

SETTLEMENT AGREEMENT

Made as of ● ●, 2020

Between:

**LEONID KAPLAN
and
JENNIFER BALABANIAN**

(the Plaintiffs)

-and-

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

(the Defendants)

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RECITALS

- A. WHEREAS the Plaintiff Leonid Kaplan commenced a proposed class action in the Ontario Superior Court of Justice on November 24, 2017 bearing Court file no. CV-17-587236-CP as against the Defendants (the “Ontario Action”);
- B. WHEREAS the Plaintiff Jennifer Balabanian commenced a proposed class action in the Quebec Superior Court on February 28, 2018, bearing Court file no. 500-06-000910-188 as against the Defendants (the “Quebec Action”);
- C. WHEREAS the Class Actions assert claims against the Defendants on behalf of the proposed Classes in relation to the Defendants’ online currency conversion practices.
- D. WHEREAS the Defendants deny all the allegations asserted by the Plaintiffs in the Class Actions, and maintain that they have good and valid defences to the claims asserted therein;
- E. WHEREAS the Parties estimate that at least a further five years of litigation would be required to litigate this matter through contested motions for certification and authorization, and, if the Plaintiffs were successful, documentary productions, examinations for discovery, and a common issues trial (excluding appeals);
- F. WHEREAS the Parties participated in a two-day mediation with Max Mendelsohn on August 19-20, 2020, at the end of which they agreed to a binding agreement in principle to settle the Class Actions, and have continued arm’s-length settlement discussions since the mediation to reach this Settlement Agreement;
- G. WHEREAS the Parties have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the Class Actions and to avoid the further expense, inconvenience and burdens of protracted litigation;
- H. WHEREAS the Defendants have agreed that, for the purposes only of effecting this settlement of the Class Actions, they will consent to certification of the Class Actions as class proceedings with the Plaintiffs appointed as the representative plaintiffs and Class Counsel appointed as class counsel;
- I. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on Class Counsel’s analyses of the facts and law applicable to the Plaintiffs’ claims asserted in the Class Actions, and having regard to the burdens and expense of prosecuting the Class Actions, including, in particular, the risks and uncertainties associated with certification and authorization, trials and appeals, and taking into account the likely maximum recovery for the Class weighed against those costs, risks, uncertainties and delays, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Classes;

- J. WHEREAS the Plaintiffs and Class Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendants, or evidence of the truth of any of the Plaintiffs' allegations against the Defendants, and the Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Plaintiffs, or evidence of the truth or validity of any of the Defendants' defences or arguments against the Plaintiffs' claims; and
- K. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Actions and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Ontario Superior Court of Justice and the Quebec Superior Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Actions shall be settled on the following terms and conditions:

ARTICLE I - DEFINITIONS

1.1 Definitions

The following terms, as used in this Agreement, including the Recitals, mean:

- (a) ***Account*** means an interest-bearing trust account with a Canadian financial institution under the control of the Defendants in which the Settlement Fund will be held in trust for the benefit of the Class Members until distributed pursuant to the Distribution Protocol.
- (b) ***Active Group*** or ***Active Group Member*** has the meaning provided in the Distribution Protocol (Schedule G);
- (c) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Claims Administrator, or otherwise, for the approval, implementation and operation of this Settlement Agreement including the costs, if any, of distribution of the Settlement Fund and the costs of notices to the Class, except for: (i) internal expenses of the Defendants to identify members of the Active Group and related inquiries and to distribute the Settlement Amount as provided in the Distribution Protocol; (ii) internal expenses of the Defendants to provide information to the Claims Administrator and/or Class Counsel to provide notices to the Class as provided in the Notice Plan; and (iii) Class Counsel Fees.
- (d) ***Certification Order*** means the anticipated orders of the Courts certifying and authorizing the Class Actions as class proceedings, as provided for as part of the First Order.

- (e) **Claims Administrator** means Epiq Class Actions Services Canada Inc. or such other entity or person appointed by the Court to administer this Settlement.
- (f) **Class** or **Classes** means the members of the classes as defined in the First Order in both the Ontario Action and the Quebec Action, but excludes any person who validly opts out following the First Order in accordance with the process provided under the First Order, and **Class Member** means any one thereof.
- (g) **Class Actions** means the proposed class proceeding commenced by the Plaintiff Leonid Kaplan in the Ontario Superior Court of Justice bearing Court File No. CV-17-587236-CP, and the proposed class proceeding commenced by the Plaintiff Jennifer Balabanian in the Quebec Superior Court bearing Court File No. 500-06-000910-188.
- (h) **Class Counsel** means Paliare Roland Rosenberg Rothstein LLP and IMK LLP.
- (i) **Class Counsel Fees** include the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Actions as approved by the Courts.
- (j) **Courts** means the Ontario Superior Court of Justice and the Quebec Superior Court, and **Court** means either one thereof.
- (k) **Defence Counsel** means McCarthy Tétrault LLP.
- (l) **Defendants** means PayPal Canada Co., PayPal CA Limited, PayPal Holdings Inc. and PayPal Inc., and **Defendant** means any one thereof.
- (m) **Distribution Protocol** means the plan for distributing the Settlement Fund and accrued interest to the Classes as approved by the Courts.
- (n) **Effective Date** means (i) the date upon which the ability to appeal from the last-rendered anticipated Second Order expires; or (ii) if any appeal is taken from either the Quebec Action or the Ontario Action Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final order.
- (o) **Final** when used in relation to a Court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (p) **First Order** means the draft orders of the Courts, in the Ontario Action and the Quebec Action, granting the following relief: (1) the Courts' approval of the Notice of Hearing; (2) certifying the Ontario Action and authorizing the Quebec Action as class proceedings for the purposes of the settlement; and (3) the appointment of the Claims Administrator, which will be substantially in the form of **Schedule A** and **A1** hereto or as modified by the Courts.

- (q) **Fonds d'aide** means the *Fonds d'aide aux actions collective* created pursuant to the *Act respecting the Fonds d'aide aux actions collectives* (CQLR c F-3.2.0.1.1).
- (r) **Fund** means the Class Proceedings Fund established pursuant to the *Law Society Act*, R.S.O. 1990, c. L.8.
- (s) **Notice of Hearing** means the Notice of Hearing for Settlement Approval and Counsel Fee Approval, approved by the Courts, in the Ontario Action and the Quebec Action, to inform the Classes of: (1) the certification of the Ontario Action and the authorization of the Quebec Action as class proceedings for the purposes of the settlement; (2) the process by which Class Members may opt out; (3) the date of the hearing to approve this Settlement Agreement; (4) the key terms of this Settlement Agreement, which will be substantially in the form of **Schedules B** and **B1** hereto or as modified by the Courts; and (5) Class Counsel Fees.
- (t) **Notice of Court Order** means the Notice of Settlement Approval and Class Counsel Fee Approval as approved by the Courts, in the Ontario Action and the Quebec Action, to inform the Class Members of (1) the approval of this Settlement Agreement; (2) the approval of Class Counsel Fees; and (3) the process by which the Settlement Fund will be distributed, which will be substantially in the form of **Schedules C** and **C1** hereto, or as modified by the Courts.
- (u) **Parties**, when capitalized, means the signatories to this Settlement Agreement, being the Plaintiffs and the Defendants, and **Party** means any one thereof.
- (v) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them, whether directly or indirectly, ever had, could have had, or now have relating to the Defendants' online currency conversion practices that were the subject matter of allegations in the Class Actions or that could have been the subject matter of allegations by or on behalf of the Releasers, or any of them, in the Class Actions.
- (w) **Releasees** means the Defendants and their respective predecessors, successors, parents, subsidiaries, affiliates and past and current officers, directors, employees, agents, shareholders and beneficiaries of any kind.
- (x) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees or representatives of any kind.

- (y) **Second Order** means the draft orders of the Courts at **Schedule E** and **E1** approving the terms of this Settlement Agreement.
- (z) **Settlement Agreement** means this agreement, including the recitals and Schedules.
- (aa) **Settlement Amount** means the all-inclusive amount of Ten Million Canadian Dollars (CDN \$10,000,000.00), payable by the Defendants, plus any interest earned on the Settlement Amount after it has been transferred to the Account pursuant to Article IV of this Settlement Agreement pending payment of the Settlement Fund pursuant to the Distribution Protocol and Administrator's Guidelines (**Schedule G**).
- (bb) **Settlement Fund** means the Settlement Amount less the amount approved by the Courts for Class Counsel Fees, any Administrator Expenses (including a reasonable estimate of the Administrator Expenses that will be required to up to the end of the distribution of the Settlement Fund), and the amount paid to the Fund.
- (cc) **Third Order** means the draft orders of the Courts at **Schedule F** and **F1** approving Class Counsel Fees.

ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement Agreement and shall cooperate to seek and obtain the Courts' approval of this Settlement Agreement and all other matters addressed herein.

If the Defendants intend to seek a sealing order in respect of commercially-sensitive information to be included in the materials submitted on any of the motions contemplated under this Settlement Agreement, they will notify the Plaintiffs in advance and deliver a motion record which will include the evidentiary basis for the sealing order. The Plaintiffs will not oppose the order, unless they believe it would result in prejudice to the Class, in which instance they will provide their concerns to Defence Counsel in advance.

The Defendants will cooperate to provide information in a timely manner to Class Counsel that is reasonable and necessary for the Plaintiffs to seek and obtain court approval of this Settlement Agreement.

2.2 Court Approval Required for Enforceable Agreement

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless this Settlement Agreement is approved by the Courts.

ARTICLE III - SETTLEMENT APPROVAL

Subject to the direction of the Courts regarding the approval process, the Parties propose to seek the orders contemplated in this Settlement Agreement as follows. The Parties agree that the motions contemplated in this article may be conducted by videoconference, or by teleconference, as directed by the Courts.

3.1 Motions for Approval of Notice of Hearing

As soon as practicable after this Settlement Agreement is executed, Plaintiffs shall bring motions in both the Ontario Action and the Quebec Action for the Courts' approval of an order substantially in the form of the First Order at **Schedule A** and **A1** (being the draft orders approving the Notice of Hearing, certifying and authorizing the Class Actions as class proceedings, and Appointment of Claims Administrator). The Defendants will consent to these motions.

In the event that this Settlement is not approved by one or both of the Courts, the Plaintiffs will consent to Defendants' motions to decertify the Class Actions.

3.2 Motions for Approval

- (a) As soon as practicable after an order substantially in the form of the First Order is made, and the Notice of Hearing published, the Plaintiffs shall bring motions in both the Ontario Action and the Quebec Action for the Courts' approval of an order substantially in the form of the draft Second Order at **Schedule E** and **E1** (being the draft order approving this Settlement). The Defendants will consent to these motions, and the Fonds d'aide will be served with the motion in connection with the Quebec Action. The Parties waive any rights of appeal if the Second Order is granted by the Courts.
- (b) At the same time as the motions seeking an order substantially in the form of the Second Order at **Schedule E** and **E1**, Class Counsel will bring motions in both the Ontario Action and the Quebec Action for the Courts' approval of an order substantially in the form of the draft Third Order at **Schedule F** and **F1** (being the draft order approving Class Counsel Fees). The Defendants will not oppose these motions. The Parties waive any rights of appeal if the Third Order is granted by the Courts.
- (c) The Plaintiffs will provide draft copies of the motion materials to Defence Counsel before they are finalized. The Parties will work cooperatively to address any confidentiality or other reasonable concern raised by the Defendants prior to filing the motion materials. The Parties agree that the motion materials will include information from the Defendants regarding: the quantum of the Class' overcharge claim consistent with the information provided by the Defendants for the Parties' mediation, the size of the Class, the estimated number of Active Group Members, the reliability of information about PayPal accountholders, and the Defendants' foreign exchange practices.

- (d) If a Class Member wishes to object to this 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 of the motions in articles 3(a) and 3(b), and must advise whether the Class Member intends to attend or otherwise participate in those motions. Class Counsel will bring any written objections to the attention of the Courts on those motions. If the Plaintiffs, Class Counsel, the Defendants, or Defence Counsel become aware that a Class Member or other person intends to object to those motions, they will advise the Parties in writing as soon as practicable and in any event no later than 2 business days before the hearing of the motions in article 3(a) and 3(b).

ARTICLE IV - SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount and Settlement Fund

- (a) Within ten (10) business days of the Effective Date, the Defendants shall pay the Settlement Amount to the Account in trust, for the benefit of the Class.
- (b) The Defendants' payment of the Settlement Amount will be in full satisfaction of the Released Claims against the Releasees.
- (c) None of the Defendants shall have any obligation to pay to the Plaintiffs, the Class or the Class Administrator any amount in addition to the Settlement Amount unless otherwise expressly provided for in this Agreement.
- (d) The Defendants shall hold the Settlement Amount in trust in the Account and maintain the Account as provided for in this Settlement Agreement.
- (e) Within fourteen (14) days of the Settlement Amount being transferred to the Account: (i) the Defendants shall transfer to Class Counsel payment in the amount of the Class Counsel Fees approved by the Courts, (ii) the Defendants shall transfer to the Fund payment in the amount approved by the Court; and (iii) the Defendants shall commence with distribution of the Settlement Fund to the Class Members pursuant to the Distribution Protocol.
- (f) The Claims Administrator will provide invoices on notice to Class Counsel and Defence Counsel for payment of reasonable Administration Expenses on a monthly basis beginning after the appointment of the Claims Administrator by the Courts.

4.2 Taxes and Interest

- (a) Except in the event of termination of this Settlement Agreement, all interest earned on the Settlement Amount after it is transferred to the Account, shall accrue to the benefit of the Class and shall become and remain part of the Settlement Fund.
- (b) Subject to Article 4.2(c), all Canadian taxes payable on any interest that accrues on the Settlement Amount in the Account or otherwise in relation to the

Settlement Amount, and becomes part of the Settlement Fund, shall be paid out of the Settlement Fund by the Claims Administrator. The Defendants shall provide the Claims Administrator with all information reasonably required in order to fulfill all tax reporting and payment requirements arising from the Settlement Fund in the Account, including any obligation to report taxable income and make tax payments, and the Claims Administrator will make such payments and prepare such reports as required. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Fund shall be paid from the Account and deducted from the Settlement Fund.

- (c) The Defendants shall have no responsibility to make any income tax filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Amount after it has been transferred to the Account, or on the Settlement Fund or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount, including on the Settlement Fund, shall be paid to the Defendants, and in such case, each Defendant shall be responsible for the payment of all taxes on its proportionate share of such interest.

ARTICLE V - DISTRIBUTION OF THE SETTLEMENT FUND

5.1 Distribution Protocol

The Distribution Protocol is part of this Settlement Agreement and will be subject to approval as part of the motions seeking Court approval of the Second Order. The Distribution Protocol is set out at **Schedule G** hereto.

5.2 No responsibility for External Administration Fees

The Defendants acknowledge that they may incur internal expenses to identify the Active Group Members and to distribute the Settlement Fund to Class Members pursuant to the Distribution Protocol and to provide information to the Claims Administrator and Class Counsel to provide notices to Class Members pursuant to the Notice Plan. However, the Defendants will not be required to incur any external Administration Fees in connection with the Distribution Protocol.

5.3 Fonds d'aide

The Parties agree that the Settlement Agreement is subject to the *Act respecting the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1, the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1.r.2 and the *Code of Civil Procedure*, C.Q.L.R., c. C-24.01.

5.4 Rendering of Account and Closing Judgment

- (a) The Defendants will provide monthly progress reports to the Claims Administrator by e-mail regarding the number of payments completed in the context of the distribution of the Settlement Fund.

- (b) Within ninety (90) days following the completion of the distribution of the Settlement Fund in accordance with the Distribution Protocol, the Claims Administrator will confirm the following (the “**Rendering of Account**”) in a report:
 - (i) The number of Class Members in the Ontario Action who were paid out of the Settlement Fund;
 - (ii) The amount distributed to Class Members in the Ontario Action;
 - (iii) The number of Class Members in the Quebec Action who were paid out of the Settlement Fund;
 - (iv) The amount distributed to each Class Member in the Quebec Action; and
 - (v) The balance, if any, remaining from the Settlement Fund.
- (c) If any balance pursuant to article 5.4(b)(v) remains, it will be returned to the Account and distributed entirely to the Fonds d’aide in respect of Quebec and to the Law Foundation of Ontario in respect of the rest of Canada. The formula for such payment will be 20% to the Fonds d’aide and 80% to the Law Foundation of Ontario.
- (d) Within 30 days after the Rendering of Account, the Plaintiff with the assistance of the Claims Administrator shall file with the Quebec Court an application to obtain a closing judgment approving the distribution of the Settlement Amount with respect to the Quebec Action. The application will be served on the Defendants and the Fonds d’aide. The Plaintiff with the assistance of the Claims Administrator shall also report back to the Ontario Court with respect to the distribution, if required by the Ontario Court.

ARTICLE VI - TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

- (a) The Defendants shall have the option to terminate this Settlement Agreement in the event that:
 - (i) the Plaintiffs breach any material terms of this Settlement Agreement;
 - (ii) A Court declines to issue an order substantially in the form of the Second Order, to approve any material part of the Settlement Agreement, or requires a material change to the Settlement Agreement as a pre-condition to approval;
 - (iii) A Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal; or

- (iv) 10% or more of the Class in the Class Actions (i.e. the Quebec Action and Ontario Action combined) opt out of the Class Actions.
 - (v) Class members representing 10% or more of the volume of transactions of the Class in the Class Actions (i.e. the Quebec Action and Ontario Action combined) opt out of the Class Actions.
- (b) The Plaintiffs and Class Counsel, collectively but not separately, shall have the option to terminate the Settlement Agreement in the event that:
- (i) The Defendants breach any material terms of this Settlement Agreement;
 - (ii) A Court declines to issue an order substantially in the form of the Second Order, or to approve of any material part of the Settlement Agreement or requires a material change to the Settlement Agreement as a pre-condition to approval; or
 - (iii) A Court issues an order substantially in the form of the Second Order, but the Order is materially altered on appeal.
- (c) If the Defendants elect to terminate the Settlement Agreement pursuant to Article 6.1(a), or the Plaintiffs together with Class Counsel elect to terminate the Settlement Agreement pursuant to Article 6.1(b), a written notice of termination shall be provided by the terminating Party(s) to the other Party(s) forthwith, and, in any event, no later than 10 business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Articles 6.2 and 6.3, and the related Definitions in Article I, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any Released Claims, including but not limited to any motion for certification or authorization of the class or trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.
- (d) Any order, ruling or determination made by a Court with respect to the Class Counsel's Fees shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

If this Settlement Agreement is terminated:

- (a) Any step taken by the Defendants or the Plaintiffs in the Class Actions in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Class Actions; and

- (b) Any order made by a Court pursuant to this Settlement Agreement shall be set aside or vacated on the consent of the Parties, except to the limited extent of the provisions of the First Order dealing with the publication of the Notice of Hearing, if the Notice of Hearing has already been published.

6.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated after the Settlement Amount has been transferred to the Account, the Settlement Amount shall be returned to the Defendants, including accrued interest, but less:

- (a) The amount of any income taxes paid or owing in respect of any interest earned on the Settlement Amount while on deposit in the Account; and
- (b) Any Administration Expenses that have been actually incurred as at the date of termination, including costs associated with any Notices, including translation expenses, and the estimated costs of Administration Expenses to be incurred to provide notice to the Class that the Settlement Agreement has been terminated, if such notice is required by the Courts, as well as costs associated with the Claims Administrator.

ARTICLE VII - RELEASES AND DISMISSALS

7.1 Release of Releasees

Subject to termination of this Settlement Agreement, upon the transfer of the Settlement Amount into the Account pursuant to article 4.1(a), and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers shall forever and absolutely release the Releasees from the Released Claims.

7.2 No Further Claims

The Releasers shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.

ARTICLE VIII - EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Actions or any other allegation made by the Plaintiffs or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will

defend the Class Actions and oppose certification/authorization of the actions as a class proceeding.

8.2 Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, except in a proceeding to approve or enforce this Settlement Agreement or in connection with the other motions contemplated in this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

ARTICLE IX- NOTICE TO CLASS

9.1 Notice Required

The Classes shall be given the following notices in both the Ontario Action and the Quebec Action, subject to approval by the Courts:

- (a) Notice of Hearing both in the Ontario Action (**Schedule B**) and in the Quebec Action (**Schedule B1**);
- (b) Notice of Court Order both in the Ontario Action (**Schedule C**) and in the Quebec Action (**Schedule C1**); and
- (c) Notice of termination of this Settlement Agreement if it is terminated pursuant to this Settlement Agreement, or as otherwise ordered by a Court in a form to be agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notice of termination of the Settlement Agreement, then in the form ordered by the Courts.

9.2 Costs of Disseminating Notice

The costs of disseminating each Notice shall be paid from the Settlement Amount, regardless of whether the Settlement is approved by the Courts or the Settlement Agreement is terminated.

9.3 Method of Disseminating Notices

The Notices required under Article 9.1 shall be disseminated pursuant to the Notice Plan attached as **Schedule D** as approved by the Courts or in a manner otherwise ordered by the Courts.

ARTICLE X- CLASS COUNSEL AND ADMINISTRATION FEES

10.1 Counsel Fees

- (a) Class Counsel will seek the Courts' approval of Class Counsel Fees and that the Class Counsel Fees, Administration Expenses, and payment to the Fund shall be paid from the Settlement Amount as outlined in Article 4.1(e). The Defendants will not oppose Class Counsel's motion for approval of the Class Counsel Fees.

10.2 Administration Expenses

The Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of Class Counsel, the Plaintiffs or the Class, in respect of the administration of this settlement, all of which shall be paid from the Settlement Amount, as approved by the Court.

ARTICLE XI- MISCELLANEOUS

11.1 Motions for Directions

- (a) The Plaintiffs, Defendants, or the Claims Administrator may bring motions to the Courts for directions in respect of the implementation and administration of this Settlement Agreement at any time.
- (b) All motions contemplated by this Settlement Agreement shall be on reasonable notice to the Parties.

11.2 Headings, *etc.*

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

11.3 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) Only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

11.4 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and Canada, except that mandatory provisions of Quebec law apply to the Quebec Action.

11.5 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.6 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiffs and the Defendants, subject approval by the Courts where required.

11.7 No Waiver

No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

11.8 Binding Effect

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, the Class Members, the Defendants, the Releasers, and the Releasees once it is approved by a Final order of the Courts, except that the Parties are required to perform their obligations under this Settlement Agreement prior to the motions for approval of this Settlement Agreement. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasers, once it is approved by Final order of the Courts.

11.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any

provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.11 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.*

11.12 Recitals

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.13 Schedules

The Schedules annexed hereto form part of this Settlement Agreement and are, for both the Ontario Action and the Quebec Action:

- (a) **Schedule A** – Draft First Order in the Ontario Action (the draft order approving the Notice of Hearing and certifying the Class Action as a class proceeding).
Schedule A1 – Draft First Order in the Quebec Action (the draft order approving the Notice of Hearing and certifying and authorizing the Class Action as a class proceeding).
- (b) **Schedule B** – Notice of Hearing in the Ontario Action
Schedule B1 – Notice of Hearing in the Quebec Action
- (c) **Schedule C** - Notice of Court Order in the Ontario Action
Schedule C1 - Notice of Court Order in the Quebec Action
- (d) **Schedule D** – Notice Plan
- (e) **Schedule E** - Draft Second Order in the Ontario Action (the draft order approving this Settlement Agreement)
Schedule E1 - Draft Second Order in the Quebec Action (the draft order approving this Settlement Agreement)
- (f) **Schedule F** - Draft Third Order in the Ontario Action (the draft order approving Class Counsel Fees)
Schedule F1 - Draft Third Order in the Quebec Action (the draft order approving Class Counsel Fees)

(g) **Schedule G** – Distribution Protocol and Administrator’s Guidelines

11.14 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party’s representative by his, her or its counsel;
- (c) He, she, or the Party’s representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party’s decision to execute this Settlement Agreement.

11.15 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

11.16 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel:

IMK LLP
3500 Boulevard de Maisonneuve O
Suite 1400
Westmount, QC H3Z 3C1

David Grossman
Telephone: 514-934-7730
Facsimile: 514-935-2999
Email: dgrossman@imk.ca

- and -

Paliare Roland Rosenberg Rothstein LLP
Professional Corporation
155 Wellington St W

35th Floor
Toronto, ON M5V 3H1

Odette Soriano

Telephone: 416-646-4306
Facsimile: 416-646-4301
Email: Odette.soriano@paliareroland.com

For the Defendants and Defence Counsel:

McCarthy Tétrault LLP

Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Christine L. Lonsdale

Telephone: 416-601-8019
Facsimile: 416-868-0673
Email: clonsdale@mccarthy.ca

- and -

PayPal Inc.

Attn: Legal Department
2211 North First Street
San Jose, CA 95131

James Lindfelt

Email: jlindfelt@paypal.com

- and -

PayPal Canada Co.

Attn: Legal Department
661 University Avenue, Suite 506
Toronto ON M5G 1M1

Jason Young

Email: jasyoung@paypal.com

Date of Execution

The Parties have executed this Settlement Agreement effective as of the date on the cover page.

Dated at Toronto this ____ day of _____, 2020

LEONID KAPLAN

Plaintiff

Dated at Toronto this ____ day of _____, 2020

JENNIFER BALABANIAN

Plaintiff

Dated at Toronto this ____ day of _____, 2020

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Lawyers for the Plaintiffs, Leonid Kaplan and Jennifer Balabanian

Dated at Montreal this ____ day of _____, 2020

IMK LLP

Lawyers for the Plaintiff, Jennifer Balabanian

Dated at Toronto this ____ day of _____, 2020

Jason Young
Head of Legal & Co Secretary

“I have authority to bind the corporations.”

PAYPAL CA LIMITED and PAYPAL CANADA CO.

Defendants

Dated at San Jose, CA this ____ day of _____, 2020

Brian Yamasaki
VP, Corporate Legal and Secretary

“I have authority to bind the corporations.”

PAYPAL INC. and PAYPAL HOLDINGS INC.

Defendants