

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ANDREA KARVALY, VINCENT
FARINELLA, NANETTE ARAGON,
DANIELLE SCHOPPE, CHRISTINA
SIRACUSA, JASON ETTEN, GEORGE
CESAR, DENNIS TRUBITSKY and
DOUGLAS MASHKOW, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

EBAY, INC., PAYPAL, INC., PETER
MARCUM, ROBERT ECHOLS, ERIC
CRAWFORD and ESSEX TECHNOLOGY
GROUP, INC.,

Defendants.

Civil Action No. 1:05-CV-01720 (ILG)(VVP)

**SECOND AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Andrea Karvaly, Vincent Farinella, Nanette Aragon, Danielle Schoppe, Christina Siracusa, Jason Etten, George Cesar, Dennis Trubitsky and Douglas Mashkow (collectively “Plaintiffs”), complaining of the Defendants, by their attorneys, MARINA TRUBITSKY AND ASSOCIATES, PLLC, based on their individual experiences and the investigation of their counsel, and upon information and belief, respectfully show to this Court and allege on behalf of the proposed plaintiff class defined herein, and on behalf of the general public, as follows:

JURISDICTION

1. This action arises under the Racketeer Influenced and Corrupt Organizations Act of 1970, 18 U.S.C. Section 1961 (“RICO”), and the laws of New York. Plaintiffs seek to recover compensatory and punitive damage sustained, as a result of the Defendants’ conduct, along with the costs of this suit, interest and reasonable attorney’s fees. The court’s

jurisdiction is invoked under 28 U.S.C. § 1331, 28 U.S.C. § 1332, 28 U.S.C. § 1337, 18 U.S.C. § 1964(c), and the doctrine of pendent jurisdiction.

2. The Defendants are subject to the personal jurisdiction of this Court under Fed. R. Civ. P. Rule 4(e) under the nationwide service of process provisions of RICO, 18 U.S.C. § 1965.
3. Venue: Venue is proper in this District under 28 U.S.C. Section 1391 (b) and 9(c). A substantial part of the events and conduct giving rise to the violations of law complained of herein occurred in or emanated from this District. In addition, Defendants continue to conduct regular business with consumers in this District.
4. Settlement: On or about September 26, 2006, Plaintiffs have reached a settlement with Defendants eBay and PayPal. On or about October 13, 2006, Plaintiffs and Defendants eBay and PayPal have filed a joint motion for a preliminary approval of the proposed Settlement Agreement with this Court pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs and Defendants' joint motion is currently pending before this Court. If the Settlement Agreement is approved by this Court, all claims against Defendants eBay and PayPal will be withdrawn by the Plaintiffs in their entirety.

PARTIES

5. That, at all times hereinafter mentioned, the Plaintiff, ANDREA KARVALY, is a resident of Palm Coast, Florida;
6. That, at all times hereinafter mentioned, the Plaintiff, CHRISTINA SIRACUSA, is a resident of Davis, California;
7. That, at all times hereinafter mentioned, the Plaintiff, VINCENT FARINELLA, is a resident of Lindenhurst, New York;

8. That, at all times hereinafter mentioned, the Plaintiff, MARJORIE SCHOPPE, is a resident of Austin, Texas.
9. That, at all times hereinafter mentioned, the Plaintiff, NANETTE ARAGON, is a resident of Fowler, Colorado;
10. That, at all times hereinafter mentioned, the Plaintiff, GEORGE CEASAR, is a resident of San Antonio, Texas;
11. That, at all times hereinafter mentioned, the Plaintiff, JASON ETTEN, is a resident of Urbandale, Iowa;
12. That, at all times hereinafter mentioned, the Plaintiff DENNIS TRUBITSKY is a resident of Brooklyn, New York;
13. That, at all times hereinafter mentioned, the Plaintiff, DOUGLAS MASHKOW, is a resident of Rockville Centre, New York.
14. That at all times hereinafter mentioned, defendant, PAYPAL, INC. (“PayPal”) was and still is a domestic for profit corporation duly organized and existing under and by virtue of the laws of the State of Delaware and has its primary place of business at 2211 North First Street, San Jose, California. It is a wholly-owned subsidiary of eBay, Inc., the online marketplace.
15. That at all times hereinafter mentioned, defendant, EBAY, INC. (“eBay”) was and still is a corporation established under the laws of Delaware with its principal place of business at 2145 Hamilton Avenue, San Jose, California 95125.
16. That upon information and belief, at all times mentioned herein, the Defendant, ESSEX TECHNOLOGY GROUP, INC. (“Essex”) was and still is a for profit corporation duly

organized and existing under and by virtue of the laws of the State of Tennessee with its principal place of business at 2728 Eugenia Avenue, Nashville, Tennessee 37211-2120.

17. That, at all times hereinafter mentioned, Defendants PETER MARCUM, ROBERT ECHOLS, and ERIC CRAWFORD were principals and agents of Essex.
18. The Individual Defendants are the officers, directors, managers and/or majority shareholders or owners of the Corporate Defendant and are individually responsible for the acts and practices set forth in the Complaint.
19. That at all times material to this Complaint, acting alone or in concert with each other, the Defendants have directed, controlled or participated in the acts and practices set forth in this Complaint.

FACTUAL ALLEGATIONS

(DEFENDANTS ESSEX, PETER MARCUM, ROBERT ECHOLS, ERIC CRAWFORD)

20. Defendant Essex specializes in trading used name-brand products at closeout/liquidation pricing. Defendant Essex has conducted business in the State of New York through online auctions and through its website www.buyessex.com.
21. Upon information and belief, the company had been the fifth largest eBay seller and as such was able to sell goods to the public at large.
22. Payments for purchases of Essex's products had been made in large part through PayPal's payment system that provides a means by which businesses and individuals can send and receive online payments.
23. Defendant Essex held two types of auctions: auctions which sold the products in "AS IS" condition and the auctions which sold the products on a regular basis. (Enclosed, please

find a description of the unit that was being sold in “AS IS” condition, annexed hereto as **Exhibit “A”**.)

24. Plaintiffs and the members of the Plaintiffs’ class have complained that throughout the Class Period, the goods sold by Essex through regular auctions to the public at large were often not delivered as promised.
25. For example, on numerous occasions, PayPal account holders never received the products that they ordered through eBay. Even when the products sold by Essex were delivered, their actual condition often departed significantly from the product description at the time of the purchase.
26. Plaintiffs and the members of the Plaintiffs’ class also complained that many products shipped to PayPal account holders were defective, unfit for their intended use and/or arrived in broken condition.
27. According to Defendant Essex’s Company Policy, the products sold in “AS IS” condition are not eligible for a refund.
28. Plaintiffs and the members of the Plaintiffs’ class complained that they were unaware that once they purchase the products from Defendant Essex, they would not be eligible for a refund since the auctions’ descriptions failed to inform PayPal customers that the products were being sold in “AS IS” condition.
29. During the Class Period, many PayPal customers had initiated formal complaints against defendant Essex and had demanded a full refund of their money. Defendant Essex had ignored numerous complaints from disgruntled customers and frequently failed to issue refunds to the purchasers/account holders including the Plaintiffs and the members of Plaintiff’s class.

30. Furthermore, Plaintiffs and the members of the Plaintiffs' Class complained that Essex was not responsive to e-mail inquiries. For instance, customers complained that Essex: failed to respond to e-mail inquiries in a timely manner if at all; responded to e-mail inquiries with form-letter e-mails that are not responsive to the problem raised by the customers; and did not provide a phone number or address so that customers may follow up by phone or direct mail, if necessary.
31. When the number of complaints addressed to Essex grew, the Better Business Bureau (the "BBB") of Middle Tennessee revoked Essex's membership for not promptly responding to complaints. The BBB listed Defendant Essex as having an "unsatisfactory record" responding to complaints.

FACTUAL ALLEGATIONS

(DEFENDANTS EBAY AND PAYPAL)

32. Defendant eBay is an Internet auction, where sellers place certain goods for sale, and buyers can purchase them. eBay utilizes services of its in-house payment transmitter PayPal, a wholly-owned subsidiary of eBay, for execution of its online transactions. This utilization by eBay makes PayPal a widely popular payment transmitter in the cyber marketplace.
33. PayPal and eBay do business in the State of New York through their websites, respectively www.paypal.com and www.ebay.com.
34. PayPal's payment system employs the existing financial infrastructure of bank accounts and credit cards, but permits individuals and businesses (particularly small businesses) to send and receive online payments using only PayPal as an intermediary.

35. In order for such a PayPal fund transfer or purchase to occur, both the transferor (usually a buyer) and transferee (usually a seller) must be PayPal account holders.
36. Further, in order to actually engage in a particular transaction the registered account holder has to provide the funding source information – either a bank account information or credit card information - from which source PayPal will withhold funds to transmit them to the intended recipient.
37. A customer, who wants to become a user of PayPal must agree to the PayPal user agreement (the “User Agreement”), the text of which can be found on PayPal’s website. The User Agreement can be accessed through a link appearing on each page of the PayPal’s web site. The User Agreement is presented in a “scroll box”, as well as a link for print out. In order to complete the registration process and become an account holder, the potential customer must accept the User Agreement.
38. Plaintiffs and members of the Plaintiffs’ Class complained that in many instances the agreement is unconscionable as a potential customer does not have any negotiation power, thus when he/she wishes to engage services of PayPal, the only alternatives available for him/her are to accept the agreement in full, or to decline it in full.
39. Since August 2000, as part of the User Agreement, PayPal has offered its users Buyer Complaint Policy (the “Buyer Complaint Policy”). This policy permits the buyers, within 45 days from the day the payment was made, to file a complaint with PayPal informing of their unsuccessful business transactions and requesting investigation of the matter and recoup from the seller of the amount paid. However, this policy is limited to circumstances under which the goods were either not delivered to the buyer, or, when they have been delivered, turn out to be different from the goods the buyer was ordering.

Moreover, even if the buyer's complaint complies with those strict conditions, satisfaction of the claim still remains at PayPal's discretion and recovery of the claim is not guaranteed.

40. Within a section describing the Buyer Complaint Policy, the PayPal User Agreement stated, during the relevant period, "The Buyer Protection Policy does not replace or reduce any other consumer rights Users might have, including reversal rights that may be granted by a User's credit card issuer".
41. During the relevant period, PayPal's User Agreement also stated "PayPal is the merchant of record with respect to all credit card transactions through the PayPal service to purchase goods or services. As such we afford customers the rights and privileges expected of a credit card transaction."
42. Under the federal law, the credit card customers have "chargeback" rights – the rights granted to credit card holders under the Fair Credit Billing Act ("FCBA"), to dispute billing errors that appear on their monthly credit card statements. An example of such billing error would be a situation when a customer, having paid for the product, has not received that product. In essence, FCBA gives consumers a possibility to recall such wrongful charges, although such a recall is not available for customers using their bank accounts or other immediate sources of payment. See also, New York General Business Law, 703.

CREDIT CARD CUSTOMERS

43. In addition to seeking to exercise their rights under the PayPal Buyer Complaint Policy, PayPal account holders who used their credit cards as opposed to the funds from the bank accounts often have sought chargebacks from their credit card issuers.

44. In practice, however, when PayPal account holders have complained to their credit card issuers that goods paid for through PayPal were not delivered as promised, PayPal generally has terminated the account holder's claim to PayPal. Thus, in order to exercise their Buyer Complaint Rights (the "Buyer Complaint Rights"), PayPal account holders actually have been required to choose between either exercising their credit card reversal or "chargeback" rights, or pursuing their rights under the Buyer Complaint Policy.
45. In those cases when a transaction has not completed successfully due to a breach by, or non-performance of, the seller, the buyer's interests were not protected, as neither PayPal, nor the credit card company reimbursed the buyer for the payments made. The buyers therefore have not received the protection similar to "chargeback rights".

Plaintiffs Who Chose Not To Exercise Their Rights Under PayPal Buyer Complaint Policy.

46. Depending on their respective issuer's policies governing PayPal transactions, PayPal account holders were either granted or denied a chargeback. For instance, in 2002 through mid-2003, and prior to recent agreements with the New York State Attorney General's Office, account holders who funded PayPal transactions through American Express or Discover credit cards often were denied a chargeback, upon complaining that goods they had ordered were not delivered as promised. These denials generally occurred because after PayPal account holders sought chargebacks, PayPal disputed the chargeback request with American Express and Discover, who in turn reinstated the original charges to aid defendant Essex and others at the expense of Plaintiffs.
47. In certain follow up letters responding to inquiries from account holders who had been denied chargebacks from their credit card issuers in this manner, PayPal inaccurately

described the reasons for these denials by informing account holders that, “On the date in question PayPal received notification of merchandise. The decision to dispute this charge was made by your credit card issuing bank and not PayPal.”

48. That the above language inaccurately described to account holders the true reason that their chargeback was denied, in that it minimized the role that PayPal, eBay, and Essex played in the process, given that it was PayPal, and not the account holder’s credit card company acting unilaterally, that had disputed the account holder’s chargeback.

CLASS ACTION

49. That this civil action is brought as a class action against Defendants Essex, Peter Marcum, Robert Echols and Eric Crawford pursuant to Federal Rules of Civil Procedure 23(a)(1)-(4), 23(b)(1), (2) or (3) and case law thereunder on behalf of themselves and all others similarly situated who comprise the following class (the “Class”), defined as follows:

All persons who purchased goods and/or products from Defendant Essex through Internet and who thereafter disputed their transactions with Essex, eBay, PayPal, their credit card company and/or their bank and who are interested in pursuing this lawsuit. The Class Period is the period from January 2000 to the present.

50. Excluded from the Class are Defendant Essex, employees and agents of the Defendant, members of the immediate family of the Defendant, any entity in which Defendant Essex has a controlling interest, and Essex’s legal representatives, heirs, successors or assigns.
51. This action has been brought and is properly maintainable as a class action, pursuant to Federal Rules of Civil Procedure 23(a)(1)-(4), 23(b)(1), (2) or (3), and case law thereunder.

52. **Numerosity of the Class** - Fed. R. Civ. P. 23(a)(1): Although the exact number of class members cannot be ascertained, they are so numerous and geographically dispersed that joinder of all class members is impracticable. The precise number of Class members and their addresses is unknown to Plaintiffs but can be readily determined from inspection of records maintained by Defendant Essex. Class members may be notified of the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.
53. **Existence and Predominance of Common Questions of Fact and Law** – Fed. R. Civ. P. 23(a)(2); 23(b)(3): There are common questions of law and fact involved herein which predominate over any questions affecting only individual members of the class. The common question of law and fact include, but are not limited to the following:
- a. whether Defendants violated Section 349 of the New York General Business Law (Gen. Bus. L.) in that they engaged in deceptive acts or practices in the conduct of their business;
 - b. whether Defendants Essex and Defendants Peter Marcum, Robert Echols, Eric Crawford, engaged in shill bidding practices in violation of New York and Federal anti-trust law;
 - c. whether Defendants violated Gen. Bus. L., Section 350 by engaging in false advertising in the conduct of their businesses;
 - d. whether Defendants committed fraud by advertising and selling technological products under the guise that the products are fit for the use intended knowing that in fact the products were defective and/or unfit for the intended use;

- e. whether Defendants were unjustly enriched at the expense of Plaintiffs and the Class;
 - f. whether Defendants refused to reimburse consumers when the products shipped by Defendant were not fit for their intended use;
 - g. whether Defendants acted negligently, as alleged herein;
 - h. whether Plaintiffs and the Class are entitled to restitution of all monies acquired by Defendant from Plaintiffs and the Class and the general public as a result of Defendant's unlawful conduct, and, if so, the appropriate measure of damages;
 - i. the appropriate form of injunctive, declaratory and monetary relief.
54. **Typicality** - Fed. R. Civ. P. 23(a)(3): Plaintiffs' claims are typical of those of the Class in that plaintiffs are members of the Class and have no known interest that are antagonistic to or contrary to the interest of the Class.
55. **Adequacy** - Fed. R. Civ. P. 23(a)(4): Plaintiffs will fairly and adequately protect the interest of the members of the class because their interests do not conflict with the interests of the Class members they seek to represent. Plaintiffs have retained competent counsel experienced in class litigation and intend to prosecute this action vigorously.
56. **Superiority** - Fed. R. Civ. P. 23(b)(3): A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action which would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation make it impracticable for the class members to seek redress individually or the wrongs they have suffered.

57. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) because:
- a. the prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendant;
 - b. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
 - c. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

CLASS ACTION

(DEFENDANTS EBAY AND PAYPAL)

58. That this civil action is brought as a class action pursuant to Federal Rules of Civil Procedure 23(a)(1)-(4), 23(b)(1), (2) or (3) and case law thereunder on behalf of themselves and all others similarly situated who comprise the following class (the Class), defined as follows:

All U.S. based PayPal account holders who sent or received a PayPal payment during the Class period. The Class Period is the period from January 1, 2000 through the date the Class Notice is disseminated.

59. Excluded from the Class are any judicial officer to whom this Litigation is assigned; PayPal and any of its affiliates; any current or former employees, officers, or directors of

PayPal; any Persons currently residing outside of the United States; and all Persons who timely and validly request exclusion from the Class pursuant to the Notice.

60. This action has been brought and is properly maintainable as a class action, pursuant to Federal Rules of Civil Procedure 23(a)(1)-(4), 23(b)(1), (2) or (3), and case law thereunder.
61. **Numerosity of the Class** - Fed.R. Civ. P. 23(a)(1): Although the exact number of class members cannot be ascertained, they are so numerous and geographically dispersed that joinder of all class members is impracticable. The precise number of Class members and their addresses is unknown to Plaintiffs but can be readily determined from inspection of records maintained by Defendants PayPal and eBay . Class members may be notified of the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.
62. **Existence and Predominance of Common Questions of Fact and Law** – Fed. R. Civ. P. 23(a)(2); 23(b)(3): There are common questions of law and fact involved herein which predominate over any questions affecting only individual members of the class. The common question of law and fact include, but are not limited to the following:
- a. whether Defendants PayPal and eBay violated Section 349 of the New York General Business Law (Gen. Bus. L.) in that they engaged in deceptive acts or practices in the conduct of their business;
 - b. whether Defendants PayPal and eBay fraudulently induced Plaintiffs and members of the Class to use their banking accounts for making payments online for the products purchased on eBay;

- c. whether Defendants violated Gen. Bus. L., Section 350 by engaging in false advertising in the conduct of their businesses;
 - d. whether Defendants were unjustly enriched at the expense of Plaintiffs and the Class;
 - e. whether Defendants refused to reimburse consumers when the products shipped by Defendant were not fit for their intended use;
 - f. whether Defendants acted negligently, as alleged herein;
 - g. whether Plaintiffs and the Class are entitled to restitution of all monies acquired by Defendant from Plaintiffs and the Class and the general public as a result of Defendant's unlawful conduct, and, if so, the appropriate measure of damages;
 - h. the appropriate form of injunctive, declaratory and monetary relief.
63. **Typicality**- Fed. R. Civ. P. 23(a)(3): Plaintiffs' claims are typical of those of the Class in that plaintiffs are members of the Class and have no known interest that are antagonistic to or contrary to the interest of the Class.
64. **Adequacy** - Fed. R. Civ. P. 23(a)(4): Plaintiffs will fairly and adequately protect the interest of the members of the class because their interests do not conflict with the interests of the Class members they seek to represent. Plaintiffs have retained competent counsel experienced in class litigation and intend to prosecute this action vigorously.
65. **Superiority** - Fed. R. Civ. P. 23(b)(3): A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action which would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation

make it impracticable for the class members to seek redress individually or the wrongs they have suffered.

66. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) because:
- a. the prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendant;
 - b. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
 - c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

Violations of Racketeer Influenced Corrupt Organizations Act, Sections 1962(c) and (d).

67. Defendants have violated 18 U.S.C. §§ 1962(c) and (d) by conspiring and committing multiple acts of bank fraud, mail fraud, and wire fraud in a continuing pattern of racketeering.
68. During the relevant period, Defendants were involved in a scheme, pursuant to which they encouraged their users - purchasers over the Internet - and in particular, Plaintiffs within, to purchase their products through eBay via PayPal's online system.
69. Throughout the Class Period, Defendant Essex and its Principals were making false representation to the public at large that the products that they offered were fit for their

intended use and would be shipped to the customers as agreed. Throughout the Class Period, Defendant Essex and its Principals often failed to inform the public at large that the products sold by Essex were not eligible for a refund. Specifically, the auctions posted by Defendant Essex and its Principals often did not inform the public at large that the products were being sold in “AS IS” condition.

70. This representation misled the Plaintiffs and Plaintiff’s class, in believing that they would not be disadvantaged and their lawful interests would not be harmed if they purchased the products from Defendant Essex through PayPal’s online system.
71. By engaging in the activity stated above, Defendant Essex and its principals committed mail and wire fraud within the meaning of 18 U.S.C. §§ 1341 and 1343, respectively.
72. In those cases when a transaction had not completed successfully due to a breach by or non-performance of the seller, the buyer’s interests were not protected, as neither Defendant PayPal nor the buyer’s bank reimbursed the buyer for the payments made.
73. When buyers turned to defendant Essex for a refund, Defendants, with the specific intent to defraud the public at large, failed to advise their customers of their decision to deny a refund but advised them to wait for their decision for extended periods of time. As a result, the buyers and the members of the Plaintiff class would often be forced to wait for more than thirty days thus losing their chance to obtain a refund from PayPal under PayPal’s Buyer Complaint Policy which required all its customers to apply for a refund within thirty days from the date of the purchase of the product.
74. By engaging in the activity stated above, defendant Essex and its principals committed additional counts of mail and wire fraud within the meaning of 18 U.S.C. §§ 1341 and 1343, respectively.

75. When Plaintiffs and Plaintiffs' Class complained to Defendants PayPal, Inc. and eBay, Defendants were made specifically aware of the illegal activities committed by Defendant Essex but refused to credit their accounts for the money obtained from Defendant Essex's unlawful activity.
76. Upon information and belief, by transmitting Plaintiffs and Plaintiffs' Class's money to Defendant Essex and other merchants trading on eBay, Defendant PayPal was involved in the transportation or transmission of funds that were known to the Defendant PayPal to have been derived from a criminal offense and/or were intended to be used to promote or support unlawful activity.
77. By engaging in the activity stated above, defendant PayPal committed additional counts of mail and wire fraud within the meaning of 18 U.S.C. §§ 1341 and 1343, respectively.
78. Furthermore, Defendant PayPal acted unlawfully when it encouraged their users - purchasers over the Internet - and in particular, the plaintiffs within and the members of Plaintiffs' Class, to use their bank accounts (e.g., ATM/debit cards, checking accounts), in lieu of credit cards, for making payments through PayPal's system. Specifically, Defendant PayPal was making false representation to its users at the time when they were already logged in the system and ready to initiate a particular transaction stating that PayPal provided the same level of protection to its users who pay with their bank accounts as credit card companies provide to its customers. This representation misled the Plaintiffs and plaintiff's class, in believing that they would not be disadvantaged and their lawful interests would not be harmed if they use their bank accounts, instead of credit cards.

79. PayPal made another representation in their funding confirmation request (“Funding Confirmation message”) - which is also intended to induce customers to make their payments by means of bank accounts - stating that users’ account information stored with PayPal is kept “safe and secure” and PayPal promises a “100% coverage of any unauthorized use”. This Funding Confirmation message is not part of the User Agreement, therefore does not give rise to any rights and obligations of the customer, although it misleads the customer into believing that it does.
80. PayPal’s use of its online agreement which made its users forfeit the protections afforded to them by their credit card issuers and misleads them into believing that their users’ account information is kept “safe and secure”, further constitutes multiple counts of wire fraud within the meaning of 18 U.S.C. § 1343.
81. Finally, Defendant PayPal, Inc. is a financial institution under 15 U.S.C. § 1693a(8), and Plaintiffs and Class Members are “consumers” under 15 U.S.C. § 1693a(5).
82. By disputing Plaintiffs’ and members of the Plaintiffs’ class chargeback requests with credit card companies and/or their banks, each of the Defendants, except for eBay, committed bank fraud within the meaning of 18 U.S.C. § 1344.
83. Defendants knew that their acts, as described herein, constituted a pattern of racketeering activity.

NEW YORK ATTORNEY GENERAL’S INVESTIGATION

84. In addition to seeking to exercise their rights under the PayPal Buyer Complaint Policy, PayPal account holders whose purchases were not delivered as promised often have sought chargebacks from their credit card issuers. Depending on their respective issuer’s

policies governing PayPal transactions, PayPal account holders were oftentimes denied a chargeback.

85. For instance, in 2002 through mid-2003, and prior to recent agreements with the Attorney General, account holders who funded PayPal transactions through American Express or Discover were often denied a chargeback. These denials generally occurred because after PayPal account holders sought chargebacks, Defendants in furtherance of their scheme to defraud actively disputed the chargeback request with American Express and Discover, who in turn reinstated the original charges to aid Defendants and others at the expense of the Plaintiffs.
86. The scheme perpetrated by defendants constituted mail fraud and wire fraud and violates 18 U.S.C. §§ 1341 and 1343, respectively.
87. The individual Defendants and other persons employed by Defendant Essex, for the purposes of effectuating the aforesaid scheme, have concealed the various frauds perpetrated on the Plaintiffs by, among other things, refusing to give an accounting of the Plaintiffs' monies. Defendants had continued to engage in their fraudulent activities notwithstanding the fact that it received a huge number of negative responses/complaints from their disgruntled customers over the course of many years.

DEFENDANT ESSEX'S SHILL BIDDING PRACTICES

88. On June 28, 2005, Defendant Essex has been permanently removed by eBay from their online auctions.
89. Upon information and belief, the reason for the suspension is Essex's former employees alleged reports to eBay that Essex was involved in shill bidding practices.

90. Shill Bidding is bidding that artificially increases an item's price or apparent desirability, or bidding by individuals with a level of access to the seller's item information not available to the general Community. Shill Bidding is prohibited on eBay.
91. Upon information and belief, former employees have also disclosed to eBay that Essex's management was aware of the shill bidding practices and was even boasting that "eBay will never catch us".
92. Prior to their suspension, Essex had between 5000 and 8000 auctions posted at any given time. Upon information and belief, following their suspension, defendants have attempted to circumvent their suspension by recruiting their former employees to post auctions for Essex inventory from their homes.
93. The aforesaid scheme was devised by Essex to have ex-employees open PayPal accounts, sell Essex inventory and collect payments.
94. By engaging in the aforesaid scheme, Defendants have violated Section One of the Sherman Act by conspiring to conceal their fraudulent activities from Plaintiffs and consumers at large.
95. The scheme perpetrated by Defendants also constituted mail fraud and wire fraud and violates 18 U.S.C. Sections 1341 and 1343, respectively.
96. Plaintiffs and members of plaintiffs' class have sustained economic injuries in the amount to be determined at trial as a result of the fraudulent practices of Defendants set forth above.

PLAINTIFF CHRISTINA SIRACUSA'S EXPERIENCE

97. Sometime in November of 2004, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for a digital camera.

98. In November of 2004, not being aware that she would not be eligible for a refund from Defendants, Christina Siracusa won that auction and made a payment for the product through PayPal's online system.
99. Upon its arrival, Ms. Siracusa discovered that the camera was defective. Her claim for refund was denied by Defendants Essex and PayPal.
100. Upon information and belief, Defendant PayPal acted in reliance upon misleading representations by Defendant Essex. The scheme perpetrated by Defendant Essex and its Principals whereby Defendants provided misleading information to defendant PayPal constituted bank fraud under 18 U.S.C. § 1344 and wire fraud under 18 U.S.C. § 1343.
101. In addition, by denying Ms. Siracusa's claims for chargeback, PayPal failed to afford her the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted wire fraud and violates 18 U.S.C. § 1343.

PLAINTIFF ANDREA KARVALY'S EXPERIENCE

102. Sometime in October of 2004, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for a CD player.
103. On or about, October 5, 2004, not being aware that she would not be eligible for a refund from Defendants, Andrea Karvaly won that auction and made a payment for the CD player, item nr: 5723451821, through PayPal's online system. Essex forwarded a thank you notice to Ms. Karvaly for her prompt payment for the item.
104. Ms. Karvaly, however, never received her CD player.
105. Ms. Karvaly contacted Essex by e-mail complaining that she did not receive the item. Essex responded saying that the reason for her not receiving the item was that she was not the winner of the underlying auction. Ms. Karvaly replied saying that she has a

confirmation from Essex itself stating that she had paid for the item. However, Essex never responded

106. Upon information and belief, Defendant PayPal acted in reliance upon misleading representations by Defendant Essex. The scheme perpetrated by Defendant Essex and its Principals whereby Defendants provided misleading information to Defendant PayPal constituted bank fraud under 18 U.S.C. § 1344 and wire fraud under 18 U.S.C. § 1343.
107. In addition, by denying Ms. Karvaly's claims for chargeback, PayPal failed to afford her the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted wire fraud and violates 18 U.S.C. § 1343.

PLAINTIFF NANETTE ARAGON'S EXPERIENCE

108. Sometime in October of 2004, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for sets of three packages of ten hotel towels, eBay auction numbers 4329131957, 4329244576, and 4329524133.
109. On or about, October 9, 2004, not being aware that she would not be eligible for a refund from Defendants, Nanette Aragon won two auctions for two sets of the product and made a payment for the items through PayPal's online system.
110. On or about, October 11, 2004, not being aware that she would not be eligible for a refund from Defendants, Nanette Aragon won two auctions for one set of the product and made a payment for the items through PayPal's online system.
111. When Ms. Aragon received the purchased items, she discovered that twelve towels were missing from each of three sets.
112. Both Essex and PayPal refused to honor her complaint.

113. Upon information and belief, sometime in September and October of 2004, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for Lot of Rubbermaid cooler igloo, eBay auction number 4328787264, Ozark Trail 13'X10' screen house, eBay auction number 5126334483, Impressions two-bag luggage set, eBay auction number 2273349062, Skyline five-piece luggage set, eBay auction number 2272289334, and Skyline three-piece luggage set, eBay auction number 2272289362.
114. In or about September and October of 2004, not being aware that she would not be eligible for a refund from Defendants, Nanette Aragon won the auctions for the aforementioned items and made a payment for through PayPal's online system.
115. Ms. Aragon never received these items.
116. Both Essex and PayPal refused to honor her complaint.
117. Upon information and belief, Defendant PayPal acted in reliance upon misleading representations by Defendant Essex. The scheme perpetrated by Defendant Essex and its Principals whereby Defendants provided misleading information to defendant PayPal constituted bank fraud under 18 U.S.C. § 1344 and wire fraud under 18 U.S.C. § 1343.
118. In addition, by denying Ms. Aragon's claims for chargeback, PayPal failed to afford her the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted wire fraud and violates 18 U.S.C. § 1343.

PLAINTIFF DANIELLE SCHOPPE'S EXPERIENCE

119. Sometime in October of 2004, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for Braun Twist Cap Battery Shaver, which was listed as new.

120. On or about October 21, 2004, not being aware that she would not be eligible for a refund from Defendants, Danielle Schoppe won the auction for the aforementioned item and made a payment for through PayPal's online system.
121. When the item arrived, Mr. Schoppe discovered that it was a blade.
122. Both Essex and PayPal refused to honor his complaint.
123. Upon information and belief, Defendant PayPal acted in reliance upon misleading representations by Defendant Essex. The scheme perpetrated by Defendant Essex and its Principals whereby Defendants provided misleading information to Defendant PayPal constituted bank fraud under 18 U.S.C. § 1344 and wire fraud under 18 U.S.C. § 1343.
124. In addition, by denying Mr. Schoppe's claims for chargeback, PayPal failed to afford him the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted wire fraud and violates 18 U.S.C. § 1343.

PLAINTIFF GEORGE CESAR'S EXPERIENCE

125. Plaintiff George Cesar opened a PayPal account approximately two years ago.
126. Sometime in January of 2005, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for a DVD Player.
127. On or about January 16, 2005, not being aware that he would not be eligible for a refund from Defendants, Mr. Cesar won that auction and made a payment for the product through PayPal's online system.
128. Mr. Cesar never received the product that he ordered.
129. Mr. Cesar has spent numerous hours on the phone with Defendant Essex to have them trace the product through the express mail carrier. Mr. Cesar also sent numerous emails

to Essex trying to explain that he never received the product that he won through an online auction.

130. Notwithstanding Mr. Cesar's complaints, Essex failed to refund the money to Mr. Cesar.
131. Sometime in April of 2005, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for Acoustic Authority computer speakers. The "item condition" statement provided only that this was a used, open-box item, in working order. The "item condition" statement did not include an "AS-IS" clause.
132. On or about April 12, 2005, not being aware that he would not be eligible for a refund from Defendants, Mr. Cesar won that auction and made a payment for the product through PayPal's online system by using funds from his bank account.
133. When Mr. Cesar received the computer speakers, he discovered that the speakers' subwoofer was damaged and, as a result, the speakers could not be operated via a remote control.
134. Mr. Cesar submitted a formal complaint and a request for a chargeback to PayPal, which was denied. Filed complaint with Essex, but Essex failed to respond to it.
135. On or about February 7, 2005, Mr. Cesar won an eBay auction for a Sony 27-inch TV set, which was described as new, and paid for the item by using funds from his bank account. The TV set arrived in damaged condition, and Mr. Cesar was unable to turn it on. Mr. Cesar filed a formal claim with PayPal to receive a chargeback, which was denied.
136. On or about May 26, 2005, Mr. Cesar won an eBay auction for a Hoover Windtunnel vacuum cleaner, which was described as new, and paid for the item by using funds from his bank account. The vacuum cleaner arrived with a broken belt and had dust in the bag

canister. Mr. Cesar wanted to return the product or, at least, receive reimbursement to buy a new belt. Mr. Cesar submitted a claim to PayPal to this effect, which was denied because “the equipment was shipped.”

137. On or about November 3, 2005, Mr. Cesar won an eBay auction for a Computer System, IMAC G5, 2GHZ, 1.5 RAM memory, which was described as used and the picture of the item created an impression that the screen of the computer was in working order. Mr. Cesar paid for the item by using funds from his bank account. The product arrived damaged, and the screen was cracked. Mr. Cesar notified PayPal, but his claim was denied.
138. Upon information and belief, Defendant PayPal acted in reliance upon misleading representations by Defendant Essex. The scheme perpetrated by Defendant Essex and its Principals whereby Defendants provided misleading information to defendant PayPal constituted bank fraud under 18 U.S.C. § 1344 and mail and wire fraud under 18 U.S.C. § 1341 and 18 U.S.C. § 1343, respectively.
139. In addition, by denying Mr. Cesar’s claims for chargeback, PayPal failed to afford him the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted wire fraud and violates 18 U.S.C. § 1343.

PLAINTIFF DOUGLAS MASHKOW’S EXPERIENCE

140. Plaintiff Douglas Mashkow opened a PayPal account approximately six years ago.
141. On or about the first week of January of 2004, with a specific intent to deceive and defraud the public at large, Defendant Essex held an auction on eBay for a CD Recorder, Philips CDR 800.

142. On or about January 5, 2004, not being aware that he would not be eligible for a refund, Mr. Mashkow won that auction and made a payment to defendant Essex through PayPal's online system. (A true and correct copy of the January 5, 2004 transaction is annexed hereto as **Exhibit "B"**.)
143. When the product arrived, Mr. Mashkow discovered that the CD Recorder was not in a working condition and could not be used for the purpose intended by Mr. Mashkow.
144. Mr. Mashkow promptly contacted Essex and was told that all purchases were "AS IS".
145. The scheme perpetrated by Essex constituted mail fraud and wire fraud and violates 18 U.S.C. Sections 1341 and 1343, respectively.
146. Mr. Mashkow thereafter filed an online complaint with PayPal but also received a rejection.
147. Upon information and belief, Defendant PayPal acted in reliance upon misleading representations by Defendant Essex. The scheme perpetrated by Defendant Essex and its Principals whereby Defendants provided misleading information to defendant PayPal constituted bank fraud under 18 U.S.C. § 1344 and mail and wire fraud under 18 U.S.C. § 1341 and 18 U.S.C. § 1343, respectively.
148. In addition, by denying Mr. Mashkow's claims for chargeback, PayPal failed to afford him the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted wire fraud and violates 18 U.S.C. § 1343.

PLAINTIFF JASON ETTEN'S EXPERIENCE

149. Plaintiff Jason Etten opened a PayPal account several years ago.
150. With a specific intent to deceive, Defendant Essex held an auction on eBay for an HP Deskjet 3820 Color Printer NR, which stated that "This item has been fully tested" and

“This item has been powered on and is working properly”. The auction held by defendant Essex further stated that Essex needs to be contacted within ten days if any problems arise in connection with the product received through this auction.

151. On or about September 19, 2004, not being aware that he would not be eligible for a refund, Mr. Etten won the auction for a printer, HP Deskjet 3820 Color Printer NR. (A true and correct copy of a record of the September 19, 2004 transaction is annexed hereto as **Exhibit “C”**.)
152. However, when the printer arrived, Mr. Etten had tested it and had discovered that it was not in a working condition. Specifically, he discovered that it was missing a key part to feed the paper to the ink head.
153. Mr. Etten immediately contacted Essex by e-mail and by phone to inform them about the problem and obtain a refund of the money but had received no reply.
154. The correspondence with Essex lasted for more than thirty days. On September 28, 2004, Mr. Etten sent a second e-mail to Essex. (Enclosed, please find Mr. Etten’s e-mail annexed hereto as **Exhibit “C”**.)
155. Mr. Etten received no response from Defendants. He, thereafter, wrote to PayPal to obtain a refund for the transaction but also received a rejection on the grounds that, inter alia, more than thirty days passed from the date of the transaction.
156. Upon information and belief, Defendant PayPal’s denial was directly caused by Defendant Essex’ intentional failure to respond to Plaintiff’s complaint in a timely fashion. The scheme perpetrated by Defendant Essex and its Principals whereby Defendants intentionally failed to communicate with Mr. Etten causing him to waive his rights under PayPal’s Buyer Complaint Policy constituted additional counts of bank fraud

under 18 U.S.C. § 1344 as well as mail and wire fraud under 18 U.S.C. § 1341 and 18 U.S.C. § 1343, respectively.

157. In addition, by denying Mr. Etten's claims for chargeback, PayPal failed to afford him the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted wire fraud and violates 18 U.S.C. § 1343.

PLAINTIFF VINCENT FARINELLA'S EXPERIENCE

158. In or about January of 20045, with a specific intent to deceive and defraud the public at large, seller, named Randy Davis, held an auction on eBay for a GPS, Magellan RoadMate 700 WAAS-Enabled GPS Receiver, item number 5753380068. (A true and correct copy of the product description is annexed hereto as **Exhibit "D"**.)
159. On or about February 20, 2005, not being aware that he would not be eligible for a refund, Mr. Vincent Farinella won that auction and attempted to make a payment with his American Express credit card. After several unsuccessful attempts to do so, Mr. Farinella called PayPal, and as per PayPal advice, he used his checking account funds to make a \$671.90 payment for the item.
160. Mr. Farinella never received the GPS.
161. Mr. Farinella filed a complaint with PayPal, and, in the end, only \$175.00 was reimbursed to him. (A true and correct copy of Mr. Farinella's PayPal Transaction Details is annexed hereto as **Exhibit "D"**.)
162. When Mr. Farinella complained to Defendants PayPal, Inc. and eBay, Defendants were made specifically aware of the illegal activities committed by the seller Randy Davis but refused to credit his accounts for the money obtained from Randy Davis's unlawful activity. Specifically, in a telephone conversation held with Mr. Farinella, Defendant

PayPal, Inc. informed Mr. Farinella that they were aware of the complaints against this seller by other PayPal online customers.

163. By transmitting Mr. Farinella's money to Mr. Davis and by allowing him to trade on eBay, Defendants eBay and PayPal were involved in the transportation or transmission of funds that were known to the Defendants to have been derived from a criminal offense and/or were intended to be used to promote or support unlawful activity.
164. By engaging in the activity stated above, defendant PayPal committed additional counts of mail and wire fraud within the meaning of 18 U.S.C. §§ 1341 and 1343, respectively.
165. In addition, by denying Mr. Farinella's claims for chargeback, PayPal failed to afford him the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted mail and wire fraud and violates 18 U.S.C. § 1343 and 18 U.S.C. § 1341, respectively.

PLAINTIFF DENNIS TRUBITSKY'S EXPERIENCE

166. Plaintiff Dennis Trubitsky opened a PayPal account on or about January 18, 2001.
167. On or about October 30, 2004, with a specific intent to deceive, Defendant Essex held an auction on eBay for a HP Pavilion ze5170 Notebook. A close review of the specific description of the auction of a HP Pavilion ze5170 Notebook, annexed hereto as Exhibit "E", reveals that it failed to apprise Mr. Trubitsky and the public at large that this unit was not eligible for a refund and was being sold on an "AS-IS" basis.
168. On or about October 30, 2004, not being aware that he would not be eligible for a refund, Mr. Trubitsky won the auction for a HP Pavilion ze5170 Notebook and made a prompt payment through PayPal's online payment system by using his credit card. (A true and

correct copy of a record of Mr. Trubitsky's transaction with Defendant Essex pertaining to HP Pavilion ze5170 Notebook is annexed hereto as **Exhibit "E"**.)

169. Upon receipt of the item and visual inspection, Mr. Trubitsky had discovered that the unit was missing essential parts and had specific problems not listed in the description of the eBay auction.
170. Specifically, upon close inspection of the unit, Mr. Trubitsky had uncovered that the unit would not power on because (1) BIOS chip was missing; (2) CPU did not belong to that model and had bent pins because it was forced into the socket; (3) the LCD cable was missing; (4) the LCD shell was missing some screws and covers and (4) the power plug was not in a working condition.
171. On or about October 27, 2004, with a specific intent to deceive, Defendant Essex held an auction on eBay for a HP Pavilion ze1230 Notebook. A close review of the specific description of the auction of a HP Pavilion ze1230 Notebook, annexed hereto as **Exhibit "E"**, reveals that it failed to apprise Mr. Trubitsky and the public at large that this unit was not eligible for a refund and was being sold on an "AS-IS" basis.
172. On or about October 30, 2004, not being aware that he would not be eligible for a refund, Mr. Trubitsky won the auction for a HP Pavilion ze1230 Notebook and made a prompt payment through PayPal's online payment system by using his credit card. (A true and correct copy of a record of Mr. Trubitsky's transaction with Defendant Essex pertaining to HP Pavillion ze5170 Notebook is annexed hereto as **Exhibit "E"**.)
173. When the product arrived, Mr. Trubitsky discovered that (1) LCD screen, screws, and covers were missing; (2) the battery was different color than the color of the laptop itself, and the battery did not work, and (3) LCD cable was missing.

174. On or about November 4, 2006, Mr. Trubitsky complained to Essex by e-mail about the problem with the item and requested a refund of the money that he paid.
175. On November 6, 2004, November 8, 2004 and November 12, 2004, Mr. Trubitsky sent additional e-mails to Essex which included specific description of the problems experienced with the unit. Enclosed, please find Mr. Trubitsky's e-mail correspondence annexed hereto as **Exhibit "E"**.
176. Notwithstanding Mr. Trubitsky's detailed explanations of the problems that he experienced with the unit, he was eventually denied a refund by Defendants.
177. When Mr. Trubitsky complained to Defendants PayPal, Inc. and eBay, Defendants were made specifically aware of the illegal activities committed by Defendant Essex but refused to credit his accounts for the money obtained from Essex's unlawful activity.
178. By transmitting Mr. Trubitsky's money to Defendant Essex and by allowing him to trade on eBay, Defendants eBay and PayPal were involved in the transportation or transmission of funds that were known to the Defendants to have been derived from a criminal offense and/or were intended to be used to promote or support unlawful activity.
179. By engaging in the activity stated above, defendant PayPal committed additional counts of mail and wire fraud within the meaning of 18 U.S.C. Sections 1341 and 1343, respectively.
180. In addition, by denying Mr. Trubitsky's claims for chargeback, PayPal failed to afford him the same chargeback rights that would be expected of a credit card. The scheme perpetrated by Defendant PayPal constituted mail and wire fraud and violates 18 U.S.C. Section 1343 and 18 U.S.C. § 1341, respectively.

181. Mr. Trubitsky thereafter filed a complaint with the credit card company and was also denied a refund for the products purchased.
182. By disputing Mr. Trubitsky's chargeback requests with credit card companies and/or their banks and/or failing to provide a corroborative statement to the credit card company, each of the Defendants, except for eBay, committed bank fraud within the meaning of 18 U.S.C. § 1344.

FIRST CAUSE OF ACTION

(For Violations of Racketeer Influenced Corrupt Organizations Act Section 1962 (c))

183. Plaintiffs and other members of the Class repeat and re-allege each and every allegation set forth in paragraphs "1" through "182" as it fully set forth herein.
184. This cause of action is brought against each of the Defendants (except eBay) on behalf of the plaintiffs and the other members of the Class and arises under 18 USC § 1962(c) and (d) of RICO.
185. At all relevant times during the Class Action Period, eBay is a for-profit entity and constitutes an "enterprise" as that term is defined in 18 U.S.C.S. Section 1961(4), which engages in, and the activities of which affect interstate commerce.
186. At all relevant times during the Class Action Period, each of the Defendants (except for eBay) was a "person" as that term is defined in 18 U.S.C. § 1961 (3), as each of the defendants was "capable of holding a legal or beneficial interest in property".
187. Each of the Defendants (except for eBay) conducted or participated, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c).

188. Each of the Defendants (except for eBay) committed predicate offenses under Section 1961(1)(B), to wit, numerous counts of bank fraud under 18 U.S.C. § 1344, mail fraud under 18 U.S.C. § 1341, wire fraud under 18 U.S.C. § 1343 and a violation of 18 U.S.C. § 1960 as described above.
189. Each of the Defendants engaged in a pattern of racketeering activity as defined by 18 U.S.C. § 1961 in that they conspired to maintain a pattern and/or practice of selling defective products over the Internet without any intent of issuing refunds for said products and with the intent to improperly increase their market share at the expense of Plaintiffs and the Class herein and to lure away these class members from purchasing said products from other distributors and websites who sell similar products over the Internet.
190. The pattern of racketeering activity referred to above consisted of a variety of schemes which all had the same specific intent, namely to use fraudulent means and unlawful influence to enrich Defendants at the expense of Plaintiffs and other members of the Class.
191. These acts of racketeering activity were continuous and related to one another by virtue of common participants, to wit each of the Defendants (except for eBay); the common victims: eBay online customers; and the common purpose and common result of improperly enriching Defendants' at the expense of the Plaintiffs and other members of the Class. Because Defendants performed more than two acts of racketeering activity that were continuous, related and caused substantial injury to Plaintiffs and other members of the Class, these acts constituted a pattern of racketeering activity within the meaning of RICO, 18 U.S.C. § 1961(5).

192. The unlawful pattern of racketeering activity has been committed through the vehicle of the enterprise, to wit eBay, during the Class Period. The enterprise had an ascertainable decision-making structure by utilizing the management organization of eBay.
193. eBay operated and managed the enterprise and also conducted a legitimate business activity, to wit, online auctions of various other merchants that sold legitimate products through the Internet to the public at large. Throughout the relevant periods, Defendants Essex conducted the enterprise through a pattern of racketeering activity within the meaning of RICO, 18 U.S.C. § 1961(5) and § 1962(c), in violation of RICO, 18 U.S.C. § 1962(c).
194. Defendants have (a) used or invested the proceeds of the income derived from the pattern of racketeering activity to establish, operate and acquire an interest in any and/or all of the companies constituting the enterprise; (b) acquired an interest or control of the enterprise through a pattern of racketeering activity; and (c) conducted the affairs of that enterprise through a pattern of racketeering activity.
195. Each of the Defendants (except eBay) also conspired to violate 18 U.S.C. § 1962(a), in violation of 18 U.S.C. Section 1962(d).
196. Plaintiffs and other members of the Class suffered damages, which were the direct, foreseeable, and proximate result of the defendants' materially misleading acts and practices.
197. In addition, Defendant's deceptive practices are likely to continue to deceive thousands of persons who will also be injured thereby.
198. By virtue of the foregoing, Plaintiffs and the Members of the Class have been damaged, jointly and severally, for treble damages in the amount to be ascertained at trial.

SECOND CAUSE OF ACTION

**(DECEPTIVE TRADE PRACTICES BY DEFENDANTS ESSEX, PETER MARCUM,
ROBERT ECHOLS, ERIC CRAWFORD)**

199. That plaintiffs repeat and re-allege each and every allegation set forth in paragraphs “1” through “198” as it fully set forth herein.
200. That Defendants’ misrepresentations are misleading in a material respect since in practice Essex sells technological products under the guise that the product are fit for the use intended when in fact the products are knowingly defective. These misrepresentations constitute a deceptive trade practice under the provision of Gen. Bus. L., Section 349.
201. Upon information and belief, Defendants were also involved in shill bidding practices described above. Such practices also constitute a deceptive trade practice under the provision of Gen. Bus. L., Section 349.
202. Gen. Bus. L., § 349(h) provides for a private right of action by any person who has been injured by a violation of Gen. Bus. L. § 349(a).
203. Defendants’ deceptive practices including shill bidding have deceived plaintiffs and other members of plaintiff’s Class. In addition, Defendant Essex’s deceptive practices are likely to continue to deceive thousands of persons who will also be injured thereby.
204. Upon information and belief, Plaintiffs and members of the Plaintiffs’ Class had suffered damages, which were the direct, foreseeable, and proximate result of the Defendants’ materially misleading acts and practices.
205. By virtue of the foregoing, Plaintiffs and members of the Plaintiffs’ Class have been damaged, jointly and severally, in the amount to be ascertained at trial.

THIRD CAUSE OF ACTION
(DECEPTIVE TRADE PRACTICES BY PAYPAL)

206. That plaintiffs repeat and re-allege each and every allegation set forth in paragraphs “1” through “205” as it fully set forth herein.
207. The defendants’ misrepresentations to the Plaintiffs and their Class are misleading in a material respect since in practice PayPal’s Buyer Complaint Policy has generally not “afforded customers the rights and privileges expected of a credit card transaction”. The misrepresentations mentioned above constitute a deceptive trade practice under the provision of Gen. Bus. L., § 349.
208. Gen. Bus. L., § 349(h) provides for a private right of action by any person who has been injured by a violation of Gen. Bus. L. § 349(a).
209. Defendants’ deceptive practices had deceived plaintiffs and other members of the Class. In addition, Defendants’ deceptive practices are likely to continue to deceive thousands of persons who will also be injured thereby.
210. Upon information and belief, Plaintiffs and the members of Plaintiffs’ Class have suffered damages, which were the direct, foreseeable, and proximate result of the defendants’ materially misleading acts and practices.
211. By virtue of the foregoing, Plaintiffs and the members of their Class have been damaged, jointly and severally, in the amount to be ascertained at trial.

FOURTH CAUSE OF ACTION

**FRAUDULENT INDUCEMENT
(MISREPRESENTATIONS REGARDING CHARGEBACK RIGHTS BY DEFENDANTS
PAYPAL AND EBAY)**

212. That plaintiffs repeat and re-allege each and every allegation set forth in paragraphs “1” through “211” as it fully set forth herein.
213. To the extent that the plaintiffs and the other Class members are deemed by Defendants not to be entitled to broad rights to obtain chargebacks when goods are not delivered as agreed, Defendants, knowingly or recklessly, made false and misleading representations by falsely representing that their bank accounts if used through PayPal would provide the same protection as credit cards. These misrepresentations are material to the plaintiffs and the other members of the Class because they caused them to become registered users of PayPal, provide their sensitive personal and banking information, and otherwise abide by their User Agreement.
214. Defendants made these false representations and omissions with the knowledge that they were false and misleading and with the intent that they were relied upon by persons who were deciding whether to become registered users of PayPal and abide by their user agreement.
215. The plaintiffs and the other members of plaintiff’s Class believed these representations to be true and relied on Defendants’ false representations when making their decision to further the transaction. The plaintiffs and the other class members have thereby been injured because they have not been provided with the rights and privileges granted to credit card holders under the Federal Credit Billing Act and were not allowed to exercise their “chargeback” rights. The plaintiffs and the other members of the Class were led to

expect, and reasonably believed, they were entitled to the rights and privileges granted to credit card holders under the federal Credit Billing Act. In practice, however, the User Agreement has not afforded customers the rights and privileges expected of a credit card transaction.

216. By virtue of the foregoing, plaintiffs have been damaged, jointly and severally, for treble damages in the amount to be ascertained at trial.

FIFTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT BY DEFENDANT PAYPAL
(MISREPRESENTATIONS REGARDING UNAUTHORIZED USE)

217. That plaintiffs repeat and re-allege each and every allegation set forth in paragraphs “1” through “216” as it fully set forth herein.
218. PayPal sends a Billing Confirmation pop-up message to every registered user who is prepared to make a purchase through the Internet; the said message is in fact an inducement to make the payment using the debit account.
219. By means of this Billing Confirmation pop-up, PayPal is making a representation that it will provide for “100% coverage of any unauthorized use” of the customers bank information.
220. Nevertheless, PayPal’s user agreement does not contain a similar provision, which would provide “for such “100% coverage of any unauthorized use”, which has been stored with PayPal, contrary to the express representations made in funding confirmation pop-up.
221. To the extent that Plaintiffs and plaintiff’s Class are deemed by Defendants not to be entitled to 100% coverage of any unauthorized use, Defendants, knowingly or recklessly, made the false and misleading representations in their Funding Confirmation pop-up, which is not part of the User Agreement but is collateral and/or extraneous to it.

222. This misrepresentation is material to the decision that is to be made by PayPal users when they are making a payment and/or transmitting funds through PayPal.
223. Defendants made these false representations and omissions with the knowledge that they were false and misleading and with the intent that these representations would be relied upon by the users.
224. Plaintiffs and Plaintiffs' Class believed these representations to be true and relied on defendants' false representations in making their decision to provide their sensitive banking information to PayPal.
225. Plaintiffs and other Class members have thereby been injured because pursuant to its User Agreement PayPal is not obliged to provide reimbursement of users' monetary losses in case of unauthorized use by third parties. Plaintiffs and the other members of the Class were led to expect, and reasonably believed, they were entitled to the rights and privileges pursuant to PayPal's Funding Confirmation's request, which in their mind was a reflection of their rights pursuant to the User Agreement.
226. By virtue of the foregoing, Plaintiffs and other Class members have been damaged, jointly and severally, for damages in the amount to be ascertained at trial. In the alternative, those Plaintiffs who have not yet incurred any pecuniary damages request rescission of their contract obligations with PayPal, as well as injunctive relief.

SIXTH CAUSE OF ACTION
(BREACH OF CONTRACT BY DEFENDANT PAYPAL)

227. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "226" as it fully set forth herein.

228. Pursuant to the general policy of PayPal, the plaintiffs and the other members of the Class, individually entered into a contract with PayPal entitled “User Agreement”.
229. The User Agreement is lawful, enforceable, and binding upon the Parties as it satisfies all the elements necessary for formation of a valid contract.
230. The plaintiffs and the other Class members have duly executed the contract by agreeing to it and have performed it by providing their personal and billing information to PayPal.
231. Moreover, when making a claim under the Buyer Complaint Policy, they complied with the procedural requirements prescribed by the Buyer Complaint Policy.
232. This User Agreement defined the rights and obligations of PayPal and each respective customer. The User Agreement affords PayPal’s customers, in particular plaintiffs and other Class members, certain Buyer Complaint Rights similar to those “expected of a credit card transaction”.
233. Moreover, this “User Agreement” afforded the plaintiffs and other Class members specific Buyer Complaint Rights and privileges “expected of a credit card transaction”.
234. Defendants breached that User Agreement by not providing to the customers, in particular the plaintiffs and other Class members, rights and privileges they have contracted for.
235. By virtue of the foregoing, plaintiffs have been damaged, jointly and severally, for damages in the amount to be ascertained at trial.

SEVENTH CAUSE OF ACTION
(FRAUD BY DEFENDANTS ESSEX, PETER MARCUM, ROBERT ECHOLS, AND
ERIC CRAWFORD)

236. That plaintiffs repeat and re-allege each and every allegation set forth in paragraphs “1” through “235” as it fully set forth herein.

237. That Defendants committed fraud by advertising and selling technological products under the guise that the products are fit for the use intended knowing that in fact the products were defective and/or unfit for the intended use, causing damages to defendant and other members of the class herein who suffered damages as the result of their reliance on the defendant's Essex fraudulent representations.
238. Defendants' practices have deceived Plaintiffs and other members of plaintiff's Class. In addition, Defendant Essex's deceptive practices are likely to continue to deceive thousands of persons who will also be injured thereby.
239. Upon information and belief, Plaintiffs and their Class suffered damages, which were the direct, foreseeable, and proximate result of the defendants' materially misleading acts and practices.
240. By virtue of the foregoing, Plaintiffs and their Class have been damaged, jointly and severally, in the amount to be ascertained at trial.

EIGHTH CAUSE OF ACTION

**(BREACH OF CONTRACT AGAINST DEFENDANTS ESSEX, PETER MARCUM,
ROBERT ECHOLS, AND ERIC CRAWFORD)**

241. That plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "207" as it fully set forth herein.
242. Plaintiffs and Plaintiffs' Class agreed with Defendant Essex to purchase certain products displayed on eBay and on Essex websites.

243. Upon information and belief, the Defendants willfully and wrongfully stated and represented to Plaintiffs and their Class that they would obtain the items as displayed and sold through the Internet site known as eBay.
244. Upon information and belief, the Plaintiffs and Plaintiff's Class did purchase said products from Essex as agreed.
245. Upon information and belief, Defendants were paid in full for said products.
246. Upon information and belief, Defendants have failed to deliver the said items as agreed upon despite the facts that the Defendants have paid the agreed upon prices in full.
247. Upon information and belief, Defendants have failed to reimburse Plaintiffs and members of the Plaintiffs' Class although payment has been duly requested.
248. By virtue of the foregoing, Defendant are each liable to Plaintiffs for damages in an amount to be ascertained at trial.

NINTH CAUSE OF ACTION

(NEGLIGENCE BY ALL DEFENDANTS)

249. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "249" as it fully set forth herein. This cause of action is brought against the Defendants on behalf of the Plaintiffs and the other members of the Class.
250. Defendants have an obligation to establish and maintain adequate procedures to promote efficient dispute resolution. Defendants also had a duty to provide Plaintiffs and Class members with readily available information concerning dispute resolution and to create and maintain adequate procedures to accurately resolve disputes over the transfer of funds.

251. Defendants breached these obligations by not making dispute resolution information readily available to customers and by making it difficult, if not impossible, for customers to resolve disputes with Defendants in an efficient and appropriate manner. Defendants also breached its obligations to Plaintiffs and Class members by failing to establish and maintain adequate procedures regarding their shipping policy.
252. By virtue of the foregoing, Plaintiffs and Class members have been injured in that they have lost the possession and use of Plaintiffs' and Class members' money and have suffered other adverse financial consequences directly caused by Defendants' improper conduct. Plaintiffs and Class members pray for relief as set forth below.

DEMAND FOR JURY TRIAL

254. Plaintiffs hereby demand a trial by jury on all causes of action so triable.

WHEREFORE, it is respectfully requested that the Court assume jurisdiction herein and thereafter Plaintiffs demand a trial by jury and judgment against all defendants as follows:

- a. Compensatory damages in an amount to be determined at trial, together with interest;
- b. Punitive damages in an amount to be determined at trial;
- c. Treble damages pursuant to RICO;
- d. For an order awarding Plaintiffs and the Class restitution of all monies acquired by Defendants from Plaintiffs, the Class, and the general public, as a result of Defendant's wrongful practices described above;

- e. For an order awarding Plaintiff and the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- f. For an order imposing a constructive trust upon all monies and assets Defendants have acquired from Plaintiffs and the Class as a result of Defendant's unlawful, unfair, fraudulent and deceptive practices;
- g. For an order awarding Plaintiffs and the Class equitable and declaratory relief, as the Court deems appropriate; and
- h. For an order awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York
December 20, 2006

_____/s/_____
Marina Trubitsky, Esq. (MT-9371)
MARINA TRUBITSKY
& ASSOCIATES, PLLC
Attorneys for Plaintiffs
11 Broadway, Suite 861
New York, New York 10004
(212) 732-7707