

IF YOU OPENED A PAYPAL ACCOUNT BETWEEN OCTOBER 1999 AND JANUARY 2004, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

PLEASE READ THIS NOTICE CAREFULLY.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

**In re PayPal litigation
Case No. CV-02-01227-JF (PVT)**

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED
SETTLEMENT**

1. WHY DID I GET THIS NOTICE?

You have been sent this Notice because the records of PayPal, Inc. indicate you are a current or former PayPal account holder. This means you may be eligible to receive a payment from the proposed class action settlement in the lawsuit **In re PayPal Litigation**, Case No. 02 1227 JF PVT, pending in the United States District Court for the Northern District of California in San Jose. This Notice provides a summary of the terms of the proposed settlement. It also explains the lawsuit, your legal rights under the settlement, what benefits are available to you under the settlement, and how to get them.

2. WHAT IS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case Roberta Toher and Jeffrey Resnick), sue on behalf of people who have similar claims. All of these people are members of the Class. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. United States District Judge Jeremy Fogel is in charge of this class action.

3. WHAT IS THIS LAWSUIT ABOUT?

In early 2002, Plaintiffs Roberta Toher and Jeffrey Resnick filed separate lawsuits against PayPal, Inc. These two cases were later consolidated into one lawsuit in the United States District Court for the Northern District of California, San Jose Division, entitled **In re PayPal Litigation**, Case No. CV 02 01227-JF (PVT). The lawsuit alleges that PayPal violated the federal Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. §§ 1693 *et seq.*, including provisions requiring PayPal to supply customers with information about dispute resolution procedures and to follow certain procedures when investigating complaints of unauthorized or incorrect electronic fund transfers. For example, the lawsuit claims that PayPal did not provide account statements in the manner required by the EFTA. The lawsuit further alleges that PayPal has placed inappropriate restrictions or other limits on customers' accounts and engaged in other improper practices. Based on these practices, the lawsuit asserts claims under California state law for conversion, money had and received, negligence, and violations of consumer protection statutes.

PayPal does not believe that it did anything wrong. In fact, PayPal disputes that the EFTA, originally passed in 1978, applies to its business. PayPal denies any and all liability for the claims

alleged in the lawsuit. The Court did not decide in favor of the Plaintiffs or PayPal. Instead, beginning in the fall of 2003, the parties began a series of settlement negotiation sessions mediated by United States Magistrate Judge Edward Infante. Eventually, in November 2003, both sides agreed to a settlement in principle. By settling their claims, both parties avoided the uncertainty and cost of a trial. The settlement provides money and other benefits to the Class. On June 11, 2004, the parties entered into a formal, written Settlement Agreement, which is on file with the Court and available on the Internet at <https://www.paypal.com/settlement/>. By entering into the Settlement Agreement, PayPal is not admitting any wrongdoing. PayPal continues to believe that it did not do anything wrong. The Representative Plaintiffs and the attorneys appointed by the Court to represent the Class believe that the settlement is fair to Class Members. By this notice, the Court is not expressing any view on the merits of the lawsuit.

4. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

On July 12, 2004, Judge Fogel entered an order granting preliminary approval of the settlement and certifying the following class for purposes of the settlement: **All Persons who opened a PayPal account during the period from October 1, 1999 through January 31, 2004.** Excluded from the class are any judicial officer to whom the lawsuit is assigned; PayPal and any of its affiliates; any current or former employee, officer, or director of PayPal; anyone who resides in Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, The Netherlands, or United Kingdom; and all persons who timely and validly request exclusion from the class pursuant to this notice.

Thus, if you opened a PayPal account between October 1, 1999 and January 31, 2004, and are not one of the excluded persons listed above, you are a member of the class.

5. WHO REPRESENTS ME IN THIS CASE?

To represent the class, the Court has appointed Plaintiffs Roberta Toher and Jeffrey Resnick as Representative Plaintiffs and their counsel of record as Class Counsel. The Court has also appointed the following attorneys and law firms as Co-Lead Counsel:

A. J. De Bartolomeo
Girard Gibbs & De Bartolomeo LLP
601 California Street, Suite 1400
San Francisco, California 94108

Robert C. Finkel
Wolf Popper LLP
845 Third Avenue
New York, New York 10022

6. WHAT DOES THE SETTLEMENT PROVIDE?

A. Injunctive Relief

The settlement requires that PayPal consent to the entry of an order, called an injunction, that mandates various changes to PayPal's business practices. PayPal has already implemented these changes. The injunction includes PayPal's agreement to comply with certain notice and error resolution procedures of the EFTA, and to follow certain procedures for limiting accounts and responding to and returning funds to customers whose accounts have been limited. A copy of this injunction can be found as Exhibit D to the Settlement Agreement, entitled "Form of Injunctive Order."

B. Monetary Relief

Under the settlement, PayPal will pay \$9.25 million into a settlement fund, to be held in an interest-bearing account. The fund will be used (1) to make payments to class members who submit valid claims before the claims deadline; (2) to pay certain costs of giving notice to the Class and of settlement administration, as approved by the Court; and (3) to pay attorneys' fees and expenses to Class Counsel in the amount awarded by the Court. Class Counsel have proposed that,

after deduction of notice and administrative costs and Class Counsel's attorneys' fees and expenses, the balance of the fund ("Net Settlement Fund") be applied in accordance with a written plan of allocation. (The following explanation is qualified in its entirety by reference to the Plan of Allocation attached to the Settlement Agreement as Exhibit C, a copy of which is on file with the Court and available on the Internet at <https://www.paypal.com/settlement/>.)

1. Certain Definitions

Certain capitalized words are used in this part of the Notice to describe the way in which the Net Settlement Fund will be allocated. These capitalized words have the following meanings:

(a) "Released Persons" means PayPal and its past and present partners, affiliates, predecessors, successors, assigns, parents, subsidiaries, officers, directors, attorneys, and employees.

(b) "Fund Claimants" are class members who submit timely, valid claims in accordance with the procedures described in this notice.

(c) "Dispute Resolution Claimants" are Fund Claimants who contend that, prior to February 1, 2004, they:

(i) experienced or reported to PayPal an unauthorized or incorrect electronic transfer to or from their PayPal account including, without limitation, electronic transfers initiated by (a) the Fund Claimant; (b) PayPal in connection with, among other things, chargebacks, refunds, buyer complaints, PayPal's Seller Protection Policy, Buyer Complaint Process and/or Buyer Protection Policy; or (c) any third party;

(ii) had access to their PayPal account improperly, incorrectly or erroneously limited or restricted, in whole or in part;

(iii) made a request for information in connection with PayPal's restriction or limitation of the Fund Claimant's PayPal account or regarding an incorrect or unauthorized electronic transfer to which PayPal did not respond at all or did not respond to the Fund Claimant's satisfaction.

(d) "Statutory Damage Fund Claimants" are all Fund Claimants who are not Dispute Resolution Claimants.

2. Statutory Damage Fund Claimants

The plan of allocation designates \$1 million of the Net Settlement Fund to a "Statutory Damage Fund," to be distributed equally among all Fund Claimants who are **not** Dispute Resolution Claimants. This means that if you are a member of the Class and **do not** fall within the definition of a "Dispute Resolution Claimant," as set out above, you can make a claim for a payment from the Statutory Damage Fund. The Statutory Damage Fund provides compensation for potential statutory damages under the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. §§ 1693 *et seq.* Statutory damages under the EFTA are limited by law to

no more than \$500,000 for any class of individuals claiming "the same failure to comply." Plaintiffs' counsel contended in the litigation and for purposes of settlement that PayPal was potentially liable for multiple failures to comply, a position PayPal vigorously opposed.

The Statutory Damage Fund Claim Form requires you to provide certain identifying information and sign a statement under penalty of perjury authenticating your claim, which may be subject to verification by PayPal's records. To make a claim for payment from this fund, please complete and submit the **Statutory Damage Fund Claim Form** available on the Internet at <https://www.paypal.com/settlement/> in accordance with the instructions on the form.

3. Dispute Resolution Claimants

The balance of the Net Settlement Fund will be allocated for distribution to Dispute Resolution Claimants. If you fall within the definition of a "Dispute Resolution Claimant," as set out above, you have the right to make a Dispute Resolution Claim. You can choose to submit either the Short Claim Form or the Long Claim Form available on the Internet at <https://www.paypal.com/settlement/>. If the Court awards attorneys' fees and costs in the amount requested, Class Counsel estimate that there will be approximately \$4.3 million to pay the claims of Dispute Resolution Claimants. Half of the money allocated to Dispute Resolution Claimants will be allocated to pay Short Form Claimants (the "Short Form Fund"). The other half will be allocated to pay Long Form Claimants (the "Long Form Fund").

a. Short Form Claimants

The **Short Claim Form** requires you to provide certain identifying information and sign a statement under penalty of perjury, which may be verified using PayPal's records, that you experienced an unauthorized or incorrect electronic transfer or an account limitation or denial of access to your account. If you make a timely, valid claim using the Short Claim Form, you will receive a payment of \$50, unless the amount needed to pay all of the Short Form claims exceeds the Short Form Fund. In that case, the Short Form Fund will be divided equally among all Short Form Claimants. If the amount needed to pay all of the Short Form claims is less than the amount of the Short Form Fund, the money left over will be added to the Long Form Fund.

b. Long Form Claimants

The **Long Claim Form** requires you to provide certain identifying information; give the details of the account restriction(s) and/or unauthorized electronic fund transfer (s) you experienced; state the amount of your claim, and sign a statement, under penalty of perjury, which may be subject to verification by PayPal's records, that you actually suffered the claimed damages. You should also provide any documentation you have that will support your claim, as explained in more detail on the Long Form.

If you make a timely, valid claim using the Long Claim Form, an independent, court-approved claims administrator will evaluate your claim and determine the amount you should receive. In making this determination, the claims administrator will take into account the amount of damages you claim; the nature of your complaint; the quality of the supporting documentation you provide; your recoverable damages; the probability that you would be

successful on your complaint; and such other factors that the claims administrator considers relevant. If the amount needed to pay all of the Long Form claims is less than the amount of the Long Form Fund, the money left over will be added to the Short Form Fund.

c. Balance after payment of Long Form and Short Form Claimants

If there are sufficient funds to pay all Short Form and Long Form Claimants in full in accordance with the written plan of allocation, any remaining funds will be divided equally among all Dispute Resolution Claimants to supplement their recoveries.

7. HOW DO I MAKE A CLAIM AND GET A PAYMENT?

To make a claim for payment, please complete one of the claim forms (**Statutory Damage Claim Form, Short Claim Form, or Long Claim Form**) available on the Internet at <https://www.paypal.com/settlement/>. To make a valid claim, you will need to (1) fill out the claim form electronically and (2) print the signature page of your claim form, sign it and return it by mail to the address provided on the claim form. You must complete the claims procedure **no later than October 23, 2004**. Your payment will be transferred electronically to your PayPal account. If you do not have a current, unrestricted PayPal account or you indicate on the claim form that you prefer to receive a check, payment will be made in the form of a check, sent by first class mail to the address provided on the claim form. If you are paid by check, a \$1.00 charge will be deducted from your payment to cover the cost of issuing and mailing the check. The claims administrator will not issue checks for less than \$1.00. Such amounts will instead be reallocated to those claimants who are entitled to receive distributions.

8. WHAT AM I GIVING UP IF I PARTICIPATE IN THE SETTLEMENT?

If you do not exclude yourself from the class and the settlement is granted final approval, the judgment entered upon approval of the settlement will dismiss the lawsuit with prejudice, and will release any and all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that were or could have been asserted in the Litigation against the Released Persons, including without limitation, claims under the Electronic Fund Transfer Act, California Business and Professions Code §§ 17200 *et seq.*; the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and for PayPal's alleged conversion, breach of the User Agreement or other contract, money had and received, unjust enrichment, and negligence under California law or any other state or federal law arising out of, among other things, PayPal's restriction or limitation of accounts; PayPal's dispute resolution policies, practices and procedures; PayPal's debit of accounts following the receipt of chargebacks, buyer complaints, reports of unauthorized access or in connection with its Seller Protection Policy, Buyer Complaint Process or Buyer Protection Policy; PayPal's alleged conversion of funds; and PayPal's compliance with the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 *et seq.*, or any similar legislation arising under the laws of any state. You will be permanently barred from bringing any such claims that arose prior to February 1, 2004. With regard to accounts that were limited prior to February 1, 2004, however, you will not be releasing claims to recover any balance that remained in the account 180 days after the account was initially limited.

In summary, if you do not exclude yourself, you will not be able to sue, continue to sue, or be part of another lawsuit against PayPal relating to the legal issues in this case. You will be bound by all proceedings, orders, and judgments entered in connection with the settlement, whether favorable or unfavorable, and will be represented by the Representative Plaintiffs and Class Counsel for purposes of the settlement. If you do not exclude yourself from the class, and the settlement is granted final approval, your claims against PayPal and its affiliates will be released as described above. If you are a class member, you may, if you wish, appear in this lawsuit through your own attorney at your own expense. You need not do so to participate in the settlement, however.

9. WHAT IF I WANT TO EXCLUDE MYSELF (OPT-OUT) FROM THE SETTLEMENT?

If you do **not** want to remain a member of the class and participate in the settlement, then you must mail or deliver (email is not considered adequate), such that it is **RECEIVED** on or before September 7, 2004, (1) an original written, **signed** request for exclusion to Co-Lead Counsel at the following address:

Co Lead Counsel:

PayPal Class Action Settlement
A. J. De Bartolomeo
Girard Gibbs & De Bartolomeo LLP
601 California Street, Suite 1400
San Francisco, California 94108

and (2) a copy of the written signed request to PayPal's counsel at the following address:

PayPal's counsel:

PayPal Class Action Settlement
Morgan Lewis & Bockius LLP
One Market
Spear Street Tower
San Francisco, California 94105

This request for exclusion must contain your name and address; be **signed** by you; and include the reference "**In re PayPal Litigation**, Case No. CV-02-1227-JF (PVT)."

If you exclude yourself from the class, you will not participate in the settlement and cannot receive any payment from the settlement. Your claims will not be released.

10. HOW WILL THE LAWYERS FOR THE CLASS BE PAID?

From the inception of the litigation in early 2002 to the present, Class Counsel have not received any payment for their services in prosecuting the case, nor have they been reimbursed for any out-of-pocket expenses. If the Court approves the proposed settlement, Class Counsel will make a motion to the Court for an award of attorneys' fees of up to \$3,332,500 and reimbursement of expenses of up to \$135,000, to be paid from the \$9.25 million settlement fund. Class Counsel will also seek reimbursement from the settlement fund on behalf of certain of the named plaintiffs in the litigation for reimbursement of their expenses related to their service as class representatives in the litigation, in an aggregate amount not to exceed \$15,000. The motion will be heard at the settlement hearing described below in Section 11.

Class Counsel's motion for an award of attorneys' fees and reimbursement of expenses is based on various factors that include the benefits obtained for the class through litigation. These benefits include the \$9.25 million cash settlement and PayPal's agreement to the injunctive relief requirements. In addition, certain changes to PayPal's business practices are attributable in part to this litigation, including PayPal's decision to undertake to return to its customers approximately \$5.1 million in those accounts to which access was limited for 180 days or more; modifications to PayPal's arbitration provision in its User Agreement and its replacement with a clause that limits PayPal's ability to compel arbitration where the total amount of the award sought is \$10,000 or greater; and various other changes in PayPal's business practices during the pendency of the litigation.

Class Counsel submitted their proposed request for attorneys' fees to the Magistrate Judge who had previously presided over discovery and settlement discussions. Class Counsel's request for attorneys' fees is equal to the amount recommended by the Magistrate Judge.

11. WHEN AND HOW WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a hearing on September 24, 2004, at 9:00 a.m., before the Honorable Jeremy Fogel, United States District Judge, United States District Court for the Northern District of California, Courtroom 3, 5th Floor, 280 South First Street, San Jose, California 95113. The

purpose of the hearing will be to determine (a) whether the proposed settlement should be approved as fair, reasonable, and adequate; (b) whether the application by Class Counsel for an award of attorneys' fees and expenses should be granted; and (c) whether the lawsuit and class members' claims should be dismissed with prejudice pursuant to the settlement. The Court reserves the right to adjourn or continue the hearing without further notice to the class.

You may attend the hearing if you wish, but are **not** required to do so to participate in the settlement.

If the settlement is not approved by the Court, the lawsuit will proceed. If there are further actions taken in the case that affect your rights, you will receive notice as determined by the Court.

12. CAN I COMMENT ON THE SETTLEMENT?

If you decide to remain in the class, and you wish to comment in support of or in opposition to the settlement or Class Counsel's motion for attorneys' fees and expenses, you may do so by mailing or delivering your written (non-email) comments, such that they are **RECEIVED** on or before September 3, 2004, as follows: (1) the original must be sent to the Court at the following address:

Clerk of the Court
United States District Court for the Northern District of California
280 South First Street
San Jose, California 95113

and (2) copies must be sent to Co Lead Counsel and PayPal's counsel at the addresses listed in Section 9, above.

Your written comments must contain your name and address; be **signed** by you; and include the reference **In re PayPal Litigation**, Case No. CV-02-1227-JF (PVT). If you wish to appear and present your comments orally at the hearing, your written comments must contain a notice that you intend to appear and be heard, a statement of the position you intend to present at the hearing, and any supporting arguments.

If you do not comply with the foregoing procedures and deadlines for submitting written comments or appearing at the hearing, you will not be entitled to be heard at the hearing; contest or appeal from approval of the settlement or any award of attorneys' fees or expenses; or contest or appeal from any other orders or judgments of the Court entered in connection with the settlement.

13. HOW CAN I GET MORE INFORMATION ABOUT THE SETTLEMENT?

You can get more information by writing Plaintiffs' Co-Lead Counsel electronically or by first class mail at:

paypalsettlement@settlement4onlinepayments.com

Girard Gibbs & De Bartolomeo LLP
601 California Street, Suite 1400
San Francisco, California 94108

Wolf Popper LLP
845 Third Avenue
New York, NY 10022

This notice is a summary and does not describe all details of the settlement. For full details of the matters discussed in this notice, you may wish to review the Settlement Agreement dated June 11, 2004 and on file with the Court or visit <https://www.paypal.com/settlement/>. Complete copies of the Settlement Agreement and all other pleadings and papers filed in the lawsuit are also available for inspection and copying during regular business hours, at the Office of the Clerk

of the Court, United States District Court for the Northern District of California, 280 South First Street, San Jose, California 95113.

PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.

DATED: July 12, 2004

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA