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13  
14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 MOHAMMAD AL-RAMAHI, individually and on  
17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 PAYPAL, INC.,

21 Defendant.  
22

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Mohammad Al-Ramahi (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, brings this Class Action Complaint (“Complaint”) against Defendant PayPal, Inc.  
3 (“PayPal” or “Defendant”), based upon personal knowledge with respect to himself, and on  
4 information and belief and the investigation of counsel as to all other matters. In support thereof,  
5 Plaintiff alleges as follows:

6 **INTRODUCTION**

7 1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of  
8 similarly situated customers of PayPal who signed up for Defendant’s Venmo money transfer  
9 service (“Venmo”), and who have been the victim of fraud on Venmo, have incurred losses due to  
10 that fraud and have not been reimbursed by PayPal, and were entitled to such reimbursement by  
11 federal regulations and the marketing representations of PayPal.

12 2. Venmo is a person-to-person money transfer application (“Transfer App”) owned  
13 and operated by Defendant.

14 3. Defendant markets Venmo as a safe way for consumers to send money. This is false.  
15 In fact, there are huge, undisclosed security risks of using Venmo that Defendant omitted from its  
16 marketing push to get its customers to sign up for Venmo.

17 4. Defendant misrepresents and omits a key fact about the service that is unknown to  
18 accountholders: that there is virtually no recourse for consumers to recoup losses due to fraud.  
19 Indeed, unlike virtually every other payment method commonly used by American consumers—  
20 debit cards, credit cards, and checks—there is no protection for accountholders who are victims of  
21 fraud, and virtually no recourse for accountholders attempting to recoup losses due to fraud.

22 5. Defendant informs accountholders that Venmo is “safe.”<sup>1</sup>

23 6. The unique, misrepresented, and undisclosed architecture of the Venmo payment  
24 system means that virtually any money transferred for any reason via Venmo is gone forever,  
25 without recourse, reimbursement, or protection, unlike other payment options commonly used by  
26 American consumers.

27 7. Worse, Defendant misrepresents and omits the truth about a secret policy it has

28 <sup>1</sup> <https://venmo.com/> (last accessed June 20, 2022).

1 adopted: it does not and will not reimburse its accountholders for losses on Venmo due to fraud,  
2 even where those losses are timely reported by accountholders.

3 8. Defendant was required to not misrepresent the unique and dangerous features of the  
4 Venmo service in its marketing and in contractual representations. But it failed to do so.

5 9. As a result, users like Plaintiff sign up for and use the Venmo service without the  
6 benefit of accurate information regarding that service, and later end up with huge, unreimbursed  
7 losses due to fraud. Such users never would have signed up for Venmo in the first place if they had  
8 known the risks of signing up for and using the service.

9 10. These risks are well known to Defendant but are omitted from all of its marketing  
10 regarding Venmo.

11 11. As a recent New York Times investigation showed, fraud on Transfer Apps is a  
12 widespread scourge of which Defendant is well aware. Quoting an industry expert, the *Times*  
13 reported:

14 “Organized crime is rampant,” said John Buzzard, Javelin’s lead fraud  
15 analyst. “A couple years ago, we were just starting to talk about it” on  
16 apps like Zelle and Venmo, Mr. Buzzard said. “Now, it’s common  
and everywhere.”

17 The banks are aware of the widespread fraud on Zelle. When Mr.  
18 Faunce called [his bank] to report the crime, the customer service  
19 representative told him, “A lot of people are getting scammed on  
20 Zelle this way.” Getting ripped off for \$500 was “actually really  
good,” Mr. Faunce said the rep told him, because “many people were  
getting hit for thousands of dollars.”

21 <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last accessed May  
22 25, 2022).

23 12. Had Plaintiff and the Class members known of the true operation and risks of the  
24 Venmo service—risks Venmo was aware of and actively misrepresented—they would not have  
25 signed up for and used the Venmo service.

26 13. Plaintiff and the Class members have been injured by signing up for and using the  
27 Venmo service. Plaintiff brings this action on behalf of himself, the putative Class, and the general  
28 public. Plaintiff seeks actual damages, punitive damages, restitution, and an injunction on behalf of

1 the general public to prevent Defendant from continuing to engage in its illegal practices as  
2 described herein.

3 **PARTIES**

4 14. Plaintiff Mohammad Al-Ramahi (“Plaintiff”) is a citizen and resident of San Jose,  
5 California. Plaintiff is a Venmo accountholder. Due to fraud, Plaintiff lost \$2,450 on the Venmo  
6 app in April 2020. When Plaintiff attempted to obtain a refund of these fraudulent charges,  
7 Defendant refused to cover the transactions. When Plaintiff signed up for Venmo, he was not  
8 informed that Venmo’s service had a significant “catch” and that considerable monetary losses  
9 could result from signing up for the service—or that those losses are almost never reimbursed by  
10 Defendant.

11 15. Defendant PayPal, Inc. is a Delaware corporation with its principal place of business  
12 in San Jose, California. Defendant is a financial institution or servicer as defined by the EFTA, 15  
13 U.S.C. § 1693(a)(9). Defendant owns and operates the Venmo app that is at issue in this case.

14 **JURISDICTION AND VENUE**

15 16. This Court has jurisdiction over the subject matter of this action pursuant to 28  
16 U.S.C. § 1332(d)(2), because the amount in controversy exceeds \$5,000,000, exclusive of interest  
17 and costs, and is a class action in which at least one member of each of the Classes is a citizen of a  
18 State different from the Defendant. The number of members of the proposed Classes in aggregate  
19 exceeds 100 accountholders. 28 U.S.C. § 1332(d)(5)(B).

20 17. This Court has personal jurisdiction over the Defendant because Defendant  
21 maintains its principal place of business in this district. Venue is proper in this district pursuant to  
22 28 U.S.C. § 1391 because Defendant maintains its principal place of business in this district.

23 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

24 **A. Overview**

25 18. It is free to sign-up with Venmo. During that sign-up process, a user provides basic  
26 information to Defendant in order for the user to link his or her bank account with the Venmo app.

27 19. Signing up for the Venmo service allows the fast transfer of a user’s account funds to  
28 other Venmo users.

1           20.     In 2021, users sent \$230 billion in immediate payment transfers through Venmo.

2           21.     The Venmo service is very popular, but it also has a massive fraud problem—in no  
3 small part because of the immediacy with which money transfers are made on the service. If a  
4 fraudster removes money from a Venmo user’s bank account, either directly or by fooling the  
5 Venmo user to transfer money, those funds are unrecoverable to the consumer.

6           22.     Nearly 18 million Americans were defrauded through scams involving person-to-  
7 person payment apps like Venmo in 2020 alone, according to Javelin Strategy & Research, an  
8 industry consultant.

9           23.     Organized crime is rampant on Venmo and other similar person-to-person money  
10 transfer services.

11          24.     Financial institutions, including Defendant, know full well that they have a  
12 widespread fraud problem on their hands, but have misrepresented and failed to take reasonable  
13 steps to warn their accountholders of these risks—or to protect their accountholders who fall prey to  
14 fraud.

15          25.     For example, a common scam involves a scammer impersonating a bank employee  
16 and requesting that the accountholder transfer money to a different bank account for testing  
17 purposes. In many cases, unsuspecting Venmo users, tricked into making a fraudulent transfer,  
18 send hundreds or thousands of dollars to fraudsters.

19          26.     In another very common scheme, a Venmo user’s phone is stolen and Venmo  
20 transfers are made from the stolen phone to the fraudster.

21          27.     Yet another common scheme involves posting a fake employment advertisement  
22 online to which victims respond. The victims will quickly be “hired” and told that part of their  
23 duties will include paying for goods and supplies. The victims will be sent a check and then quickly  
24 told to complete transaction requests on Venmo. Only after the check bounces a few days later will  
25 the victim realize that they have been defrauded. It was this type of scam to which Plaintiff fell  
26 victim.

27          28.     In short, and unbeknownst to average Venmo users, the Venmo network has become  
28 a preferred tool for fraudsters like romance scammers, cryptocurrency con artists, and those who

1 use social media sites to advertise fake concert tickets and purebred puppies.

2 29. Scams like these are rampant on the Venmo network precisely because of the design  
3 and architecture of the network, specifically that a money transfer is instantaneous and  
4 unrecoverable. Indeed, there is virtually no recourse for consumers to recoup losses due to fraud,  
5 unlike other payment methods commonly used by American consumers—debit cards, credit cards,  
6 and checks. Venmo provides no protection for accountholders who are victims of fraud, and  
7 Defendant provides virtually no recourse for accountholders attempting to recoup losses due to  
8 fraud.

9 30. The unique, misrepresented, and undisclosed architecture of the Transfer App  
10 payment systems and Defendant’s own fraud policies means—again, unlike other payment options  
11 commonly used by American consumers—that virtually any money transferred for any reason via a  
12 Transfer App is gone forever, without recourse, reimbursement, or protection for victimized  
13 accountholders.

14 **B. Defendant Falsely Markets Venmo as a Safe Way to Transfer Money and**  
15 **Omits Information Regarding the Extreme Risks of Signing Up for and Using**  
16 **the Service**

17 31. Defendant states that Venmo is a way to make “Fast, **safe**, social payments”  
(emphasis added).

18 32. At no time in its marketing or during the sign-up process does Defendant reasonably  
19 warn potential users of the true security risks of using the Venmo service—including the risk of  
20 fraud and the risk that fraudulent losses will never be reimbursed by Defendant.

21 33. Venmo’s services can cause unsuspecting consumers like Plaintiff to incur massive  
22 losses on their linked bank accounts.

23 34. Defendant misrepresents and omits facts about the true nature, benefits, and risks of  
24 the Venmo service, which means that users are at extreme and undisclosed risk of fraud when using  
25 Venmo. Had Plaintiff been adequately informed of these risks, he would not have signed up for or  
26 used Venmo.

27 35. Defendant’s marketing representations about Venmo—including within its app and  
28 website—misrepresent and never disclose these risks and material facts, instead luring

1 accountholders to sign-up for and use the service with promises of ease, safety, and security.

2 36. These representations—which all users view during the sign-up process—are false  
3 and contain material omissions.

4 37. Defendant misrepresents the true nature, benefits, and risks of the service, which  
5 burden users with an extreme and undisclosed risk of Venmo causing losses due to fraud. Plaintiff  
6 would not have used Venmo if he had been adequately informed of the risks.

7 38. Defendant’s misrepresentations and omissions are especially pernicious because  
8 Defendant alone knows a crucial fact regarding Venmo transfers that occur on its customers’  
9 accounts: as a matter of secret bank policy, fraudulently-induced Venmo transfers will almost never  
10 be reimbursed to accountholders.

11 39. Indeed, PayPal maintains a secret policy whereby it refuses to reimburse fraud losses  
12 incurred via Venmo, even where its accountholders timely inform Defendant of the fraud.

13 40. Defendant misrepresents and fails to disclose this secret policy.

14 41. Further, Venmo’s Help center implies to users that if they “Report any unauthorized  
15 payments or activity to Venmo,” that Venmo will take action.<sup>2</sup>

16 42. These provisions are and were reasonably understood by Plaintiff to mean that  
17 Plaintiff would not be liable for electronic funds transfers effectuated by fraud.

18 **C. Defendant is Legally Required to Cover Unauthorized Fraudulent Transactions**

19 43. The Electronic Fund Transfer Act (“EFTA”) and Regulation E apply to an electronic  
20 fund transfer that authorizes a financial institution to debit or credit a consumer’s account. 12 CFR  
21 1005.3(a).

22 44. The term “electronic fund transfer” or “EFT” means any transfer of funds that is  
23 initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of  
24 ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account.  
25 12 CFR 1005.3(b)(1).

26 45. Accordingly, Regulation E applies to any person-to-person (P2P) or mobile payment  
27

28 <sup>2</sup> <https://help.venmo.com/hc/en-us/articles/4410324103187-Reporting-Fake-or-Suspicious-Emails-> (last accessed June 20, 2022).

1 transactions that meet the definition of EFT, including debit card, ACH, prepaid account, and other  
2 electronic transfers to or from a consumer account. 12 CFR 1005.3(b)(1)(v); Comment 3(b)(1)-1.ii.

3 46. According to the Consumer Financial Protection Bureau (“CFPB”), “Person-to-  
4 person” or “P2P” payments allow a consumer to send money to another person without needing to  
5 write a check, swipe a physical card, or exchange cash. Depending on the payment provider, a P2P  
6 payment can be initiated from a consumer’s online bank account portal, prepaid account portal, or  
7 mobile application. Any P2P payment that meets the definition of EFT is covered by EFTA and  
8 Regulation E.”<sup>3</sup>

9 47. Any P2P payment provider can be a financial institution under Regulation E. Thus,  
10 if a P2P payment provider directly or indirectly holds an account belonging to a consumer, they are  
11 considered a financial institution under Regulation E. 12 CFR 1005.2(i).<sup>4</sup>

12 48. If a consumer notifies a financial institution within two business days after learning  
13 of a loss due to an unauthorized transfer, the consumer’s liability shall not exceed the lesser of \$50  
14 or the amount of unauthorized transfers that occur before notice to the financial institution. 12  
15 C.F.R. § 1005.6(b)(1).

16 49. Even if the consumer fails to notify the financial institution within two business days  
17 after learning of the loss or theft of the access device, the consumer’s liability shall not exceed the  
18 lesser of \$500 or the sum of: (i) \$50 or the amount of unauthorized transfers that occur within the  
19 two business days, whichever is less; and (ii) [t]he amount of unauthorized transfers that occur after  
20 the close of two business days and before notice to the institution, provided the institution  
21 establishes that these transfers would not have occurred had the consumer notified the institution  
22 within that two-day period. 12 C.F.R. § 1005.6(b)(2).

23 50. If the consumer’s delay in notifying the financial institution was due to extenuating  
24 circumstances, the institution shall extend the times specified above to a reasonable period. 12  
25 C.F.R. § 1005.6(b)(4).

26 51. The CFPB has made it clear that a transaction that is fraudulently induced by a third

27 <sup>3</sup> <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/> (last accessed May 25, 2022).

28 <sup>4</sup> *Id.*



1 party is an unauthorized electronic funds transfer subject to the limitations of liability in 12 C.F.R. §  
2 1005.6.<sup>5</sup>

3 52. “Negligence by the consumer cannot be used as the basis for imposing greater  
4 liability than is permissible under Regulation E.”<sup>6</sup>

5 53. A separate regulation, Regulation Z, also requires Defendant to cover extensions of  
6 credit that are “not made to the consumer or to a person who has actual, implied, or apparent  
7 authority to use the consumer's credit card or open-end credit plan.” 12 C.F.R. § 1026.13(a)(1).

8 54. Because of the failure of Transfer Apps to cover fraudulently induced transactions.  
9 Senators Robert Menendez and Elizabeth Warren sent a letter to the CEO of a Transfer App noting:

10 The Consumer Financial Protection Bureau previously clarified that  
11 Regulation E of the Electronic Fund Transfer Act protected victims of  
12 fraudulent money transfers, **including those who were “induced”**  
13 **into transferring the money themselves**, while the FDIC issued a  
14 report in March 2022 finding that both the banks and the platform ...  
15 were held responsible for fraudulent electronic transfers through  
16 Regulation E.

17 See **Exhibit 1**, Menendez Letter Regarding Scams and Fraud (emphasis added).

18 **D. Plaintiff’s Experience**

19 55. In April 2020, Plaintiff responded to a job posting about an “Admin Position” on  
20 indeed.com.

21 56. On April 18, 2020, Plaintiff received an email from someone identifying themselves  
22 as Mark Moton, stating that Plaintiff was to be expected to carry out various duties, including  
23 paying for goods and supplies. Plaintiff was told that the payment was to be arranged with the  
24 CFO, who was to mail the payment to Plaintiff, and which Plaintiff would be required to use to pay  
25 for supplies.

26 57. On April 21, 2020, Plaintiff received a check for \$4,950, which he deposited into his  
27 bank account.

28 <sup>5</sup> <https://www.consumerfinance.gov/rules-policy/regulations/1005/2/#m> (“An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud”) (last accessed May 25, 2022).

<sup>6</sup> <https://www.consumerfinance.gov/rules-policy/regulations/1005/interp-6/#6-a-Interp-1-ii> (last accessed May 25, 2022).

1         58.       On April 24, 2020, the job offeror initiated two fraudulent transactions including one  
2 for \$2,450 by requesting that Plaintiff send that amount using the Venmo app linked to his bank  
3 account.

4         59.       Plaintiff dutifully completed both transactions as part of what he thought was his  
5 new job.

6         60.       Unbeknownst to Plaintiff, the job offer was fraudulent and he had fallen victim to a  
7 scam that caused him to lose \$4,950, including \$2,450 via Venmo.

8         61.       Plaintiff was not aware that he had been defrauded until April 28, 2020, when his  
9 bank informed him that the check that he had deposited was altered/fictitious. As a result,  
10 \$4,962.00 was deducted from Plaintiff’s bank account, \$4,950 of which was the amount of the  
11 returned item, and \$12.00 of which was for a return items fee.

12         62.       At this point, Plaintiff was distraught and desperately attempted to recover his badly  
13 needed funds.

14         63.       On the same day, he contacted Venmo to explain that he was the victim of fraudsters  
15 who had taken \$2,450 of his money on Venmo without his authorization.

16         64.       Plaintiff also filed a police report with the San Jose Police Department and left a  
17 complaint with the Internet Crime Complaint Center.

18         65.       Venmo refused to cover the transactions in question or help Plaintiff in any manner  
19 whatsoever.

#### **CLASS ALLEGATIONS**

21         66.       Plaintiff brings this action on behalf of himself and all others similarly situated  
22 pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity,  
23 commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

24         67.       The proposed classes are defined as:

##### **The Nationwide Class**

26                 All persons who incurred unreimbursed losses due to fraud on  
27                 Venmo (the “Nationwide Class”).

1           **The California Subclass**

2                     All California persons who incurred unreimbursed losses due to  
3                     fraud on Venmo (the “California Subclass”).

4     The Nationwide Class and California Subclass are collectively referred to as the “Classes.”

5           68.     Plaintiff reserves the right to modify or amend the definition of the proposed Classes  
6     before the Court determines whether certification is appropriate.

7           69.     Specifically excluded from the Classes are Defendant, its parents, subsidiaries,  
8     affiliates, officers and directors, any entity in which Defendant has a controlling interest, all  
9     customers who make a timely election to be excluded, governmental entities, and all judges  
10    assigned to hear any aspect of this litigation, as well as their immediate family members.

11          70.     The members of the Classes are so numerous that joinder is impractical. The Classes  
12    consist of hundreds of thousands of members, the identity of whom is within the knowledge of and  
13    can be ascertained only by resort to Defendant’s records.

14          71.     The claims of the representative plaintiff are typical of the claims of the Classes in  
15    that the representative plaintiff, like all members of the Classes, was similarly injured through  
16    Defendant’s uniform misconduct as alleged above. As alleged herein, Plaintiff, like the members of  
17    the Classes, was deprived of monies that rightfully belonged to him. Further, there are no defenses  
18    available to Defendant that are unique to Plaintiff. Furthermore, the factual basis of Defendant’s  
19    misconduct is common to all members of the Classes, and represents a common thread of unfair and  
20    unconscionable conduct resulting in injury to all members of the Classes. Plaintiff has suffered the  
21    harm alleged and has no interests antagonistic to the interests of any other members of the Classes.

22          72.     There are numerous questions of law and fact common to the Classes and those  
23    common questions predominate over any questions affecting only individual members of the  
24    Classes.

25          73.     The questions of law and fact common to the Classes include:

- 26                 a.    Whether Defendant’s representations and omissions about Venmo are false,  
27                     misleading, deceptive, or likely to deceive;  
28                 b.    Whether Defendant failed to disclose the risks of using the Venmo service;

- 1 c. Whether Plaintiff and the Class members were damaged by Defendant's conduct;
- 2 d. Whether Defendant's actions or inactions violated the consumer protection
- 3 statutes invoked herein;
- 4 e. Whether these practices violated California and federal law;
- 5 f. The proper method or methods by which to measure damages;
- 6 g. Whether Defendant is legally required to cover transactions that Plaintiff and
- 7 Class members were fraudulently induced to enter into; and
- 8 h. The declaratory, injunctive, and other equitable relief to which the Classes are
- 9 entitled.

10 74. Plaintiff is committed to the vigorous prosecution of this action and has retained  
11 competent counsel experienced in the prosecution of class actions and, in particular, class actions on  
12 behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate  
13 representative and will fairly and adequately protect the interests of the Classes.

14 75. A class action is superior to other available methods for the fair and efficient  
15 adjudication of this controversy. Since the amount of each individual class member's claim is small  
16 relative to the complexity of the litigation, and due to the financial resources of PayPal, no class  
17 member could afford to seek legal redress individually for the claims alleged herein. Therefore,  
18 absent a class action, the Classes will continue to suffer losses and Defendant's misconduct will  
19 proceed without remedy.

20 76. Even if Class members themselves could afford such individual litigation, the court  
21 system could not. Given the complex legal and factual issues involved, individualized litigation  
22 would significantly increase the delay and expense to all parties and to the Court. Individualized  
23 litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a  
24 class action presents far fewer management difficulties, allows claims to be heard which might  
25 otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides  
26 the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

27 77. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all  
28 members of the Classes, is at risk of being victimized by future fraudulent transactions that

1 Defendant will refuse to cover. Plaintiff and the members of the Classes are entitled to injunctive  
2 and declaratory relief as a result of the conduct complained of herein. Money damages alone could  
3 not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant  
4 from continuing to commit its unfair and illegal actions.

5 78. Defendant has acted or refused to act on grounds generally applicable to the Classes,  
6 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to  
7 the Classes as a whole.

### 8 CAUSES OF ACTION

#### 9 COUNT I

#### 10 **Breach Of Contract and Breach of the Covenant Of Good Faith And Fair Dealing** 11 **(On Behalf Of The Classes)**

12 79. Plaintiff incorporates by reference each of the allegations set forth in the preceding  
13 paragraphs.

14 80. Plaintiff brings this claim on behalf of the Classes.

15 81. Plaintiff and members of the Classes contracted with Defendant.

16 82. Defendant breached the terms of its contract with consumers when, as described  
17 herein, Defendant failed to fairly investigate reported fraudulent transactions on Venmo and failed  
18 to reimburse accountholders for fraud-induced losses incurred from using Venmo.

19 83. Further, under the law of each of the states where Defendant does business, an  
20 implied covenant of good faith and fair dealing governs every contract. The covenant of good faith  
21 and fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

22 84. This good faith requirement extends to the manner in which a party employs  
23 discretion conferred by a contract.

24 85. Good faith and fair dealing, in connection with executing contracts and discharging  
25 performance and other duties according to their terms, means preserving the spirit—not merely the  
26 letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply  
27 with the substance of their contract in addition to its form. Evading the spirit of the bargain and  
28 abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

86. Subterfuge and evasion violate the obligation of good faith in performance even

1 when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist  
2 of inaction, and fair dealing may require more than honesty. Other examples of violations of good  
3 faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify  
4 terms, and interference with or failure to cooperate in the other party's performance.

5 87. Defendant breached the covenant of good faith and fair dealing when it failed to  
6 fairly investigate reported fraudulent transactions on Venmo and failed to reimburse accountholders  
7 for fraud-induced losses incurred using Venmo.

8 88. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

9 89. Plaintiff and members of the Classes have performed all of the obligations imposed  
10 on them under the contract.

11 90. Plaintiff and members of the Classes have sustained monetary damages as a result of  
12 Defendant's breaches of the contract and the covenant of good faith and fair dealing.

13 **COUNT II**  
14 **Violation of California Unfair Competition Law**  
15 **Business and Professions Code § 17200**  
16 **(On Behalf of the Classes)**

17 91. Plaintiff incorporates by reference each of the allegations set forth in the preceding  
18 paragraphs.

19 92. Plaintiff brings this claim on behalf of the Classes.

20 93. Defendant's conduct described herein violates the Unfair Competition Law (the  
21 "UCL"), codified at California Business and Professions Code section 17200, *et seq.*

22 94. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose  
23 is to protect both consumers and competitors by promoting fair competition in commercial markets  
24 for goods and services. In service of that purpose, the Legislature framed the UCL's substantive  
25 provisions in broad, sweeping language.

26 95. By defining unfair competition to include any "any unlawful, unfair or fraudulent  
27 business act or practice," the UCL permits violations of other laws to be treated as unfair  
28 competition that are independently actionable, and sweeps within its scope acts and practices not  
specifically proscribed by any other law.

1           96.     The UCL expressly provides for injunctive relief, and also contains provisions  
2 denoting its public purpose. A claim for injunctive relief under the UCL is brought by a plaintiff  
3 acting in the capacity of a private attorney general. Although the private litigant controls the  
4 litigation of an unfair competition claim, the private litigant is not entitled to recover compensatory  
5 damages for his own benefit, but only disgorgement of profits made by the defendant through unfair  
6 or deceptive practices in violation of the statutory scheme or restitution to victims of the unfair  
7 competition.

8           97.     As alleged herein, Defendant’s conduct violates the UCL’s “unfair” prong insofar as  
9 Defendant regularly:

- 10           a.     Knowingly and intentionally makes false or misleading representations that it  
11                 provides “safe” money transfer service through its website and mobile app;
- 12           b.     Knowingly and intentionally conceals and fails to disclose material facts  
13                 regarding the true risks of utilizing the Venmo money transfer service through its  
14                 website and mobile app;
- 15           c.     Deceives reasonable consumers, who expect financial institutions to fully  
16                 investigate and protect against fraudulent losses incurred using Venmo; and
- 17           d.     Omits the security risks of using the Venmo service, including the risk of fraud  
18                 and the risk that fraudulent losses will never be reimbursed by Defendant, as a  
19                 matter of secret policy.

20           98.     As alleged above, Defendant’s conduct also violates the UCL’s “unlawful” prong  
21 insofar as Defendant regularly refuses to cover transactions that Plaintiff and class members were  
22 fraudulently induced to enter into despite being required to by federal and state regulations.

23           99.     Defendant’s conduct was not motivated by any legitimate business, economic need,  
24 or rationale. The harm and adverse impact of Defendant’s conduct on members of the general  
25 public were neither outweighed nor justified by any legitimate reasons, justifications, or motives.

26           100.    The harm to Plaintiff and members of the Classes arising from Defendant’s unfair  
27 and unlawful practices outweighs the utility, if any, of those practices.

28           101.    Defendant’s unfair and unlawful business practices as alleged herein are immoral,

1 unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff,  
2 members of the Classes, and the general public.

3 102. Defendant’s conduct was substantially injurious to consumers in that they have  
4 suffered monetary injury on the Venmo app. Had Plaintiff known the true risks of using the Venmo  
5 service, he never would have signed up for and used the Venmo service.

6 103. Moreover, Defendant committed fraudulent business acts and practices in violation  
7 of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and knowingly stated that it  
8 provides “safe” money transfer services through its website and mobile app. Such representations  
9 misled the Plaintiff and are likely to mislead the public. Additionally, Defendant willfully and  
10 intentionally concealed and omitted the security risks of using the Venmo service, including the risk  
11 of fraud and the risk that fraudulent losses will never be reimbursed by Defendant. As a matter of  
12 secret policy, this is a practice that is likely to deceive a consumer acting reasonably under the  
13 circumstances, to the consumer’s detriment.

14 104. Plaintiff relied on Defendant’s misrepresentations and material omissions.  
15 Specifically, Plaintiff had no idea that Defendant would refuse to cover fraudulent transactions. If  
16 Plaintiff knew Defendant would not cover fraudulent transactions, he would have not used the  
17 Venmo service. Such misrepresentations and omissions misled Plaintiff and are likely to mislead  
18 the public. Plaintiff seeks to enjoin Defendant from misrepresenting and/or omitting this material  
19 and accurate information in the documents that it makes available to existing customers and the  
20 general public who might consider using Venmo.

21 105. Plaintiff and members of the Classes relied on Defendant’s misrepresentations and  
22 omissions in that Plaintiff received and reviewed the materials provided by Defendant, and like any  
23 reasonable customer, understood these documents to mean that in the event he was the victim of a  
24 fraudulent transaction, Defendant would cover the transaction. Had Plaintiff and others been  
25 informed in any of the documents provided by Defendant that they would be subject to these  
26 practices, they would not have used Venmo.

27 106. Moreover, Defendant committed unlawful business acts and practices in violation of  
28 Cal. Bus. & Prof. Code § 17200, *et seq.*, when it violated the CLRA, as alleged herein.



1 107. Defendant also committed unlawful business acts and practices in violation of  
2 Regulation E and Regulation Z, when it violated those regulations, as alleged herein.

3 108. As a result of Defendant's violations of the UCL, Plaintiff and members of the  
4 Classes have suffered, and/or will continue to suffer from Defendant's unfair and unlawful policies,  
5 and thereby have suffered and will continue to suffer actual damages.

6 109. Absent injunctive and public injunctive relief prohibiting Defendant from  
7 misrepresenting and omitting material information concerning its unfair policies at issue in this  
8 lawsuit, Plaintiff and other existing accountholders, and the general public will be exposed to  
9 Defendant's conduct violative of the UCL.

10 **COUNT III**  
11 **Consumer Legal Remedies Act (CLRA) Cal. Civ. Code 1750 *et seq.***  
12 **(On Behalf Of The Classes)**

13 110. Plaintiff incorporates by reference each of the allegations set forth in the preceding  
14 paragraphs.

15 111. Plaintiff brings this claim on behalf of the Classes.

16 112. Plaintiff and each of the members of the Classes are "consumers" within the meaning  
17 of Civil Code § 1761(d).

18 113. Plaintiff and Class members engaged in "transactions" with Defendant within the  
19 meaning of Civil Code § 1761(e).

20 114. Defendant's payment services are "services" within the meaning of § 1761(b).

21 115. Defendant's actions, representations, and conduct have violated, and continue to  
22 violate, the CLRA because they extend to transactions that are intended to result, or that have  
23 resulted, in the sale of goods or services to any consumer.

24 116. The CLRA expressly provides for injunctive relief, and also contains provisions  
25 denoting its public purpose. A claim for injunctive relief under the CLRA is brought by a plaintiff  
26 acting in the capacity of a private attorney general.

27 117. As detailed above, Defendant has engaged, and continues to engage, in unfair  
28 methods of competition and has undertaken unfair or deceptive acts or practices in violation of the  
CLRA by, inter alia:

- 1 a. Knowingly and intentionally making false or misleading representations that it
- 2 provides “safe” money transfer service through its website and mobile app;
- 3 b. Knowingly and intentionally concealing and failing to disclose material facts
- 4 regarding the true risks of utilizing the Venmo money transfer service through its
- 5 website and mobile app;
- 6 c. Deceiving reasonable consumers, who expect financial institutions to fully
- 7 investigate and protect against fraudulent losses incurred using the Venmo
- 8 service; and
- 9 d. Omitting the security risks of using the Venmo service, including the risk of
- 10 fraud and the risk that fraudulent losses will never be reimbursed by Defendant
- 11 as a matter of secret policy.

12 118. Defendant made material misrepresentations and/or omissions concerning each of  
13 these practices upon which Plaintiff relied.

14 119. Such misrepresentations and omissions misled Plaintiff and are likely to mislead the  
15 public. Plaintiff seeks to enjoin Defendant from misrepresenting and/or omitting this material and  
16 accurate information in the documents that it makes available to the public.

17 120. Plaintiff and members of the Classes relied on Defendant’s misrepresentations and  
18 omissions in that Plaintiff received and reviewed the materials provided by Defendant. Had  
19 Plaintiff been informed in any of the documents provided by Defendant that he would be subject to  
20 these unfair practices, he would have been able to weigh the convenience and benefits in engaging  
21 in transactions against the cost of the risks associated with using Venmo.

22 121. Plaintiff and the members of the Classes are injured in fact and have lost money as a  
23 direct and proximate result of Defendant’s unfair methods of competition and/or deceptive acts or  
24 practices in that they incurred fees that were improper.

25 122. Plaintiff and the members of the Classes seek declaratory relief, injunctive relief, and  
26 all other relief allowable under Bus. & Prof. Code § 17203, including but not limited to enjoining  
27 Defendant from continuing to engage in the unfair, unlawful, and fraudulent conduct alleged herein.

28 123. As a result of Defendant’s violations of the CLRA, Plaintiff and members of the

1 Classes have paid, and/or will continue to pay improperly charged fees and thereby have suffered  
2 and will continue to suffer actual damages.

3 124. Absent injunctive and public injunctive relief prohibiting Defendant from  
4 misrepresenting and omitting material information concerning its policies at issue in this lawsuit,  
5 Plaintiff and other existing accountholders, and the general public will be exposed to Defendant's  
6 conduct violative of the CLRA.

7 **COUNT IV**  
8 **Violation of The Electronic Fund Transfers Act, 15 U.S.C. § 1693 et seq.**  
9 **(On Behalf of the Classes)**

10 125. Plaintiff incorporates by reference each of the allegations set forth in the preceding  
11 paragraphs.

12 126. Plaintiff brings this claim on behalf of himself and members of the Classes.

13 127. The fraudulent transfers described above, including the \$2,450.00 that the fraudsters  
14 made using Plaintiff's Venmo account, are electronic funds transferred as defined under the EFTA.

15 128. Per the EFTA, Regulation E, and Regulation E's Official Interpretations, Defendant  
16 bears the financial responsibility for these unauthorized transfers.

17 129. The EFTA caps consumer liability for unauthorized electronic fund transfers at \$50  
18 and the transactions at issue exceed that amount. 15 U.S.C. § 1693g(a).

19 130. Defendant has violated the EFTA by refusing to cover the aforementioned  
20 unauthorized transfers, in violation of the EFTA's sharp limitation on consumer liability.

21 131. Moreover, once Plaintiff and class members notified Defendant that they disputed  
22 the unauthorized transfers and withdrawals, Defendant was required to conduct a bona fide  
23 reasonable investigation to determine if fraud occurred.

24 132. However, Defendant failed to conduct a reasonable investigation.

25 133. For example, a reasonable investigation of Plaintiff's situation would have included  
26 review of one or more of the following items, which would have led Defendant to conclude that  
27 fraud had occurred:

- 28 a. Historical information on the customer's pattern of use (e.g. time, frequency,  
location, and types and amounts of transactions);

1           b. Complaints to the FTC and CFPB; and

2           c. Plaintiff's Police report.

3           134. Furthermore, a reasonable investigation would have revealed, inter alia, the  
4 following:

5           a. Plaintiff did not authorize the disputed transaction;

6           b. Plaintiff promptly reported the fraudulent transaction;

7           c. Plaintiff filed a police report concerning the fraudulent transaction;

8           d. Plaintiff has no criminal history; and

9           e. Plaintiff has no history of fraud with Defendant or any other financial institution.

10          135. Moreover, the EFTA places the burden of proof on the financial institution to  
11 demonstrate that challenged transfers were authorized or, if they were unauthorized, that the  
12 consumer can be held liable for them. 15 U.S.C. § 1693g(b).

13          136. This burden of proof cannot be and was not plausibly met with regard to the  
14 contested transactions and Defendant could not have plausibly concluded that the transfers were  
15 authorized.

16          137. In short, any reasonable investigation of these transactions would have resulted in  
17 Defendant cancelling transfers and crediting Plaintiff's account for the stolen funds.

18          138. Defendant's acts and omissions set forth above constitute violations of the EFTA.

19          139. As a direct and proximate result of Defendant's violations of the EFTA, Plaintiff and  
20 class members are entitled to an award of statutory and actual damages as well as attorney's fees  
21 and costs.

22          140. Defendant did not conduct a good faith investigation regarding the stolen funds.

23          141. Defendant did not have a reasonable basis for believing the accounts were not in  
24 error.

25          142. Defendant willfully concluded that Plaintiff and class member's accounts were not in  
26 error when such a conclusion could not reasonably have been drawn from the evidence available to  
27 Defendant at the time of the investigation.

1 143. In light of the foregoing – in addition to all other relief sought herein – Plaintiff is  
2 also entitled to recover treble damages under Section 1693f(e).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks  
5 judgment against Defendant, as follows:

- 6 (a) For an order certifying this action as a class action, appointing Plaintiff as  
7 Class Representative, and appointing Plaintiff’s counsel as Class Counsel;
- 8 (b) For compensatory, statutory, and punitive damages on all applicable claims  
9 and in an amount to be proven at trial;
- 10 (c) For restitution on all applicable claims and in an amount to be proven at trial;
- 11 (d) For an order requiring Defendant to disgorge, restore, and return all monies  
12 wrongfully obtained together with interest calculated at the maximum legal  
13 rate;
- 14 (e) For an order enjoining the wrongful conduct alleged herein;
- 15 (f) For other appropriate injunctive and other equitable relief;
- 16 (g) For costs;
- 17 (h) For pre-judgment and post-judgment interest as provided by law;
- 18 (i) For attorneys’ fees under the account contracts, the common fund doctrine,  
19 and all other applicable rules and law; and
- 20 (j) For such other relief as the court deems just and proper.

21 **DEMAND FOR TRIAL BY JURY**

22 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any  
23 and all issues in this action so triable of right.

24 Dated: June 21, 2022

Respectfully submitted,

25  
26 **BURSOR & FISHER, P.A.**

27 By: /s/ L. Timothy Fisher  
28 L. Timothy Fisher

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