

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LEONID KAPLAN

Plaintiff

- and -

**PAYPAL CA LIMITED, PAYPAL CANADA CO., PAYPAL, INC. and PAYPAL
HOLDINGS, INC.**

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____

Issued by _____
Local registrar

Address of court office:
393 University Ave., 10th Floor
Toronto, Ontario
M5E 1G6

TO: PayPal CA Limited
Brunswick House
44 Chipman Hill, Suite 1000
Saint John, NB E2L 2A9

AND TO: PayPal Canada Co.
Suite 900
1959 Upper Water Street
Halifax, NS B3J 3N2

AND TO: PayPal, Inc.
2211 North First Street
San Jose, CA 95131
U.S.A.

AND TO: PayPal Holdings, Inc.
2211 North First Street
San Jose, CA 95131
U.S.A.

CLAIM

1. The Plaintiff, Leonid Kaplan, claims on his own behalf and on behalf of the Class:¹
 - (a) an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992 c. 6 (the “CPA”);
 - (b) an order defining the Class and the Overcharge Sub-Class as set out below in paragraph 10;
 - (c) an order appointing the Plaintiff as representative plaintiff on behalf of the Class pursuant to the CPA;
 - (d) damages in the amount of \$100,000,000 or such other amount as the Court considers appropriate for the Defendants’ collection of:
 - (i) undisclosed and unauthorized fees in connection with the exchange foreign of currency in transactions effected using the Defendants’ payments system;
 - (ii) undisclosed and unauthorized fees in connection with the exchange of foreign currency upon withdrawal of funds from accounts held with the Defendants;
 - (iii) all of the fees the Defendants charged in connection with the exchange of foreign currency upon withdrawal of funds from accounts held with the Defendants; and/or

¹ Unless otherwise defined, capitalized terms in paragraph 1 are defined below.

- (iv) undisclosed and unauthorized fees in connection with the exchange of currency in transactions funded by a linked bank account or a credit card using the Defendants' payments system (collectively with (i), (ii), and (iii) above, the "Unauthorized FX Fees").
- (e) in the alternative, an accounting and disgorgement of all profits the Defendants generated in connection with currency conversion transactions in respect of which the Class members paid the Unauthorized FX Fees;
- (f) a declaration that the Defendants breached the User Agreements;
- (g) a declaration that the Defendants breached the Consumer Protection Legislation;
- (h) if necessary, an order waiving or disregarding any notice provisions of the Consumer Protection Legislation;
- (i) a declaration that the Defendants have been unjustly enriched at the expense of the Class by their receipt of the Unauthorized FX Fees;
- (j) a declaration that the Defendants hold the amounts they unlawfully obtained from the Class members in a constructive trust for the benefit of the Class members;
- (k) the costs of providing notice of certification of this action as a class proceeding to the Class;

- (l) the costs of distributing the proceeds of any judgment to all Class members;
- (m) punitive, aggravated, and/or exemplary damages in the amount of \$5,000,000 or such other amount as the Court considers appropriate;
- (n) pre- and post-judgment interest in accordance the Interest Legislation;
- (o) costs of this action; and
- (p) such further and other relief as this Court considers just.

A. *The Parties*

2. The Plaintiff, Leonid Kaplan, is an individual residing in Ontario, who has an account with the Defendant, PayPal CA Ltd. Mr. Kaplan opened his account with PayPal CA Ltd. on or about October 2, 2016. Like many residents of Canada, Mr. Kaplan has used his account to purchase and sell goods online, including engaging in transactions in currencies other than Canadian dollars.
3. The Defendant, PayPal CA Ltd., is a corporation organized pursuant to the laws of the Province of New Brunswick.
4. The Defendant, PayPal Holdings₁ Inc., is a corporation organized pursuant to the laws of Delaware whose shares trade on the NASDAQ Stock Market. Its head office is in San Jose, California.

5. The Defendant, PayPal, Inc., is a corporation organized pursuant to the laws of Delaware. PayPal, Inc. is currently a subsidiary of PayPal Holdings, Inc. Together with the other Defendants, PayPal, Inc. is responsible for:
 - (a) managing PayPal Canada's (as defined below) currency conversion transactions, including the rates and fees that are applied to Class members; and
 - (b) managing the processes for publishing, maintaining, drafting, and editing user agreements for PayPal Canada (as defined below). The user agreements govern the relationship between the Defendants and their customers in Canada. Those agreements contain the disclosure relating to currency conversions at the heart of this proceeding.
6. PayPal Holdings, Inc., PayPal, Inc., and their affiliates, including the other Defendants, operate a global technology platform known as "PayPal" which processes online payment transactions around the world and facilitates online global commerce.
7. PayPal Holdings, Inc., PayPal, Inc., and their affiliates, including the other Defendants, provide online payment services for over 250 million PayPal account holders in over 200 countries and in approximately 25 currencies. There are more than 7 million registered PayPal accounts in Canada.
6. The Defendant, PayPal Canada Co. (together with PayPal CA Ltd., "PayPal Canada"), is an unlimited liability corporation organized pursuant to the laws of

the Province of Nova Scotia. It is an affiliate of the other Defendants. One of the corporations amalgamated to form PayPal Canada Co. was a corporation organized pursuant to the laws of the Province of Ontario.

7. The Defendants carry on business in the Province of Ontario and throughout Canada, and have at least one office located in Toronto.
8. The Defendants operate the PayPal payments system used by the Class members, perform currency conversions on that platform, and obtain the fees in respect of such conversions charged to the Class members.
9. The Defendants' business is inextricably interwoven. Each Defendant is the agent of the other Defendants for the purposes of operating the PayPal payments system for the Class members, including in relation to the disclosure provided to Class members and the currency conversion rates and fees charged to Class members.

B. The Class

10. This action is brought on behalf of (collectively, the "Class"):
 - (a) all individuals resident in Canada other than residents of the Province of Quebec, who purchased goods or services using the Defendants' payments system in a currency other than the currency in which the goods or services were offered for sale, as follows:
 - (i) all individuals who made such purchase between January 14, 2017 and August 8, 2018 (the "Overcharge Sub-Class");

- (ii) all individuals who made such purchases and funded them from a linked bank account from the date on which the Defendants began performing currency conversions in Canada until August 8, 2018; and
 - (iii) all individuals who made such purchases and funded them from a linked credit card from the date on which the Defendants began performing currency conversions in Canada until October 5, 2012; and
- (b) all individuals who held accounts with PayPal Canada other than residents of the Province of Quebec, who withdrew funds from their accounts that the Defendants converted to Canadian dollars before transferring to the individuals' link bank accounts and credit cards during the following periods:
- (i) the date on which the Defendants began performing currency conversions in Canada until July 7, 2008; and
 - (ii) May 24, 2011 until August 8, 2018.

C. *The PayPal Payments System*

11. The PayPal payments system is an online payment system designed to facilitate online commerce transactions including transactions across international borders and in different currencies. Sellers using the system must hold accounts with the

Defendants and their affiliates, while buyers may use the system whether or not they are accountholders.

1. Accountholders

12. In order to operate PayPal Canada accounts, accountholders must link a Canadian dollar bank account or a Canadian dollar credit card to their PayPal Canada accounts. Accountholders may then deposit Canadian currency into their PayPal Canada accounts from the linked bank account or credit card for use in PayPal transactions.
13. Accountholders can carry out transactions with other PayPal accountholders, merchants that accept PayPal as a form of payment, or purchasers (who may or may not be accountholders). Those transactions need not be conducted in Canadian currency. Other currencies can be deposited into the accounts through such transactions and accountholders may hold currencies other than Canadian dollars in their accounts.
14. Given the volume of international transactions undertaken by PayPal Canada users, many transactions are effected in foreign currencies with the result that PayPal Canada accountholders routinely obtain foreign currency (typically U.S. dollars).
15. The Defendants charge sellers a commission based upon the sale price of goods or services paid for using the PayPal payments system. The Defendants generally do not charge buyers a fee to use PayPal, unless the Defendants perform a currency conversion.

16. Buyers may fund purchases using the PayPal payments system by three means: (1) using the balance of the user's PayPal Canada account; (2) funding the payment using a linked credit card; or (3) funding the payment using a linked bank account.
17. An accountholder may withdraw funds from the accountholder's PayPal Canada account directly to the accountholder's linked bank account or credit card at any time that the account has a positive balance. The Defendants pay no interest on funds held in a PayPal Canada account; therefore, it is in an accountholder's interest to withdraw such funds.

2. Non-Accountholders

18. Many e-commerce websites use the PayPal payments system to process transactions for those websites' customers, regardless of whether those customers have a PayPal account. Accordingly, millions of non-accountholders end up using PayPal to purchase goods online.
19. For such websites, individuals and businesses may transact using PayPal's payments system without opening an account, or, if they have an account, without using it for those transactions.

D. The User Agreements

1. Overview

20. All transactions using the PayPal payments system, whether by accountholders or non-accountholders, are subject to a user agreement, as is the use of a PayPal account (the "User Agreement(s)").

21. Since the date on which the Defendants began operating in Canada, they have had a number of versions of the User Agreement as it relates to currency conversions. The Plaintiff pleads and relies on the terms of all versions of the User Agreements between the date on which the Defendants began performing currency conversion in Canada and August 9, 2018.
22. PayPal CA Ltd. and the Class members are the named parties to the User Agreements. Some or all of the Defendants are involved in carrying out PayPal CA Ltd.'s obligations under the User Agreements.
23. Each of the User Agreements is a standard form contract of adhesion that the Defendants drafted and imposed on those who use the PayPal payments system and/or hold accounts with PayPal Canada. There was no opportunity for any Class member to negotiate the terms of the User Agreements.
24. The Defendants were only lawfully entitled to charge the Class for fees that were disclosed in the User Agreements.
25. The User Agreement expressly provides that PayPal may only charge fees of users that are set out in the User Agreement. The User Agreement further expressly provides that the Defendants will provide prior written notice to users before the Defendants introduced changes to the User Agreement that increased the users' responsibilities under the User Agreement, which included, among other things, introduction of new fees or changes in the amount of fees. As particularized below, starting in January 2017, the Defendants charged the Class undisclosed fees for currency conversions.

26. The Defendants were only lawfully entitled to conduct currency conversions in circumstances that were authorized in the User Agreements.
27. Over the Class Period, the Defendants amended the User Agreement. As particularized below, initially, there were no provisions stating when the Defendants would conduct a currency conversion. The User Agreement was silent and there was no contractual or other lawful authority for the Defendants to conduct any currency conversion. The Defendants amended the User Agreement to provide such authorization in some circumstances, but not others. However, later, the Defendants removed those provisions from the User Agreement altogether so that, again, there was no contractual or other lawful authority to conduct any currency conversions. Finally, in August 2018, after the Plaintiff commenced this action, the Defendants amended the User Agreements to authorize the Defendants to conduct currency conversions in transactions funded through a linked bank account, a linked credit card, and for withdrawals from PayPal Canada accounts.

2. 2006 – July 7, 2008: No authorization whatsoever

28. Prior to July 8, 2008, the User Agreement contained no authorization for the Defendants to perform currency conversions in respect of any transaction or withdrawal of the Class members. It made no mention of the circumstances in which there would be a currency conversion at all.

29. Instead, the agreement referred to a separate “Fees Policy” which made reference to an “Exchange Rate & Fee” that “only applies when PayPal performs the currency conversion”:

Exchange Rate & Fee	The exchange rate is the retail foreign exchange rate as determined by PayPal at the time a transaction is completed. The exchange rate is adjusted regularly, based on market conditions, and includes a 2.5% Fee above the rate at which PayPal obtains foreign currency. The 2.5% is retained by PayPal. This Fee only applies when PayPal performs the currency conversion. Higher volume merchants may qualify for a lower fee than 2.5%. See fees page for more information.
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- 3. July 8, 2008 – May 23, 2011: No authorization on withdrawals or on transactions funded from a linked bank account or credit card**
30. Effective July 8, 2008 (the “2008 User Agreement”), the Defendants amended the User Agreement and obtained the authorization of Class members to convert currency for transactions funded from an account balance and upon withdrawals of currencies other than Canadian dollars. However, in the 2008 User Agreement, the Defendants did not obtain the authorization of Class members to convert currency for transactions funded from a linked bank account or credit card.
31. The 2008 User Agreement stated, in relevant part:

3.2 Default Funding Sources/ Ways to Pay. When you make a payment, PayPal will fund your transaction in this order:

- a. Balance
- b. Instant Transfer from your bank account
- c. Credit card
- d. eCheck

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3.9 Sending Money in Multiple Currencies. When you are sending money to a merchant who has requested a currency that is different than your primary currency, you

will need to specify whether you want to pay the merchant in the merchant's requested currency, or in your primary currency (in some cases, the merchant may not give you a choice). If you send money in a currency that is not your primary currency, we will follow these practices:

- a. If you have a Balance in the requested currency, we will fund your transaction from your Balance.
- b. If you have a Balance in a different currency, we will perform a currency conversion and use it to fund your transaction.
- c. If you do not have a Balance, we will fund your transaction through your Default Funding Sources.

The Exchange Rate & Fee in section 8 of this Agreement will apply whenever PayPal performs a currency conversion.

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6.3 Withdrawing Money in Multiple Currencies. If you have multiple currencies in your Balance, you will be able to choose from those when you withdraw funds, but the withdrawal will take place in your home currency. The Exchange Rate & Fees stated in section 8 of this Agreement will apply if you withdraw your Balance in a currency other than your primary currency.

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8. Fees.

Unless stated otherwise, all Fees are in CAD.

Personal Account Fees:

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Exchange Rate & Fee	The exchange rate is the retail foreign exchange rate as determined by PayPal at the time the transaction is completed. The exchange rate is adjusted regularly, based on market conditions, and includes a 2.5% Fee above the rate at which PayPal obtains currency. The 2.5% Fee is retained by PayPal. This Fee only applies when PayPal performs the currency conversion.
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4. May 24, 2011 – October 5, 2012: No authorization on withdrawals or on transactions funded from a linked bank account or credit card

- 32. Effective May 24, 2011 (the "2011 User Agreement"), the Defendants removed section 6.3 set out above authorizing the Defendants to perform currency conversion upon withdrawals from the accounts of the Class members. The 2011 User Agreement did not authorize the Defendants to perform currency

conversions upon withdrawals from the accounts of the Class members again until the User Agreement was amended again in August 9, 2018.

33. The amendments in the 2011 User Agreement did not authorize the Defendants to perform for currency conversions in respect of transactions that were funded from a linked bank account or credit card. The Defendants continued to perform those currency conversions in breach of contract, breach of the Consumer Protection Legislation (defined below), and without authorization from the Class. By way of contrast, as with the earlier User Agreements, the 2011 User Agreement expressly authorized the Defendants to perform currency conversions in respect of transactions that were funded from an account balance.

5. October 6, 2012 – October 9, 2013: No authorization on withdrawals or on transactions funded from a linked bank account

34. Effective October 6, 2012 (the “2012 User Agreement”), the Defendants added a term authorizing them to perform currency conversions when a transaction was funded using a linked credit card:

When your payment is funded by a debit or credit card and requires a currency conversion, you consent to and authorize PayPal to convert the currency in place of your debit or credit card issuer.

35. However, the 2012 User Agreement did not authorize the Defendants to perform currency conversions:
- (a) in respect of transactions that were funded from a linked bank account, or
 - (b) upon withdrawals from PayPal Canada accounts.

6. October 10, 2013 – September 28, 2017: No authorization on withdrawals or on transactions funded from a linked bank account, and charging undisclosed fees

36. Effective October 10, 2013 (the “2013 User Agreement”), the Defendants revised the agreement regarding currency conversions. The 2013 User Agreement stated, in relevant part:

8.8 Additional Fees.

Activity	Fee	
Currency Conversion	The Currency Conversion Fee applies whenever a currency conversion is required to complete your transaction. The exchange rate is determined by a financial institution and is adjusted regularly based on market conditions. Adjustments may be applied immediately and without notice to you.	
	Activity	Currency Conversion Fee
	Converting Balance within your Account and not as part of a sending or withdrawal transaction	2.5% added to the exchange rate
	Withdrawing Balance to your bank account and a currency conversion is required	2.5% added to the exchange rate
	Any other transaction requiring a currency conversion to Canadian or U.S. Dollars	2.75% added to the exchange rate
	Any other transaction requiring a currency conversion to a currency other than Canadian or U.S. Dollars	3.5% added to the exchange rate
When your payment is funded by a debit or credit card and requires a currency conversion, you consent to and authorize PayPal to convert the currency in place of your debit or credit card issuer. You have the right to have your card issuer perform the currency conversion and can choose this option during checkout on your transaction review page before you		

complete the transaction.		
The Currency Conversion Fees below apply to the conversion of U.S. Dollar Balance to Canadian Dollars before you withdraw it to your bank account if you qualify for Merchant rates.		
Merchant Rates*	Monthly Sales Volume	Currency Conversion Fee
	\$0.01 - \$3,000.00	2.5%
	\$3,000.01 - \$12,000.00	1.5%
	\$12,000.01 - \$125,000.00	1.5%
	Over \$125,000.00	1.0%
*To qualify for our Merchant rates you must submit a one-time application, have qualifying monthly sales volume, and have an Account in good standing.		

37. In the 2013 User Agreement, the Defendants did not have authorization from the Class members to perform currency conversions in respect of transactions that were funded from a linked bank account or upon withdrawal from a PayPal Canada account.
38. Moreover, as detailed below, on January 14, 2017, without amending the 2013 User Agreement, the Defendants changed their process for performing currency conversion transactions. The 2013 User Agreement continued to state that, when

the Defendants performed a currency conversion, the “exchange rate [was] determined by a financial institution”. However, this was no longer the case.

39. Beginning on January 14, 2017, the User Agreement failed to disclose how the Defendants performed currency conversions and calculated the Currency Conversion Fee. The Defendants systematically overcharged Class members and/or charged Class members a hidden and/or undisclosed fee in respect of their transactions conducted on and after January 14, 2017. The Defendants continued to do so until they updated the User Agreement on August 9, 2018.

7. September 29, 2017 – August 8, 2018: No authorization on withdrawals or on transactions funded from a linked bank account, and charging undisclosed fees

40. Effective September 29, 2017 (the “2017 User Agreement”), the Defendants revised the language of the agreement:

8.4 Additional Fees.

- a. Currency conversion. A Currency Conversion Fee applies whenever a currency conversion is required to complete your transaction, including if a currency conversion is required to complete a withdrawal. The exchange rate is adjusted regularly based on market conditions. Adjustments may be applied immediately and without notice to you.

Activity	Currency Conversion Fee
Converting Balance within your Account and not as part of a sending or withdrawal transaction	2.5% added to the exchange rate
Withdrawing Balance to your bank account and a currency conversion is required	2.5% added to the exchange rate
Any other transaction requiring a currency conversion to Canadian or U.S. Dollars	3.0% added to the exchange rate
Any other transaction requiring a currency conversion to a currency other	3.5% added to the

than Canadian or U.S. Dollars	exchange rate
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- b. When your payment is funded by a debit or credit card and requires a currency conversion, you consent to and authorize PayPal to convert the currency in place of your debit or credit card issuer. You have the right to have your card issuer perform the currency conversion and can choose this option during checkout on your transaction review page before you complete the transaction.

The Currency Conversion Fees below apply to the conversion of U.S. Dollar Balance to Canadian Dollars before you withdraw it to your bank account if you qualify for Merchant rates.

Seller Rates	Monthly Sales Volume	Currency Conversion Fee
	\$0.01 - \$3,000.00	2.5%
	\$3,000.01 - \$12,000.00	1.5%
	\$12,000.01 - \$125,000.00	1.5%
	Over \$125,000.00	1.0%

8. The August 9, 2018 User Agreement: Authorization and fees stipulated in the agreement

41. Finally, after this action was commenced, the Defendants introduced an amended User Agreement effective from August 9, 2018 (the "2018 User Agreement"), in which Defendants explained to users of PayPal when currency conversions would occur and which authorized the Defendants to undertake such conversions.
42. The 2018 User Agreement also provided the basis on which the Defendants calculated currency conversion rates and the basis upon which they charged fees for currency conversions. Thus, the class period ends after the

commencement of this litigation with the introduction of the 2018 User Agreement.

43. The 2018 User Agreement provided as follows concerning currency conversions:

We don't charge a fee to make a transfer to your bank. However, if you withdraw a PayPal balance that is in a currency other than Canadian Dollars, we will convert it to Canadian Dollars and a **currency conversion fee** will apply. We do not permit USD withdrawals to USD-denominated Canadian bank accounts.

Currency conversion

Some uses of your PayPal account require a currency conversion. Some examples of situations where a currency conversion is required include:

- Purchasing goods from a seller who accepts payments only in a specific currency which you do not hold in your PayPal account.
- Sending money to a friend or family member in a currency that you do not hold at the time of the transaction.
- Sending money using PayPal's Payouts or MassPay products in a currency that you do not hold at the time of the transaction.
- Receiving money either from a buyer or from a friend or family member in a currency that your PayPal account is not configured to accept.
- Converting your PayPal balance from one currency to another, not in connection with any transaction.
- Withdrawing funds from your PayPal balance held in a currency other than Canadian dollars to the bank account linked to your PayPal account.
- If you sold something and the transaction must be refunded or reversed, and you do not have the correct currency available in your PayPal balance at the time of the refund or reversal.

If PayPal converts the currency, it will be completed at the transaction exchange rate we set for the relevant currency exchange. The transaction exchange rate is adjusted regularly and includes a currency conversion fee applied and retained by us on a base exchange rate to form the rate applicable to your conversion. The base exchange rate is based on rates within the wholesale currency markets on the conversion day or the prior business day; or, if required by law or regulation, set at the relevant government reference rate(s). The transaction exchange rate applicable to your conversion may be applied immediately and without notice to you.

For purchase and send money transactions described above in the first three bullets that involve a currency conversion, the currency conversion fee is 3.0% for Canadian or US Dollars and 3.5% for all other currencies. For all other transactions involving a currency conversion, the currency conversion fee is 2.5%.

When you purchase goods from a merchant who accepts payment only in a specific currency that you do not hold in your PayPal balance, the currency conversion will occur at the time your transaction is processed and the transaction exchange rate in effect at the time the transaction is processed will be used for this currency conversion.

When your payment is funded by a debit or credit card and requires a currency conversion, you consent to and authorize PayPal to convert the currency in place of your debit or credit card issuer. You have the right to have your credit card issuer perform the currency conversion and can choose this option during checkout on your transaction review page before you complete the transaction. If your card issuer converts the currency, you'll be charged a rate set by them (shown on your statement), and you'll be subject to any fees and terms set by them related to the conversion.

PayPal will always perform the conversion for transactions where your PayPal balance or linked bank account is the payment method.

E. The Unauthorized FX Fees

1. The overcharge claim

44. The Overcharge Sub-Class Period is January 14, 2017 to August 8, 2018. During this period, two versions of the User Agreement were in effect: the 2013 User Agreement and the 2017 User Agreement. The full extent of the Defendants' disclosure concerning the fees they charged on currency conversion transactions during this period was as follows.

(a) In the 2013 User Agreement: "The exchange rate is determined by a financial institution and is adjusted regularly based on market conditions."

On top of that exchange rate, the Defendants disclose that they added a

Currency Conversion Fee between 2.5% and 3.5%, depending on the type of transaction (the “Currency Conversion Fee”).

- (b) In the 2017 User Agreement: “The exchange rate is adjusted regularly based on market conditions.”
45. Under these versions of the User Agreement, it was impossible for Class members to discern the exchange rate the Defendants applied to the currency conversion transactions and, therefore, it was impossible to determine, and the User Agreements did not disclose, the total fees the Defendants charged the Class members in respect of currency conversions.
46. Under each of these versions of the User Agreement, the Defendants represented that the Currency Conversion Fee, a defined term in the User Agreements, was the only fee they charged in respect of currency conversions. The Currency Conversion Fee was described in these User Agreements as a percentage “added to the exchange rate”. However, the Defendants failed to disclose what the exchange rate was, how it was determined, how the Currency Conversion Fee was calculated, and that they profited from the exchange rate.
47. The exchange rate the Defendants charged to the Class members (the “Inflated Class Rate”) differed from the rate at which the Defendants transacted or could have transacted in currency (the “PayPal Rate”) at the relevant times during the period from January 14, 2017 to August 8, 2018. The Inflated Class Rate was systemically higher than the PayPal Rate and/or was otherwise set at a rate to generate profit for the Defendants at the expense of the Class members.

Alternatively, the Inflated Class Rate was the exchange rate that had embedded in it a fee paid to the Defendants in addition to the Currency Conversion Fee.

48. In effect, the Inflated Class Rate included an embedded fee the Defendants charged the Class members on all transactions involving the conversion of currency, which was not disclosed in, or authorized by, the User Agreements or otherwise.
49. Additionally, the Defendants did not disclose how the Currency Conversion Fee was calculated. To the extent it was based on the Inflated Class Rate, the Currency Conversion Fee was also inflated, and/or it otherwise included an undisclosed additional profit to the Defendants at the expense of the Class members that was not disclosed in, or authorized by, the User Agreements or otherwise.
50. The Defendants systemically charged Class members the Unauthorized FX Fees, which include:
 - (a) a higher exchange rate for currency conversion transactions than was disclosed in or authorized by the User Agreements or otherwise; and
 - (b) a higher Currency Conversion Fee than was disclosed in or authorized by the User Agreements or otherwise.
51. The Defendants hid the Unauthorized FX Fees from the Class Members and/or did not disclose to the Class members:

- (a) the Inflated Class Rate;
 - (b) the PayPal Rate;
 - (c) the extent to which imposition of the Inflated Class Rate inflated the Currency Conversion Fee;
 - (d) how the Currency Conversion Fee was calculated; and/or
 - (e) the total cost of the currency conversion transactions.
52. Among other transactions, Mr. Kaplan purchased four items on eBay Inc.'s website in a foreign currency (U.S. dollars) in April 2017. eBay Inc.'s website required all users to transact using the PayPal payments system.
53. In each instance:
- (a) The Defendants did not disclose to Mr. Kaplan the Inflated Class Rate or how it was determined;
 - (b) The Defendants calculated and charged the Currency Conversion Fee on the Inflated Class Rate, which materially exceeded the PayPal Rate;
 - (c) The Defendants charged and Mr. Kaplan paid the Unauthorized FX Fees;
 - (d) The Unauthorized FX Fees were neither disclosed in nor authorized by the User Agreements; and
 - (e) The Defendants charged Mr. Kaplan a total currency conversion fee that materially exceeded the total currency conversion fee that would have

been charged by Mr. Kaplan's credit card issuer for precisely the same transactions.

54. The Defendants increased the total foreign currency fee paid by the Class members well above the Currency Conversion Fee disclosed in the User Agreements. In the result, the Defendants' disclosure was grossly inadequate, intentionally vague, deceptive, and/or misleading.
55. During the Class Period, the Defendants charged the Unauthorized FX Fees to the Overcharge Sub-Class on all transactions using the PayPal payments system involving a currency conversion.
56. By failing to disclose the PayPal Rate and the Inflated Class Rate to which they added the Currency Conversion Fee, the Defendants concealed the Unauthorized FX Fees from the Class members.

2. Unauthorized Conversions on Transactions Funded from a Linked Bank Account and Credit Card

57. In addition, the Defendants unilaterally and automatically converted currency in transactions funded by a linked bank account or credit card and charged the Unauthorized FX Fees
58. The Defendants performed those conversions without authorization for:
 - (a) transactions funded from a linked bank account from the date on which the Defendants began performing currency conversions until August 8, 2018; and

- (b) transactions funded from a linked credit card from the date on which the Defendants began performing currency conversions until October 6, 2012.
59. By unilaterally and automatically converting foreign currency and charging the Unauthorized FX Fees to the Class members, the defendants acted contrary to the applicable User Agreements without lawful authority.
60. The Class members are entitled to reimbursement of the Unauthorized FX Fees for those unauthorized currency conversion transactions.
61. In addition, on these unauthorized currency conversion transactions, for the period between January 14, 2017 and August 8, 2018, like the transactions described above in paragraphs 44-56, the Defendants failed to disclose:
- (a) The Inflated Class Rate upon which the currency conversion fee for transactions funded by a linked bank account was based;
 - (b) the hidden fee or spread added to the PayPal Rate;
 - (c) the degree to which the Inflated Class Rate increased the total currency conversion fees actually paid by the Class Members;
 - (d) the extent to which the imposition of the Inflated Class Rate inflated the Currency Conversion Fee; and/or
 - (e) how the Currency Conversion Fee was calculated.

3. Unauthorized Automatic Conversions on Withdrawal

62. Under the User Agreements, the Defendants unilaterally and automatically converted any foreign currency held in an accountholder's PayPal Canada account to Canadian dollars upon withdrawal, and charged the accountholder the Unauthorized FX Fees.
63. Currency conversions were not "required" in order to withdraw foreign currencies from accountholders' PayPal Canada accounts. Rather, accountholders' funds could be, and should have been, transferred directly to their linked bank accounts or credit cards without the Defendants' performing any foreign currency conversion and charging currency conversion-related fees, including the Unauthorized FX Fees and the inflated Currency Conversion Fee. Once the foreign currency was transferred to the linked bank account or credit card, the bank or credit card issuer could have, if authorized, converted the funds to Canadian dollars.
64. In the 2008 User Agreement and again in the 2018 User Agreement, the Defendants stipulated that they would convert to Canadian dollars funds withdrawn in currencies other than Canadian dollars and that the Defendants would charge the Currency Conversion Fee.
65. For example, as set out above, the 2018 User Agreement stated:

We don't charge a fee to make a transfer to your bank. However, if you withdraw a PayPal balance that is in a currency other than Canadian Dollars, we will convert it to Canadian Dollars and a **currency conversion fee** will apply. We do not permit USD withdrawals to USD-denominated Canadian bank accounts.

66. However, before the 2008 User Agreement and in each of the 2011 User Agreement, the 2012 User Agreement, the 2013 User Agreement, and the 2017 User Agreement, the contract did not authorize the Defendants to convert all funds withdrawn from PayPal Canada accounts into Canadian dollars and charge the Currency Conversion Fee. In the absence of such a provision, the Defendants acted without lawful authority and in breach of contract in performing the currency conversion transactions.

67. By unilaterally converting foreign currency in Class members' accounts to Canadian dollars and by charging them any fees on the currency exchange, the Defendants acted contrary to the User Agreements and without lawful authority during the following periods:
 - (a) from the date on which the Defendants began converting currencies in Canada until July 7, 2008; and
 - (b) from May 24, 2011 until August 8, 2018.

68. In addition, on the unauthorized withdrawals for the period between January 14, 2017 and August 8, 2018, like the transactions described above at paragraphs 44-56, the Defendants failed to disclose:
 - (a) The Inflated Class Rate upon which the currency conversion fee for withdrawals was based;
 - (b) the hidden fee or spread added to the PayPal Rate;

- (c) the degree to which the Inflated Class Rate increased the total currency conversion fees actually paid by the Class Members;
 - (d) the extent to which the imposition of the Inflated Class Rate inflated the Currency Conversion Fee; and/or
 - (e) how the Currency Conversion Fee was calculated.
69. In November 2017, Mr. Kaplan withdrew U.S. dollars from his PayPal Canada account. Upon withdrawal, the Defendants automatically converted those funds to Canadian dollars despite no requirement to do so. As with the transactions involving foreign currency:
- (a) The Defendants did not disclose to Mr. Kaplan the Inflated Class Rate or how it was determined;
 - (b) The Defendants calculated and charged the Currency Conversion Fee on the Inflated Class Rate instead of the PayPal Rate;
 - (c) The Defendants charged and Mr. Kaplan paid the Unauthorized FX Fees, being the undisclosed spread between the PayPal Rate and the Inflated Class Rate and the inflated Currency Conversion Fee;
 - (d) The Defendants charged Mr. Kaplan a total currency conversion fee that was:
 - (i) in excess of the Currency Conversion Fee; and

- (ii) neither disclosed in nor authorized by the 2017 User Agreement;
and
 - (e) The Defendants charged Mr. Kaplan a total currency conversion fee that materially exceeded the total currency conversion fee that would have been charged by Mr. Kaplan's credit card issuer for precisely the same withdrawal.
70. In addition, in effecting these currency conversion transactions upon withdrawal, the Defendants acted without lawful authority and were unnecessarily and impermissibly charging the Class members the Unauthorized FX Fees.

F. Liability and Damages

1. Breach of Contract

71. The Defendants have systematically breached their contracts with the Class members during the periods described above, including by:
- (a) failing to obtain Class members' authorization to convert currency in transactions funded by a linked bank account or credit card;
 - (b) charging the Class members the Unauthorized FX Fees; and
 - (c) automatically converting currency to Canadian dollars whenever PayPal Canada accountholders withdrew funds not denominated in Canadian dollars and charged currency conversion fees.

72. The Defendants failed to disclose the total fees they charged for foreign currency conversions and the basis on which the total fees for currency conversions were calculated and charged to the Class members.
73. It was an express or implied term of the User Agreements that the exchange rate to which the Defendants added the Currency Conversion Fee they charged the Class members was the PayPal Rate, and/or that the Defendants would not profit from the exchange rate, and/or that the only fee associated with currency conversion was the Currency Conversion Fee calculated on the PayPal Rate.
74. In fact, the base exchange rate the Defendants used for the foreign currency transactions in respect of the Class members was materially higher than the PayPal Rate and/or the Defendants charged an additional, hidden fee, in respect of every currency conversion transaction. In the result, the Defendants charged the Class members a total fee that is not authorized by and is in breach of the User Agreements.
75. Contrary to the User Agreements, the Defendants charged the Class members the Unauthorized FX Fees and the Currency Conversion Fee.
76. The Defendants breached their obligation to perform the User Agreements honestly and in good faith by:
 - (i) failing to disclose all of their charges to users; and

- (ii) performing currency conversions when no such conversions were authorized, with the effect of and/or for the purpose of obtaining both the Currency Conversion Fee and the Unauthorized FX Fees.

77. Class members have suffered damages as a result of the Defendants' breach of contract. In particular:

- (a) members of the Overcharge Sub-Class are entitled to compensation for all of the Unauthorized FX Fees they paid the Defendants; and
- (b) Class members are entitled to compensation for all of the Unauthorized FX Fees and the Currency Conversion Fees they paid the Defendants.

78. The precise quantum of the Class members' losses is within the knowledge of the Defendants.

2. Breach of Consumer Protection Legislation

79. By engaging in the conduct set out above at paragraphs 44-78, the Defendants breached the *Competition Act*, R.S.C. 1985, c. C-34, as amended, Ontario's *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A, as amended, and substantially similar consumer protection legislation in Canada's other provinces and territories other than the Province of Quebec, as set out in Appendix "A" (collectively, the "Consumer Protection Legislation"), because, among other things, the Defendants:

- (a) made false, misleading, and untrue representations;

- (b) failed to disclose the fees they charged on currency conversion transactions;
 - (c) effected currency conversions in respect of transactions funded by a linked bank account or credit card without authorization; and
 - (d) effected currency conversions upon withdrawals from accounts when such conversions were not required.
80. A substantial portion of the Class members are consumers.
81. The Class members reasonably relied on the Defendants' representations (a) to enter into transactions using the PayPal payments system for which the Defendants charged Unauthorized FX Fees, and (b) to withdraw funds from accounts held with the Defendants and to perform transactions funded by a linked bank account or credit card for which the Defendants charged the Unauthorized FX Fees. Such reliance may be inferred from, among other things, the fact of the Class Members' having made transactions using the Defendants'; system and having withdrawn funds from their accounts with the Defendants.
82. The Class members have suffered damages as a result of the Defendants' breach of the Consumer Protection Legislation. Rescission is not possible or practicable in the circumstances, and an accounting and disgorgement of the Defendants' profits is the appropriate remedy. The quantum of the Defendants' gains is within the knowledge of the Defendants. Alternatively, damages to compensate the Class members for their losses are the appropriate remedy. The

quantum of the Class members' losses is within the knowledge of the Defendants.

83. It is impossible or impracticable for the Plaintiff and the Class members to provide notice of the breaches of the Consumer Protection Legislation to the Defendants. It is in the interests of justice that the Court waive or disregard any applicable notice requirements in accordance with the objectives of the CPA and the Consumer Protection Legislation.

3. Unjust Enrichment

84. The Defendants were enriched by their receipt of the Unauthorized FX Fees and the Currency Conversion Fees. The Class members suffered a corresponding deprivation. There was no juristic reason for the enrichment and deprivation. Class members are therefore entitled to restitution of those amounts. The precise quantum to be returned to the Class members is within the knowledge of the Defendants.

4. Alternative Remedies

85. In the alternative, if compensatory damages and/or restitution are inadequate, impossible, or impracticable, the Class members are entitled to an accounting and disgorgement of the Defendants' profits derived from currency conversion transactions in respect of the Class members.

G. Punitive Damages and Constructive Trust

86. The Defendants have knowingly collected the Unauthorized FX Fees from the Class members on a systemic basis and structured their payments system to

require, or in the alternative, effectively require, currency conversions on a massive scale by preventing users from availing themselves of alternatives. Such conduct flagrantly breached their obligations under contract, equity, and the Consumer Protection Legislation, and their duties of honest performance and good faith. Such high-handed, oppressive and egregious conduct justifies an award of punitive damages in the amount of \$5,000,000 or such other amount as the Court considers appropriate.

87. As a consequence of the Defendants' wrongdoing set out above, the Class members are entitled to a constructive trust over the monetary relief to which they are entitled.

H. Interest

88. The Class members are entitled to pre- and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the interest legislation applicable in Canada's other provinces and territories other than the Province of Quebec, as set out in Appendix "B" (collectively, the "Interest Legislation").

I. Service Outside Ontario

89. For service outside of Ontario, the Plaintiff and Class members rely on rr. 17.02 (f) and (p) of Ontario's *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194:
- (a) Some of the User Agreements were made in Ontario, are governed by Ontario law, include a clause attorning to the jurisdiction of Ontario courts and were breached in Ontario, while the Defendants' compliance with

other versions of the User Agreement are being challenged in a proposed national class action in Ontario; and

(b) the Defendants carry on business in Ontario.

90. The Plaintiff and Class members propose that this action be tried in the City of Toronto.

November 24, 2017

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APPENDIX “A”
The Consumer Protection Legislation

- (a) British Columbia’s *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, as amended, for Class members resident in British Columbia;
- (b) Alberta’s *Fair Trading Act*, R.S.A. 2000, c. F-2, as amended, and *Financial Consumers Act*, R.S.A. 2000, c. F-13, as amended, for Class members resident in Alberta;
- (c) Saskatchewan’s *The Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2, as amended, for Class members resident in Saskatchewan;
- (d) Manitoba’s *Business Practices Act*, C.C.S.M. c. B120, as amended, and *Consumer Protection Act*, C.C.S.M., c. C200, as amended, for Class members resident in Manitoba;
- (e) New Brunswick’s *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, as amended, for Class members resident in New Brunswick;
- (f) Prince Edward Island’s *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, as amended, and *Consumer Protection Act*, R.S.P.E.I. 1988, c. C-19, as amended, for Class members resident in Prince Edward Island;

- (g) Nova Scotia's *Consumer Protection Act*, R.S.N.S. 1989, c. 92, as amended, for Class members resident in Nova Scotia;
- (h) Newfoundland and Labrador's *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, as amended, for Class members resident in Newfoundland and Labrador;
- (i) Yukon's *Consumer Protection Act*, R.S.Y. 2002, c. 40, as amended, for Class members resident in Yukon;
- (j) the Northwest Territories' *Consumer Protection Act*, R.S.N.W.T. 1988, c. C-17, as amended, for Class members resident in the Northwest Territories; and
- (k) Nunavut's *Consumer Protection Act*, R.S.N.W.T. (Nu) 1988, c. C-17, as amended, for Class members resident in Nunavut.

**APPENDIX “B”
The Interest Legislation**

- (a) British Columbia’s *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended, for Class members resident in British Columbia;
- (b) Alberta’s *Judgment Interest Act*, R.S.A. 2000, c. J-1, as amended, for Class members resident in Alberta;
- (c) Saskatchewan’s *Pre-Judgment Interest Act*, S.S. 1984-85-96, c. P-22.2, as amended, for Class members resident in Saskatchewan;
- (d) Manitoba’s *The Court of Queen’s Bench Act*, C.C.S.M., c. C280, as amended, for Class members resident in Manitoba;
- (e) New Brunswick’s *Judicature Act*, R.S.N.B. 1973, c. J-2, as amended, for Class members resident in New Brunswick;
- (f) Prince Edward Island’s *Judicature Act*, R.S.P.E.I. 1988, c. J-2.1, as amended, for Class members resident in Prince Edward Island;
- (g) Nova Scotia’s *Judicature Act*, R.S.N.S. 1989, c. 240, as amended, and *Interest on Judgments Act*, R.S.N.S. 1989, c. 233, as amended, for Class members resident in Nova Scotia;
- (h) Newfoundland and Labrador’s *Judgment Interest Act*, R.S.N.L. 1990, c. J-2, as amended, for Class members resident in Newfoundland and Labrador;

- (i) Yukon's *Judicature Act*, R.S.Y. 2002, c. 128, as amended, for Class members resident in Yukon;
- (j) the Northwest Territories' *Judicature Act*, R.S.N.W.T. 1988, c. J-1, as amended, for Class members resident in the Northwest Territories;
- (k) Nunavut's *Judicature Act*, S.N.W.T. (Nu) 1998, c. 34, s. 1, as amended, for Class members resident in Nunavut