

NO. _____

IN THE MATTER OF

STATE OF TEXAS

AND

PAYPAL, INC.

Respondent

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

THE STATE OF TEXAS ("State") acting by and through Attorney General Ken Paxton, and Respondent PAYPAL, INC. ("PayPal"), hereby agree to and respectfully submit for the Court's approval and filing in accordance with, TEX. BUS. & COM. CODE ANN. § 17.58 (Vernon 2011), this Assurance of Voluntary Compliance ("Assurance").

FACTUAL BACKGROUND

1. In December 2013, PayPal became the parent company of Venmo. Venmo, formerly a separate legal entity which has now been dissolved and merged into PayPal, offers peer to peer money transfer services primarily through its mobile application, allowing Venmo Service Users to pay their friends electronically. PayPal also recently began offering its Venmo Service as a method for Venmo Service Users to pay approved merchants.

2. The State has investigated PayPal for potential violations of the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (Vernon 2011) ("DTPA"), in connection with its Venmo Service. PayPal has agreed to the entry of this Assurance and to commit to certain business practices related to the Venmo Service as described below. The Parties agree that this is a compromise of a disputed claim and that this Assurance is entered into without admitting any liability or wrongdoing, which is expressly denied, and without agreement by any party to any of the allegations or defenses made by another party.

LEGAL AUTHORITY AND RECITALS

3. The Office of the Attorney General has investigated certain potential claims and causes of action under the DTPA and alleges that PayPal has caused confusion regarding its Venmo Service.

4. The corporate signatory hereto represents and certifies that he is an officer of PayPal who is authorized to execute and provide this Assurance on behalf of PayPal, and that by executing this Assurance on behalf of PayPal he confirms that: (a) he has read this Assurance; (b) he and PayPal understand and acknowledge that it is executed on behalf of, and is therefore binding upon, PayPal; (c) he and PayPal agree to the filing of this Assurance with the District Court (the "Court") and the approval by the Court of the same; and (d) pursuant to § 17.58(c) of the DTPA, any subsequent failure by PayPal to comply with the terms of this Assurance shall constitute prima facie evidence of a violation of the DTPA.

DEFINITIONS

5. As used in this Assurance, the following words or terms shall have the following meanings:
- A. "accessing" a contact list means accessing, storing, maintaining, or otherwise viewing or using a Venmo Service User's contact list.
 - B. "audience" means the functionality that allows a Venmo Service User to determine which category of Venmo Service Users and/or consumers are capable of viewing a transaction.
 - C. "autofriend" or "autofriending" means the "Add Friends When They Join" feature, or similar feature which allows PayPal to access a Venmo Service User's contact list to add individuals in the contact list to his or her list of Venmo Service friends without a specific, deliberate action by the Venmo Service User.

- D. “clear and conspicuous” or “clearly and conspicuously” when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement or disclosure may not contradict or be inconsistent with any other information with which it is presented.
- E. “consumer” as used herein means an individual who is a resident of the State of Texas.
- F. “contact list” means any list of personal information that could be used to contact a person, including any telephone number list, email address book, list of social network friends or contacts, or similar list of contact information that PayPal accesses from a Venmo Service User’s phone contacts or Facebook Friends or any third party platform.
- G. “PayPal” means PayPal, Inc. and includes its parents, subsidiaries, officers, agents, employees, successors and assigns as well as any other persons acting on its behalf who receive actual notice of this Assurance by personal service or otherwise.
- H. “Venmo Service” means those payment services currently branded as “Venmo”.
- I. “Venmo Service User” means a consumer that is a user of the Venmo Service.

RELIEF

- 6. PayPal hereby agrees to the following, as of the Effective Date unless otherwise specified, with respect to the Venmo Service:
 - A. By ninety (90) days after the Effective Date, PayPal will not access or attempt to access a Venmo Service User’s contact list without first:

- i. Clearly and conspicuously disclosing to the Venmo Service User whose contact list is being accessed:
 1. The type of information from the contact list that will be accessed (e.g., name, phone numbers, email addresses, etc.);
 2. The specific ways in which PayPal is authorized to use such information; and
 3. How the autofriend feature works and how to disable it after enrollment.
 - ii. Prior to a consumer completing Venmo Service enrollment, PayPal will disclose the fact, if true, that as part of enrollment, any Venmo Service User who has the consumer listed as a contact will be notified that the consumer has joined Venmo, if such Venmo Service User has not disabled autofriend.
- B. By ninety (90) days after the Effective Date, PayPal will ensure that its disclosures regarding the security of its Venmo Service or the security features it offers in its Venmo Service are true and correct (for example, PayPal shall not represent that it provides “bank-grade security” unless such statement is true and correct).
- C. At the time of the the submission of any transaction, PayPal shall clearly and conspicuously disclose the audience setting for the transaction in close proximity beneath, beside, or adjacent to any field designed to capture a required “note” or other description provided for such transaction on the Venmo Service or call to action.

D. By ninety (90) days after the Effective Date, as part of a Venmo Service User receiving notice of his or her payment or withdrawal of funds on the Venmo Service, PayPal shall clearly and conspicuously disclose:

- i. at what point the transaction may be final; and
- ii. any circumstances which may affect a Venmo Service User's ability to withdraw funds.

Similarly, by ninety (90) days after the Effective Date, when a payment is sent to a consumer who is not a Venmo Service User, but who will be required to enroll in the Venmo Service in order to receive the payment, PayPal shall clearly and conspicuously provide the disclosures in D(i) and (ii) to the newly enrolled Venmo Service User upon completion of his or her enrollment.

E. By ninety (90) days after the Effective Date, PayPal shall clearly and conspicuously disclose any optional security features available to secure the Venmo Service at the time the option of adding a payment or withdrawal method on the Venmo Service is presented to a Venmo Service User via an email confirmation that is sent to the Venmo Service User confirming that a payment instrument has been added to the Venmo Service User's account. For example, at the time of this Agreement, an optional security feature is the ability to add a passcode lock to your Venmo Service account via the "settings" page.

F. By ninety (90) days after the Effective Date, either during the Venmo Service enrollment process, or immediately thereafter, via an in-app disclosure contained through a clearly and conspicuously labeled hyperlink that clearly and

conspicuously discloses its purpose, PayPal shall clearly and conspicuously disclose:

- i. the audience sharing settings available for transactions made using the Venmo Service, and the fact that the settings will be set to public or friends (or some other designation as applicable) unless the Venmo Service User takes affirmative action to change the audience sharing settings;
- ii. whether or not PayPal offers buyer and seller protections relating to transactions made using the Venmo Service, and if so, for what Venmo Service transactions PayPal offers buyer and seller protections;
- iii. the types of transactions, if any, that are prohibited pursuant to the terms and conditions applicable to the Venmo Service;
- iv. circumstances which may affect a Venmo Service User's ability to withdraw funds;
- v. any optional password features available to secure the Venmo Service, and
- vi. information about how the autofriend feature works and how to disable it once enrolled.

G. By ninety (90) days after the Effective Date, within twenty-four (24) hours following a Venmo Service User's Venmo Service enrollment, PayPal will send an email containing the disclosures in Paras. 6.F.i-vi.

H. By ninety (90) days after the Effective Date, PayPal shall clearly and conspicuously disclose methods by which consumers may contact customer service. Such customer service must be available to consumers at reasonable hours.

- I. PayPal will not send an email or provide other messages that purport to be from or on behalf of a Venmo Service User to any person unless the Venmo Service User from whom or on whose behalf the message is sent expressly authorizes the sending of the email or other message.
- J. By ninety (90) days after the Effective Date, PayPal will provide an easily accessible method for a Venmo Service User to access at any time the disclosures listed in Paras. 6.F. and 6.H.
- K. PayPal shall, by ninety (90) days after the Effective Date, via in-app disclosure provide current Venmo Service Users with the disclosures listed in Paras. 6.F.i.-vi.

PAYMENT TO THE STATE

- 7. State of Texas recovers from Respondent the sum of \$40,000 for reimbursement of attorneys' fees to the Texas Attorney General, which fees were incurred on behalf of Plaintiff and do not constitute an antecedent debt with respect to this litigation.
- 8. State of Texas recovers from Respondent the sum of \$135,000 for "payment" allocated in accordance with Tex. Govt. Code §402.007(b)(1) to the Supreme Court Judicial Fund to provide basic legal services to the indigent.
- 9. Payment is to be made by certified check or wire transfer within two weeks of the Effective Date, payable to the "STATE OF TEXAS," bearing the reference AG# 153586771, and if not by wire transfer, delivered/mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15th Street, MC-003, Austin, Texas 78701.

MISCELLANEOUS PROVISIONS

- 10. This Assurance contains the entire agreement between PayPal and the State as to all matters addressed herein.

11. This Assurance shall be deemed effective on the day it is approved and filed by the Court ("Effective Date"). To the extent that the provisions of this Assurance "conflict" with any Texas, local, or federal law or regulation that now exists, or is later enacted or amended, such law or regulation, and not this Assurance, shall apply. For the purpose of this Assurance, such "conflict" exists if conduct prohibited by this Assurance is required or expressly permitted by such Texas, local, or federal law or regulation, or if conduct required by this Assurance is prohibited by such Texas, local, or federal law or regulation.
12. This Assurance is governed by § 17.58 of the DTPA. The parties agree that, should any clause, provision, or section of this Assurance, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or provision had not been contained herein.
13. The parties agree that this Assurance shall not be modified or terminated except by written agreement signed by the parties and filed with the Court.
14. PayPal agrees that it will not participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts in relation to the Venmo Service that are prohibited in this Assurance or for the purpose of circumventing any part of this Assurance or the spirit or purpose of this Assurance. In the event Venmo Service is rebranded under a different name or transferred to another entity, this agreement shall survive such rebranding or transfer and apply to that rebranded product or transferred entity, as long as that rebranded product or transferred entity remains under PayPal's control.

15. This Assurance shall not be construed against either party as the “drafter,” because both PayPal and the State participated in the drafting of this Assurance.
16. The State and PayPal each acknowledges and agrees that nothing in this Assurance is intended to constitute, nor shall it be used to constitute, evidence of the truth of any alleged violation that may have been or may ever be asserted by any individual or entity against PayPal.
17. PayPal agrees that it will not represent to the public that this Assurance constitutes approval by the Texas Attorney General or the Court of any of PayPal’s actions or business activities.

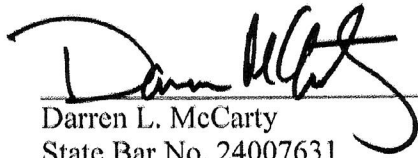
AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

DAVID A. TALBOT
Chief, Consumer Protection Division


Darren L. McCarty
State Bar No. 24007631
Alston & Bird LLP
2828 N. Harwood St., Ste. 1800
Dallas, Texas 75201
(214) 922-3414 (telephone)
(214) 922-3854 (facsimile)

ATTORNEYS FOR PAYPAL, INC.

PAYPAL, INC.

ELIZABETH CHUN
State Bar No. 24082700
PAUL SINGER
State Bar No. 24033197
Assistant Attorneys General
Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185 (telephone)
(512) 463-1267 (facsimile)

By: William Ready
Title: Senior Vice President, Global Head
Product and Engineering

ATTORNEYS FOR STATE OF TEXAS

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

DAVID A. TALBOT
Chief, Consumer Protection Division

Darren L. McCarty
State Bar No. 24007631
Alston & Bird LLP
2828 N. Harwood St., Ste. 1800
Dallas, Texas 75201
(214) 922-3414 (telephone)
(214) 922-3854 (facsimile)

ATTORNEYS FOR PAYPAL, INC.

PAYPAL, INC.

ELIZABETH CHUN
State Bar No. 24082700
PAUL SINGER
State Bar No. 24033197
Assistant Attorneys General
Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185 (telephone)
(512) 463-1267 (facsimile)

By: 
William Ready

Title: Senior Vice President, Global Head
Product and Engineering

ATTORNEYS FOR STATE OF TEXAS

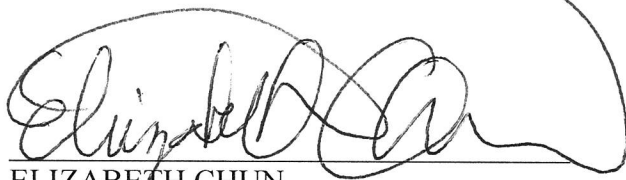
AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

DAVID A. TALBOT
Chief, Consumer Protection Division



ELIZABETH CHUN
State Bar No. 24082700

PAUL SINGER
State Bar No. 24033197
Assistant Attorneys General
Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185 (telephone)
(512) 463-1267 (facsimile)

ATTORNEYS FOR STATE OF TEXAS

Darren L. McCarty
State Bar No. 24007631
Alston & Bird LLP
2828 N. Harwood St., Ste. 1800
Dallas, Texas 75201
(214) 922-3414 (telephone)
(214) 922-3854 (facsimile)

ATTORNEYS FOR PAYPAL, INC.

PAYPAL, INC.

By: William Ready
Title: Senior Vice President, Global Head
Product and Engineering