. We contacted  
14 your customer service asking where this amount was coming from and  
15 was informed that they do not see this negative charge. We would  
16 happily send that money back to our customer, but we were told PayPal  
17 refunded all our funds so that customer should already have received  
18 her refund from PayPal either way. So why are we still receiving these  
19 messages and calls.

20  
21 Sincerely, Aigerim Tobokelova”

22  
23 76. From the beginning of June 2020, multiple customers contacted Mr. Akylbekov,  
24 stating that PayPal sent them invoices to pay for orders they did not place, during the time  
25 that PayPal had limited the PayPal account used for sales of the Hyaluron Pens. True and  
26 correct copies of the customer communications are attached hereto as **Exhibit “2.”**

27  
28 77. Mr. Akylbekov kept checking the balance in his PayPal account from time to time,  
and learned at or around August 4, 2020, that PayPal had seized \$172,206.43 from his  
account, without explanation and without notifying him that the funds had been seized by  
PayPal and transferred to PayPal's account.

78. After calling and speaking with different PayPal customer service employees over  
the telephone, Mr. Akylbekov received no explanation why PayPal seized the money in his  
PayPal user account.

79. Mr. Akylbekov sent two letters to the legal department of PayPal, to its address at  
2211 North 1st Street, San Jose, CA. 95121, but he never received any reply.

80. Mr. Akylbekov then filed a Complaint against PayPal with the Better Business  
Bureau and thereafter received a reply to his Better Business Bureau Complaint No. 914533,  
from Soumya A. R., Executive Escalations for PayPal.

1           81. This letter dated May 18, 2021, claimed that Aigerim Tobokelova, the wife of  
2 Shbadan Akylbekov, violated PayPal’s User Agreement and Acceptable Use Policy  
3 (“AUP”) by accepting payments for the sale of injectable fillers not approved by the FDA.

4           82. This letter claimed that the money seized was debited from her PayPal account  
5 balance “for its liquidated damages arising from those AUP violations pursuant to the User  
6 Agreement.”

7           83. Mr. Akylbekov never received a copy of the AUP or the User Agreement until  
8 PayPal limited his account and seized the monies from his PayPal user account, transferring  
9 it to PayPal’s own account, without notice or explanation.

10           84. After discovering that his account was limited, Mr. Akylbekov was informed of the  
11 AUP and was referred to a link to the AUP which was accessible from his PayPal account.

12           85. PayPal never returned the \$172,206.43 to his PayPal user account.

13           86. PayPal later claimed that it used these funds to reimburse customers who had  
14 purchased the Hyaluron Pens, and to compensate PayPal for its damages.

15           87. No customer ever told Mr. Akylbekov that he or she received a refund from  
16 PayPal. On information and belief, PayPal kept the entire \$172,206.43 for itself, without  
17 giving a refund to any customers.

18           88. In the letters sent to PayPal’s legal department, Mr. Akylbekov requested  
19 documents which evidenced the amounts and identity of customers that were purportedly  
20 issued refunds.

21           89. He was told by a PayPal customer service supervisor that the documents were being  
22 downloaded and would be provided to him within 2 days. To this day no documents were  
23 ever given.

24           90. The May 18, 2021, letter references a customer requesting a refund because the  
25 item was not received. Instead of using some of the \$172,206.43 it seized, PayPal demanded  
26 that Mr. Akylbekov pay this customer, which he did.

27           Mr. Akylbekov asked PayPal why a customer was requesting a refund after PayPal had  
28 claimed that it issued refunds to his customers related to his sale of the Hyaluron Pens.

          91. PayPal later sent a Form 1099K to Azyk Logistics, Inc., a company owned by Mr.  
Akylbekov’s wife, stating that the sum of \$162,517.19 was paid as the “gross amount of  
payment third party network transactions” even though PayPal seized all of this money and

1 transferred it to PayPal’s own account, and never returned a cent of that money to his PayPal  
2 user account.

3 92. PayPal essentially claimed a deduction for an expense that it never paid. PayPal  
4 seized \$172,206.43, while reporting only \$162,517.19 to the IRS.

5 93. PayPal’s transactions and practices are illegal, highly questionable and akin to  
6 outright theft.

7 94. It is wrong for Plaintiffs and Class members to pay taxes on money which PayPal  
8 wrongfully seized from their PayPal user accounts

9 **V. CLASS ACTION ALLEGATIONS**

10 95. This action satisfies the prerequisites for maintenance as a class action provided in  
11 Fed. R. Civ. P. 23, as set forth herein.

12 96. **Class Definition.** Plaintiffs bring this action individually and on behalf of the  
13 following class of similarly situated persons (the “Class”), of which Plaintiffs are each  
14 members: All natural persons or legal entities who, within the applicable statutes of  
15 limitation, were PayPal users and had funds seized from their accounts by Defendants based  
16 on a purported breach of Defendants’ Acceptable Use Policy.

17 97. Excluded from the Class are Defendants and any of their respective officers,  
18 directors or employees, the presiding judge, Class counsel, and members of their immediate  
19 families, and persons or entities who timely and properly exclude themselves from the Class.

20 98. The members of the Class are so numerous and geographically dispersed  
21 throughout the United States and the entire world such that joinder of all members is  
22 impracticable. Plaintiffs are informed and believe and thereon allege that there are easily  
23 thousands of persons in the Class. The exact number and identity of Class members is  
24 unknown to Plaintiffs at this time and can only be ascertained from information and records  
25 in the possession, custody or control of Defendants.

26 99. There are questions of law or fact common to all members of the Class including,  
27 but not limited to, the following:  
28

- 1 • Whether Plaintiffs and each member of the Class were users of Defendant’s PayPal  
2 service;
- 3 • Whether Plaintiffs and each member of the Class had some or all of their PayPal  
4 funds seized by Defendants for alleged violations of Defendants’ AUP;
- 5 • Whether Defendants conducted any meaningful investigation before unilaterally  
6 seizing the class members’ funds;
- 7 • Whether Defendants were permitted to engage in “self-help” by deducting funds for  
8 an alleged breach of the parties’ agreement without first obtaining a determination of  
9 actual violation;
- 10 • Whether Defendants offered Plaintiffs and each member of the Class any meaningful  
11 opportunity to dispute Defendants’ accusation of breach, either before or after  
12 Defendants acted; and
- 13 • Whether Defendants suffered any demonstrable, actual damages due to Plaintiffs’  
14 actions.

15 100. The claims of Plaintiffs are typical of the claims of the Class, in that they arise out  
16 of Defendants’ uniform conduct and business practices.

17 101. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have  
18 retained counsel who are competent and experienced in the prosecution of complex and  
19 class action litigation. The interests of Plaintiffs are aligned with, and not antagonistic to,  
20 those of the Class.

21 102. A class action is superior to all other available means of fair and efficient  
22 adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by  
23 each individual Class member is relatively small compared to the burden and expense of  
24 individual prosecution of the complex and extensive litigation necessitated by Defendants’  
25 conduct. It would be nearly impossible for members of the Class to individually redress the  
26 wrongs done to them in separate actions. Individualized rulings and judgments could further  
27 result in inconsistent relief for similarly-situated individuals.

28



**FIRST CAUSE OF ACTION**  
**(CONVERSION)**

1  
2  
3           103.       Plaintiffs incorporate each and every paragraph of this Complaint by  
4 reference as though fully stated and/or set forth herein, and further state and allege as  
5 follows.

6           104.       Conversion is any act of dominion wrongfully exerted over the personal  
7 property of another. “Credit card, debit card, or PayPal information may be the subject of a  
8 conversion.” [*Welco Electronics, Inc. v. Mora*, 223 Cal.App.4th 202, 212 (2014).] “[T]he  
9 tort of conversion has been adapted to new property rights and modern means of commercial  
10 transactions.” *Id.*

11           In the *Welco* case, “Defendant wrongfully caused a charge to plaintiff’s credit card  
12 account by having a specific sum of money paid through defendant’s credit card terminal  
13 into defendants bank account. Plaintiff had a property right in its credit card account  
14 because plaintiff’s interest was specific, control over its credit card account, and an  
15 exclusive claim to the balance. (See *Kremen v. Cohen*, supra, 337 F.3d at p. 1030.)”

16           Similarly, in the instant case, Plaintiffs and Class members with PayPal accounts have  
17 specific control over their accounts and an exclusive claim to the balance in their accounts.  
18 When PayPal transferred funds from *their* PayPal accounts to PayPal’s own account PayPal  
19 committed a conversion.

20           “In both instances, a party is deprived ultimately of money. By, in effect, taking from  
21 plaintiff, or without authorization transferring plaintiff’s rights in, a certain identifiable sum  
22 equivalent to money, defendant has converted an intangible property right.” *Welco*, supra,  
23 223 Cal.App.4th at 214.

24           105.       “PayPal provides an intermediary account for internet purchases. PayPal  
25 charges the seller a fee for its service. The customers fund their PayPal accounts through  
26 electronic transfers from their own financial institution (e.g., checking account, debit card,  
27 or credit card). PayPal keeps the customers' financial information confidential, thereby  
28 providing a measure of security for online purchases.” (*In re Easysaver Rewards Litig.*

1 (S.D.Cal.2010) 737 F.Supp.2d 1159, 1163, fn. 1.)” *Welco*, supra, 223 Cal.App.4th at 213,  
2 footnote 4.

3 106. “See *In Re Checking Account Overdraft Litig.*, 694 F.Supp.2d 1302, 1323  
4 (S.D.Fla.2010) (applying California law, holding that conversion action is available for  
5 wrongful debiting of funds from customer's account because it interfered with [the]  
6 plaintiffs' right to possess and use those funds).” *Welco*, supra, 223 Cal.App.4th at 213,  
7 citing *Acme Paper Co. v. Goffstein*, 125 Cal.App.2d 175, 179-180 (1954).

8 107. As the facts in this Complaint demonstrate, Plaintiffs and Class members  
9 “stated a cause of action for and presented substantial evidence in support of, conversion.”  
10 *Welco*, supra, 223 Cal.App.4th at 216.

11 108. At all times relevant to this litigation, Defendants owed Plaintiffs and the  
12 Class members a duty with respect to the funds maintained in users’ PayPal accounts not to  
13 convert those funds to Defendants’ own use and benefit.

14 109. Defendants breached that duty on many occasions and such breaches were  
15 the actual and proximate cause of harm to Plaintiffs and the Class members.

16 110. “California cases permitting an action for conversion of money typically  
17 involve those who have misappropriated, commingled, or misapplied specific funds held for  
18 the benefit of others.]” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil &*  
19 *Shapiro, LLP*, supra, 150 Cal.App.4th at pp. 396, italics added.)” *Welco*, supra, 223  
20 Cal.App.4th at 216.

21 111. Such harm includes interest on the monies Defendants unlawfully seized and  
22 withheld from users’ PayPal accounts which belong to Plaintiffs and the Class members.

23 112. Such harm includes monies properly spent in pursuit of the monies  
24 Defendants unlawfully seized from users’ PayPal accounts which belong to Plaintiffs and  
25 the Class members.

26 113. Defendants’ actions, refusing to return the funds they wrongfully seized from  
27 users’ PayPal accounts which belong to Plaintiffs and the Class members, are fraudulent,  
28 oppressive and malicious, justifying an award of exemplary and/or punitive damages.

1           114.       At the time of conversion, Plaintiffs and the Class members had an  
2 immediate right of possession to the monies Defendants unlawfully seized from their PayPal  
3 accounts.

4           115.       In some instances, Defendants told Plaintiffs and the Class members that  
5 they were limiting their PayPal accounts and holding the monies belonging to them for a  
6 period of 180 days, and afterwards would release the funds for transfer to the bank accounts  
7 of Plaintiffs and the Class members.

8           116.       At no time did Plaintiffs and the Class members consent to this unlawful 180-  
9 day hold on the funds in their PayPal accounts.

10          117.       After the 180-day unlawful hold, Defendants failed to keep their promise to  
11 release the funds for transfer, and instead, seized the monies from users' PayPal accounts  
12 belonging to Plaintiffs and the Class members, and transferred said monies to PayPal's own  
13 account.

14          118.       In some instances, PayPal, attempting to justify its fraudulent, oppressive and  
15 malicious conduct, told Plaintiffs and the Class members that PayPal was entitled to the  
16 monies belonging to Plaintiffs and the Class members from users' PayPal accounts because  
17 of a purported violation of PayPal's Acceptable Use Policy ("AUP").

18          119.       Until PayPal limited users' accounts and unlawfully seized monies, Plaintiffs  
19 and the Class members never received the AUP or any link by which to access the AUP.

20          120.       PayPal is not entitled to seize monies in the users' accounts for PayPal's own  
21 use even if Plaintiffs and the Class members violated PayPal's AUP.

22          121.       There has never been any court adjudication that Plaintiffs and the Class  
23 members did anything illegal with respect to the activities for which they utilized their  
24 PayPal accounts.

25          122.       In some instances, Defendants claimed the monies they seized would be used  
26 to refund customers who had purchased products using PayPal.

27          123.       On information and belief, Defendants never issued any refunds to customers  
28 that purchased products from Plaintiffs and Class members, and instead, PayPal transferred

1 all the money it seized to PayPal's own account, pursuant to an unenforceable liquidated  
2 damages clause that Plaintiffs and Class members never agreed to.

3 124. There is a specific, identifiable sum which was seized from each of the users'  
4 PayPal accounts of Plaintiffs and the Class members, which is reflected in their PayPal  
5 account balances.

6 125. "Cases have held that the amount of money converted was readily  
7 ascertainable." Even if the conversion were to be treated as a conversion of money, a  
8 conversion claim does not require that a specific lump sum of money be entrusted to  
9 defendant; the plaintiff must merely prove a specific, identifiable sum of money that was  
10 taken from it." Welco, supra, 223 Cal.App.4th at 216.

11 126. PayPal never gave Plaintiffs and the Class members notice when PayPal  
12 limited their PayPal accounts or when PayPal seized monies from their account balances.

13 127. PayPal never even gave Plaintiffs and the Class members any explanation  
14 why PayPal seized monies from their users' accounts at the time of seizure.

15 128. When Plaintiffs and Class members tried to call and speak with PayPal's  
16 customer service representatives, the persons they spoke with did not know the reason why  
17 PayPal limited their accounts or why PayPal seized money from their accounts.

18 129. When Plaintiffs and the Class members wrote letters to PayPal's legal  
19 department they never received any response to their inquiries why PayPal seized monies  
20 from their PayPal accounts.

21 130. In some instances, Plaintiffs and the Class members filed a Complaint with  
22 the Better Business Bureau. It was only after a Complaint was made to the Better Business  
23 Bureau that the legal department or some PayPal representative responded to their request  
24 for an explanation.

25 131. None of the explanations made any sense, and in no way justify legally or  
26 factually PayPal's unlawful seizure and conversion, for its own use, monies rightfully  
27 belonging to Plaintiffs and the Class members.

28

1           132.       Plaintiffs and the Class members respectfully request, pursuant to Section  
2           483.010 of the California Code of Civil Procedure, that this Honorable Court issue a Pre-  
3           Judgment Writ of Attachment which will be given to a Sheriff, with instructions to seize the  
4           assets of PayPal in an amount that will cover the monies PayPal wrongfully seized and  
5           converted to PayPal’s own account, which rightfully belong to Plaintiffs and the Class  
6           members.

7           133.       Under this statutory scheme, a plaintiff can obtain relief prior to trial and  
8           judgment, and as soon as upon the filing of the complaint. Code of Civil Procedure Section  
9           483.010 provides that attachment may be sought on claims which are “based upon a  
10          contract, express or implied.” These “implied contract” or “quasi-contract” theories include  
11          situations where a defendant acquires property through fraud, conversion, or theft and  
12          refuses to return it.

13          134.       Plaintiffs and the Class members respectfully request that this Court also  
14          issue an Order placing an equitable lien on the amount of monies PayPal wrongfully seized  
15          from them, pursuant to California Civil Code § 2872, where an equitable lien is proper  
16          because unjust enrichment and detrimental reliance are implicated.

17          135.       PayPal has been unjustly enriched by converting and seizing monies not  
18          belonging to it, and transferring same to PayPal’s own account, instead of releasing said  
19          monies back to the rightful owners which are Plaintiffs and the Class members.

20          136.       When the customers of Shbadan Akylbekov began calling to tell him they  
21          were unable to place their orders through PayPal, this is how he learned that PayPal had  
22          limited his account.

23          137.       During the period that his account was limited, in or around June of 2020,  
24          PayPal began placing orders for products that his customers did not place, further increasing  
25          his emotional distress when his customers began contacting him, telling him that PayPal sent  
26          them requests for payments for orders that they did not place.

27          138.       Plaintiffs and Class members request that this Honorable Court issue an  
28          injunction ordering PayPal not to dissipate its assets in an amount to cover the identifiable

1 sums of monies PayPal unlawfully seized from the user accounts of Plaintiffs and the Class  
2 members, in accordance with California Code of Civil Procedure §§ 525 et seq. [*Heckmann*  
3 *v. Ahmanson*, 16 Cal.App.3d 119, 136 (1985).]

4 139. The facts stated herein evidence a reasonable probability of success on the  
5 issue of Defendants' liability. Furthermore, Plaintiff and the Class members would be  
6 harmed should PayPal have unfettered control over funds it wrongfully seized from their  
7 PayPal accounts.

8 140. Plaintiffs and Class members request attorneys' fees for the costs of  
9 recovering the funds which PayPal converted from their PayPal accounts.

10 **SECOND CAUSE OF ACTION**  
11 **(CIVIL VIOLATIONS OF FEDERAL RACKETEER INFLUENCED and CORRUPT**  
12 **ORGANIZATIONS ACT**  
13 **[18 U.S.C. § 1964(c) ("FEDERAL RICO")]**

14 141. Plaintiffs incorporate each and every paragraph of this Complaint by  
15 reference as though fully stated and/or set forth herein, and further state and allege as  
16 follows.

17 142. At all relevant times, Defendants, and each of them, unlawfully, knowingly  
18 and intentionally conducted and participated, directly and indirectly, in the conduct of  
19 wrongful affairs through a pattern of racketeering activities as set forth below, in violation of  
20 Section 1962(c) of RICO, 18 U.S.C. § 1962(c).

21 143. At all times, Defendants knew and intended to convert monies in the PayPal  
22 accounts of Plaintiffs and Class members by seizing the monies in their accounts without  
23 just cause, and without explanation. By means of this practice, PayPal committed an  
24 unlawful conversion of these monies, for PayPal's own use. This association-in-fact  
25 constitutes an "enterprise" within the meaning of Section 1961(4) of RICO, 18 U.S.C. §  
26 1961(4).  
27  
28

1           144.       At all times, Defendants, and each of them, were "persons" as that term is  
2 defined in Section 1961(3) of RICO, 18 U.S.C. § 1961(3) and are legally distinct from the  
3 enterprise.

4           145.       At all relevant times, the enterprise as described herein was engaged in, and  
5 its activities affected, interstate commerce within the meaning of Section 1962(c)  
6 of RICO, 18 U.S.C. § 1962(c).

7           146.       Defendants, and each of them, did willfully and with purpose commit a  
8 conversion of monies belonging to PayPal's customers, including Plaintiffs and the Class  
9 members, converting their monies to PayPal's own use, constituting wire fraud in violation  
10 of 18 U.S.C. § 1343 and 1341, by engaging in the following acts:

11                   a. Forming and maintaining the RICO enterprise; and

12                   b. Taking and seizing monies from the PayPal accounts of Plaintiffs and the Class  
13 members unlawfully, and converting said monies to PayPal's own use, without  
14 notice or explanation, based on a purported breach of Defendants' Acceptable Use  
15 Policy.

16           147.       There is a significant disparity in bargaining power. Plaintiffs and members  
17 of the Class, the weaker parties, have placed their funds in accounts over which PayPal has  
18 control and PayPal asserts its unchecked ability to seize the funds therein.

19           148.       While PayPal states that the funds are still the users' own funds, when those  
20 funds are in the custody or control of PayPal, it has fiduciary obligations that require it to act  
21 in the interests of Plaintiffs and the Class. PayPal has utterly failed to do so.

22           149.       Instead, Defendants participated in a scheme to unlawfully seize monies from  
23 user accounts of Plaintiffs and the Class members, and to convert and divert those monies  
24 for its own use by transferring those monies into PayPal's own accounts, under the guise of  
25 purported violations of its AUP where, in fact, there is no evidence that Plaintiffs and Class  
26 members committed any illegal acts in the use of their PayPal accounts.

1           150.       Even if there was a violation of PayPal’s AUP, this does not justify PayPal to  
2 wrongfully seize funds for its own use from the user accounts of Plaintiffs and the Class  
3 members.

4           151.       18 U.S.C. § 1962(c) makes it “unlawful for any person employed by or  
5 associated with any enterprise engaged in, or the activities of which affect, interstate or  
6 foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such  
7 enterprise’s affairs through a pattern of racketeering activity . . .” 18 U.S.C. § 1962(c).

8           152.       Each Defendant, at all relevant times, is and has been a “person” within the  
9 meaning of 18 U.S.C. § 1961(3) because each Defendant is capable of holding, and does  
10 hold, “a legal or beneficial interest in property.”

11           153.       Defendants’ activities include at least four acts of racketeering activity since  
12 2017. Accordingly, Defendants’ conduct constitutes a “pattern” of racketeering activity. 18  
13 U.S.C. § 1961(5).

14           154.       One such act took place when PayPal seized \$10,000 from Ms. Shemtov in  
15 September of 2017, and thereafter seized \$32,351.87 from Ms. Shemtov on November 26,  
16 2019. Another such act took place when PayPal seized \$172,206.43 from Mr. Akylbekov on  
17 August 4, 2020. Another such act took place when PayPal seized \$26,984 from Ms. Evans  
18 on May 22, 2021.

19           155.       Other such acts were suffered by the other Class members, which acts were  
20 and are continuous and ongoing until this very day.

21           156.       At all times relevant hereto, and continuing through the present, each  
22 Defendant conducted and participated in the affairs of an enterprise through a pattern of  
23 racketeering activity, in violation of 18 U.S.C. § 1962(c).

24           157.       Plaintiffs and Class members with PayPal accounts have specific control over  
25 their accounts and an exclusive claim to the balance in their accounts.

26           158.       PayPal provides an intermediary account for internet purchases. PayPal  
27 charges the seller a fee for its service. The customers fund their PayPal accounts through  
28



1 electronic transfers from their own financial institution (e.g., checking account, debit card,  
2 or credit card).

3 159. Defendants used the Internet and other electronic facilities to carry out the  
4 aforementioned Scheme and to conceal their ongoing wrongful activities.

5 160. PayPal's wrongful actions transferring monies rightfully belonging to  
6 Plaintiffs and the other Class members from their user accounts into PayPal's own account  
7 constitutes an unlawful conversion.

8 161. At all times discussed herein, Defendants owed Plaintiffs and the Class  
9 members a duty with respect to the funds maintained in users' PayPal accounts not to  
10 convert those funds to Defendants' own use and benefit.

11 162. Defendants breached that duty on many occasions.

12 163. Defendants engaged in and affected interstate commerce by way of said  
13 wrongful seizures.

14 164. To achieve their common goals, Defendants knowingly and willfully  
15 concealed their wrongful actions from Plaintiffs and Class members, not informing them  
16 when PayPal limited their accounts, not giving any explanation at the time their accounts  
17 were limited, not informing them when PayPal seized money from their user accounts, and  
18 not giving any explanation at the time of seizure.

19 165. As a direct and proximate consequence of the conduct of Defendants and  
20 each of them as alleged herein, Plaintiffs and Class members have been injured in their  
21 business and property, causing them to suffer monetary damages in amount to be proven at  
22 the time of trial.

23 166. By virtue of the foregoing wrongful activities, Defendants have engaged in a  
24 pervasive pattern of unlawful and unfair business practices, causing harm to Plaintiffs and  
25 others. Defendants' wrongful conduct, as described above, constitutes a scheme or artifice to  
26 convert the monies belong to Plaintiffs and the Class members to Defendants' own use.

27 167. In furtherance of and for the purposes of executing the foregoing illegal  
28 course of conduct and scheme, Defendants used and caused to be used, interstate wire

1 communications to transmit or disseminate false and/or misleading communications and  
2 information, in violation of the wire fraud statutes, 18 U.S.C. §§ 1343 and 1341.

3 168. Defendants' use of interstate wire and electronic transfer mechanisms for the  
4 transfer and removal of funds from Plaintiffs' and Class members' PayPal accounts is a  
5 violation of the statutes.

6 169. The use of interstate wire and electronic mechanisms and/or communications  
7 were made in furtherance of the Defendants' scheme to commit a conversion of monies  
8 belonging to Plaintiffs and Class members, and to divert those monies to PayPal's account  
9 for its own use.

10 170. Each interstate wire and electronic transfer mechanism and/or  
11 communication that was made in furtherance of Defendants' scheme to commit a conversion  
12 of monies from the PayPal accounts of Plaintiffs and the Class members, to obtain their  
13 monies by false pretenses, constitutes a separate and distinct act of "racketeering activities"  
14 as the term is defined in Section 1961(1) of RICO, 18 U.S.C. § 1961(c).

15 171. Defendants each committed and/or aided and abetted the commission of these  
16 acts of a "racketeering activity."

17 172. The predicate acts are common to the Defendants' scheme to conduct the  
18 affairs of the RICO enterprise, and the acts are continuing and threatening to continue  
19 indefinitely. These predicate acts are chargeable and indictable, as required under Section  
20 1961(1) of RICO, 18 U.S.C § 1961(1).

21 173. The racketeering activities were and are related by virtue of common  
22 participants, common victims (Plaintiffs and Class members), a common structure and  
23 method of commission, a common purpose, and a common result of allowing PayPal to  
24 commit a conversion of monies belonging to Plaintiffs and Class members, and diverting  
25 said monies to PayPal's own use, relating to items being sold both inside and outside of the  
26 United States, thereby defrauding Plaintiffs and Class members of significant monies and  
27 unjustly enriching the Defendants and their collaborators.

28

1            174.        The racketeering activities are distinct from the RICO enterprise. The  
2 enterprise, as an association-in-fact, was formed to facilitate the payment for online sales on  
3 the eBay platform primarily, and to generate fees regardless of PayPal's unlawful and  
4 deceptive acts through wire fraud.

5            175.        Such acts of the Defendants and their collaborators allow them to maintain  
6 profitability and conduct enterprises for the purpose of defrauding PayPal's customers.

7            176.        As a direct and proximate result of the racketeering activities, Plaintiffs and  
8 Class members were victims of a conversion by PayPal of the monies in their PayPal  
9 accounts. Thus, Plaintiffs and Class members have been "injured in their property" and have  
10 standing to sue Defendants and recover damages and costs of bringing this action under  
11 Section 1962(c) of RICO, 18 U.S.C. § 1962(c).

12            177.        By virtue of Section 1962(c) of RICO, 18 U.S.C. § 1962(c), Defendants, and  
13 each of them, are jointly and severally liable to Plaintiffs and Class members for three times  
14 the damages that Plaintiffs and Class members have suffered as a result of Defendants'  
15 scheme to defraud PayPal's customers.

16            178.        Because of Defendants' violations of 18 U.S.C. § 1962(c), Defendants are  
17 liable to Plaintiffs and Class members for three times the damages they have sustained, plus  
18 the cost of this suit, including reasonable attorneys' fees.

19                                **THIRD CAUSE OF ACTION**  
20                                **(VIOLATION OF THE ELECTRONIC FUNDS TRANSFER ACT**  
21                                **[15 U.S.C. § 1693 ET SEQ.]**

22            179.        Plaintiffs incorporate each and every paragraph of this Complaint by  
23 reference as though fully stated and/or set forth herein, and further state and allege as  
24 follows.

25            180.        PayPal's actions as set forth herein violate the Electronic Funds Transfer Act  
26 ("EFTA").  
27  
28

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

3           182.       An "'electronic fund transfer' means any transfer of funds, other than a  
4           transaction originated by check, draft, or similar paper instrument, which is initiated through  
5           an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order,  
6           instruct, or authorize a financial institution to debit or credit an account." 15 U.S.C. §  
7           1693a(6).

8           183.       PayPal' s receipt of funds electronically from buyers to sellers constitutes an  
9           electronic fund transfer. PayPal's deposit of funds into sellers' accounts also constitutes an  
10          electronic fund transfer.

11          184.       A "financial institution" includes people "who, directly or indirectly, hold an  
12          account belonging to a consumer". 15 U.S.C. § 1693a(8).

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

14          186.       PayPal is a financial institution within the meaning of the EFTA, and  
15          Plaintiffs and the Class are consumers protected by the EFTA.

16          187.       The EFTA provides that "The terms and conditions of electronic fund  
17          transfers involving a consumer's account shall be disclosed at the time the consumer  
18          contracts for an electronic fund transfer service...". 15 U.S.C. § 1693(c)(a). Such  
19          disclosures include "(3) the type and nature of electronic fund transfers which the consumer  
20          may initiate, including any limitations on the frequency or dollar amount of such transfers...;  
21          (4) any charges for electronic fund transfers or for the right to make such transfers." 15  
22          U.S.C. § 1693(c)(a)(3)-(4).

23          188.       The EFTA further provides that "an error consists of (6) a consumer's request  
24          for additional information or clarification concerning an electronic fund transfer." 15 U.S.C.  
25          § 1693(f)(f). If a consumer documents an alleged error in his or her account, and the  
26          financial institution determines that there was an error, "it shall promptly, but in no event  
27          more than one business day after such determination, correct the error...including the  
28          crediting of interest where applicable." 15 U.S.C. § 1693(f)(b).

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

6           190.       Plaintiffs and the Class have requested from PayPal additional information or  
7 clarification concerning electronic fund transfers of money into their accounts that is  
8 subsequently held and thereafter permanently seized by PayPal for its own use. PayPal has  
9 refused to provide Plaintiffs and the Class with any explanation or reasons for the failure to  
10 fully transfer the money into their accounts, and why PayPal permanently seized this money  
11 for PayPal's own use, in violation of the EFTA.

12           191.       Financial institutions are "liable to a consumer for all damages proximately  
13 caused by the financial institution's failure to make an electronic fund transfer, in accordance  
14 with the terms and conditions of an account, in the correct amount or in a timely manner  
15 when properly instructed to do so by the consumer." 15 U.S.C. § 1693(h)(a)(1).

16           192.       Furthermore, "no writing or other agreement between a consumer and any  
17 other person may contain any provision which constitutes a waiver of any right conferred or  
18 cause of action created by this subchapter." 15 U.S.C. § 1693(1).

19           193.       Additionally, based on the conduct alleged herein, PayPal has violated and  
20 failed to comply with sections of the EFTA including but not limited to the following: 15  
21 U.S.C. §§ 1693(c)(a)(2), 1693(g), 1693(f)(a), 1693(f)(c), 1693(m).

22           194.       It is wrong to assume that sellers of merchandise are beyond the ambit of  
23 protections afforded by the EFTA. It is wrong to assume that only purchasers of  
24 merchandise where said merchandise is intended to be personally used by the buyer is  
25 protected by the EFTA. PayPal customers are consumers which are entitled to the  
26 protections set forth in the EFTA.

27           195.       It is wrong to assume that PayPal is not a financial institution for purposes of  
28 applying and making PayPal subject to the EFTA.

1           196.       The following statistics evidence that PayPal handles as many transactions  
2 for online customers as do traditional financial institutions who process credit and debit card  
3 transactions for their customers:

- 4           • The average PayPal user conducts 40 transactions per year.
- 5           • 87.5% of online buyers use PayPal.
- 6           • PayPal had \$5.46 billion in net revenue in 2020.
- 7           • PayPal accounts for 22% of online transactions in the US.
- 8           • The average PayPal user has \$485 in their account.

9           <https://spendmenot.com/blog/paypal-statistics/>

10          197.       PayPal is an automated clearinghouse, so there is no reason why PayPal is  
11 not covered and regulated by the ETA.

12          198.       PayPal is an authorization service directly resulting in a debit or credit to a  
13 customer's account, so there is again no reason why PayPal is not covered and regulated by  
14 the ETA.

15          199.       The EFTA defines a financial institution as a "State or National bank, a State  
16 or Federal savings and loan association, a mutual savings bank, a State or Federal credit  
17 union, or any other person who, directly or indirectly, holds an account belonging to a  
18 consumer." 15 U.S.C. § 1693a(9).

19          200.       PayPal clearly is a "person" under the EFTA which holds accounts belonging  
20 to its customers.

21          201.       The EFTA is a consumer protection statute intended to protect consumers  
22 who use electronic fund transfers, which is precisely what PayPal does.

23          202.       Business users are consumers. There is no logic or reason to conclude that  
24 only purchasers of products intended for their own personal use are protected by the EFTA.

25          203.       This Court must address PayPal's operating practices which led to  
26 widespread complaints by users of the PayPal system. The misconduct by which the claims  
27 in this case is predicated cannot be permitted under the User Agreement and Acceptable Use  
28 Policy of PayPal. This Court cannot condone theft.

1           204.       The EFTA was enacted "to provide a basic framework establishing the rights,  
2 liabilities, and responsibilities of participants in electronic fund and remittance transfer  
3 systems." 15 U.S.C. § 1693(b). These obligations apply to PayPal. This Court cannot ignore  
4 the realities and ever evolving nature of consumer protection. Online purchases make up a  
5 huge percentage of the participants in electronic fund and remittance transfer systems,  
6 including those of PayPal, which the EFTA was meant to protect and regulate.

7           205.       While it is true that 15 U.S.C. § 1693a(2) specifies that accountssubject to the  
8 EFTA must be "established primarily for personal, family, or household purposes," the  
9 EFTA does not limit the ambit of its protections to buyers of products which intend to  
10 personally use the products purchased. It may well be that the personal family household  
11 would be homeless but for the purchase and sale of products which generate income to  
12 sustain that household.

13           206.       WHEREFORE, accordingly, Plaintiffs and the Class members pray for relief  
14 as set forth below.

15  
16                           **FOURTH CAUSE OF ACTION**  
                              **(BREACH OF WRITTEN CONTRACT)**

17           207.       Plaintiffs incorporate each and every paragraph of this Complaint by  
18 reference as though fully stated and/or set forth herein, and further state and allege as  
19 follows.

20           208.       Plaintiffs and the Class members performed all of the conditions and  
21 covenants owed to Defendants under the terms of the User Agreement, except for those  
22 obligations that may have been excused by the conduct of Defendants.

23           209.       Defendants breached the agreement as set forth herein, including but not  
24 limited to by seizing funds from Plaintiffs' and Class members' accounts without a  
25 determination of an actual violation of the Acceptable Use Policy, and in amounts in excess  
26 of the damages suffered by Defendants, if any, pursuant to an unlawful and unreasonable  
27 liquidated damages clause in violation of law.

28

1           210.       As a proximate and direct result of Defendants' breaches, Plaintiffs and the  
2       Class have sustained damages and will continue to sustain damages, in an amount to be  
3       proven at trial.

4  
5   **FIFTH CAUSE OF ACTION**  
6   **(BREACH OF FIDUCIARY DUTY)**

7           211.       Plaintiffs incorporate each and every paragraph of this Complaint by  
8       reference as though fully stated and/or set forth herein, and further state and allege as  
9       follows.

10          212.       By holding and maintaining Plaintiffs' and the Class members' funds,  
11       Defendants were acting as agent and custodian of these funds, and thereby owed to Plaintiffs  
12       and the Class members fiduciary duties relating to the funds held by Defendants.

13          213.       Defendants breached these fiduciary duties to Plaintiffs and the Class  
14       members by knowingly acting against their interests and in preference for Defendants' own  
15       self-interests, as alleged herein, including but not limited to taking some or all of the funds  
16       into Defendants' custody for themselves, without just cause.

17          214.       As a direct and proximate result of Defendants' breaches of their fiduciary  
18       duties, Plaintiffs and the Class have sustained damages and will continue to sustain  
19       damages, in an amount to be proven at trial.

20          215.       Defendants' conduct was intentional, malicious, fraudulent and oppressive,  
21       and in conscious disregard of Plaintiffs' rights and the rights of the Class. An award of  
22       punitive and/or exemplary damages against Defendants is therefore appropriate.

23   **SIXTH CAUSE OF ACTION**  
24   **(VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §17200)**

25  
26          216.       Plaintiffs incorporate each and every paragraph of this Complaint by  
27       reference as though fully stated and/or set forth herein, and further state and allege as  
28       follows.



1           217.       The foregoing conduct, as alleged, violates the California Unfair Competition  
2 Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*, which prohibits unfair competition  
3 by prohibiting, inter alia, any unlawful or unfair business acts or practices.

4           218.       Defendants violated the UCL, by, among other things, engaging in the acts  
5 and practices described in this Complaint, including but not limited to seizing users’ funds  
6 without authorization, without a determination of actual violation of the AUP, in amounts in  
7 excess of any actual damages suffered by Defendants, and without a full and fair opportunity  
8 to challenge Defendants’ actions. These actions defrauded consumers, who were led to  
9 believe that their funds were safely placed in Defendants’ trust. Moreover, they constituted a  
10 breach of Defendants’ agreements with its users and a breach of Defendants’ fiduciary  
11 duties to consumers.

12           219.       Defendants’ conduct as herein alleged has caused Plaintiffs and the Class to  
13 suffer injury in fact and to lose money or property. Accordingly, they are entitled to  
14 restitution, as well as other legal and equitable relief from Defendants’ unlawful and willful  
15 conduct as the Court deems just and proper.

16  
17                                   **SEVENTH CAUSE OF ACTION**  
18                                   **(UNJUST ENRICHMENT)**

19           220.       Plaintiffs incorporate each and every paragraph of this Complaint by  
20 reference as though fully stated and/or set forth herein, and further state and allege as  
21 follows.

22           221.       As described herein, Plaintiffs and the Class members conferred upon  
23 Defendants an economic benefit, specifically the funds improperly seized by Defendants  
24 from its users’ accounts.

25           222.       As a result of Defendants’ actions set forth herein, including Defendants’  
26 improper seizing of funds without a valid basis and the withholding of those funds and their  
27 use pending resolution of this dispute, it would be unjust and unequitable for Defendants to  
28 retain such benefits at the expense of Plaintiffs and the Class.

1           223.       Defendants' conduct was intentional, malicious, fraudulent and oppressive,  
2 and in conscious disregard of Plaintiffs' rights and the rights of the Class. An award of  
3 punitive and/or exemplary damages against the Defendants is therefore appropriate.

4  
5                               **EIGHTH CAUSE OF ACTION**  
6                               **(DECLARATORY RELIEF)**

7           224.       Plaintiffs incorporate each and every paragraph of this Complaint by  
8 reference as though fully stated and/or set forth herein, and further state and allege as  
9 follows.

10          225.       As alleged herein, an actual controversy has arisen between Defendants on  
11 the one hand and Plaintiff and the Class members on the other, as to whether Defendants  
12 may unilaterally seize funds from users' accounts without first obtaining a determination of  
13 an actual violation of the AUP, and in amounts that exceed Defendants' actual damages, if  
14 any.

15          226.       To resolve the legal and factual questions raised by Defendants and to afford  
16 relief from the uncertainty which has precipitated, Plaintiffs and the Class are entitled to  
17 issuance of an order stating their rights pursuant to 28 U.S.C. §§ 2201-02, and specifically  
18 declaring that Defendants are not entitled to seize funds from users' accounts without a final,  
19 judicial determination of actual violation of the AUP; that where there is a final  
20 determination of actual violation of the AUP, Defendants are not entitled to deduct damages  
21 in amounts exceeding Defendants' actual damages; and declaring all contrary provisions of  
22 the User Agreement including any provision providing for liquidated damages void.

23                               **NINTH CAUSE OF ACTION**  
24                               **(ACCOUNTING)**

25          227.       Plaintiffs incorporate each and every paragraph of this Complaint by  
26 reference as though fully stated and/or set forth herein, and further state and allege as  
27 follows.  
28

1 228. Defendants acted as the agent of Plaintiffs and the Class members with  
2 respect to the funds maintained in users' PayPal accounts.

3 229. Defendants owe Plaintiffs and the Class members funds which have been  
4 seized without a determination of any AUP violation and in excess of Defendants' actual  
5 damages, if any. An accounting is appropriate to determine the amount improperly seized.  
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### PRAYER FOR RELIEF

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WHEREFORE, Plaintiffs and members of the Class pray as follows:

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1. That the Court enter an order certifying the Class, appointing Plaintiffs as representatives of the Class, appointing Plaintiffs' counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the Class;
2. For general, specific and compensatory damages, including restitution, in an amount to be proven at trial;
3. That the Court award Plaintiffs and Class members enhanced (treble) damages, three times the amount of monetary damages proven at the trial of this matter pursuant to 18 U.S.C. § 1964(c);
4. For punitive and exemplary damages as permitted by law;
5. For a declaration of Plaintiffs' and the Class members' rights with respect to those funds seized by Defendants and the User Agreement;
6. For a preliminary and permanent injunction ordering Defendants to cease and desist from engaging in the unfair, unlawful and/or fraudulent business practices alleged herein;
7. That the Court enter an Order finding that all Defendants are jointly and severally liable for all damage caused to Plaintiffs and the Class members;
8. For prejudgment and post-judgment interest as provided by law;
9. For costs of suit, including reasonable attorneys' fees; and

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10. For such other and further relief as the Court may deem appropriate, proper and equitable.

DATED: January 13, 2022

THE BENSAMOCHAN LAW FIRM INC.

By: /s/ Eric Bensamochan  
ERIC BENSAMOCHAN  
Attorney for Plaintiffs Lena Evans,  
Roni Shemtov and Shbadan Akylbekov

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**JURY TRIAL DEMAND**

Pursuant to L.R. 3-6(a), Plaintiffs, on their own behalf and on behalf of all others similarly situated, hereby demand a trial by jury.

DATED: January 13, 2022

THE BENSAMOCHAN LAW FIRM INC.

By: /s/ Eric Bensamochan  
ERIC BENSAMOCHAN  
Attorney for Plaintiffs Lena Evans,  
Roni Shemtov and Shbadan Akylbekov