

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

MIKE STEELE, DON MEADOWS,
MARJORIE SCHOPPE, DENNIS
TRUBITSKY, ROBERT LABAY, BARRY
JONES, JASON M. ETTEN, NANETTE
ARAGON, GEORGE CESAR, ANDREA
KARVALY and CHRISTINA SIRACUSA,
individually and on behalf of others similarly
situated,

Plaintiffs,

v.

PAYPAL, INC., EBAY INC., and ESSEX
TECHNOLOGICAL GROUP, INC.

Defendants.

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

**AMENDED STIPULATION AND
AGREEMENT OF SETTLEMENT**

Whereas, the parties to this action previously reached a proposed comprehensive settlement of this action which was denied approval by the Court in its Order dated September 6, 2007 ("Order"); and

Whereas, since the Court's Order, the parties have met and conferred through counsel and have conducted in person and telephonic settlement conferences before the Hon. Magistrate Judge Viktor Pohorelsky in December 2007 and January 2008 and, guided by such conferences, have modified the original stipulation of settlement in an effort to satisfy the concerns expressed by the Court in the Order;

The parties hereby enter into this Amended Stipulation and Agreement of Settlement (which fully supersedes and replaces any and all prior manifestations of settlement, including, without limitation, the original Stipulation of Settlement and related Memorandum of Understanding that was the subject of the Order) as follows:

Representative Plaintiffs, on behalf of themselves and all Class Members, on the one hand, and defendants eBay Inc. and PayPal, Inc. (collectively, "PayPal"), on the other hand

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(each, a "Party"; collectively, the "Parties"), hereby enter into this Amended Stipulation and Agreement of Settlement ("Settlement Agreement"), subject to the approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

1. CERTAIN DEFINITIONS

As used in this Settlement Agreement, certain capitalized persons and terms are defined as follows:

- 1.1. Claim Deadline: the date set forth in the Notice by which Class Members must submit a Claim Form.
- 1.2. Claim Form: a document, substantially in the form attached hereto as Exhibit D, that a Class Member must complete and submit under oath, on or before the Claim Deadline, in order to receive a payment from the Net Settlement Fund.
- 1.3. Class: all U.S. based PayPal account holders who funded a PayPal transaction after February 1, 2004, using a source other than a credit card: (i) who subsequently requested a reversal of the transaction through PayPal's prevailing Buyer Complaint Policy and/or Buyer Protection Policy (collectively, "Policies"); (ii) who did not receive a refund equal to 100% of their transaction payment in response to such request from PayPal or their bank; and (iii) who, through the timely submission of a Claim Form under oath, attest to a reasonable and good faith belief that they would have received a full reversal of such payment had they used a valid credit card in their possession at the time of the subject transaction to fund the payment and filed a timely chargeback request with their credit card issuing bank. 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.
- 1.4. Class Counsel: the Representative Plaintiffs' counsel of record in the Litigation, namely, Marina Trubitsky & Associates, PLLC.

- 1.5. Class Member: a Person who falls within the definition of the Class set forth in subsection 1.3 herein.
- 1.6. Class Period: the period from February 1, 2004, through the date the Class Notice is disseminated.
- 1.7. Complaint: the Second Amended Complaint on file in the Litigation as of the Effective Date of this Settlement Agreement.
- 1.8. Court: the United States District Court for the Eastern District of New York.
- 1.9. Defense Counsel: PayPal's counsel of record in the Litigation, namely, Cooley Godward Kronish LLP.
- 1.10. eBay: defendant eBay Inc.
- 1.11. Effective Date: the first date as of which all of the events and conditions specified in section 7 of this Settlement Agreement have occurred.
- 1.12. Email Notice: the Email Notice, substantially in the form attached hereto as Exhibit A.
- 1.13. Fee Application: an application by Class Counsel to the Court for an award of attorneys' fees and reimbursement of actual expenses and costs incurred in connection with the Litigation, as well as any interest thereon.
- 1.14. Fee Award: an order by the Court granting Class Counsel's Fee Application in whole or in part.
- 1.15. Final: (a) if no appeal from the Judgment is filed, the date of expiration of the time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, and no petition for a writ of certiorari ("Writ Petition") with respect to the appellate court's judgment affirming the Judgment or dismissing the appeal ("Appellate Judgment") is filed, the date of expiration of the time for the filing of a Writ Petition; or (c) if a Writ Petition is filed and denied, the date the Writ Petition is denied; or (d) if a Writ Petition is filed and granted, the date of final affirmance of the Appellate Judgment or final dismissal of the review proceeding initiated by the Writ Petition.

Any proceeding, order, appeal, or Writ Petition pertaining solely to the Fee Award or the Plan of Allocation, will not in any way delay or preclude the Final Approval Date of the Judgment as defined herein.

1.16. Judgment: the proposed Judgment and Order of Dismissal With Prejudice to be entered by the Court, substantially in the form attached hereto as Exhibit G.

1.17. Litigation: the putative class action pending in the United States District Court for the Eastern District of New York and captioned *Steele et al. v. PayPal, Inc. et al.*, Case No. 1:05-CV-01720 (ILG) (VVP).

1.18. Mediator: the Honorable Viktor Pohorelsky, United States Magistrate Judge for the Eastern District of New York.

1.19. Net Settlement Fund: the Settlement Fund less all Administrative Costs, the amount of any Fee Award, and any Taxes or Tax Expenses (as defined in subsection 4.18 below).

1.20. Long-Form Notice: the Notice of Pendency of Class Action and Proposed Settlement, substantially in the form attached hereto as Exhibit B, informing Class Members of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement, and their options with respect thereto.

1.21. Parties: the Representative Plaintiffs and PayPal.

1.22. PayPal: defendants PayPal, Inc. and eBay.

1.23. Person: an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, and assignees.

1.24. Plan of Allocation: the plan for allocating the Net Settlement Fund, substantially in the form attached hereto as Exhibit E.

1.25. Preliminary Approval Date: the date as of which the Court issues the Preliminary Approval and Notice Order.

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1.26. Preliminary Approval and Notice Order: a Court order, substantially in the form attached hereto as Exhibit E, providing for, among other things, preliminary approval of the Settlement and dissemination of the Notice to the Class.

1.27. Proposed Order: the proposed order granting preliminary approval of the proposed amended settlement, provisionally, certifying the class, and directing dissemination of notice to the class, substantially in the form attached hereto as Exhibit F.

1.28. Protected Persons: PayPal and each of its past and present officers, directors, employees, insurers, agents, representatives, partners, joint-venturers, parents, subsidiaries, affiliates, attorneys, successors and assigns. Essex and its employees will not be considered "Protected Persons," except to the extent that a natural Person employed by Essex otherwise falls within this definition.

1.29. Released Claims: any and all claims for payment, reimbursement, or damages of any kind or nature arising from or relating to the allegations, transactions and occurrences alleged in the original, first amended, and second amended complaints filed in connection with the Litigation, or any State Attorney General's report or investigation involving the same or substantially similar matters, regarding PayPal's alleged failure to fully pay, reimburse, or satisfy Class Members during the Class Period under PayPal's then prevailing Buyer Complaint Policy and/or Buyer Protection Policy.

1.30. Representative Plaintiffs: Vincent Farinella, George Cesar, Douglas Mashkow, Daniel Shoppe, and ~~Nannette Aragon~~. *M.T.*

1.31. Settlement: the terms of settlement set forth in this Settlement Agreement.

1.32. Settlement Administrator: The Garden City Group, a third party class action administrator agreed to by the Parties and approved by the Court in its Preliminary Approval and Notice Order or thereafter, who is responsible for administering the Settlement Fund as provided in this Settlement Agreement and the Plan of Allocation.

1.33. Settlement Agreement: this Stipulation and Agreement of Settlement, to be submitted to the Court for approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

1.34. Settlement Fund: three million five hundred thousand dollars (\$3,500,000) in cash, to be paid by PayPal into an interest bearing account, plus accrued interest thereon.

1.35. Settlement Website: the Internet website maintained by the Settlement Administrator for the purpose of providing Class Members with information about the Settlement and the claims process.

1.36. Settling Parties: collectively, PayPal, the Representative Plaintiffs, and all Class Members who do not opt out of the Settlement.

1.37. The plural of any term defined herein includes the singular, and vice versa.

2. INTRODUCTION

(a) Background of the Settlement

2.1. In March 2005, predecessors to the Representative Plaintiffs, filed the Litigation in New-York state court alleging claims against PayPal arising out of representations in the PayPal User Agreement regarding PayPal's policies and practices for responding to refund requests from those customers who pay for transactions through PayPal using funds from funding sources other than credit cards. The Litigation also alleges claims against Essex, a company that sold goods through eBay, arising out of alleged misrepresentations about Essex's goods and services.

2.2. In April 2005, the Litigation was removed to the United States District Court for the Eastern District of New York, where it is currently pending.

2.3. Beginning in the summer of 2005, the Parties began a series of settlement negotiation sessions mediated by the Honorable Nicholas H. Politan, during which the Parties candidly aired the strengths and weaknesses in their respective litigation positions, including, but not limited to, conducting an all day mediation session in New York City at the law offices of Class Counsel conducted by the Honorable Nicholas H. Politan.

2.4. On or about December 1, 2005, under the supervision of Retired Judge Politan, the Parties reached an agreement in principle for the resolution of all claims alleged against PayPal in the Litigation, subject to the Parties' entering into a formal Memorandum of

Understanding and thereafter reaching agreement on final settlement documentation, including a prior settlement agreement.

2.5. On or about March 23, 2006, the Parties executed a Memorandum of Understanding (the "MOU"), which provided a framework for the proposed settlement memorialized in a prior settlement agreement.

2.6. In its Order dated September 6, 2007, the Court denied approval of the settlement set forth in the original MOU and associated stipulation of settlement.

2.7. Thereafter, the Parties and their counsel met and conferred extensively in a good faith effort to restructure the settlement in such a way as to address the concerns expressed by the Court in its Order, which included numerous telephone calls and email communications between counsel for the Parties and in person meetings and telephone calls with the Mediator in his chambers in December 2007 and January 2008. This Settlement Agreement is the reflection of the foregoing processes.

(b) PayPal's Denial of Wrongdoing and Liability

2.8. PayPal denies any and all wrongdoing whatsoever. Nothing in this Settlement Agreement shall be construed or deemed to be evidence of, or an admission, presumption, or concession on the part of PayPal of any fault, liability, coverage or wrongdoing as to any facts or claims asserted in the Litigation (or any infirmity in the defenses that PayPal has asserted or could assert in the Litigation), or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used against PayPal in the Litigation, or in any other action or proceeding, whether civil, criminal, or administrative.

(c) The Settlement Is Fair, Adequate, and Reasonable

2.9. Class Counsel has conducted research and an investigation relating to the claims and the underlying events and transactions alleged in the Complaint during the prosecution of the Litigation which included: (a) numerous telephonic meetings with experts and consultants; (b) the review of thousands of pages of public filings, annual reports and other public statements, including press releases and articles about PayPal and eBay; (c) twice amending the original

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complaint which included research of the applicable law with respect to the claims asserted in the Complaint and responding to Defendants' motion to remand thereto; and (d) hundreds of pages of documents made available by Defendants to Class Counsel for their review. Although Class Counsel believes that the claims asserted against PayPal in the Litigation have merit, Class Counsel recognizes and acknowledges that continued prosecution of the Litigation through trial and possible appeal would be protracted and expensive.

2.10. Class Counsel has also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is mindful of the inherent problems of proof and possible defenses to the claims asserted in the Litigation against PayPal.

2.11. Class Counsel has conducted discussions and arm's length negotiations with Defense Counsel, with the assistance of both the Mediator and the Hon. Nicholas Politan, with respect to a resolution of the claims in the Litigation against PayPal, and with the goal of achieving the best relief possible consistent with the interests of the Class and the strengths and weaknesses of the claims and defenses asserted in the Litigation.

2.12. Based on evaluation of all of these factors, Class Counsel has concluded, in light of the applicable law, that the terms of the Settlement are fair, adequate, and reasonable, and that it is desirable and in the best interests of the Representative Plaintiffs and all Class Members that the Litigation be fully and finally settled against PayPal on the terms set forth in this Settlement Agreement.

2.13. **NOW THEREFORE**, in consideration of the promises and mutual covenants set forth herein, it is hereby STIPULATED AND AGREED, by and among the Parties to this Settlement Agreement, through their respective attorneys, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure and satisfaction of all the terms and conditions set forth herein, that the Litigation and all Released Claims shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms.

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3. CLASS CERTIFICATION

3.1 The Parties stipulate to the certification of the Class, for settlement purposes only, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

3.2 The class certification contemplated by this Settlement Agreement is for purposes of settlement only, and nothing in this Settlement Agreement shall constitute, in this or in any other action or proceeding, an admission by PayPal, or a finding or evidence that any claims that either were brought or could have been brought in the Litigation are appropriate for class treatment, or that any requirement for class certification is or could otherwise be satisfied. By entering into this Settlement Agreement, PayPal in no way waives its right to challenge or contest the continued maintenance of the Litigation or any other lawsuit or class action and to oppose certification of any class or otherwise oppose the claims of the class for litigation purposes. Nor may the fact that PayPal entered into this Settlement Agreement be offered, received, or construed as an admission, finding, or evidence, for any purpose, including the appropriateness of class certification.

4. SETTLEMENT CONSIDERATION

(a) Dissemination of the Notice

As soon as reasonably practicable after the Court certifies the tentative Settlement Class, preliminarily approves the proposed Settlement, and approves the forms of notice, PayPal shall:

4.1. Post on the Settlement Website the approved Notice and Claim Forms.

4.2. Email the Notice to each Class Member's last known primary email address in PayPal's database. This email will be sent to both current and former PayPal users who are Class Members. The Settling Parties agree that PayPal's database reflects the most accurate current email address reasonably available for the Class Members. In addition, PayPal has provided information and evidence from which the Mediator has concluded that the most efficacious manner of providing actual notice to Class Members is sending them an email from PayPal (and PayPal will submit a declaration from one of its employees to this effect to the Court in connection with the Parties' Motion to Approve the Settlement). PayPal will send this email

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at its own expense and at no cost to the Class or the Settlement Fund.

4.3. PayPal shall also publish notice on its website (www.paypal.com) via a hypertext link on the "Legal Agreements" page, which is available to both current PayPal users and former PayPal users. This link will stay active on PayPal's website throughout the entire Notice Period.

4.4. During the Notice period, PayPal shall also cause the approved summary form of publication notice, in a form substantially similar to that attached hereto as Exhibit B (the "Publication Notice"), to be published in one daily issue and one weekend issue of the national edition of *USA Today*. The cost of the Publication Notice shall constitute an Administrative Cost and be paid from the Settlement Fund.

4.5. To the extent that additional notices to the Class are ordered by the Court, or become necessary for the Court's approval of the Settlement, such additional notices may be made in the same manner as the original Notice, but the out-of-pocket costs, if any, of any additional notices, will constitute Administrative Costs and will be reimbursed to PayPal from the Settlement Fund.

(b) Settlement Fund

4.6. No later than thirty (30) calendar days after the Judgment becomes Final, PayPal will deposit the total sum of three million five hundred thousand dollars (\$3,500,000) into an interest-bearing account under the joint custody and control of Class Counsel and Defense Counsel. The original deposit of \$3,500,000, plus accrued interest, will constitute the Settlement Fund. The Settlement Fund will be applied as follows or as otherwise ordered by the Court:

(1) Administrative Costs

4.7. Subject to the Court's approval, the Settlement Fund will be applied to payment of the reasonable costs incurred by Class Counsel and/or Defense Counsel of administering the Settlement, including the costs of retaining the Settlement Administrator in accordance with the Plan of Allocation, but excluding any costs associated with disseminating the Notice electronically or issuing distributions electronically from the Settlement Fund to Eligible Class Members (collectively, "Administrative Costs"). To the extent that additional notices to the

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Class are ordered by the Court or become necessary for the Court's approval of the Settlement, such additional notices will be made in the same manner as the original Notice, but the out-of-pocket costs, if any, of such additional notices will be deemed Administrative Costs and will be reimbursed to PayPal from the Settlement Fund.

4.8. All Administrative Costs which are reasonably and necessarily incurred prior to the Effective Date shall be advanced from the Settlement Fund, subject to prior approval by Class Counsel, Defense Counsel, and the Court.

4.9. Under no circumstances will the Representative Plaintiffs, Class Counsel, or any Class Member have any liability for Administrative Costs under the Settlement. If the Settlement is terminated or fails to become Final for any reason, PayPal will absorb such costs in their entirety.

4.10. Any disputes over the propriety of any Administrative Costs or the reimbursement thereof from the Settlement Fund shall be resolved by the Mediator in the manner as directed thereby.

(2) Attorneys' Fees and Expenses

4.11. Class Counsel has never received any payment for prosecuting this case on behalf of Representative Plaintiffs and Members of the Settlement Class, nor have they been reimbursed for their out-of-pocket expenses. On or before the date specified in the Preliminary Approval and Notice Order, Class Counsel will submit their Fee Application requesting approval of a Fee Award consisting of an award of attorneys' fees in an amount up to twenty-eight percent (28%) of the Settlement Fund as defined in Section 1.33, and reimbursement of expenses and costs already incurred or expected to be incurred in the prosecution of this Litigation, plus interest on such amount at the same rate as earned by the Settlement Fund and accrued from the date of establishment of the Settlement Fund until payment of the Fee Award. Class Counsel's Fee Application may include an application on behalf of the plaintiffs named in the Amended Complaint for reimbursement from the Settlement Fund of their actual out-of-pocket expenses (including lost wages, if any) relating to the prosecution of the Litigation, and any money lost by

them as a result of funding a PayPal transaction during the Class Period as to which a refund was requested and denied.

4.12. Class Counsel is responsible for submitting Class Counsel's Fee Application. PayPal agrees not to affirmatively object to Class Counsel's Fee Application, provided, however, that PayPal may respond fully to any inquires from the Court regarding PayPal's views on the amount of fees and costs requested by Class Counsel. The amount of any Fee Award shall be paid from the Settlement Fund. In the event the Settlement is not finally approved, Defendants are under no obligation to pay fees and expenses.

4.13. PayPal acknowledges and agrees that certain changes to its business practices and certain curative disclosures on its website are partially attributable to the Litigation and the efforts of Class Counsel, and may be considered for purposes of determining the amount recovered by Class Counsel on behalf of the Class.

4.14 No later than thirty (30) calendar days after the Court's entry of an order granting final approval of the Settlement, Defense Counsel will provide any and all necessary authorization to transfer the total amount of the Fee Award from the Settlement Fund to a bank account under the sole control of Class Counsel or Class Counsel's express designee. The Fee Award will thereafter be allocated as ordered by the Court.

4.15. In the event that the Settlement is terminated or the Judgment fails to become Final for any reason, Class Counsel shall, within 10 business days after the termination or service of an order disapproving the Settlement, return to PayPal the entire amount transferred to pay the Fee Award, plus any and all interest earned thereon.

4.16. The Fee Application and the Court's decision to grant or deny it, in whole or in part, are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceedings relating to the Fee Application or Fee Award, or any appeal from any order relating thereto, or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the Judgment approving the Settlement and this Settlement Agreement.

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4.17. Except as otherwise provided in this section 4(b)(2), each Party will bear his/her/its own costs of suit, including attorneys' fees, incurred in bringing or defending against the Litigation.

(3) Tax Treatment of Settlement Fund

4.18. The Parties will treat the bank account in which the Settlement Fund is deposited (the "Settlement Account") as a "qualified settlement fund" within the meaning of Treasury Regulations 1.468B-1 through 1.468B-5. The Parties will treat the Settlement Account as a qualified settlement fund for all reporting purposes under the federal tax laws. In addition, the Settlement Administrator and, as required, PayPal, will jointly and timely make the "relation-back election" (as defined in Treasury Regulation 1.468B-1) back to the earliest permitted date. Such election will be made in compliance with the procedures and requirements contained in such regulations. It will be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing(s) to occur.

4.19. The Garden City Group will be the "Fund Administrator" within the meaning of Treasury Regulation 1.468B-2(k)(3) for the Settlement Account. The Fund Administrator will timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Account (including without limitation the returns described in Treasury Regulation 1.468B-2(k)). Such returns (as well as the relation-back election described in the foregoing subsection herein) will be consistent with this subsection and, in any event, will reflect that (i) all taxes, including any estimated taxes, interest, or penalties (collectively, "Taxes") on the income earned by the Settlement Account will be paid out of the Settlement Account; and (ii) all expenses and costs incurred in connection with the operation and implementation of this subsection (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this subsection) (collectively, "Tax Expenses"), will be paid out of the Settlement Account. The Fund Administrator shall provide Class Counsel and Defense Counsel with

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weekly status reports regarding the claims process. In no event will PayPal have any liability or responsibility for the Taxes, the Tax Expenses, the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority, or any other reporting requirements that may relate thereto. The Settlement Account will indemnify and hold PayPal and Defense Counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Furthermore, upon the written instruction of the Fund Administrator, all Taxes and Tax Expenses will be timely paid by the Settlement Administrator out of the Settlement Account without prior Court order, and the Settlement Administrator will be obligated, notwithstanding anything herein to the contrary, to withhold from distribution to Class Members any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treasury Regulation 1.468B-2(I)(2)).

4.20. The Parties agree to cooperate with the Fund Administrator, the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of subsections 4.15 and 4.16.

4.21. Under no circumstances will the Representative Plaintiffs, Class Counsel, or any Class Member have any liability for Taxes or Tax Expenses under the Settlement.

(4) Distributions to Eligible Class Members

4.22. Once all Administrative Costs, the amount of any Fee Award, and all Taxes and Tax Expenses, if any, have been paid from the Settlement Fund, and the other necessary processes specified in this Settlement Agreement and the Plan of Allocation have been completed by the Settlement Administrator, the remainder of the Settlement Fund, or Net Settlement Fund, will be distributed among all Class Members determined by the Settlement Administrator in accordance with the Plan of Allocation to have valid claims.

4.23. Each Class Member shall receive a percentage of his or her validated claim(s) equal to the total amount of the Net Settlement Fund divided by the total monetary value of all validated claims. Thus (by way of example only), if the Settlement Administrator determined there to be \$5 million in validated claims, and there were \$2.5 million in the Net Settlement

Fund, each Class Member would receive a payment equal to 50 percent (50%) (\$2.5 million divided by \$5 million) of his or her validated claim(s). Such payments will be made to Class Members in a reasonable manner and within a reasonable time period in accordance with the Plan of Allocation.

4.24. The Fund Administrator shall provide Class Counsel and Defense Counsel with weekly status reports regarding the claims process. For each Class Member who is determined by the Settlement Administrator to be entitled to a payment and who has an unlimited PayPal account at the time his or her payment is to be made, the payment will be sent by electronically transferring the amount of the payment to the Class Member's account, unless the Class Member requests on his or her Claim Form that payment be made by check. For such electronic transfers, there will be no charge to the Class Member.

4.25. For each Class Member who is determined by the Settlement Administrator to be entitled to a payment and who: (i) requests payment by check on his or her Claim Form; or (ii) does not have an unlimited PayPal account at the time his or her payment is to be made, the payment will be sent by first-class mail to the Class Member at the address specified on his or her Claim Form in the form of a check payable to the Class Member and drawn on the Net Settlement Fund. A \$1.00 charge will be deducted from all payments made by check to cover the cost of issuing and mailing the check.

5. RELEASES

5.1. Upon the Effective Date, each of the Representative Plaintiffs and each of the Class Members will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Protected Persons from all Released Claims.

5.2. The Representative Plaintiffs and all Class Members acknowledge and agree that they have read and understand the contents of section 1542 of the Civil Code of the State of California, and, to the fullest extent permitted by law, the Representative Plaintiffs and all Class Members expressly, knowingly, intentionally, and irrevocably waive any and all rights and

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benefits that they may have under section 1542 or any other similar state or federal statute, or common law or other legal principle. Section 1542 reads as follows:

Section 1542. (General Release - Claims Extinguished) A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Representative Plaintiffs and one or more Class Members may hereafter discover facts different from or in addition to those which they now know or believe to be true with respect to the releases provided for in subsections 5.1. Nevertheless, the Representative Plaintiffs and all Class Members hereby expressly waive and release upon the Effective Date any and all Released Claims, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, contingent or non-contingent, without regard to the subsequent discovery or existence of such different or additional facts.

5.3. Notwithstanding anything to the contrary in this Settlement Agreement, the releases contained in Section 5 herein do not extend to any action or proceeding to enforce or defend any rights or obligations arising under this Agreement.

6. PRELIMINARY APPROVAL AND NOTICE ORDER; FINAL FAIRNESS HEARING

6.1. Promptly after execution of this Settlement Agreement, Class Counsel and Defense Counsel will jointly move the Court for entry of the Preliminary Approval and Notice Order.

6.2. After dissemination of the Notice in accordance with the Preliminary Approval and Notice Order, the Parties will jointly move the Court for final approval of the Settlement and entry of the Judgment. The Parties will request that the Court hold a hearing on whether the Settlement should be granted final approval and whether Class Counsel's Fee Application should be granted.

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6.3. Following dissemination of the Notice as provided in the Preliminary Approval and Notice Order, Class Members will have the right to opt out of the Settlement in accordance with the procedures set forth in the Notice. Any right to opt out shall be personal to the Class Member and shall not be assignable. In no event will any class of Persons be able to opt out of the Settlement.

6.4. In the event that 1,500 or more Class Members opt out of the Settlement, PayPal will be entitled at its sole option to void, nullify, terminate, and/or rescind the Settlement Agreement and the MOU. Such option must be exercised at least three days before the hearing on the final approval of the Settlement.

7. CONDITIONS

7.1. The Effective Date of this Settlement Agreement is conditioned upon the occurrence of all of the following events:

- (a) The Court enters the Preliminary Approval and Notice Order;
- (b) PayPal does not exercise its option under subsection 6.4 herein to void, nullify, terminate, and/or rescind the Settlement Agreement and the MOU;
- (c) The Court enters the Judgment, providing, among other things, that the Class is certified for settlement purposes, that there has been adequate and sufficient notice of the Settlement to the Class, and that the terms and conditions of the Settlement are fair, reasonable, and adequate as a settlement of the claims of the Class against PayPal;
- (d) The Judgment becomes Final;
- (e) The Litigation is dismissed with prejudice as to PayPal; and
- (f) The Representative Plaintiffs and all Class Members release PayPal from the Released Claims.

7.2. In the event that any one or more of these conditions is not met, this Settlement Agreement will be of no force or effect, and the Parties will be deemed to be in the same position as they occupied prior to entering into this Settlement Agreement, without waiver of any rights, claims or defenses.

7.3. If this Settlement Agreement is not finally approved for any reason or fails to become effective or Final in accordance with its terms, the balance remaining in the Settlement Fund, less any outstanding Administrative Costs incurred or due and owing, and any amounts incurred or due and owing in connection with Taxes or Tax Expenses provided for herein, will be refunded to PayPal.

7.4. If a case is commenced with respect to PayPal under Title 11 of the United States Code (Bankruptcy) or a trustee, receiver, or conservator is appointed under any similar laws, and if a final order of a court of competent jurisdiction is entered determining that payments by PayPal to Class Members pursuant to the Settlement are a preference, voidable or fraudulent transfer, or similar transaction, then the releases given and Judgment entered in favor of the Protected Persons pursuant to this Settlement Agreement will be null and void.

7.5. Upon the Effective Date, PayPal will relinquish any interest in the Settlement Fund, and PayPal will cooperate to promptly transfer the Net Settlement Fund to an account under the sole control of Class Counsel.

7.6. If additional notice, other than that specified in this Settlement is ordered by the Court, or the Court requires that notice be provided to Class Members via standard mail as a condition for the Court's approval of the Settlement, the costs of such additional notice are deemed Administrative Costs and will be reimbursed to PayPal from the Settlement Fund.

8. MISCELLANEOUS PROVISIONS

8.1. The Parties agree that the Settlement Administrator will host a website (the "Settlement Website") for the purpose of providing Class Members with information about the Settlement and the claims process. Both PayPal and Class Counsel will have the opportunity to review and approve or disapprove the website's content and any subsequent material changes thereto. PayPal will not unreasonably withhold its approval of the content of the website. Class Counsel agrees that it will negotiate with the Settlement Administrator for provisions ensuring that the website maintained by the Settlement Administrator will be able to handle all web traffic

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to the website (including, for example, indemnification of PayPal in the event that PayPal's website crashes as a result of traffic to the website).

8.2. The Parties acknowledge that it is their intent to consummate this Settlement Agreement, and agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their best efforts to accomplish such terms and conditions.

8.3. The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation and the Released Claims. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.

8.4. Neither this Settlement Agreement, the Settlement, nor any act performed or document executed, pursuant to or in furtherance of the Settlement, is or may be deemed to be an admission of, or evidence of: (i) the validity of any Released Claims; (ii) any wrongdoing or liability of PayPal; or (iii) any fault or omission of PayPal in any civil, criminal, or other proceeding in any court, administrative agency, or other tribunal. PayPal may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including, without limitation, those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.5. All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

8.6. The Parties acknowledge and agree that this Settlement Agreement, and the Exhibits attached hereto, constitute the entire agreement among the Parties, that they have not executed this Settlement Agreement in reliance on any promise, representation, inducement, covenant, or warranty except as expressly set forth herein, and that this Settlement Agreement supersedes all other prior statements or agreements, whether oral and written, to the extent any provision hereof is inconsistent with any such prior oral or written statements or agreements.

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8.7. This Settlement Agreement may not be amended except by a writing executed by all Parties hereto or their respective successors-in-interest.

8.8. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement and over any disputes arising under this Settlement Agreement, and all Parties hereby submit to the jurisdiction of the Court for such purposes.

8.9. Each Party represents and warrants to all other Parties that such Party: (a) was represented by attorneys of the Party's choosing in connection with the execution of this Agreement; (b) has read and understood all aspects of this Agreement and all of its effects; and (c) has executed this Agreement as a voluntary act of the Party's own free will and without any threat, force, fraud, duress, or coercion of any kind.

8.10. Class Counsel represents and warrants that it is expressly authorized by the Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class.

8.11. If any provision of this Settlement Agreement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement Agreement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement Agreement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.

8.12. This Settlement Agreement will be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity will not be interpreted against any one Party because of the manner in which this Settlement Agreement was drafted or prepared.

8.13. The headings used in this Settlement Agreement are for convenience only and will not be used to construe its provisions.

8.14. This Settlement Agreement may be executed by facsimile and in any number of counterparts, all of which will be construed together and will constitute one document.

8.15. To the extent necessary, the Parties agree to submit any disputes relating to the substance or wording of this Settlement Agreement or the terms or content of the Settlement Agreement to the Mediator.

8.16. This Settlement Agreement will be governed by, and construed in accordance with, the laws of the State of New York.

8.17. Each Person executing this Settlement Agreement as Class Counsel or Defense Counsel hereby warrants that such Person has the full authority to make any and all representations or warranties made in this Settlement Agreement, to agree to all terms and conditions of this Settlement Agreement, and to execute this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed and caused this Settlement Agreement to be executed by their duly authorized attorneys, as of the dates set forth below.

Dated: April 28, 2008

MARINA TRUBITSKY & ASSOCIATES, PLLC
MARINA TRUBITSKY, ESQ.

By: Marina Trubitsky
Marina Trubitsky

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Dated: April 21, 2008

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