

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
) WEDNESDAY, THE 16th
)
JUSTICE GLUSTEIN)
) DAY OF DECEMBER, 2020

BETWEEN:

LEONID KAPLAN

Plaintiff

- and -

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

Defendants

Proceeding under the Class Proceedings Act, 1992

ORDER

THIS MOTION made by the Plaintiff for an Order amending the Fresh as Amended Statement of Claim and adding a defendant, certifying this action as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”), for the purpose of settlement, fixing the date of a settlement approval motion, approving the short form and long form Notice of Hearing for Class Action Settlement Approval and Counsel Fee Approval (“**Notices of Hearing**”), appointing a claims administrator, approving the form, content, and method of dissemination of notice for the Notice of Hearing as set out in the Notice Plan and setting an opt-out deadline was heard this day by videoconference.

ON READING the motion record of the Plaintiff, including the Settlement Agreement between the Plaintiff and the Defendants dated December 2020 (the “**Settlement Agreement**”), and the factum of the Plaintiff, and upon hearing the submissions of counsel for the Plaintiff and for the Defendants;

AND ON BEING ADVISED that Epiq Class Action Services Canada Inc. has consented to its appointment as the Claims Administrator;

AND ON BEING ADVISED that the Defendants consent to this Order, without admission of liability by the Defendants whatsoever.

1. **THIS COURT ORDERS** that the capitalized terms in this Order, unless otherwise defined in this Order, shall have the meanings set out in the Settlement Agreement attached hereto as Appendix 1.
2. **THIS COURT ORDERS** that the Plaintiff is granted leave to amend the Fresh as Amended Statement of Claim to add PayPal, Inc. as a Defendant in the action and to correct the name of the Defendant PayPal Holdings, Inc., and that the Fresh as Amended Statement of Claim is hereby amended in the form attached as Appendix 4 to this Order.
3. **THIS COURT ORDERS** that the title of the proceeding in all documents issued, served, or filed after the date of this Order be as follows:

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

CLAIMS ADMINISTRATOR AND NOTICE

4. **THIS COURT ORDERS** that Epiq Class Action Services Canada Inc. is appointed as the Claims Administrator.
5. **THIS COURT ORDERS** that the Claims Administrator shall maintain confidentiality over and shall not share the information provided pursuant to this Order with any other person, including, but not limited to any lawyer (except Class Counsel and any lawyers retained by the Claims Administrator), unless doing so is necessary for effecting the Notice Plan and/or and facilitating the claims administration process in accordance with the Settlement Agreement.
6. **THIS COURT ORDERS** that the Claims Administrator shall use the information provided to it pursuant to this Order for the sole purpose of effecting the Notice Plan and facilitating the claims administration process in accordance with the Settlement Agreement, and for no other purpose.
7. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Order, or the administration of the Settlement Agreement and this Order except with leave of this Court.
8. **THIS COURT ORDERS AND DECLARES** that the notice of this Order shall be provided to the Class pursuant to the Notice Plan.
9. **THIS COURT ORDERS AND DECLARES** that the Claims Administrator shall pay its reasonable Administration Expenses from the Settlement Fund, from time to time, as the Administration Expenses are incurred, after providing notice to Class Counsel and Defence Counsel.

CERTIFICATION

10. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to sections 2 and 5 of the *CPA*, for settlement purposes only.

11. **THIS COURT ORDERS** that the “Class” is defined as:

all persons resident in Canada other than residents of the Province of Quebec, who:

- (1) purchased goods or services using the payments system of PayPal CA Limited, PayPal Canada Co., PayPal, Inc. and/or PayPal Holdings, Inc. (collectively “PayPal”) in a currency other than the currency in which the goods or services were offered for sale, and who made such a purchase on or before August 8, 2018; or
- (2) held an account with PayPal in Canada and who withdrew funds from their account that were converted to Canadian dollars before being transferred to the person’s linked bank account or credit card on or before August 8, 2018.

12. **THIS COURT ORDERS** that Leonid Kaplan (the “Plaintiff”) shall be appointed as Representative Plaintiff on behalf of the Class.

13. **THIS COURT ORDERS** that the following common issue shall be certified for settlement purposes only:

Did the Defendants breach their contracts with Class Members by performing foreign currency conversions in a manner not in accordance with the Defendants’ user agreements?

14. **THIS COURT ORDERS** that Class members may opt out of this class proceeding by delivering a written request to opt out to the Claims Administrator which must be postmarked, if sent by mail, or received if sent by fax, e-mail, or courier, on or before 4:00 p.m. February 23, 2021 (the “Opt-Out Deadline”) and any opt out forms received by the Claims Administrator after this date will not be valid.

15. **THIS COURT ORDERS** that an opt out must contain:

- (a) The full name, mailing address, and e-mail address of the proposed Class member; and
 - (b) If the proposed Class member is a PayPal accountholder, the e-mail address associated with the proposed Class member's PayPal account.
16. **THIS COURT ORDERS** that any Class members who validly opt out of this action by the Opt-Out Deadline are not bound by the Settlement Agreement and shall no longer participate in, or have the opportunity in the future to participate in, this action or the Settlement Agreement, and are excluded from the Class.
17. **THIS COURT ORDERS** that, within 10 business days of the Opt-Out Deadline, the Claims Administrator shall provide to Class Counsel and counsel for the Defendants the names of persons who have delivered valid opt out notices and a copy of the opt out notices.

NOTICES OF HEARING

18. **THIS COURT ORDERS** that the Notice of Hearing is approved substantially in the form attached hereto as Appendix 2.
19. **THIS COURT ORDERS** that the Notice Plan, setting out the plan for dissemination of the Notices of Hearing, is approved in the form attached hereto as Appendix 3 and the Notices of Hearing shall be disseminated in accordance with the Notice Plan, the costs of which shall be paid from the Settlement Fund, regardless of whether the Settlement Agreement is approved.

PRIVACY LAWS AND DISCLOSURE OF PERSONAL INFORMATION

20. **THIS COURT ORDERS AND DECLARES** that this Order is an order compelling the production of information by the Defendants, the Claims Administrator, and Class Counsel within the meaning of applicable privacy laws,


including that it satisfies the requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

SETTLEMENT APPROVAL HEARING

21. **THIS COURT ORDERS** that the settlement approval hearing in this matter shall take place on February 26, 2021, and that the hearing may be held by videoconference or as directed by the Court.

22. **THIS COURT ORDERS** that if a Class Member wishes to object to the Settlement Agreement or the Class Counsel Fees, the Class Member must notify Class Counsel in writing of the objection at least four business days in advance of the hearing set out in paragraph 21, and must advise whether the Class Member intends to attend or otherwise participate in the hearing.

23. **THIS COURT DECLARES** that the Parties or the Claims Administrator may apply to the Court for direction in respect of the implementation of this Order.



Justice Blusten