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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re PayPal Litigation

Case No. CV-02-01227-JF/PVT

SETTLEMENT AGREEMENT

This Settlement Agreement, dated June 11, 2004, is made and entered into by and between the Representative Plaintiffs, on behalf of themselves and the Class, on the one hand, and PayPal, Inc. ("PayPal"), on the other hand, to settle and compromise the Litigation and settle, resolve, and discharge the Released Claims, as those terms are defined below, according to the terms and conditions herein.

WHEREAS, on March 12, 2002, Craig Comb and other plaintiffs filed a class action complaint against PayPal, Inc. in this Court denominated Comb v. PayPal, No. CV-02-01227-JF. On May 1, 2002, Comb filed a First Amended Complaint, adding Roberta Toher as a plaintiff.

WHEREAS, on February 20, 2002, certain other plaintiffs filed a class action complaint against PayPal, Inc., in the Superior Court of the State of California for the County of Santa Clara ("State Court"), denominated Kamdar v. PayPal Inc., Case No. CV 805433. On March 19, 2002, PayPal filed a Notice of Removal from State Court of the Kamdar action, which was then denominated Kamdar v. PayPal Inc., No. 02-01318-JF in this Court. On June 11, 2002, this Court entered an order dismissing the Kamdar action upon the stipulation of the parties. On that same day,

1 counsel for Kamdar filed a new class action complaint in this Court on behalf of plaintiff Jeffrey
2 Resnick, denominated Resnick v. PayPal, No. CV-02-02777-JF.

3 WHEREAS, the Comb and Resnick complaints alleged claims for violations of the
4 Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 et seq., and California state law.

5 WHEREAS, on June 7, 2002 plaintiffs Susan Lee, Janice Frost, and Ginger Hastings filed a
6 class action complaint against PayPal, Inc. in the State Court, denominated as Case No. CV
7 808441, alleging claims for breach of contract, violations of Business & Professions Code §§ 17200
8 et seq., and conversion (the "Lee Action").

9 WHEREAS, on December 16, 2002, this Court entered a Civil Minute Order (1)
10 consolidating the Comb and Resnick actions; (2) appointing Girard Gibbs & De Bartolomeo LLP
11 and Wolf Popper LLP as plaintiffs' co-lead counsel, and (3) appointing Magistrate Judge Edward
12 A. Infante as a special discovery master and mediator for settlement discussions.

13 WHEREAS, also on December 16, 2002, plaintiffs designated the First Amended
14 Complaint in the Comb action as the operative complaint in the Litigation. The First Amended
15 Complaint included Jeffrey Resnick as a plaintiff and incorporated paragraphs of the Resnick
16 complaint pertaining specifically to Resnick.

17 WHEREAS, on January 2, 2003, the State Court, pursuant to a stipulation among the
18 parties, stayed all proceedings in the Lee Action.

19 WHEREAS, beginning in June 2003 and continuing through August 2003, PayPal produced
20 over 45,000 pages of documents, including internal emails, responsive to comprehensive discovery
21 requests propounded by the plaintiffs. Plaintiffs thereafter deposed eight witnesses designated by
22 PayPal pursuant to Fed. R. Civ. P. 30(b)(6) to testify on subjects identified by plaintiffs. Plaintiffs
23 also pursued third party discovery, and (among other things) deposed Peter Thiel (PayPal's founder
24 and former CEO).

25 WHEREAS, on September 8, 2003, plaintiffs Comb, Toher, and Resnick filed a motion for
26 class certification. On September 15, 2003, plaintiffs filed a motion to amend their class action
27 complaint, and subsequently filed on November 24, 2003, a Second Amended Class Action
28 Complaint.

1 WHEREAS, after plaintiffs filed their motion for class certification, the parties began
2 preliminary discussions over the terms of a potential settlement.

3 WHEREAS, in connection with the Litigation and other considerations, PayPal
4 implemented various changes to its business practices which the parties considered in their
5 settlement discussions:

6 (a) PayPal modified the arbitration provision in the Legal Disputes section of the
7 PayPal User Agreement. The modified provision limits PayPal's ability to compel
8 arbitration where the total amount of the award sought is \$10,000 or greater.

9 (b) Prior to June 2003, PayPal returned funds held in those accounts to which access
10 was limited for longer than 180 days only to those customers who specifically
11 requested the return of their funds. Beginning in June 2003, PayPal began an
12 initiative to return funds held for more than 180 days in those accounts to which
13 access had been limited for 180 days or more. As a result of this initiative, from
14 June through September 2003, PayPal undertook to return \$5.1 million in
15 restricted funds to customers as a result of this initiative ("Certain Released
16 Funds").

17 (c) PayPal has continued to maintain a policy of returning funds from those accounts
18 to which access has been limited for 180 days or more without requiring that the
19 customer seek the return of the funds.

20 (d) PayPal began emailing customers links to periodic and monthly account
21 statements.

22 (e) PayPal began initiatives to expedite its procedures for lifting account limitations.

23 WHEREAS, during September, October, and November 2003, the parties engaged in two
24 and one-half days of settlement mediation before Magistrate Judge Infante, during which the parties
25 candidly aired the strengths and weaknesses in their litigation positions.

26 WHEREAS, while the settlement negotiations were ongoing, PayPal filed its opposition to
27 plaintiffs' motion for class certification and plaintiffs filed their reply in further support of the
28 motion. The filing of these documents further crystallized for both sides the risks of continued

1 litigation. Following additional settlement discussions under the supervision of the Court-
2 appointment mediator, the Litigation was settled in principle on November 12, 2003, subject to the
3 parties reaching agreement on final settlement documentation.

4 NOW, THEREFORE, the Parties agree as follows:

5 1. **DEFINITIONS**

6 As used herein, the following terms have the meanings set forth below.

7 1.1. "Claim Deadline" means the date set forth in the Notice by which Class
8 Members must submit the Claim Form.

9 1.2. "Claim Form" means a document, substantially in the form of Exhibit A-2
10 hereto ("Short Form"), Exhibit A-3 hereto ("Long Form") or Exhibit A-4 hereto ("Statutory
11 Damage Form"), that a Class Member must complete and submit to receive a payment from the Net
12 Settlement Fund.

13 1.3. "Class" means all Persons who opened a PayPal account during the Class
14 Period. Excluded from the Class are any judicial officer to whom this Litigation is assigned; PayPal
15 and any of its affiliates; any current or former employee, officer, or director of PayPal; any
16 residents of Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy,
17 Luxembourg, Portugal, Spain, Sweden, The Netherlands, or the United Kingdom; and all Persons
18 who timely and validly request exclusion from the Class pursuant to the Notice disseminated in
19 accordance with the Notice Order.

20 1.4. "Class Counsel" means the Representative Plaintiffs' counsel of record in the
21 Litigation, namely, Girard Gibbs & De Bartolomeo LLP; Wolf Popper LLP; Horwitz, Horwitz &
22 Associates, Ltd.; and Jacoby & Myers.

23 1.5. "Class Member" means a Person who falls within the definition of the Class set
24 forth in Paragraph 1.3.

25 1.6. "Class Period" means the period from October 1, 1999 through January 31,
26 2004.

27 1.7. "Co-Lead Counsel" means Girard Gibbs & De Bartolomeo LLP and Wolf
28 Popper LLP.

1 1.8. “Court” means the United States District Court for the Northern District of
2 California, San Jose Division.

3 1.9. “Defense Counsel” means PayPal’s counsel of record in the Litigation, Morgan
4 Lewis and Bockius LLP.

5 1.10. “Effective Date” means the first date by which all of the events and conditions
6 specified in Paragraph 7.1 have occurred and been met.

7 1.11. “Final” means (a) if no appeal from the Judgment is filed, the date of expiration
8 of the time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the
9 Judgment is filed, and the Judgment is affirmed or the appeal dismissed, and no petition for
10 certiorari with respect to the appellate court’s judgment affirming the Judgment or dismissing the
11 appeal (“Appellate Judgment”) is filed, the date of expiration of the time for the filing of such a
12 petition for a writ of certiorari; or (c) if such a petition for a writ of certiorari is filed and denied, the
13 date the petition is denied; or (d) if such a petition for a writ of certiorari is filed and granted, the
14 date of final affirmance of the Appellate Judgment or final dismissal of the review proceeding
15 initiated by the petition for a writ of certiorari. Any proceeding, order, appeal, or petition for a writ
16 of certiorari pertaining solely to any application for attorneys’ fees or expenses or the Plan of
17 Allocation will not in any way delay or preclude the Judgment from becoming final.

18 1.12. “Judgment” means the judgment to be entered by the Court pursuant to the
19 Settlement, substantially in the form attached hereto as Exhibit B.

20 1.13. “Litigation” means the action In re PayPal Litigation, Case No. CV-02-01227-
21 JF/EAI, pending in the United States District Court for the Northern District of California, San Jose
22 Division.

23 1.14. “Notice” means a document, substantially in the form of Exhibit A-1(a) or
24 Exhibit A-1(b) hereto, to be disseminated or published in accordance with the Notice Order,
25 informing Persons who fall within the Class definition of among other things, the pendency of the
26 Litigation, the material terms of the proposed Settlement, and their options with respect thereto.

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1 1.15. “Notice Order” means an order substantially in the form of Exhibit A hereto,
2 providing for, among other things, preliminary approval of the Settlement and dissemination of the
3 Notice to the Class.

4 1.16. “Parties” means the Representative Plaintiffs and PayPal.

5 1.17. “PayPal” means PayPal, Inc.

6 1.18. “Person” means an individual, corporation, partnership, limited partnership,
7 association, joint stock company, estate, legal representative, trust, unincorporated association,
8 government or any political subdivision or agency thereof, any business or legal) entity, and such
9 individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

10 1.19. “Plan of Allocation” means the plan for allocating the Net Settlement Fund set
11 forth in Exhibit C hereto, or such other plan for allocating the Net Settlement Fund approved by the
12 Court.

13 1.20. “Released Claims” means any and all claims, demands, rights, liabilities, and
14 causes of action of every nature and description whatsoever, known or unknown, matured or
15 unmatured, at law or in equity, existing under federal or state law, that arose prior to February 1,
16 2004 and that were or could have been asserted in the Litigation against the Released Persons,
17 including without limitation, claims under the Electronic Fund Transfer Act, California Business
18 and Professions Code §§ 17200 et seq.; the California Consumers Legal Remedies Act, Cal. Civ.
19 Code §§ 1750 et seq.; and for PayPal’s alleged conversion, breach of the User Agreement or other
20 contract, money had and received, unjust enrichment, and negligence under California law or any
21 other state or federal law arising out of, among other things, PayPal’s restrictions or limitations of
22 accounts; PayPal’s dispute resolution policies, practices and procedures; PayPal’s debit of accounts
23 following the receipt of chargebacks, buyer complaints, reports of unauthorized access or in
24 connection with its Seller Protection Policy or Buyer Protection Policy; PayPal’s alleged
25 conversion of funds; and PayPal’s compliance with the Electronic Fund Transfer Act, 15 U.S.C. §§
26 1693 et seq., or any similar legislation arising under the laws of any state. “Released Claims” shall
27 not include the claim of any Class Member to the return of Certain Released Funds.

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1 1.21. “Released Persons” means PayPal and its past and present partners, affiliates,
2 predecessors, successors, assigns, parents, subsidiaries, officers, directors, attorneys, and
3 employees.

4 1.22. “Representative Plaintiffs” means Roberta Toher and Jeffrey Resnick, who are
5 named plaintiffs in the Litigation.

6 1.23. “Settlement” means the settlement set forth in this Agreement.

7 1.24. “Settling Parties” means, collectively, the Released Persons, the Representative
8 Plaintiffs, and all Class Members.

9 1.25. The plural of any defined term includes the singular, and the singular of any
10 defined term includes the plural, as the case may be.

11 **2. PAYPAL’S DENIAL OF WRONGDOING AND LIABILITY**

12 2.1. PayPal denies the material factual allegations and legal claims asserted by the
13 Representative Plaintiffs in the Litigation, including any and all charges of wrongdoing or liability
14 arising out of any of the conduct, statements, acts or omissions alleged, or that could have been
15 alleged, in the Litigation. Nonetheless, PayPal has concluded that further conduct of the Litigation
16 would be protracted and expensive, and that it is desirable that the Litigation be fully and finally
17 settled in the manner and upon the terms and conditions set forth in this Agreement.

18 **3. THE BENEFITS OF SETTLEMENT**

19 3.1. The Representative Plaintiffs and Class Counsel believe that the claims asserted
20 in the Litigation have merit. Class Counsel, however, recognize and acknowledge the expense and
21 length of continued proceedings that would be necessary to prosecute the Litigation against PayPal
22 through trial and appeals. Class Counsel also have taken into account the uncertain outcome and the
23 risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties
24 and delays inherent in such litigation. Class Counsel are mindful of the inherent problems of proof
25 and possible defenses to the claims asserted in the Litigation. Class Counsel believe that the
26 proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of
27 these factors, the Representative Plaintiffs and Class Counsel have determined that the Settlement is
28 in the best interests of the Representative Plaintiffs and the Class.

1 **4. SETTLEMENT CONSIDERATION**

2 **a. Injunctive Relief**

3 4.1. PayPal will consent to entry of an injunction by the Court in the form attached
4 hereto as Exhibit D.

5 **b. Electronic Dissemination Of Notice**

6 4.2. PayPal will disseminate the Notice by electronic mail in accordance with the
7 Notice Order at its own expense and at no cost to the Class or the Settlement Fund.

8 **c. Electronic Distribution Of Settlement Proceeds**

9 4.3. Class Members who are entitled to distributions from the Net Settlement Fund
10 under the Plan Of Allocation, and who have full access to PayPal accounts at the time their
11 distributions are to be sent to them, will have their distributions transferred electronically to those
12 accounts by PayPal at its own expense and at no cost to the Class or the Settlement Fund.

13 **d. Settlement Fund**

14 4.4. No later than ten business days after entry of the Judgment, PayPal will deposit
15 the sum of nine million two hundred fifty thousand dollars (\$9,250,000) into an interest-bearing
16 account under the joint custody and control of Co-Lead Counsel and Defense counsel. The original
17 deposit of \$9,250,000, plus accrued interest, will constitute the Settlement Fund. The Settlement
18 Fund will be applied as follows or as otherwise ordered by the Court,

19 **(i) Administrative Costs**

20 4.5. Subject to the Court's approval, the Settlement Fund will be applied to payment
21 of the reasonable cost of giving notice by publication and reasonable costs of administering the
22 Settlement (but excluding any costs associated with disseminating the Notice electronically or
23 issuing distributions electronically from the Settlement Fund to Fund Claimants) (collectively,
24 "Administrative Costs"). All Administrative Costs which are reasonably and necessarily incurred
25 prior to the Effective Date shall be advanced from the Settlement Fund, subject to prior approval by
26 PayPal.

27 4.6. In the event that Class Counsel incurs any reasonable Administrative Costs in
28 connection with the administration of the Settlement, including Administrative Costs incurred in

1 connection with the Plan of Allocation, the Settlement Fund shall be applied to payment of such
2 costs.

3 4.7. The Representative Plaintiffs, Class Counsel, and the Class Members shall not
4 be responsible for payment of Administrative Costs in connection with the Settlement.

5 **(ii) Attorneys' Fees And Expenses**

6 4.8. Subject to Court approval and Paragraphs 6.1-6.3, the Settlement Fund will be
7 applied to payment of any award of attorneys' fees and for reimbursement of actual costs and
8 expenses incurred by Class Counsel in the Litigation ("Fee Award").

9 **(iii) Payment of Class Members' Claims**

10 4.9. The balance of the Settlement Fund remaining after deduction of Administrative
11 Costs in accordance with Paragraphs 4.5 and 4.6, and the Fee Award in accordance with Paragraph
12 4.8 ("Net Settlement Fund") will be distributed among all Class Members who properly complete
13 and timely submit Claim Forms ("Fund Claimants"), in accordance with the Plan of Allocation.
14 The Representative Plaintiffs may request that PayPal provide copies of records pertaining to Fund
15 Claimants. PayPal's reasonable costs for providing such records shall be treated as Administrative
16 Costs and shall be recoverable from the Settlement Fund. PayPal may redact or withhold such
17 portions of the records as necessary to protect any Person's right to privacy or confidentiality or a
18 trade secret or other proprietary information of PayPal. PayPal's obligation to provide such records
19 will be contingent on PayPal's agreement to and the Court's approval of the terms and conditions
20 pursuant to which such records will be provided (such terms and conditions may include payment
21 of an hourly rate to PayPal that includes any and all costs PayPal may incur including out-of-pocket
22 costs and overhead).

23 **(iv) Tax treatment of Settlement Fund; Consequences of termination**

24 4.10 (a) The Parties will treat the bank account in which the Settlement Fund is
25 deposited ("Settlement Account") as a "qualified settlement fund" within the meaning of Treasury
26 Regulations 1.468B-1 through 1.468B-5. They will treat the Settlement Account as a qualified
27 settlement fund for all reporting purposes under the federal tax laws. In addition, the Fund
28 Administrator and, as required, PayPal will jointly and timely make the "relation-back election" (as

1 defined in Treasury Regulation 1.468B-1) back to the earliest permitted date. Such election will be
2 made in compliance with the procedures and requirements contained in such regulations. It will be
3 the responsibility of the Fund Administrator to timely and properly prepare and deliver the
4 necessary documentation for signature by all necessary parties, and thereafter to cause the
5 appropriate filing to occur.

6 (b) A. J. De Bartolomeo will be the Fund Administrator within the meaning of
7 Treasury Regulation 1.468B-(2)(k)(3) for the Settlement Account. The Fund Administrator will
8 timely and properly file all informational and other tax returns necessary or advisable with respect
9 to the Settlement Account (including without limitation the returns described in Treasury
10 Regulation 1.468B-2(k)), Such returns (as well as the relation-back election described in
11 Paragraph 4.10(a)) will be consistent with this Paragraph 4.10(b) and in any event will reflect that
12 (i) all taxes (including any estimated taxes, interest or penalties) on the income earned by the
13 Settlement Account will be paid out of the Settlement Account.; and (ii) all expenses and costs
14 incurred in connection with the operation and implementation of this Paragraph (including,
15 without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs
16 and expenses relating to filing (or failing to file) the returns described in this Paragraph) ("Tax
17 Expenses"), will be paid out of the Settlement Account. In no event will PayPal have any liability
18 or responsibility for the Taxes, the Tax Expenses, or the filing of any tax returns or, other
19 documents with the Internal Revenue Service or any other state or local taxing authority. The
20 Settlement Account will indemnify and hold PayPal and Defense Counsel harmless for Taxes and
21 Tax Expenses (including, without limitation, Taxes payable by reason of any such
22 indemnification). Furthermore, Taxes and Tax Expenses will be timely paid by the Fund
23 Administrator out of the Settlement Account without prior Court order, and the Fund
24 Administrator will be obligated (notwithstanding anything herein to the contrary) to withhold from
25 distribution to Fund Claimants any funds necessary to pay such amounts (as well as any amounts
26 that may be required to be withheld under Treasury Regulation 1.468B-2(l)(2)). PayPal is not
27 responsible and will have no liability therefor, or for any reporting requirements that may relate
28 thereto. The Parties agree to cooperate with the Fund Administrator, each other, and their tax

1 attorneys and accountants to the extent reasonably necessary) to carry out the provisions of this
2 Paragraph.

3 4.11 If this Agreement is not approved by the Court or the Settlement is terminated
4 or fails to become effective in accordance with the terms of this Agreement, the balance remaining
5 in the Settlement Fund, less amounts incurred or due and owing in connection with Taxes or Tax
6 Expenses provided for herein, will be refunded to PayPal. In such event, neither the Representative
7 Plaintiffs nor Class Counsel nor any Class Member will have any obligation to repay PayPal for
8 any Tax or Tax Expenses incurred or due and owing.

9 e. Releases

10 4.12 Upon the Effective Date, the Representative Plaintiffs and each of the Class
11 Members will be deemed to have, and by operation of the Judgment will have, fully, finally, and
12 forever released, relinquished, and discharged the Released Persons from all Released Claims.

13 4.13 To the fullest extent possible permitted by law, the Representative Plaintiffs and
14 each of the Class Members waive any and all rights and benefits they had or may have with
15 regard to the Released Claims under California Civil Code section 1542, or any comparable
16 provision of any other state, federal, or other country's law. Section 1542 provides:

17 Certain Claims Not Affected by General Release. A general
18 release does not extend to claims which the creditor does not
19 know or suspect to exist in his favor at the time of executing the
20 release, which if known by him must have materially affected his
21 settlement with the debtor.

22 The Representative Plaintiffs and one or more of the Class Members may hereafter discover facts
23 other than or different from those which he or she knows or believes to be true with respect to the
24 Released Claims. Nevertheless, the Representative Plaintiffs and Class Members hereby expressly
25 waive and release upon the Effective Date, any known, unknown, suspected or unsuspected,
26 contingent or non-contingent Released Claim, whether or not concealed or hidden, without regard
27 to the subsequent discovery or existence of such different or additional facts.

28 4.14 In the event PayPal initiates or files any complaint, claim, action, litigation, or
other proceeding against any Class Member, such Class Member shall have the right to raise or

1 assert any of the Released Claims as an affirmative defense or offset only. The Class Members'
2 right to raise or assert the Released Claims as affirmative defense or offset is limited only to those
3 instances in which PayPal is the first to file a complaint, claim, action, litigation, or other
4 proceeding against the Class Member. Pursuant to the provisions of paragraph 4.12 and 4.13
5 above, the Class Members have otherwise released generally all of the Released Claims and,
6 accordingly, have no right or ability to assert them affirmatively or as a defense, offset or in any
7 other manner to any cross-complaint or counterclaim that PayPal files in response to any complaint,
8 claim, action, litigation or other proceedings initiated by a Class Member.

9 4.15 Upon the Effective Date, each of the Released Persons and their counsel will be
10 deemed to have, and by operation of the Judgment will have, fully, finally, and forever released,
11 relinquished, and discharged the Representative Plaintiffs, Craig Comb, Ginger Hastings, Janice
12 Frost, Susan Lee and Class Counsel from any and all claims, demands, liabilities, and causes of
13 action of every nature and description whatsoever, known or unknown, whether or not concealed or
14 hidden, asserted or that might have been asserted, arising out of, based upon, or related to the
15 initiation, prosecution; assertion, litigation, settlement, or resolution of the Litigation or the
16 Released Claims.

17 **5. NOTICE ORDER AND SETTLEMENT HEARING**

18 5.1. Promptly after execution of this Agreement, the Parties will submit the
19 Agreement together with its Exhibits to the Court and will apply for entry of the Notice Order.

20 5.2. The Parties will request that the Court, after dissemination of the Notice in
21 accordance with the Notice Order to Persons who fall within the definition of the Class, hold a
22 hearing on whether the Settlement should be granted final approval and whether, Class Counsel's
23 application to the court for a Fee Award ("Fee Application") should be granted.

24 5.3. Following dissemination of the Notice to Persons who fall within the definition
25 of the Class, such Persons shall have the right to opt out of the Settlement in accordance with the
26 procedures set forth in the Notice. Any right to opt out pursuant to this paragraph shall be personal
27 to the individual and shall not be assignable. In no event shall any class of persons be able to opt
28 out. In the event that more than 1,500 such Persons opt out of the Settlement, PayPal shall have the

1 option to void, nullify, terminate, and/or rescind this Agreement. Such option shall be exercised at
2 least three (3) days before the hearing on final approval of the Settlement ("Settlement Hearing").

3 **6. ATTORNEYS' FEES AND EXPENSES**

4 6.1. Except as otherwise provided in this Agreement, PayPal shall not be liable for
5 any costs, fees, or expenses incurred by Class Counsel or any other attorneys, representatives,
6 experts, consultants, advisors, or agents retained by the Representative Plaintiffs or any of the Class
7 Members.

8 6.2. Class Counsel will submit their Fee Application requesting approval of a Fee
9 Award consisting of an award of attorneys' fees and reimbursement of actual expenses and costs
10 incurred in connection with the Litigation, plus interest on the award at the same rate as earned by
11 the Settlement Fund and accrued from establishment of the Settlement Fund until payment of the
12 award, to be paid from the Settlement Fund. Class Counsel's request for reimbursement of actual
13 expenses and costs may include an application on behalf of certain of the named plaintiffs for
14 reimbursement from the Settlement Fund of their actual out-of-pocket expenses (including lost
15 wages) relating to the prosecution of the Litigation. PayPal will not file or submit, directly or
16 indirectly, any objections to the Fee Application, so long as the Fee Application does not seek an
17 award of attorneys' fees in an amount greater than \$3,332,500, reimbursement of expenses and
18 costs in an amount greater than \$135,000, or reimbursement of the named plaintiffs' expenses in an
19 amount greater than \$15,000. PayPal agrees that certain changes to its business practices
20 referenced in this agreement, including the return, between June and September 2003, of amounts
21 held in accounts to which access was limited, are attributable in part to the Litigation and the efforts
22 of Class Counsel, and may be considered for purposes of determining the amount recovered by
23 Class Counsel on behalf of the Class.

24 6.3. No later than ten business days after the Court's entry of an order granting
25 approval of the Settlement, and only after Class Counsel has provided PayPal with security
26 satisfactory to PayPal for repayment of the final amounts to be transferred in the event repayment
27 becomes necessary pursuant to section 6.4 below, Defense Counsel will provide any and all
28 necessary authorization to transfer the total amount of the Fee Award from the Settlement Fund to a

1 bank account under the sole control of both Co-Lead Counsel. The Fee Award will be allocated
2 among Co-Lead Counsel by agreement or as otherwise determined by the Court. Co-Lead Counsel
3 will jointly determine the allocation of the Fee Award among Class Counsel. No money will be
4 paid out of the Fee Award without the written consent of both Co-Lead Counsel or by Order of the
5 Court.

6 6.4 In the event that this settlement is terminated for any reason whatsoever or
7 disapproved by the Court or any appellate court, Class Counsel shall, within 10 business days after
8 the termination or service of an order disapproving of the Settlement, return to PayPal the entire
9 amount transferred to pay the Fee Award plus any and all interest earned thereon.

10 6.5 The Fee Application and the Court's decision to grant or deny that application, in
11 whole or in part, are to be considered by the Court separately from the Court's consideration of the
12 fairness, reasonableness, and adequacy of the Settlement. Any order or proceedings relating to the
13 Fee Application, or any appeal from any order relating thereto or reversal or modification thereof,
14 will not operate to terminate or cancel this Agreement, or affect or delay the finality of the
15 Judgment approving this Agreement and the Settlement.

16 7. **CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

17 7.1. The Effective Date of this Agreement is conditioned on the occurrence of all of
18 the following events.

- 19 (a) The Court has entered the Notice Order;
- 20 (b) The Court has entered the Judgment;
- 21 (c) The Judgment has become Final, as defined in Paragraph 1.11;
- 22 (d) The Lee Action shall have been dismissed with prejudice; and
- 23 (e) Craig Comb, Ginger Hastings, Janice Frost, and Susan Lee shall have
24 released PayPal fully, finally and forever, from any and all claims, known
25 or unknown, that were or could have been asserted in the Litigation or the
26 Lee action.

27 7.2. If this Agreement is not approved by the Court or the Settlement is terminated
28 or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will

1 be restored to their respective positions in the Litigation as of November 12, 2003. In such event,
2 the terms and provisions of this Agreement, with the exception of Paragraphs 1.1-1.25, 4.11, 7.2,
3 8.4-8.5, and 8.9-8.13, will have no further force and effect with respect to the Settling Parties and
4 will not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or
5 order entered by the Court in accordance with the terms of this Agreement will be treated as
6 vacated, nunc pro tunc. Under no circumstances will the Representative Plaintiffs, Class Counsel,
7 or any Class Member have any liability for costs of giving notice or administering the Settlement. If
8 the Settlement is terminated or not approved for any reason, PayPal will absorb such costs in their
9 entirety. No Order of the Court or modification or reversal on appeal of any order of the Court
10 concerning any award of attorneys' fees, expenses, or costs to Class Counsel will constitute
11 grounds for cancellation or termination of this Agreement.

12 7.3. The class certification contemplated by this Settlement is for purposes of
13 settlement only and nothing in this Settlement shall constitute, in this or in any other action or
14 proceedings, an admission by PayPal or a finding or evidence that any claims that either were
15 brought or could have been brought in the Litigation or the Lee action are appropriate for class
16 treatment or that any requirement for class certification is otherwise satisfied. By entering into this
17 Settlement, PayPal in no way waives its right to challenge or contest the continued maintenance of
18 the Litigation or any other lawsuits or class actions, and to oppose certification of any class or
19 otherwise oppose the claims of the class for litigation purposes, nor shall the fact that it was entered
20 into be offered, received or construed as an admission, a finding or evidence for any purpose,
21 including the appropriateness of class certification.

22 7.4. If a case is commenced with respect to PayPal under Title 11 of the United
23 States Code (Bankruptcy), or a trustee receiver or conservator is appointed under any similar laws
24 and if a final order of a court of competent jurisdiction is entered determining that payments by
25 PayPal to Class Members pursuant to the Settlement are a preference, voidable transfer, fraudulent
26 transfer, or similar transaction, then the releases given and Judgment entered in favor of the
27 Released Persons pursuant to this Agreement will be null and void.

28

1 7.5. Upon the Effective Date, PayPal will relinquish any interest in the Settlement
2 Fund, and PayPal will cooperate to promptly transfer the Settlement Fund to an account under the
3 sole control of Co-Lead Counsel.

4 **8. MISCELLANEOUS PROVISIONS**

5 8.1. The Parties agree that the claims administrator will host a website under the
6 direction of Co-Lead Counsel for the purpose of providing Class members with information about
7 the Settlement and the claims process. Co-Lead Counsel will afford PayPal the opportunity to
8 review and approve or disapprove the website's content and any subsequent material changes
9 thereto. PayPal will not unreasonably withhold its approval of the content of the website.

10 8.2. The Parties acknowledge that it is their intent to consummate this Agreement,
11 and they agree to cooperate to the extent reasonably necessary to effectuate and implement all
12 terms and conditions of this Agreement and to exercise their best efforts to accomplish the
13 foregoing terms and conditions of this Agreement.

14 8.3. The Parties intend the Settlement to be a final and complete resolution of all
15 disputes between them with respect to the Litigation. The Settlement compromises claims that are
16 contested and will not be deemed an admission by any Settling Party as to the merits of any claim
17 or defense. The Parties agree that the consideration provided to the Class and the other terms of the
18 Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached
19 voluntarily after consultation with competent legal counsel.

20 8.4. Neither this Agreement, the Settlement, nor any act performed or document
21 executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to
22 be an admission of, or evidence of, (1) the validity of any Released Claims; (2) any wrongdoing or
23 liability of PayPal; or (3) any fault or omission of PayPal in any civil, criminal, or administrative
24 proceeding in any court, administrative agency, or other tribunal. PayPal may file this Agreement
25 and/or the Judgment in any action that may be brought against it in order to support any defense or
26 counterclaim, including without limitation those based on principles of res judicata, collateral
27 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
28 preclusion or issue preclusion or similar defense or counterclaim.

1 8.5. All agreements made and orders entered during the course of the Litigation
2 relating to the confidentiality of information will survive this Agreement.

3 8.6. All of the Exhibits to this Agreement are material and integral parts hereof and
4 are fully incorporated herein by this reference.

5 8.7. This Agreement may be amended or modified only by a written instrument
6 signed by or on behalf of all Parties or their respective successors-in-interest.

7 8.8. This Agreement and the Exhibits attached hereto constitute the entire agreement
8 among the Parties, and no representations, warranties, or inducements have been made to any Party
9 this Agreement or its Exhibits other than the representations, warranties, and covenants covered and
10 memorialized in such documents. Except as otherwise provided herein, the Parties will bear their
11 own respective costs.

12 8.9. Co-Lead Counsel, on behalf of the Class, are expressly authorized by the
13 Representative Plaintiffs to take all appropriate action required or permitted to be taken by the
14 Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into
15 any modifications or amendments to this Agreement on behalf of the Class that Co-Lead Counsel
16 deem appropriate.

17 8.10. Each counsel or other Person executing this Agreement or any of its Exhibits on
18 behalf of any Party hereby warrants that such Person has the full authority to do so.

19 8.11. This Agreement may be executed in one or more counterparts. All executed
20 counterparts and each of them will be deemed to be one and the same instrument. A complete set of
21 original counterparts will be filed with the Court.

22 8.12. This Agreement will be binding upon, and inure to the benefit of, the successors
23 and assigns of the Settling Parties.

24 8.13. The Court will retain jurisdiction with respect to implementation and
25 enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the
26 Court for purposes of implementing and enforcing the Settlement.

27 8.14. None of the Settling Parties, or their respective counsel, will be deemed to be
28 the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The

1 language in all parts of this Agreement and its Exhibits will be interpreted according to its fair
2 meaning, and will not be interpreted for or against any of the Settling Parties as the drafter thereof.

3 8.15. This Agreement and the Exhibits hereto will be construed and enforced in
4 accordance with, and governed by, the internal, substantive laws of the State of California without
5 giving effect to that State's choice-of-law principles.

6 8.16. Class Counsel hereby warrant and represent that they are authorized on behalf
7 of the Representative Plaintiffs to make any representations made by the Representative Plaintiffs
8 in the Settlement Agreement and to agree to the provisions therein.

9 IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be
10 executed by their duly authorized attorneys, dated as of June 10, 2004.

11 Girard Gibbs & De Bartolomeo LLP

12
13 By: 

14 Daniel C. Girard

15 601 California Street, Suite 1400
16 San Francisco, California 94108
17 Telephone: (415) 981-4800
18 Facsimile: (415) 981-4846

19 Wolf Popper LLP

20 By: _____

21 Robert C. Finkel

22 845 Third Avenue
23 New York, New York 10022
24 Telephone: (212) 759-4600
25 Facsimile: (212) 486-2093

26 Horwitz, Horwitz & Associates, Ltd.

27 By: _____

28 Richard J. Doherty

25 East Washington Street, Suite 900
Chicago, Illinois 60602
Telephone: (312) 372-8822
Facsimile: (312) 372-1673

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4 accordance with, and governed by, the internal, substantive laws of the State of California without
5 giving effect to that State's choice-of-law principles.

6 8.16. Class Counsel hereby warrant and represent that they are authorized on behalf
7 of the Representative Plaintiffs to make any representations made by the Representative Plaintiffs
8 in the Settlement Agreement and to agree to the provisions therein.

9 IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be
10 executed by their duly authorized attorneys, dated as of June _____, 2004.

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4 accordance with, and governed by, the internal, substantive laws of the State of California without
5 giving effect to that State's choice-of-law principles.

6 8.16. Class Counsel hereby warrant and represent that they are authorized on behalf
7 of the Representative Plaintiffs to make any representations made by the Representative Plaintiffs
8 in the Settlement Agreement and to agree to the provisions therein.

9 IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be
10 executed by their duly authorized attorneys, dated as of June 11, 2004.

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Jacoby & Myers

By: *Gary A. Peterson*
Gary A. Peterson

Class Counsel

PayPal, Inc.

By: _____
John Muller
Vice President & General Counsel

Morgan, Lewis & Bockius LLP

By: _____
Molly Moriarty Lane

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Counsel for PayPal, Inc.

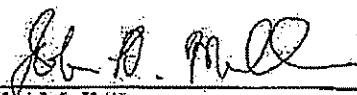
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Jacoby & Myers

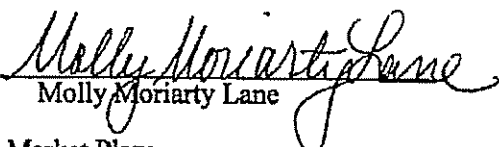
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