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Attorneys for Plaintiff

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SOLANO - UNLIMITED**

15 **ALEKSANDR GARANDZA**, an
16 individual,

17 Plaintiff.

19 v.

22 **PAYPAL, INC.**; and **DOES 1-100**,

24 Defendant(s).

FILED
Clerk of the Superior Court

MAR 14 2019

By W. Sinnett
DEPUTY CLERK

\$4350

CMFT-361352

Case No.:

FCS 05 2513

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF:**

- 1) THE CALIFORNIA IDENTITY THEFT ACT, CAL. CIV. CODE § 1798.93, ET SEQ.;
- 2) CONVERSION;
- 3) TRESPASS TO CHATTLES;
- 4) CALIFORNIA'S UNFAIR PRACTICES ACT, CAL. BUS. & PROF. CODE § 17200, ET SEQ.

JURY TRIAL DEMANDED

ASSIGNED TO

JUDGE D. Scott Daniels

FOR ALL PURPOSES

INTRODUCTION

1. Plaintiff is a victim of identity theft.
2. An unknown and unauthorized individual unlawfully used a PayPal account to withdrawal over \$50,000 from Plaintiff's bank account without Plaintiff's authorization or consent. Plaintiff filed a police report with the Vallejo Police Department and notified PayPal of the unauthorized transactions.
3. Nonetheless, PayPal has refused to return Plaintiff's money and Plaintiff now brings this action against Defendant, PAYPAL, INC., ("PAYPAL" or "Defendant") for their wrongful conduct.
4. As alleged herein, Defendant repeatedly refused to investigate Plaintiff's claims of identity theft and has instead maintained an interest in money which is the product of identity theft in violation of: (i) The California Identity Theft Act, ("CITA") Cal. Civ. Code § 1798.93, et seq.; (ii) conversion; (iii) trespass to chattels; and (iv) California's Unfair Practices Act, Cal. Bus. & Prof. Code § 17200, *et seq.*
5. Plaintiff alleges the following upon personal knowledge as to Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorney.
6. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
7. Unless otherwise stated, Plaintiff alleges any violations by Defendant were knowing and intentional, and Defendant did not maintain procedures reasonably adapted to avoid such violations.
8. Unless otherwise indicated, any Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant.
9. Unless otherwise stated, all the conduct engaged in by Defendant occurred in the State of California.

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- 1 10. At all times relevant, Plaintiff was an individual residing within the State of California.
- 2 11. All correspondence referenced herein was send to Plaintiff at an address located within the
- 3 State of California.
- 4 12. Plaintiff is currently ignorant of the true names and capacities, whether individual, corporate,
- 5 associate, or otherwise, of the defendants sued herein under the fictitious names DOES 1
- 6 through 100, inclusive, and therefore, sues such defendants by such fictitious names. Plaintiff
- 7 will amend the Complaint to allege the true names and capacities of said fictitiously named
- 8 defendants when their true names and capacities have been ascertained. Plaintiff is informed
- 9 and believes and thereon alleges that each of the fictitiously named DOE defendants are
- 10 legally responsible in some manner for the events and occurrences alleged herein, and for
- 11 the damages suffered by Plaintiff.

12 **PARTIES**

- 13 13. Plaintiff, ALEKSANDR GARANDZA, ("Plaintiff") is a natural person who resides in the
- 14 City of Vallejo, County of Solano, State of California.
- 15 14. Plaintiff is a "person" as that term is defined by Cal. Bus. & Prof. Code § 17201.
- 16 15. Plaintiff is a "victim of identity theft" as that term is defined by Cal. Civ. Code § 1798.92(d).
- 17 16. Defendant, PAYPAL, INC., ("PAYPAL") is a Delaware corporation headquartered in Santa
- 18 Clara County.
- 19 17. PAYPAL purports to have a claim for, and/or has attempted to collect, money or an interest
- 20 in property in connection with a transaction procured through identity theft and is therefore
- 21 a "claimant" as that term is defined by Cal. Civ. Code § 1798.92(a).
- 22 18. PAYPAL is a "person" as that term is defined by Cal. Bus. & Prof. Code § 17201.

23 **JURISDICTION AND VENUE**

- 24 19. This action arises out of Defendant's violations of: (i) The California Identity Theft Act,
- 25 ("CITA") Cal. Civ. Code § 1798.93, *et seq.*; (ii) conversion; (iii) trespass to chattels; and (iv)
- 26 California's Unfair Practices Act, Cal. Bus. & Prof. Code § 17200, *et seq.*
- 27 20. This Court has personal jurisdiction over Defendant as they do business within the State of
- 28 California, have sufficient minimum contacts with this state, and otherwise purposely avail

1 themselves of markets in the State of California through the promotion, sale, and marketing
2 of their products and services within this state, to render the exercise of jurisdiction by this
3 Court proper.

4 21. The Court has jurisdiction over the entire action by virtue of the fact that this is a civil action
5 wherein the matter in controversy, exclusive of interest and costs, exceeds the jurisdictional
6 minimum of the Court.

7 22. Venue is proper because Plaintiff resides in the County of Solano, the injury to Plaintiff
8 occurred in the County of Solano, and Defendant resides in and/or does business within the
9 County of Solano.

10 **FACTUAL ALLEGATIONS**

11 23. Plaintiff is a victim of identity theft.

12 24. In or around September of 2017, an unknown and unauthorized individual unlawfully used
13 a PAYPAL account to withdraw money from Plaintiff's bank account.

14 25. Specifically, the unknown and unauthorized individual unlawfully withdrew approximately
15 \$54,380.31 out of Plaintiff's Chase Bank, ("Chase") account using PAYPAL.

16 26. This amount represents Plaintiff's life savings.

17 27. Plaintiff contacted law enforcement and filed a police report for identity theft and the
18 unauthorized withdrawals, [Vallejo Police Department Report No. 18-7889].

19 28. On or about September 7, 2018, Plaintiff sent a letter to Chase disputing the unauthorized
20 transactions on the basis of identity theft. Attached to that letter was a copy of the Police
21 Report. Chase received Plaintiff's letter on or about September 15, 2018.

22 29. After receiving Plaintiff's letter, Chase refunded approximately \$2,971.25 of the unlawful
23 transfers to Plaintiff.

24 30. On or about September 7, 2018, Plaintiff sent a written letter to PAYPAL disputing the
25 unauthorized withdrawals on the basis of identity theft, ("**The PayPal Dispute Letter**")
26 Attached to that letter was a copy of Plaintiff's identity theft affidavit, signed by a police
27 officer, and Plaintiff's Police Report. PAYPAL received **The PayPal Dispute Letter** on or
28 about September 20, 2018.

- 1 31. In **The PayPal Dispute Letter**, Plaintiff demanded that PAYPAL return Plaintiff's money.
- 2 32. PAYPAL admits the withdrawals were the product of identity theft and PAYPAL
- 3 successfully recovered, and is retaining, the entire amount taken from Plaintiff's account.
- 4 However, PAYPAL refused and continues to refuse to deliver the recovered funds and has
- 5 instead chosen to retain the money for PAYPAL's own benefit.
- 6 33. Plaintiff contacted PAYPAL once by mail and at least once by telephone to dispute the
- 7 unlawful withdrawals and demand the return of his money.
- 8 34. Nonetheless, PAYPAL has adamantly refused to return Plaintiff's money, despite having the
- 9 money within their dominion and control.
- 10 35. PAYPAL has also refused to adequately investigate Plaintiff's numerous claims of identity
- 11 theft.
- 12 36. Simply put, Plaintiff is the victim of identity theft with respect to the unlawful withdrawals
- 13 and has filed a police report expressly claiming such. PAYPAL is in possession of Plaintiff's
- 14 money but has refused to return the money to Plaintiff despite knowing that the withdrawals,
- 15 and PAYPAL's subsequent possession of Plaintiff's money, were the result of identity theft.
- 16 37. PAYPAL ignored Plaintiff's disputes and instead maintained their interest in property that is
- 17 the product of identity theft by: (1) unlawfully retaining Plaintiff's money; (2) adamantly
- 18 refusing to return Plaintiff's money after numerous demands; and (3) refusing to release
- 19 Plaintiff's money after knowing PAYPAL's possession of Plaintiff's money was the result
- 20 of identity theft.
- 21 38. PAYPAL therefore purports to have a claim for, and/or has attempted to collect money or
- 22 has maintained an interest in property in connection with a transaction procured through
- 23 identity theft and is therefore a "claimant" as that term is defined by Cal. Civ. Code §
- 24 1798.92(a).
- 25 39. Plaintiff demanded return of his money from PAYPAL, but PAYPAL refused and still
- 26 refuses to deliver it. PAYPAL has and continues to deprive Plaintiff of the use and enjoyment
- 27 of his property.

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- 1 40. At all times relevant, Plaintiff was the owner of and was entitled to the immediate possession
2 of the \$54,380.31 unlawfully withdrawn from Plaintiff's bank account.
- 3 41. PAYPAL intentionally and substantially interfered with Plaintiff's property by preventing
4 Plaintiff from having access to his money and by refusing to return Plaintiff's money after
5 Plaintiff demanded its return.
- 6 42. PAYPAL is in the possession of Plaintiff's personal property in the form of approximately
7 \$51,409.06¹ PAYPAL unlawfully converted for PAYPAL's own use.
- 8 43. PAYPAL refused and continues to refuse to return Plaintiff's money despite knowing their
9 possession of Plaintiff's money is unlawful.
- 10 44. Plaintiff did not consent to PAYPAL's retention of his money.
- 11 45. As a result, Plaintiff has been damaged in the amount of approximately \$51,409.06. In
12 addition, Plaintiff has suffered damages, including but not limited to emotional distress in
13 the form of stress, anxiety, fear, loss of sleep and headaches.
- 14 46. In addition, PAYPAL's conduct alleged herein was willful, knowing, wanton, malicious, and
15 oppressive, was undertaken with the intent to cheat Plaintiff out of his money, and therefore
16 justifies an award of exemplary and punitive damages.
- 17 47. PAYPAL's conduct was a substantial factor is causing Plaintiff's harm.
- 18 48. Pursuant to recovery under conversion, and/or in the alternative trespass to chattels, Plaintiff
19 is entitled to indemnification for all of Plaintiff's losses which are the natural, reasonable,
20 and proximate result of PAYPAL's conduct. In addition, Plaintiff should be compensated for
21 the time and money reasonably spent trying to get his property back.
- 22 49. PAYPAL is wrongfully in the possession of money that belongs to Plaintiff.
- 23 50. PAYPAL obtained Plaintiff's money by means of conversion and/or trespass to chattels.
- 24 51. PAYPAL obtained Plaintiff's money in violation of CITA.
- 25 52. PAYPAL refused to return Plaintiff's money to Plaintiff's account, even though PAYPAL
26 knew PAYPAL's possession was the result of identity theft.

27 _____
28 ¹ Plaintiff is entitled to the entire \$54,380.31 PAYPAL recovered, however, Plaintiff only requests \$51,409.06 from PAYPAL as approximately \$2,971.25 has been refunded by Chase.

- 1 53. PAYPAL refused to return Plaintiff's money, even after Plaintiff demanded its return.
- 2 54. PAYPAL possesses money belonging to Plaintiff in violation of the law, and therefore, by
- 3 means of "unfair competition."
- 4 55. PAYPAL's conduct is forbidden by California law. As a result of PAYPAL's unlawful
- 5 conduct, PAYPAL has received ill-gotten gains by means of Plaintiff's money.
- 6 56. The same conduct alleged herein which violates the CITA, conversion, and trespass to
- 7 chattels constitutes an unfair, unlawful and/or deceptive business practice in violation of Cal.
- 8 Bus. & Prof. Code § 17200. PAYPAL's unlawful acts alleged herein were committed
- 9 pursuant to PAYPAL's normal business practices.
- 10 57. Through this conduct PAYPAL engaged in unfair competition by engaging in an unlawful
- 11 business act and practice in violation of Cal. Bus. & Prof. Code § 17200.

12 **FIRST CAUSE OF ACTION FOR VIOLATIONS OF**

13 **THE CALIFORNIA IDENTITY THEFT ACT**

14 **("CITA") CAL. CIV. CODE § 1798.93, ET SEQ.**

15 **[AGAINST PAYPAL]**

- 16 58. Plaintiff incorporates, by reference, all of the above paragraphs of this Complaint as though
- 17 fully stated herein.
- 18 59. The foregoing acts and omissions constitute numerous and multiple violations of the CITA.
- 19 60. Plaintiff brings this cause of action pursuant to Cal. Civ. Code § 1798.93. Plaintiff is the
- 20 victim of identity theft in connection with the alleged claims of Defendant(s) based upon
- 21 alleged debts and/ or security interest resulting from identity theft.
- 22 61. Plaintiff has provided written notice to Defendant(s) that a situation of identity theft may
- 23 exist with respect to the money, including a copy of the Police Report. Defendant(s) have
- 24 failed to diligently investigate Plaintiff's notifications of identity theft. Defendant(s) have
- 25 continued to have a claim for money and/or interest in Plaintiff's money after they were
- 26 presented with the facts that entitle Plaintiff to a judgment pursuant to Cal. Civ. Code §
- 27 1798.93.

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1 62. As a result of each and every violation of the CITA, Plaintiff is entitled to actual damages
2 pursuant to Cal. Civ. Code § 1798.93(a)(5); attorney's fees and costs pursuant to Cal. Civ.
3 Code § 1798.93(c)(5); any equitable relief the court deems appropriate pursuant to Cal. Civ.
4 Code § 1798.93(c)(5); and a civil penalty, in addition to any other damages, of up to
5 \$30,000.00, from each Defendant, pursuant to Cal. Civ. Code § 1798.93(c)(6).

6 63. In addition, Plaintiff is entitled to a declaration that Plaintiff is not obligated to Defendant(s)
7 on any claim under Cal. Civ. Code § 1798.93(c)(1); a declaration that any security interest
8 or other interest Defendant(s) purportedly obtained in the Plaintiff's property in connection
9 with the claim is void and unenforceable, under Cal. Civ. Code § 1798.93(c)(2); an injunction
10 restraining Defendant(s) from collecting or attempting to collect on the claim, from enforcing
11 or attempting to enforce any security interest or other interest in Plaintiff's property in
12 connection with the claim, or from enforcing or executing on any judgment against Plaintiff
13 on the claim under Cal. Civ. Code § 1798.93(c)(3); and the dismissal of any cause of action
14 based on a claim, which arose because of identity theft under Cal. Civ. Code § 1798.93(c)(4).

15 **SECOND CAUSE OF ACTION FOR**
16 **CONVERSION**
17 **[AGAINST PAYPAL]**

18 64. Plaintiff incorporates, by reference, all of the above paragraphs of this Complaint as though
19 fully stated herein.

20 65. Plaintiff had a right to possession of his money at all times herein as Plaintiff is the owner of
21 the money and did not authorize anyone to take or withdraw the money from his bank
22 account.

23 66. More importantly, Plaintiff had a right to possession of his money at the time Defendant
24 recovered the unlawful withdrawals as he is the owner of the money, and did not authorize
25 anyone to take or withdraw the money from his bank account. At present, Plaintiff is still the
26 rightful owner of the money and has a continuing right of possession in the money.

27 67. Defendant has intentionally and substantially interfered with Plaintiff's property by
28 wrongfully withholding Plaintiff's money, by preventing Plaintiff from having access to his

1 money, and by refusing to return Plaintiff's money to Plaintiff after Plaintiff demanded its
2 return.

3 68. Plaintiff did not and does not consent to Defendant's possession of Plaintiff's money.

4 69. Defendant unlawfully converted Plaintiff's money to Defendant's own use, to Plaintiff's
5 detriment causing Plaintiff damage.

6 70. Plaintiff should therefore be indemnified for all his losses which are the natural, reasonable,
7 and proximate result of Defendant's conduct. In addition, Plaintiff should be compensated
8 for the time and money reasonably spent trying to get his property back.

9 71. Defendant has caused Plaintiff damages including but not limited to pecuniary loss, loss of
10 use of his money, inconvenience, and emotional distress.

11 72. Defendant's conduct is not *only* a substantial factor in causing Plaintiff's harm, it is currently
12 the only factor causing Plaintiff's harm.

13 73. As a result of Defendant's conduct, Plaintiff is entitled to actual damages, including
14 economic and non-economic damages, and punitive damages.

15 **THIRD CAUSE OF ACTION FOR**
16 **TRESPASS TO CHATTELS**
17 **[AGAINST PAYPAL]**

18 74. Plaintiff incorporates, by reference, all of the above paragraphs of this Complaint as though
19 fully stated herein.

20 75. Plaintiff had and continues to have a right to possession of his money Defendant is
21 withholding as Plaintiff is the owner of the money and did not authorize anyone to take or
22 withdraw the money from his bank account.

23 76. More importantly, Plaintiff had a right to possession of his money at the time Defendant
24 recovered the unlawful withdrawals as he is the owner of the money and did not authorize
25 anyone to take or withdraw the money from his bank account. At present, Plaintiff is still the
26 rightful owner of the money and has a continuing right of possession in the money.

27 77. Defendant has intentionally and substantially interfered with Plaintiff's property by retaining
28 possession of Plaintiff's money, by preventing plaintiff from having access to his money.

1 and by refusing to return Plaintiff's money after Plaintiff demanded its return.

2 78. Plaintiff did not and does not consent to Defendant's possession of Plaintiff's money.

3 79. Plaintiff should therefore be indemnified for all his losses which are the natural, reasonable,
4 and proximate result of Defendant's conduct. In addition, Plaintiff should be compensated
5 for the time and money reasonably spent trying to get his property back.

6 80. Defendant has caused Plaintiff damages including but not limited to pecuniary loss, loss of
7 use, inconvenience, and emotional distress. Defendant's conduct is not only a substantial
8 factor in causing Plaintiff's harm, it is currently the only factor causing Plaintiff's harm.

9 81. As a result of Defendant's conduct, Plaintiff is entitled to actual damages, including
10 economic and non-economic damages, and punitive damages.

11 **FOURTH CAUSE OF ACTION FOR VIOLATIONS OF**
12 **CALIFORNIA'S UNFAIR COMPETITION LAW**
13 **("UCL") CAL. BUS. & PROF. CODE § 17200, ET SEQ.**
14 **[AGAINST PAYPAL]**

15 82. Plaintiff incorporates, by reference, all of the above paragraphs of this Complaint as though
16 fully stated herein.

17 83. The foregoing acts and omissions constitute numerous and multiple violations of the UCL.

18 84. Plaintiff and Defendant are "person(s)" as defined by Cal. Bus. & Prof. Code § 17201.

19 85. Plaintiff is entitled to a restitution of the unauthorized withdraws from Plaintiff's account as
20 said withdrawals are the product of identity theft. By failing to refund Plaintiff's account,
21 Defendant is wrongfully in the possession of money to which Plaintiff is lawfully entitled to
22 and Defendant's retention of Plaintiff's money is therefore "unfair competition."

23 86. As a result of Defendant's unlawful, unfair, and/or deceptive conduct, Defendant has
24 received ill-gotten gains by means of Plaintiff's money and/or property.

25 87. Plaintiff has suffered loss of money and/or property by way of Defendant's actions.

26 88. Defendant's unlawful, unfair, and/or deceptive acts were committed pursuant to Defendant's
27 normal business practices.

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1 89. As a result of each and every violation of the UCL, Plaintiff is entitled to restitution of any
2 money which Defendant acquired by means of unlawful practice pursuant to Cal. Bus. &
3 Prof. Code § 17203; and any declaratory and/or injunctive relief the court deems appropriate
4 pursuant to Cal. Bus. & Prof. Code § 17203.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, according to such
7 causes of action stated against each Defendant, as follows:

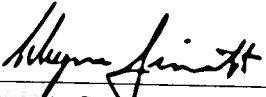
- 8 • An award of actual damages, in an amount to be determined at trial, pursuant to Cal.
9 Civ. Code § 1798.93(c)(5);
- 10 • An award of any equitable relief the Court deems appropriate, pursuant to Cal. Civ.
11 Code § 1798.93(c)(5);
- 12 • A civil penalty of up to \$30,000.00, pursuant to Cal. Civ. Code § 1798.98(c)(5) from
13 each Defendant;
- 14 • An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ.
15 Code § 1798.93(c)(5);
- 16 • A declaration that Plaintiff is not obligated to Defendants on any claims pursuant to
17 Cal. Civ. Code § 1798.93(c)(1);
- 18 • A declaration that any security interest, or other interest, Defendant purportedly
19 obtained in Plaintiff's property, in connection with any claim, is void and
20 unenforceable pursuant to Cal. Civ. Code § 1798.93(c)(2);
- 21 • The dismissal of any cause of action filed based on a claim, which arose as a result of
22 identity theft pursuant to Cal. Civ. Code § 1798.93(c)(4);
- 23 • An injunction restraining Defendant from collecting or attempting to collect on the
24 claim, from enforcing or attempting to enforce any security interest or other interest in
25 Plaintiff's property in connection with the claim, or from enforcing or executing on any
26 judgment against Plaintiff on the claim pursuant to Cal. Civ. Code § 1798.93(c)(3);
- 27 • Award of injunctive relief pursuant to Cal. Civ. Code § 1798.93(c)(3) that Defendant
28 be ordered to immediately return to Plaintiff's money;

- As a result of each and every violation of the UCL, Plaintiff is entitled to restitution of any money which Defendant acquired by means of unlawful, unfair, and or deceptive practice pursuant to Cal. Bus. & Prof. Code § 17203;
- Any declaratory and/or injunctive relief the court deems appropriate pursuant to Cal. Bus. & Prof. Code § 17203;
- An Order that Defendant immediately return Plaintiff's money him;
- An award of interest on Plaintiff's money, calculated from the date of conversion at the legal rate;
- An award of actual damages, including economic and non-economic damages;
- An award of exemplary damages;
- An award of costs incurred herein;
- An award of punitive damages;
- That the Court preliminarily and permanently enjoin Defendant from engaging in the unfair and/or unlawful practices stated herein;
- Any and all other relief that this Court deems just and proper.

Dated: March 13, 2019

Respectfully submitted,

SINNETT LAW, APC.

BY: 
WAYNE A. SINNETT, ESQ.
ATTORNEY FOR PLAINTIFF

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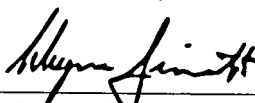
TRIAL BY JURY

90. Pursuant to the Seventh Amendment in the Constitution of the United States of America,
Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 13 2019

Respectfully submitted,

SINNETT LAW, APC.

BY: 
WAYNE A. SINNETT, ESQ.
ATTORNEY FOR PLAINTIFF

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