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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 ANN FARMER and TODD VAN PELT,) Case No.
individually and on behalf of all others similarly)
18 situated,) **CLASS ACTION COMPLAINT**
)
19 Plaintiffs,)
)
20 v.)
) **JURY TRIAL DEMANDED**
21 EBAY, INC.,)
)
22 Defendant.)

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1 Plaintiffs Ann Farmer and Todd Van Pelt, individually and on behalf of a class of all those
2 similarly situated, bring this action for damages and injunctive relief under the antitrust laws of the
3 United States and applicable California law, demanding a trial by jury, and complaining and
4 alleging, upon personal knowledge as to their own actions and upon information and belief with
5 respect to all other allegations, as follows.

6 I. INTRODUCTION

7 1. This is an antitrust class action brought under section 2 of the Sherman Act.
8 Plaintiffs allege that by use of illegal tie-in and steering practices, Defendant eBay Inc. (“eBay”),
9 has acted, through various abusive methods, to maintain its monopoly in the online auction market.
10 As a part of this scheme to abuse its monopoly position, Defendant eBay has acquired its
11 competitors, acted through its wholly-owned subsidiary PayPal, Inc. (“PayPal”) to monopolize the
12 available forms of payment that sellers can use on eBay, and banned competitors outright in an
13 attempt to maintain its dominance in the online auction market.

14 2. Beginning in 2002, when PayPal was seen as a threat through its growing online
15 payment system, eBay acquired PayPal – the “gorilla” in the online payment system market –
16 eliminating competition, and expanding its own market dominance. Ebay possesses monopoly
17 power in online auction markets. Ebay’s gross merchandise volume in 2006 totaled \$52.474
18 billion. Moreover, it is estimated that eBay controls in excess of 90% of the online auction market.

19 3. Ebay has maintained its monopoly by tying its PayPal person-to-person stored-value
20 payment system (tying product) to the acceptance of Payment Cards (tied product).¹ Essentially,
21 once a seller states that he or she will accept cash or cash equivalent payment through PayPal, eBay
22 rules *require* the seller also to accept Payment Cards using the PayPal service.

23 4. These services are entirely separate payment systems. Ebay’s forced tying of these
24 products together results in substantially higher costs to sellers and also serves to maintain eBay’s
25 monopoly in both the online auction market and the online payment system for use with online
26 auctions.

27 _____
28 ¹ “Payment Cards” or “Payment Card” refers to transactions with credit, debit, or charge
accounts, such as Visa or MasterCard.

1 District of California, Local Rule 3-2(e), because this action arises in the county of Santa Clara,
2 assignment to the San Jose division is proper.

3 **III. PARTIES**

4 12. Plaintiff Ann Farmer is a resident of Charlotte, North Carolina. She has been an
5 active seller on eBay since 2003. She has both a Personal and Premier PayPal account. Plaintiff
6 Farmer has been injured by eBay's anticompetitive practices because, as a seller on eBay and a
7 PayPal user, Plaintiff Farmer has been forced to pay artificially inflated and supracompetitive fees
8 to eBay.

9 13. Plaintiff Todd Van Pelt is a resident of Ventura, California. He has been an active
10 seller on eBay since approximately 1999. He originally had a Personal Account but now has only a
11 Premier PayPal account. As a seller, eBay requires Plaintiff Van Pelt to accept credit card
12 payments from buyers and pay the accompanying credit card fees to eBay or its subsidiary PayPal.
13 Plaintiff Van Pelt has been forced to pay artificially inflated and supracompetitive fees to eBay.

14 14. Defendant eBay is a Delaware corporation with its principal executive offices
15 located at 2145 Hamilton Avenue, San Jose, California, 95125. Ebay provides online marketplaces
16 for the sale of goods and services, online payment services, and online communications serving a
17 diverse community of individuals and businesses. Ebay's website enables sellers to list items for
18 sale in either auction or fixed-price formats and buyers to bid for and purchase those items. This
19 action concerns auctions held on eBay's U.S.-based website, eBay.com, initiated by seller in the
20 United States. PayPal is a wholly-owned subsidiary of eBay, resulting from eBay's acquisition of
21 PayPal in 2002. PayPal enables individuals and businesses to send and receive payments online by
22 use of credit cards or bank transfers.

23 **IV. FACTUAL ALLEGATIONS**

24 **A. EBay Possesses Monopoly Power in the Online Auction Market**

25 15. Even before its acquisition of PayPal in 2002, eBay has sought and maintained
26 dominance in the online auction market. EBay is the world's largest online auction house and its
27 name has become synonymous with online auctions. EBay describes itself as "The World's Online
28

1 Marketplace® for the sale of goods and services by a diverse community of individuals and small
2 businesses” and says that “[o]n an average day, there are millions of items listed on eBay.”

3 16. eBay possesses monopoly power in the online auction market. Although eBay
4 offers different services, as stated in its Report on Form 10-K for the fiscal year ended December
5 31, 2006, filed with the SEC on February 28, 2007 (“2006 10-K”), “[a]t the core of our
6 Marketplaces platform are our traditional auction format listings, in which a seller will select a
7 minimum price for opening bids, with the option to set a reserve price for the item, which is the
8 minimum price at which the seller is willing to sell the item.”

9 17. Ebay’s growth has been explosive in the last decade. As described in eBay’s 2006
10 10-K, in the last three years alone, eBay’s active users (all those who bid on, bought, or listed an
11 item) increased from 56.1 million in 2004, to 71.8 million in 2005, reaching 81.8 million in 2006.
12 Its gross merchandise volume (the total value of all successfully closed items) increased from
13 \$34.168 billion, to \$44.299 billion in 2005, to reach \$52.474 billion in 2006.

14 18. It is estimated that eBay controls in excess of 90% of the online auction market,
15 which has significant market effects.

16 19. Ebay’s dominant position in the online auction market results in part from the
17 inherent nature of the market for online auctions, *i.e.*, the “network effect.” The “network effect”
18 occurs when companies “have locked in a large customer base – one that remains loyal because of
19 the effort and expense involved in switching platforms. This also discourages potential rivals, who
20 know they will face a difficult time winning worthwhile market share.”² Ebay’s dominance as an
21 online auctioneer is essentially self-fulfilling: because it has the largest amount of buyers and
22 sellers in a single place, it is the place where most buyers and sellers will gravitate to sell their
23 wares. This makes the barrier to entry extremely high.

24 20. The power of this network effect was displayed by the failure of several other
25 auction websites. For example, Yahoo!, a major Internet company, failed to enter successfully the
26 online auction market, even when it tried to do so by charging nothing for listing items. It failed

27 ² See Amrit Tewary, “It’s Hard to Beat ‘Network Effects,’” available at
28 http://www.businessweek.com/investor/content/feb2003/pi20030228_4861_pi044.htm (dated Feb.
28, 2003).

1 again when it charged for listings – and has failed for the third time in reverting back to charging
2 nothing, which it did on June 6, 2005. As stated in a recent *Business Week* article:

3 Online auctioneer eBay ..., along with other e-commerce sites,
4 benefits from strong network effects because it gives a way for
5 buyers and sellers to congregate online and transact. As the installed
6 base of potential buyers using the site increases, a potential seller will
7 likely generate more bids for a product on sale, and hence get a
8 higher price for the item. Similarly, potential buyers will benefit
9 from a large number of sellers because they can pick and choose
10 from a wide variety of items to bid on.³

11 **B. EBay Possesses Monopoly Power in Online Payment Systems for Use with Online
12 Auctions**

13 21. EBay possesses a dominant market position in online payment systems used with
14 online auctions through its subsidiary, PayPal. PayPal is a money transfer agent. To use PayPal,
15 customers (buyers) set up an account with their credit card or bank-account details, fill out a
16 payment amount and the e-mail address of the recipient, and send the payment via the Internet to
17 PayPal. If the recipient (seller) does not have an account, he or she opens one in order to collect
18 the payment.

19 22. PayPal accepts two types of payments methods:

20 a. Payment via stored-value payments, *i.e.*, direct transfers from a buyer's bank
21 account; and

22 b. Payment via credit and charge cards, such as Visa, MasterCard, American
23 Express, Discover, and debit cards, such as VisaCheck and MasterMoney.

24 23. Except for sellers who have their own merchant accounts that allow them to accept
25 Payment Cards, the payment methods for individual and merchant sellers are limited to PayPal,
26 money order, and personal check/cashier's check.

27 24. In practice, money orders or checks are much less used on eBay than PayPal
28 accounts. Not only does eBay actively discourage the use of money orders or checks, but using
these methods means that the product will not be shipped until the money has settled in the seller's
account. Thus, neither of these alternative payment methods are as commercially viable as PayPal
because: (1) eBay discourages their use; (2) the risks involved in paying a stranger by check before

³ *Id.*

1 receiving the product; (3) money orders and checks especially create significant delays in receiving
2 and use of funds because of mail and clearance; and (4) it delays the buyer's receipt of the
3 purchased product.

4 25. According to eBay's 2006 10-K, PayPal's revenues and user base continue to climb
5 each year. Payments net transaction revenues increased 40% in 2006 and 47% in 2005, compared
6 to the respective prior year. Payments segment net transaction revenues as a percentage of total net
7 transaction revenues were 24% in 2006, 23% in 2005, and 21% in 2004. During 2006, over \$37.8
8 billion in total payment volume was transacted on the PayPal platform, as compared to \$27.5
9 billion during 2005 and \$18.9 billion during 2004. As of December 31, 2006, PayPal had 133.0
10 million accounts, compared to 96.2 million at December 31, 2005 and 63.8 million accounts at
11 December 31, 2004.

12 26. In a June 27, 2003 press release, Chief Executive Officer ("CEO") Meg Whitman
13 acknowledged that as of June 2003, "more than 80 percent of the listings on eBay.com offer PayPal
14 as a payment option."⁴ More recently, in eBay's 1Q07 earnings conference call, CEO Whitman
15 stated that "PayPal continues to be, far and away, the number one online payments company,
16 turning in impressive results, including 31% annual revenue growth, and more than \$11 billion in
17 total payment volume." In the 1Q07 conference call, CEO Whitman stated that PayPal "continued
18 to grow [its] on-eBay business in the U.S., achieving nearly 80% penetration of addressable GMV
19 [gross merchandise volume]."⁵

20 **C. eBay's Anticompetitive Activities**

21 **1. eBay Acquires Its Competitors**

22 27. In order to maximize the number of bidders on a product, it is in the seller's interest
23 to provide as many payment means as possible. eBay's dominant position in the market for online
24 payment systems for use with online auctions, and use of affirmative anticompetitive activities, has
25

26 _____
27 ⁴ Available at <http://investor.ebay.com/releasedetail.cfm?ReleaseID=112496> (dated June 27,
2003).

28 ⁵ See eBay Q1 2007 Earnings Call Transcript, available at
<http://internet.seekingalpha.com/article/32757> (dated April 18, 2007).

1 ensured, however, that there are functionally no other real choices for online payment on eBay
2 besides PayPal.

3 28. In April 1999, eBay acquired Billpoint, an online payment system. In March 2000,
4 eBay launched Billpoint, but it failed in gaining any market share against another online payment
5 system, PayPal.

6 29. From 1999 until 2002 (when eBay acquired PayPal), eBay engaged in various
7 anticompetitive practices to extinguish PayPal as a competitor and abuse its own power in the
8 online payment systems market for auctions. The following are among the activities that eBay
9 engaged in:

- 10 a. Banning PayPal from eBay's community boards;
- 11 b. Referring to Billpoint's payment service as "eBay Payments";
- 12 c. Funneling buyers (with "continue" buttons and other prompts) to Billpoint,
13 thereby giving the impression that the eBay payment format, known as "buy
14 it now," accepted only Billpoint payments;
- 15 d. Declaring that sellers were required either to have a credit card merchant
16 account or to accept Billpoint to be included in eBay stores, *de facto*
17 excluding PayPal as a payment option;
- 18 e. Giving preferential placement to Billpoint on eBay's end-of-auction e-mails;
- 19 f. Replacing saved preferences for PayPal with Billpoint preferences; and
- 20 g. Mandating that buyers use a "checkout" feature that presented marketing
21 materials promoting Billpoint and even took the buyer to a Billpoint
22 payment form.

23 30. Ebay's anticompetitive conduct caused PayPal's management to threaten an
24 antitrust lawsuit against eBay for engaging in an illegal bundling strategy. PayPal also filed a
25 complaint with the Department of Justice and with the Federal Trade Commission.

26 31. Commentators noted that "PayPal has been a thorn in eBay's side since it debuted in
27 late 1999." Although PayPal allowed buyers to make payments electronically, and made auctions
28

1 more user-friendly, “at the same time eBay always chafed at seeing another company making
2 money on its own site.”⁶

3 32. In 2002, eBay acquired PayPal. One of the conditions of eBay’s purchase of PayPal
4 was that eBay would shut down Billpoint, PayPal’s chief competitor on eBay. Thus, the
5 acquisition by eBay of PayPal had the effect of eliminating competition in the market for online
6 payment services.

7 33. In 2002, prior to its acquisition by eBay, PayPal stated that it handled payment for
8 one in four winning auctions on eBay. At the time, analysts noted eBay’s desire to boost the use of
9 electronic payments for auctions, and reasoned it was easier for eBay to buy its rival than to beat
10 it.⁷ CEO Whitman, in justifying the PayPal acquisition, stated that at the time, about 40 percent of
11 eBay transactions are settled with electronic payments, a figure she hopes will “increase
12 dramatically” with the PayPal acquisition.⁸

13 34. At the time of the eBay acquisition of PayPal, analysts noted that this was the
14 joining of two dominant forces in the online payment and online auction markets. As described by
15 Merrill Lynch analyst Justin Baldauf in a research note, “PayPal is the ‘gorilla’ in the online
16 payment market, as eBay is the ‘gorilla’ in the online auction market.”⁹

17 **2. Ebay Forces Sellers to Use Both PayPal’s Stored-Value Payment System and**
18 **Payment Cards**

19 35. PayPal allows its buyer members to register bank account and Payment Card
20 account information for use in later transactions. If a member buys merchandise through eBay, the
21 buyer can make payment by advising PayPal from which bank or Payment Card account payment
22 should be made.

23 36. PayPal’s service is not a single, integrated product. It can be, and has been, divided
24 into separate payment mechanisms. If allowed to compete, other providers of payment systems

25 ⁶ See “eBay’s New Pal,” found at <http://www.fool.com/news/take/2002/take020708.htm>
(dated July 8, 2002).

26 ⁷ See Margaret Kane, “eBay picks up PayPal for \$1.5 Billion,” available at
<http://news.com.com/2100-1017-941964.html> (dated July 8, 2002).

27 ⁸ *Id.*

28 ⁹ See Margaret Kane, “eBay Picks up PayPal for \$1.5 Billion,” available at
<http://news.com.com/2100-1017-941964.html> (dated July 8, 2002).

1 would offer the two payments untied. Billpoint, for example, once offered Payment Card services
2 (Visa) without fees. And before eBay acquired it in 2002, PayPal itself allowed eBay sellers to
3 limit PayPal payments to bank-transfers.

4 37. PayPal has three types of seller accounts, “Personal,” “Premier,” and “Business.”
5 Pursuant to the User Agreement for PayPal Service, to use the PayPal service, a seller “must
6 register for a Personal, Premier, or Business account.” In addition, “Users may only hold one
7 Personal account and either one Premier or one Business account.”

8 38. In February 2005, eBay changed the PayPal policies to require sellers with Premier
9 and Business accounts to offer and accept Payment Card transactions. This had the effect of
10 requiring all sellers using PayPal to pay fees for both Payment Card transactions and stored-value
11 payment transactions.

12 39. Ebay, therefore, requires that all sellers who wish to accept any payment method via
13 PayPal to accept all payment methods, *i.e.*, both money transfers and Payment Card account
14 payments. Sellers may not limit payments via PayPal to only bank transfers to their personal
15 accounts. Attempts to do so result in warnings from eBay that doing so again would result in the
16 suspension of their accounts.

17 40. Ebay trumpets the tying of its person-to-person stored-value payment system to its
18 acceptance of Payment Cards on its website. In its “Rules for Listings,” eBay states that “sellers
19 cannot . . . [c]ommunicate to buyers that they accept, or will not accept, specific forms of PayPal
20 payment.”¹⁰ In the examples on its “PayPal Payments Policy” section, eBay clearly states that it is
21 *impermissible* to state, “I accept PayPal but do not accept credit card payments through PayPal.”¹¹

22 41. Similarly, PayPal’s User Agreement states that sellers who offer PayPal as a
23 payment *must* accept Payment Cards as payment:

24 4.3 Use of PayPal on eBay. Sellers who offer PayPal as a
25 payment method in their eBay listings (either via logos or through
26 text in the item description) *must accept Card Funded Payments*.
Sellers must have a Premier or Business PayPal Account, or be

27 ¹⁰ See “Rules for Listings – Overview,” found at <http://pages.ebay.com/help/policies/listing-ov.html> (undated).

28 ¹¹ See “PayPal Payments Policy,” found at <http://pages.ebay.com/help/policies/paypal-payments.html> (undated).

1 willing to upgrade from a Personal PayPal Account to a Premier or
2 Business Account upon receipt of a Card Funded Payment. Sellers
3 may not communicate to buyers that they only accept Balance/Bank
4 Funded Payments, or will not accept Card Funded Payments. eCheck
5 is the only Funding Source that eBay Sellers are allowed to block.¹²

4 42. Violations of this tying policy results in a range of actions, including:

- 5 • Listing cancellation
- 6 • Forfeiture of eBay fees on cancelled listings
- 7 • Limits on account privileges
- 8 • Loss of PowerSeller status
- 9 • Account suspension¹³

8 43. Because eBay forces sellers to accept Payment Cards, it forces sellers to use either a
9 Premier or Business account and thus pay fees for bank transfers.

10 44. The use of a PayPal Premier or Business account obliges the seller to pay fees for
11 both stored-value payment transactions and Payment Card transactions as follows¹⁴:

| | Standard Rate | Merchant Rate (qualification required) | | |
|--------------------------|---------------------|--|----------------------------|----------------|
| Monthly Received Payment | \$0.00 - \$3,000.00 | \$3,000.01 - \$10,000.00 | \$10,000.01 - \$100,000.00 | > \$100,000.00 |
| Fees per transaction | 2.9%+\$0.30 | 2.5% + \$0.30 | 2.2% +\$0.30 | 1.9% + \$0.30 |

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16 45. Upon information and belief, the fees paid by sellers for payments received via their
17 own merchant accounts with Payment Cards are materially less than what sellers pay for
18 transactions executed via PayPal in which the buyers use Visa, MasterCard, American Express, or
19 Discover accounts. Additionally, this tying arrangement now requires sellers to incur transaction
20 fees that prior thereto they had not been required to pay.

21 46. If given the option, sellers with merchant accounts for Payment Cards could elect
22 *not* to use PayPal to process purchases made by Payment Cards but limit PayPal to money
23 transfers. This election would reduce fees that sellers pay to eBay via PayPal.

24
25 ¹² See "User Agreement for PayPal™ Service," available at https://www.paypal.com/cgi-bin/webscr?cmd=p/gen/ua/policy_pbp-outside (last modified April 11, 2007); see also "PayPal Payments Policy," available at <http://pages.ebay.com/help/policies/paypal-payments.html> (undated) (emphasis added).

26
27 ¹³ See "PayPal Payments Policy," available at <http://pages.ebay.com/help/policies/paypal-payments.html> (undated).

28 ¹⁴ See "User Agreement for PayPal™ Service", available at https://www.paypal.com/cgi-bin/webscr?cmd=p/gen/ua/policy_pbp-outside (last modified April 11, 2007).

1 47. Defendant's abuse of its market power forces and has forced Plaintiffs and class
2 members to use payment methods that result in fees to Defendant that sellers would *not* pay in a
3 competitive market. Sellers without merchant accounts for Payment Cards could, if given the
4 option, limit payment to money transfers on their PayPal Personal account and thereby avoid
5 additional charges.

6 48. On the heels of its change in policy requiring sellers to accept Payment Cards
7 whenever using the PayPal service, on or around October 10, 2005, eBay announced that it was
8 acquiring Verisign's payment gateway business for a total of \$370 million, to combine with its
9 PayPal online payment system.¹⁵ eBay's acquisition of Verisign closed on or around November
10 21, 2005.¹⁶ The acquisition of Verisign allowed eBay and PayPal the ability to process credit card
11 payments internally, without relying on a bank or other intermediary, while at the same time
12 eliminating Verisign as a rival online payment center.

13 **3. EBay Blocks Competitor Google From Online Auctions**

14 49. EBay has also abused its monopoly power by foreclosing sellers from using
15 alternative online payment systems on its PayPal and eBay websites.

16 50. On or around June 29, 2006, Google, a dominant online search engine, announced
17 the launch of Google Checkout, an online payment service.¹⁷ Google Checkout was designed to be
18 similar to PayPal, except users could not maintain an account balance with Google for future
19 transactions, make payments using online bank withdrawals or make consumer-to-consumer
20 payments. Essentially, Google Checkout allowed credit-card purchases, without the purchaser
21 sharing credit-card information with merchants.

22 51. Dramatically highlighting the threat to eBay's online banking business, Google's
23 proposed transaction fees were much lower than PayPal's. Google Checkout promised to only
24

25
26 ¹⁵ Available at http://www.verisign.com/verisign-inc/news-and-events/news-archive/us-news-2005/page_035983.html (dated Oct. 10, 2005).

27 ¹⁶ Available at http://www.verisign.com/verisign-inc/news-and-events/news-archive/us-news-2005/page_036284.html (dated Nov. 21, 2005).

28 ¹⁷ See "Google Checkout Opens for Business," available at <http://www.google.com/intl/en/press/pressrel/checkout.html> (dated June 29, 2006).

1 charge merchants \$0.20 and 2 percent per transaction.¹⁸ In addition, Google offered merchants \$10
2 worth of free transaction processing for every \$1 in advertising they spent on Google.

3 52. Ebay immediately reacted to the threat of Google Checkout. As described in public
4 reports, Jeff Jordan, the president of PayPal online-payments unit, learned of Google Checkout in
5 May 2006. According to news reports, he:

6 [I]mmediately asked employees to unearth information about the
7 Google service. Soon, PayPal employees were monitoring blogs,
8 news reports and other data for information about Google's progress
9 in payments. PayPal staffers even gleaned details about Google's
10 plans during regular calls to customers who were eager to dish about
11 how Google had reached out to them.

12 Mr. Jordan was quoted as saying that Google Checkout, and presumably Google itself, were “a
13 very legitimate competitive threat.” Mr. Jordan concluded that it was “hard not to pay attention to
14 what Google is doing.”¹⁹

15 53. On or around July 3, 2006, Google Checkout was available for consumers’ use.²⁰
16 Only *three days later*, on July 6, 2006, eBay announced it was *banning* sellers from requesting
17 payment through Google Checkout.²¹ eBay updated its “Safe Payments Policy” to reflect this
18 change, and add Google Checkout to its list of online payment methods not permitted on eBay.

19 54. As stated in eBay’s current “Accepted Payments Policy,” “Payment Services not
20 permitted on eBay” include “Google Checkout.”²²

21 55. Recently, eBay announced that in 4Q06, PayPal’s total payment volume from eBay
22 grew 57%. CEO Whitman has acknowledged eBay’s continued monitoring of Google Checkout,

23 ¹⁸ See “The Rising Tide of Alternative Payment Systems: These options can change the
24 shopping cart experience,” available at [http://www.practicaledge.com/articles/277/The-
25 Rising-Tide-of-Alternative-Payment-Systems/](http://www.practicaledge.com/articles/277/The-Rising-Tide-of-Alternative-Payment-Systems/) (dated Aug. 31, 2006).

26 ¹⁹ See Mylene Mangalindan, “PayPal Prepares For a Challenge From Google,” Wall St. J.,
27 available at http://online.wsj.com/article_print/PA2VJBNA4R/SB113918924045565647.html.
(Feb. 6, 2006).

28 ²⁰ See “The Rising Tide of Alternative Payment Systems: These options can change the
shopping cart experience,” available at [http://www.practicaledge.com/articles/277/The-
Rising-Tide-of-Alternative-Payment-Systems/](http://www.practicaledge.com/articles/277/The-Rising-Tide-of-Alternative-Payment-Systems/) (dated Aug. 31, 2006).

²¹ See Ina Steiner, “eBay Bans Sellers from Using Google Checkout,” available at
<http://www.auctionbytes.com/cab/abn/y06/m07/i06/s02> (dated July 6, 2006).

²² See “Accepted Payments Policy,” available at [http://pages.ebay.com/help/policies/accepted-
payments-policy.html](http://pages.ebay.com/help/policies/accepted-payments-policy.html) (undated).

1 and the success that PayPal had experienced, despite the introduction of Google Checkout into the
2 marketplace (and because of eBay's exclusion of Google Checkout from its auction website):

3 So let me talk about little bit about Google. And it's interesting, we
4 have obviously been monitoring this quite closely. Interestingly, we
5 have really had a great quarter at PayPal: \$417 million in revenue,
37% year-over-year growth, 133 million accounts, \$11 billion in total
payment volume; it was a remarkable quarter.

6 What we have seen and this is very interesting and you probably
7 have seen this when you look at other industries, is that when a new
8 entrant comes into a category and creates a lot of interest and news,
the market leader is typically the beneficiary. That actually we
believe is evidenced by our results in the quarter.²³

9 56. Ebay's monopoly and anticompetitive activities have resulted in the near-universal
10 acceptance of PayPal by eBay sellers as a method of payment.

11 **4. Ebay Continues to Steer Sellers and Buyers to Use PayPal**

12 57. In January 2007, eBay again tightened the noose around the necks of sellers wishing
13 to operate outside the confines of the PayPal online payment system. On January 17, 2007, eBay
14 doubled the PayPal Buyer Protection on its website, offering up to \$2,000 of coverage for qualified
15 transactions on eBay. In doing so, eBay *eliminated* buyer-protection for non-PayPal transactions.²⁴

16 58. Historically, from 1999 onwards, eBay had a buyer protection program that
17 provided buyers coverage of up to \$200, less \$25 to cover processing costs, in cases of non-
18 shipment or significant misrepresentation of goods. By eliminating coverage for non-PayPal
19 transactions, consumers who pay with checks, money orders, postal orders and bank-to-bank wire
20 transfers no longer have any formal recourse through eBay for non-shipment or misrepresentations
21 that occur during the auction process.

22 59. In order to steer buyers (and, accordingly, sellers) towards PayPal, buyers are now
23 offered coverage up to \$2000 (doubled from the previous \$1000 coverage available) with qualified
24 sellers who maintain a 98 percent positive feedback rating and have at least 50 feedback points.²⁵

25
26 ²³ See eBay's Q4 2006 Earnings Call Transcript, available at
<http://internet.seekingalpha.com/article/25034> (dated Jan. 24, 2007).

27 ²⁴ See Ina Steiner, "eBay Limits Buyer Protection to PayPal-Funded Transactions," available
at <http://www.auctionbytes.com/cab/abn/y07/m01/i10/s01> (dated Jan. 10, 2007).

28 ²⁵ See "Purchase protection on eBay — PayPal Buyer Protection," available at
http://www.paypal.com/cgi-bin/webscr?cmd=_pbp-info-outside (undated).

1 For all other qualified transactions on eBay, *as long as the item is paid for with PayPal*, PayPal
2 will provide up to \$200 of coverage.²⁶

3 **V. INTERSTATE TRADE AND COMMERCE**

4 60. The activities of eBay, as described herein, were within the flow of, and
5 substantially affected, interstate commerce. In 2006, eBay's annual revenues exceeded \$6.0
6 billion.

7 **VI. RELEVANT MARKETS**

8 61. The relevant product markets in this case are: (1) the market for online auctions in
9 the United States; (2) the market for online person-to-person stored-value payment systems for use
10 with online auctions in the United States; and (3) the market for online Payment Card payment
11 processing for use with online auctions in the United States. The markets referred to above in (2)
12 and (3) are collectively referred to as the market for online payment systems for use with online
13 auctions. There are substantial barriers to entry in all of these markets. eBay's activities
14 complained of are entirely uniform nationwide.

15 62. Throughout the class period, eBay has had a monopoly in the market for online
16 auctions in the United States and in the market for online payment systems used in online auctions.

17 **VII. CLASS ACTION ALLEGATIONS**

18 63. Plaintiffs bring this action as a class action under rule 23(b)(1), (2) and (3) of the
19 Federal Rules of Civil Procedure for violations of section 2 of the Sherman Act, 15 U .S.C. § 2.
20 The class consists of:

21 [A]ll auction sellers on eBay who have been required to honor all
22 payment methods encompassed by PayPal in respect to sales on
23 eBay.com beginning four years from the date of the filing of this
24 complaint to the present (the "class"). Defendant, its directors,
25 officers, employees or members of their families are not class
26 members.

27 The "class period" is four years the date of the filing of this complaint to the present.
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²⁶ See "User Agreement for PayPal™ Service," available at https://www.paypal.com/cgi-bin/webscr?cmd=p/gen/ua/policy_pbp-outside (last modified April 11, 2007).

1 64. The illegal monopolization and tying arrangements have harmed and continue to
2 harm the interests of the vast majority of eBay sellers throughout the United States. The members
3 of the class are so numerous that joinder of all members is impracticable.

4 65. Defendant's relationships with the class members and Defendant's enforcement of
5 the tying arrangements with respect to class members have been substantially uniform. Questions
6 of law and fact will predominately be common to the class.

7 66. Plaintiffs have no conflicts of interest with other class members and have retained
8 counsel competent and experienced in federal antitrust litigation. Plaintiffs and their counsel will
9 fairly and adequately represent the interests of the class.

10 67. Defendant's behavior is common to the class, thereby making appropriate final
11 injunctive relief with respect to the class as a whole.

12 68. This action is superior to any other method for the fair and efficient adjudication of
13 this legal dispute, as joinder of all members is not only impracticable, but impossible. The
14 damages suffered by certain members of the class are small in relation to the expense and burden
15 of individual litigation and therefore it is highly impractical for such class members to attempt
16 redress of the wrongful tying arrangements individually. There will be no extraordinary difficulty
17 in the management of this class action. Common questions of law and fact exist with respect to all
18 class members and predominate over any questions solely affecting individual members.

19 69. Among the questions of law and fact common to the class are:

- 20 a. the definition of the relevant product and geographic markets;
- 21 b. whether Defendant has sufficient economic power in the tying market to
22 restrain appreciably competition in the tied product market;
- 23 c. whether Defendant uses coercion in the market for online auctions to
24 monopolize (or attempt to monopolize) the market for online payment
25 systems for use in online auctions;
- 26 d. whether the amount of commerce affected is substantial;
- 27 e. whether Defendant is abusing its monopoly power and/or is illegally
28 maintaining its monopoly power; and

1 f. whether the practices are ongoing.

2 **VIII. CLAIMS FOR RELIEF**

3 **FIRST CLAIM FOR RELIEF**

4 **Sherman Act § 2 (Abuse of Monopoly Power and Monopoly Maintenance)**
5 **for Damages and Injunctive Relief Under 15 U.S.C. §§ 15, 26 Respectively**

6 70. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth in this
7 paragraph.

8 71. By reason of the foregoing conduct eBay has willfully acquired and maintained
9 monopoly power by engaging in anticompetitive conduct in the market for online payment systems
10 for use in online auctions.

11 72. The anticompetitive conduct complained of includes: (i) obliging sellers to accept
12 payment forms that carry supracompetitive fees; (ii) intimidating sellers into acceptance of these
13 forms of payment; (iii) seeking to exclude new payment services by destruction or the acquisition
14 of competitors; (iv) excluding or making arcane the use of alternative payment mechanics; and
15 (v) steering buyers to PayPal.

16 73. Ebay's monopolization conduct has had and/or is likely to include the following
17 anti-competitive consequences:

- 18 a. actual and potential competition in the market for online payment
19 systems for use in online auctions has been injured, limited, reduced,
20 restrained, suppressed, and effectively foreclosed; and
21 b. Ebay sellers that accept PayPal have paid or are likely to pay
22 artificially inflated and supra competitive fees.

23 74. To the extent that eBay has sought to achieve any legitimate business purpose
24 through its conduct, it has not used the least restrictive means for doing so, any claimed
25 procompetitive benefit is outweighed by the anticompetitive harm, and any purported legitimate
26 business justifications are mere pretexts for illegal monopoly maintenance.

1 84. Plaintiffs and the other members of the class have been and are being forced to buy
2 and accept PayPal fees at supracompetitive prices.

3 85. The ability of Plaintiffs and the other members of the class to sell items on eBay via
4 superior and less-costly payment systems has been effectively and substantially reduced, limited,
5 and foreclosed by the conduct complained of herein.

6 86. Ebay intended by its actions to:

- 7 a. force Plaintiffs and the other members of the class into buying, accepting,
8 and receiving both PayPal's person-to-person stored-value transactions and
9 Payment Card processing services;
- 10 b. reduce, limit, and foreclose merit competition in the product markets for
11 online payment systems for use in online auctions; and
- 12 c. injure and eliminate competition in the product markets for online payment
13 systems.

14 87. EBay's tying conduct has had and/or is likely to have, among other things, the
15 following effects:

- 16 a. actual and potential competition in the online payment systems markets for
17 online auctions has been injured, limited, reduced, restrained, suppressed,
18 and effectively foreclosed; and
- 19 b. EBay sellers that accept PayPal have paid or are likely to pay artificially
20 inflated prices caused by reduced competition.

21 88. As a result of eBay's violations of section 2 of the Sherman Act, Plaintiffs and the
22 other members of the class have been injured in their business and property in amounts to be
23 determined.

24 89. Such violation and the effects thereof are continuing and will continue unless the
25 injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

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1 **FOURTH CLAIM FOR RELIEF**

2 **Unfair Competition Law – Business & Professions Code §§ 17200 *et seq.***

3 90. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth in this
4 paragraph.

5 91. By reason of the foregoing conduct, eBay has engaged in unlawful, unfair and.
6 deceptive business practices, as defined by Cal. Bus. and Prof. Code §§ 17200, *et seq.*

7 92. eBay’s conduct complained of herein constitutes an unlawful business practice
8 within the meaning of Cal. Bus. and Prof. Code §§ 17200 *et seq.*, in that the conduct violates
9 federal, state, statutory, regulatory, or common law including, but not limited to the Sherman Act.
10 Specifically, as alleged herein, eBay has:

11 a. Attempted, with specific intent, to monopolize the market for online
12 payment systems for use in online auctions;

13 b. Willfully acquired monopoly power and maintained it by suppressing
14 competition in the market for online payment systems for use in online
15 auctions through restrictive and exclusionary conduct;

16 c. Engaged in conduct that coerced market participants into transacting
17 business with eBay; and

18 d. Forced sellers on eBay, through a tying arrangement, to pay
19 supracompetitive prices for PayPal fees.

20 93. eBay’s anticompetitive conduct as described herein violates not only the unlawful
21 prong of Cal. Bus. and Prof. Code §§ 17200 *et seq.*, it also constitutes a violation of Cal. Bus. and
22 Prof. Code § 17200’s “unfair” prong, independent of the other causes of action asserted herein.
23 eBay’s misleading statements on its website and attempts to dupe buyers into using PayPal is
24 conduct that offends public policy and the practice is immoral, unethical, oppressive, unscrupulous
25 and substantially injurious to consumers. Any justification for eBay’s practices is outweighed by
26 the consequences and harm to Plaintiffs and class members.

27 94. eBay’s conduct constitutes an unfair business practice within the meaning of Cal.
28 Bus. and Prof. Code §§ 17200 *et seq.* for the following additional reasons:

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