

Court File No.

CV-17-587236-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LEONID KAPLAN

Plaintiff

- and -

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

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992

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 27 November 2017 Issued by Helena Takis
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 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, the Transaction Sub-Class and the Withdrawal Sub-Class as set out below in paragraph 9;
 - (c) an order appointing the Plaintiff as representative plaintiff on behalf of the Class pursuant to the *CPA*;
 - (d) damages in the amount of \$150,000,000 or such other amount as the Court considers appropriate for the Defendants’ collection of:
 - (i) undisclosed fees in connection with the exchange of currency in transactions effected using the Defendants’ payments system (the “**Undisclosed FX Transaction Fees**”);
 - (ii) undisclosed fees in connection with the exchange of foreign currency upon withdrawal of funds from accounts held with the Defendants (the “**Undisclosed FX Withdrawal Fees**”); and/or
 - (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;

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

- (e) in the alternative, an accounting and disgorgement of all profits the Defendants earned in connection with foreign exchange transactions in respect of the Class members;
- (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 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 Undisclosed FX Transaction Fees and the Undisclosed FX Withdrawal Fees (together, the “**Undisclosed FX Fees**”) and/or all fees the Defendants charged the Class members in connection with the exchange of foreign currency upon withdrawal of funds from accounts held with the Defendants;
- (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;
- (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. ("**PayPal Canada**"). Mr. Kaplan opened his account with PayPal Canada on or about October 2, 2016. Like many residents of Canada, Mr. Kaplan uses his account to purchase and sell goods online, including engaging in transactions in currencies other than Canadian dollars.
3. The Defendant, PayPal Canada, is a corporation organized pursuant to the laws of the Province of New Brunswick. PayPal Canada carries on business in the Province of Ontario and throughout Canada, and has at least one office located in Toronto.
4. The Defendant, PayPal Holdings Inc. ("**PayPal Holdings**"), 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. PayPal Holdings and its

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.

5. PayPal Holdings and its 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 Canada accounts.
6. PayPal Canada is the affiliate of PayPal Holdings with which Canadian residents are directed to deal.
7. The Defendant, PayPal Canada Co., 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.
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.

B. The Class

9. This action is brought on behalf of (collectively, the “Class”):

- (a) all individuals resident in Canada who, from the date upon which the Defendants began performing currency conversions until the date of the

certification of this action under the CPA (the “**Class Period**”), 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 (the “**Transaction Sub-Class**”); and

- (b) all individuals who held accounts with PayPal Canada, who, during the Class Period, withdrew funds from their accounts that the Defendants converted to Canadian dollars before transferring to the individuals’ linked bank accounts and credit cards (the “**Withdrawal Sub-Class**”).

C. The PayPal Payments System

- 10. 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

- 11. 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 account or credit card for use in PayPal transactions. 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.

12. The Defendants charge sellers a commission based upon the sale price of goods or services paid for using the PayPal payments system. The Defendants do not charge buyers a fee to use PayPal, unless the Defendants perform a currency conversion.
13. When the PayPal payments system is used for transactions involving different currencies, the Defendants perform a currency conversion in order to complete the transaction and systemically charge an undisclosed fee to the buyer, the Undisclosed FX Transaction Fees.
14. 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.
15. 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). PayPal Canada accountholders may hold foreign currency in their accounts.

16. When accountholders wish to withdraw foreign currency from their PayPal Canada accounts, the Defendants unilaterally and automatically convert those funds to Canadian dollars. The conversions are not authorized by contract or otherwise. The Defendants charge accountholders an undisclosed fee to convert foreign currency on withdrawal, the Undisclosed FX Withdrawal Fees, as well as a percentage fee added to the exchange rate charged to the Class members.
17. Accountholders are members of both the Transaction Sub-Class and the Withdrawal Sub-Class.

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. Many online commerce businesses require all of their customers to use PayPal to process transactions. 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.
20. Non-accountholders whose transactions involve foreign currencies are charged the Undisclosed FX Transaction Fees. They are members of the Transaction Sub-Class.

D. The User Agreements

21. 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.
22. During the Class Period, PayPal Canada has had at least three different versions of the user agreement as it relates to currency conversions.²
23. PayPal Canada and the Class members are the parties to the user agreements. Some or all of the Defendants are involved in carrying out PayPal Canada's obligations under the user agreements.
24. Each of the user agreements is a standard form contract of adhesion that the Defendants imposed on those who use its system and/or hold accounts. There was and is no opportunity for any Class member to negotiate its terms.
25. The User Agreement effective between September 4, 2013 and October 25, 2014 (the "**2013 User Agreement**") provided as follows concerning currency conversions:

² There have been other amendments to the User Agreement between those reviewed below. As far as the Plaintiff is currently aware, those amendments did not affect the currency conversion provision.

8.8 Additional Fees.

| Activity | Fee | | | | | | | | | | | | | | | |
|-----------------------------------|---|-------------------------|----------------------|-------------------------|--|---------------------|------|--|--------------------------|------|--|----------------------------|------|--|-------------------|------|
| <p>Currency Conversion</p> | <p>2.5% added to the exchange rate</p> <p>The Currency Conversion Fee applies whenever a currency conversion is required to complete your payment, except as set out below. 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.</p> <p>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.</p> <p>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.</p> <table border="1" data-bbox="381 947 1435 1585"> <thead> <tr> <th data-bbox="381 947 673 1115">Merchant Rates*</th> <th data-bbox="673 947 1047 1115">Monthly Sales Volume</th> <th data-bbox="1047 947 1435 1115">Currency Conversion Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="381 1115 673 1234"></td> <td data-bbox="673 1115 1047 1234">\$0.01 - \$3,000.00</td> <td data-bbox="1047 1115 1435 1234">2.5%</td> </tr> <tr> <td data-bbox="381 1234 673 1354"></td> <td data-bbox="673 1234 1047 1354">\$3,000.01 - \$12,000.00</td> <td data-bbox="1047 1234 1435 1354">1.5%</td> </tr> <tr> <td data-bbox="381 1354 673 1474"></td> <td data-bbox="673 1354 1047 1474">\$12,000.01 - \$125,000.00</td> <td data-bbox="1047 1354 1435 1474">1.5%</td> </tr> <tr> <td data-bbox="381 1474 673 1585"></td> <td data-bbox="673 1474 1047 1585">Over \$125,000.00</td> <td data-bbox="1047 1474 1435 1585">1.0%</td> </tr> </tbody> </table> <p>*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.</p> | 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% |
| 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% | | | | | | | | | | | | | | |

26. The User Agreement effective between October 25, 2014 and September 29, 2017 (the “2014 User Agreement”) provided as follows concerning currency conversions:

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. | |
| Withdrawing your Balance | No Fee to withdraw to a bank account. If a currency conversion is required to complete your withdrawal, the Currency Conversion Fee will apply. | |

27. The User Agreement effective from September 29, 2017 to present (the “**2017 User Agreement**”) provides as follows concerning currency conversions:

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 than Canadian or U.S. Dollars | 3.5% added to the exchange rate |

- 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% |

28. While the Defendants represented in the 2014 User Agreement and the 2017 User Agreement that Class members have “the right to have [their] credit card issuer[s] perform ... currency conversion[s] and can choose this option during checkout on [their] transaction review page before [they] complete the transaction,” no such option was or is present during checkout. In breach of this contractual provision, throughout the Class Period, the Defendants have unilaterally undertaken the currency conversion in respect of all purchases involving different currencies, and charged the buyers the Undisclosed FX Transaction Fees.
29. The 2013 User Agreement, the 2014 User Agreement and the 2017 User Agreement are referred to collectively as the “**User Agreements**”.
30. The user agreement(s) effective prior to September 4, 2013 is not available to the Plaintiff. The Plaintiff reserves his right to amend the Statement of Claim once he receives a copy of that agreement (or those agreements).

E. The Undisclosed Fees

1. **The Undisclosed FX Transaction Fees**
31. The full extent of the Defendants’ disclosure concerning the fees they charge on foreign exchange transactions is stipulated as follows.
 - (a) In the 2013 User Agreement and the 2014 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) The 2017 User Agreement’s disclosure of the rate to which the Currency Conversion Fee is added is even more vague: “The exchange rate is adjusted regularly based on market conditions.”

32. Under each of the User Agreements it is impossible to discern the exchange rate the Defendants applied to the foreign exchange transactions and, therefore, it is impossible to determine the total fees the Defendants charged the Class members.

33. What is clear is that the exchange rate the Defendants applied to the transactions and used to calculate the Currency Conversion Fee charged to the Class members was far in excess of the rate at which the Defendants transacted in foreign currency during the Class Period.

34. Specifically, the exchange rate the Defendants charged the Class members was higher than the exchange rate the Defendants’ financial institution(s) charged them (the “**Spot Rate**”). This spread in the exchange rate was neither disclosed in, nor authorized by, the User Agreements. In the result, the Defendants charged Class members:

(a) a higher exchange rate for foreign exchange transactions than was disclosed in or authorized by the User Agreements; and

- (b) a higher Currency Conversion Fee than was disclosed in or authorized by the User Agreements.
35. 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 requires all users to transact using the PayPal payments system.
36. In each instance:
- (a) The Defendants did not disclose to Mr. Kaplan the exchange rate they used for the transaction or how it was determined;
 - (b) The Defendants imposed an exchange rate that materially exceeded the Spot Rate;
 - (c) The Defendants charged Mr. Kaplan a hidden fee, being the undisclosed spread between the Spot Rate and the rate the Defendants charged Mr. Kaplan;
 - (d) The Defendants charged Mr. Kaplan an inflated Currency Conversion Fee that was not authorized by the 2014 User Agreement because of the undisclosed spread in the exchange rates; and
 - (e) The Defendants charged Mr. Kaplan a total foreign exchange fee that materially exceeded the total foreign exchange fee that would have been charged by Mr. Kaplan's credit card issuer for precisely the same transactions.

37. Throughout the Class Period, the Defendants have and continue to systematically charge the Class members an exchange rate that exceeds the rate "set by a financial institution". In doing so, the Defendants increase 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 is grossly inadequate, intentionally vague, deceptive and misleading.
38. During the Class Period, the Defendants charged these Undisclosed FX Transaction Fees to the Transaction Sub-Class on all transactions using the PayPal payments system involving a currency conversion.
39. By failing to disclose the actual exchange rate at which they transacted and to which they added the Currency Conversion Fee, the Defendants concealed the Undisclosed FX Transaction Fees from the Class members.

2. Automatic Conversions on Withdrawal and the Undisclosed FX Withdrawal Fees

40. The Defendants unilaterally and automatically convert any foreign currency held in an accountholder's PayPal Canada account upon withdrawal, and charge the accountholder the Undisclosed FX Withdrawal Fees. Like transactions involving foreign currency, the Defendants fail to disclose:
 - (a) the exchange rate upon which the foreign exchange fee for withdrawals is based;
 - (b) the hidden fee or spread added to the Spot Rate; and

(c) the degree to which the hidden fee inflates the Currency Conversion Fee.

41. Moreover, currency conversions are not “required” in order to withdraw foreign currencies from accountholders’ PayPal Canada accounts. Rather, accountholders’ funds can be, and should be, transferred directly to their linked bank accounts or credit cards without the Defendants’ performing any foreign currency conversion and charging foreign exchange-related fees, including the Undisclosed FX Withdrawal Fees and the inflated Currency Conversion Fee. Once the foreign currency is transferred to the linked bank account or credit card, the bank or credit card issuer may, if authorized, convert the funds to Canadian dollars.

42. By unilaterally converting foreign currency in Withdrawal Sub-Class members’ accounts and by charging such Class members any fees on the currency exchange, the Defendants are acting contrary to the User Agreements and without lawful authority.

43. 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 exchange rate they used for the withdrawal or how it was determined;

- (b) The Defendants imposed an exchange rate that materially exceeded the Spot Rate;
 - (c) The Defendants charged Mr. Kaplan a hidden fee, being the undisclosed spread between the Spot Rate and the exchange rate the Defendants charged Mr. Kaplan;
 - (d) The Defendants charged Mr. Kaplan an inflated Currency Conversion Fee that was not authorized by the 2017 User Agreement because of the undisclosed spread in the exchange rates; and
 - (e) The Defendants charged Mr. Kaplan a total foreign exchange fee that materially exceeded the total foreign exchange fee that would have been charged by Mr. Kaplan's credit card issuer for precisely the same withdrawal.
44. In addition, in effecting these foreign exchange transactions upon withdrawal, the Defendants have and are acting without lawful authority and are unnecessarily and impermissibly charging the Withdrawal Sub-class members fees associated with currency conversions.

F. Liability and Damages

1. Breach of Contract

45. The Defendants have systematically breached their contracts with the Class members, including by:
- (a) charging the Class members the Undisclosed FX Fees;

- (b) failing to permit Class members' using the PayPal payments system to elect, on checkout, to have their credit card issuers and not the Defendants perform currency conversions for transactions using their system; and
 - (c) automatically converting currency whenever PayPal Canada accountholders withdraw funds not denominated in Canadian dollars and charging foreign exchange fees.
46. 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 Spot Rate, and not an inflated exchange rate.
47. In fact, the base exchange rate the Defendants use was and is materially higher than the Spot Rate and/or the Defendants charge an additional, hidden fee, in respect of every foreign exchange transaction. In the result, the Defendants charge the Class members a total fee that is not authorized by and is in breach of the User Agreements.
48. The Defendants fail to disclose the total fees they charge for foreign currency conversions and the basis on which the total fees for currency conversions are calculated and charged to the Class members.
49. Contrary to the express terms of the User Agreements that Class members have "the right to have [their] card issuer[s] perform the currency conversion and can choose this option during checkout on [their] transaction review page before

[they] complete the transaction,” no such option exists. As a result, the Defendants require the Transaction Sub-Class members to have the Defendants effect currency conversions and thereby ensure that the Defendants obtain the Undisclosed FX Transaction Fees and the inflated Currency Conversion Fee.

50. Contrary to the express terms of the User Agreements, the Defendants charge the Withdrawal Sub-Class members the Undisclosed FX Withdrawal Fees and the inflated Currency Conversion Fee when no currency conversion is “required” upon withdrawal of foreign currency from their accounts.

51. 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;
- (ii) failing to ensure that users could avail themselves of their rights under the User Agreements; and
- (iii) performing currency conversions when no such conversions were required for the purpose of obtaining both the inflated Currency Conversion Fee and the Undisclosed FX Withdrawal Fee upon withdrawal of funds from Withdrawal Sub-Class members’ accounts.

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

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

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

2. Breach of Consumer Protection Legislation

54. By engaging in the conduct set out above at paragraphs 31-51, 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 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 foreign exchange transactions;
- (c) failed to permit users to designate their credit card issuers to perform currency conversions; and
- (d) effected currency conversions upon withdrawals from accounts when such conversions were not required.

55. The Class members reasonably relied on the Defendants' representations to enter into transactions using the PayPal payments system for which the Defendants charged Undisclosed FX Transaction Fees and to withdraw funds from accounts held with the Defendants for which the Defendants charged the Undisclosed FX Withdrawal Fees and all other fees. Such reliance may be inferred from the fact of the Withdrawal Sub-Class members' withdrawals.
56. 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 damages to compensate the Class members for their losses are the appropriate remedy. The precise quantum of the Class members' losses is within the knowledge of the Defendants.
57. 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 any applicable notice requirements in accordance with the objectives of the CPA and the Consumer Protection Legislation.

3. Unjust Enrichment

58. The Defendants were enriched by Transaction Sub-Class members' payment of the Undisclosed FX Transaction Fees and by the Withdrawal Sub-Class members' payment of the Undisclosed FX Withdrawal 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

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

G. Punitive Damages and Constructive Trust

60. The Defendants have knowingly collected the Undisclosed 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 breaches 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.
61. 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

62. 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 set out in Appendix "B" (collectively, the "**Interest Legislation**").

I. Service Outside Ontario

63. 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) 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; and

(b) the Defendants carry on business in Ontario.

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

November 24, 2017

**PALIARE ROLAND ROSENBERG
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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) Quebec's *Consumer Protection Act*, C.Q.L.R., c. P-40.1, as amended, for Class members resident in Quebec;
- (f) 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;

- (g) 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;
- (h) Nova Scotia's *Consumer Protection Act*, R.S.N.S. 1989, c. 92, as amended, for Class members resident in Nova Scotia;
- (i) 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;
- (j) Yukon's *Consumer Protection Act*, R.S.Y. 2002, c. 40, as amended, for Class members resident in Yukon;
- (k) 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
- (l) 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) Quebec's *Civil Code of Québec*, C.Q.L.R., c. CCCQ-1991, as amended, for Class members resident in Quebec;
- (f) New Brunswick's *Judicature Act*, R.S.N.B. 1973, c. J-2, as amended, for Class members resident in New Brunswick;
- (g) 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;
- (h) 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;

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

Court File No.

LEONID KAPLAN

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

Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT
TORONTO**

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

STATEMENT OF CLAIM

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