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RICHARD W. WIEKING
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U.S. DISTRICT COURT
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 THE WEILER GROUP, INC.,
13 Individually and on Behalf of All Others
14 Similarly Situated,

15 Plaintiff,

16 v.

17 PAYPAL, INC.,

18 Defendant.

19 **CLASS ACTION**

20 **CLASS ACTION COMPLAINT**

21 **JURY TRIAL DEMANDED**

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22 The Weiler Group, Inc. ("Plaintiff"), by and through its attorneys, based on
23 its individual experiences and the investigation of its counsel, and on information
24 and belief, alleges on behalf of the proposed plaintiff class defined herein, and on
25 behalf of the general public, as follows:

26 **JURISDICTION AND VENUE**

27 1. **Jurisdiction:** This Court has jurisdiction over the First Claim for
28 Relief under 28 U.S.C. § 1331 (federal question), the Second Claim for Relief

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1 under 28 U.S.C. § 2201, and jurisdiction over the Third through Seventh Claims
2 for Relief under 28 U.S.C. § 1367.

3 2. **Venue:** Venue is proper in this District under 28 U.S.C. § 1391 (b)
4 and (c). A substantial part of the events and conduct giving rise to the violations of
5 law complained of herein occurred in or emanated from this District. Defendant's
6 principal place of business is within this District (Santa Clara County, specifically),
7 the wrongs complained of herein emanated from this District, and Defendant
8 conducts business with consumers in this District. Moreover, the contract between
9 the parties requires that litigation be commenced in this Venue (among other
10 choices). The contract is attached hereto as Exhibit "A."

11 3. **Intradistrict Assignment (L. R. 3-2(b)):** This action arises in Santa
12 Clara County, in that a substantial part of the events which give rise to the claims
13 asserted herein occurred in Santa Clara County, and Defendant has executive
14 offices and conducts business in Santa Clara County, a county encompassed in this
15 District. Moreover, the contract between the parties, Exhibit A, section 14,
16 requires adjudication in this County (among other choices).
17

18 **THE PARTIES**

19 4. Plaintiff, The Weiler Group, Inc., is a California corporation with its
20 principal place of business in Chatsworth, California.

21 5. Defendant PayPal, Inc. ("PayPal" or "Defendant") is a Delaware
22 Corporation with its principal place of business in Santa Clara County, California.
23

24 **FACTUAL ALLEGATIONS**

25 6. PayPal is an online payment system. PayPal generates revenues from
26 transaction fees and from the interest it derives from funds it holds for others.

27 7. PayPal has millions of registered users, including more than 4 million
28 business accounts. PayPal boasts that it is "the leading payment network for on-
line auction websites, including eBay."

1 8. PayPal's dispute resolution department has been chronically
2 understaffed for years. Yet, despite lawsuits – and even a stipulated injunction in
3 2004 requiring PayPal's implementation of certain "new" dispute resolution
4 procedures, PayPal remains a customer-service disaster. This seeming institutional
5 defect is no more apparent than with regard to the handling of disputes known as
6 "Claims," "Chargebacks," and "Reversals" against the accounts of its sellers, such
7 as Plaintiff herein. While purporting to act as an unbiased intermediary in regard to
8 such disputes, PayPal in fact has neither the resources nor the business incentive to
9 actually investigate these disputes. Thus, PayPal pretends to engage a "process"
10 whereby a seller can provide documentation and information in support of the
11 seller's "side of the story" while, in fact, PayPal in virtually every instance is
12 predisposed, and does in fact, side with the buyer. This is particularly true with
13 respect to "Chargebacks" which PayPal's contract defines as follows:

14 "**Chargeback**" means a request that a buyer files directly with his or her credit
15 card company or credit card issuing bank to invalidate a payment." Exhibit "A,"
16 sections 11 and 15.
17

18 9. Because PayPal desires to maintain positive relationships with credit
19 card companies and credit card issuing banks – going so far as to identify a
20 deterioration in this relationship as a material risk to its ongoing business – PayPal
21 bends over backwards and virtually always resolves "Chargebacks" in favor of the
22 credit card company/issuing bank (and the buyer).

23 10. Indeed, PayPal describes its business as "highly automated" and,
24 because of this and because PayPal does not wish to expend monies to
25 authentically resolve disputes with its sellers – and because of its bias in favor of
26 credit card companies and banks as described above – PayPal simply does not
27 investigate disputes legitimately.
28

11. This has been the experience of Plaintiff herein which duly shipped

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1 conforming goods in exchange for PayPal payments on at least two occasions and
2 yet was forced to incur losses of approximately \$10,000 as a result of
3 “Chargebacks” resolved by PayPal in favor of the buyer without any real
4 explanation, save “we’ve determined that it’s unlikely we could successfully
5 dispute this chargeback” – an oddly casual statement that is intended by PayPal to
6 give the impression of personal service but which in fact is boilerplate used to
7 deliver the bad news to sellers in virtually every instance. In resolving such
8 disputes against sellers, PayPal typically debits the seller’s account, crediting the
9 buyer directly or the buyer’s credit card or bank account, while not even requiring
10 that the goods in question be returned to the seller.

11
12 12. PayPal’s predisposition to resolve disputes in favor of the buyers and
13 against the sellers is a violation of the implied contract between PayPal and its
14 sellers that it will impartially and fairly resolve disputes on the merits.

15 CLASS ACTION ALLEGATIONS

16 13. Plaintiff brings this action individually and on behalf of all others
17 similarly situated, as members of a proposed plaintiff class, under Federal Rule of
18 Civil Procedure 23 (FRCP 23) defined as follows:

19 All PayPal sellers who, during the period from July 20, 2005 through
20 the present, shipped conforming goods to buyers subsequent to which
21 the buyer made a claim with PayPal (or the buyer’s credit card issuer
22 or bank) and whereby PayPal resolved the dispute in favor of the
23 buyer and against the seller by explaining “we’ve determined that it’s
24 unlikely we could successfully dispute this chargeback.”

25 14. Numerosity of the Class—FRCP 23(a)(1): Class Members are so
26 numerous that their individual joinder herein is impracticable. The Class includes
27 thousands of consumers. The precise number of Class Members and their
28 addresses is unknown to Plaintiff but can be readily determined from inspection of

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1 records maintained by Defendant. Class Members may be notified of the pendency
2 of this action by mail, supplemented (if deemed necessary or appropriate by the
3 Court) by published notice.

4 15. **Existence and Predominance of Common Questions of Fact and**
5 **Law** —FRCP 23(a)(2); 23(b)(3): Common questions of law and fact exist as to all
6 Class Members. These questions predominate over the questions affecting only
7 individual Class Members. These common legal and factual questions include:

- 8 a) whether Defendant electronically transferred funds or held
9 electronically transferred funds in an unlawful manner;
10 b) whether Defendant notified consumers of their right to request
11 documents upon which an investigative decision by Defendant was
12 based;
13 c) whether Defendant violated 15 U.S.C. §§ 1693 et seq;
14 d) whether Defendant violated Cal. Bus. & Prof Code §§ 17200 et
15 seq.;
16 e) whether Defendant engaged in unlawful, unfair or fraudulent
17 business practices;
18 f) whether Defendant was unjustly enriched at the expense of
19 Plaintiff and the Class;
20 g) whether Defendant acted negligently, as alleged herein;
21 h) whether Plaintiff and the Class are entitled to restitution of all
22 monies acquired by Defendant from Plaintiff and the Class and the
23 general public as a result of Defendant's unlawful, unfair or
24 fraudulent business practices;
25 i) whether Plaintiff and the Class sustained damages as a result of
26 Defendant's unlawful conduct, and, if so, what is the appropriate
27 measure of damages; and
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1 j) the appropriate form of injunctive, declaratory and monetary relief.

2 16. **Typicality** —FRCP 23 (a)(3): Plaintiff's claims are typical of the
3 claims of the Class Members because Defendant took improper actions as
4 described above in a consistent manner against all Class Members and the Plaintiff
5 herein.

6 17. **Adequacy** —FRCP 23(a)(4): Plaintiff is an adequate representative of
7 the Class because Plaintiff's interests do not conflict with the interests of the Class
8 Members it seeks to represent. Plaintiff has retained counsel competent and
9 experienced in class action litigation and intends to prosecute this action
10 vigorously. The interests of Class Members will be fairly and adequately protected
11 by Plaintiff and its counsel.

12 18. **Superiority** —FRCP 23(b)(3): The class action is superior to other
13 available means for the fair and efficient adjudication of Plaintiff's claims. The
14 damages suffered by each individual Class Member are small, given the burden
15 and expense of individual prosecution of the complex and extensive litigation
16 necessitated by Defendant's conduct. Further, it would be virtually impossible for
17 the Class Members individually to redress effectively the wrongs done to them.
18 Even if the Class Members themselves could afford such individual litigation, the
19 court system could not. Individualized litigation presents a potential for
20 inconsistent or contradictory judgments. Individualized litigation increases the
21 delay and expense to all parties and the court system presented by the complex
22 legal and factual issues of the case. By contrast, the class action device presents far
23 fewer management difficulties, and provides the benefits of single adjudication,
24 economy of scale, and comprehensive supervision by a single court.

25 19. In the alternative, the Class maybe certified under the provisions of
26 FRCP 23(b)(1) and/or 23(b)(2) because:

27 a) the prosecution of separate actions by the individual Class
28

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1 Members would create a risk of inconsistent or varying adjudications
2 with respect to individual Class Members which would establish
3 incompatible standards of conduct for Defendant;

4 b) the prosecution of separate actions by individual Class
5 Members would create a risk of adjudications with respect to them
6 which would, as a practical matter, be dispositive of the interests of
7 other Class Members not parties to the adjudications, or substantially
8 impair or impede their ability to protect their interests; and

9 c) Defendant has acted or refused to act on grounds generally
10 applicable to the Class, thereby making appropriate final injunctive
11 relief with respect to the Class as a whole.

12 **FIRST CAUSE OF ACTION**

13 **(Violation Of The Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 et seq.)**

14 20. Plaintiff incorporates by reference each paragraph set forth above and
15 asserts this cause of action on its own behalf and on behalf of the Class alleged
16 herein.

17
18 21. The purpose of the Electronic Fund Transfer Act ("EFTA") is "to
19 provide a basic framework establishing the rights, liabilities, and responsibilities of
20 participants in electronic fund transfer systems." 15U.S.C. § 1693(b). The primary
21 objective of the EFTA "is the provision of individual consumer rights." *Id.*

22 22. When addressing a consumer's error-resolution rights, the financial
23 institution should avoid any conduct that would have a chilling effect on the good-
24 faith assertion of errors by the consumer. 12 C.P.R. part 205, Supp. I, § 205.11(c)-
25 2.

26 23. An "electronic fund transfer" means any transfer of funds, other than a
27 transaction originated by check, draft, or similar paper instrument, which is
28 initiated through an electronic terminal, telephonic instrument, or computer or

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1 magnetic tape so as to order, instruct, or authorize a financial institution to debit or
2 credit an account. 15 U.S.C. § 1693a(6).

3 24. A "financial institution" means "any ... person who, directly or
4 indirectly, holds an account belonging to a consumer." 15 U.S.C. § 1693a(8). A
5 "consumer" means "any natural person." 15 U.S.C. § 1693a(5).

6 25. Defendant PayPal, Inc. is a financial institution under 15 U.S.C. §
7 1693a(8), and Plaintiff and Class Members are "consumers" under 15 U.S.C. §
8 1693a(5).

9 26. The financial institution must provide the consumer the terms and
10 conditions of electronic fund transfers, which must include in readily
11 understandable language the telephone number and address of the person or office
12 to be notified in the event the consumer believes that an unauthorized electronic
13 fund transfer has been or may be effected. 15 U.S.C. § 1693c(a)(2); 12 C.P.R. §
14 205.7(b)(2).

15 27. Under 12 C.P.R. § 205.7(b)(10), the financial institution must use a
16 form of disclosure that is substantially similar to Model Form A-3, as set out in
17 Appendix A of 12 C.P.R. § 205, which includes the provision of a telephone
18 number for the consumer to call in case of errors or questions concerning
19 electronic transfers.

20 28. In disclosing the telephone number required under 15 U.S.C. §
21 1693c(a)(2), the financial institution may insert a reference to a telephone number
22 that is readily available to the consumer. 12 C.P.R. part 205, Supp. I, §
23 205.7(b)(2)-2. The financial institution must, however, provide a specific telephone
24 number and address, on or with the disclosure statement, for reporting a lost or
25 stolen access device or a possible unauthorized transfer. Id.

26 29. PayPal failed to comply with 15 U.S.C. § 1693c(a)(2), 12 C.P.R. §
27 205.7(b)(2), 12 C.P.R. § 205.7(b)(10), and 12 C.P.R. part 205, Supp. 1, §
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1 205.7(b)(2)-2, in that during the Class Period it did not provide a specific telephone
2 number and address readily available to the consumer for purposes of reporting an
3 erroneous transaction, such as an unauthorized transfer, and it did not use a form of
4 disclosure substantially similar to Model Form A-3, as set out in Appendix A of 12
5 C.F.R. § 205.

6 30. Under 15 U.S.C. § 1693g, a consumer may be subject to a limited
7 amount of financial liability for an unauthorized electronic fund transfer in certain
8 circumstances. If the financial institution fails to provide the disclosures required
9 by 12 C.F.R. § 205.7(b)(1), (2), and (3), the consumer is not subject to liability for
10 an unauthorized electronic fund transfer.

11 31. PayPal failed to comply with 12 C.F.R. § 205.7(b)(2) in that during
12 the Class period, it did not provide a specific telephone number and address readily
13 available to the consumer for purposes of reporting an unauthorized electronic fund
14 transfer.

15 32. Under 15 U.S.C. § 1693f(a), if a consumer notifies a financial
16 institution orally or in writing of an error within sixty days after the financial
17 institution transmits to a consumer notification of a transfer or receipt of funds or a
18 periodic statement, a financial institution must investigate the alleged error,
19 determine whether an error has occurred, and report or mail the results of such
20 investigation and determination to the consumer within ten business days.

21 33. An error consists of (1) an unauthorized electronic fund transfer; (2)
22 an incorrect electronic fund transfer from or to the consumer's account; (3) the
23 omission from a periodic statement of an electronic fund transfer affecting the
24 consumer's account which should have been included; (4) a computational error by
25 the financial institution; (5) the consumer's receipt of an incorrect amount of
26 money from an electronic terminal; (6) a consumer's request for additional
27 information or clarification concerning an electronic fund transfer or any
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1 documentation required by the Act, including a request the consumer makes to
2 determine whether an error exists; or (7) any other error described in regulations of
3 the Board of Governors of the Federal Reserve System. 15 U.S.C. § 1693f(t); 12
4 C.F.R. § 205.11.

5 34. In lieu of acting within the time requirements of 15 U.S.C. § 1693f(a),
6 a financial institution may provisionally credit a consumer's account within ten
7 days of receiving notice of an error for the amount alleged to be in error, including
8 interest where applicable, pending the conclusion of its investigation and its
9 determination of whether an error has occurred. 15 U.S.C. § 1693f(c). Such
10 investigation must be concluded not later than forty-five days after receipt of
11 notice of the error; during the pendency of the investigation, the consumer must
12 have full use of the funds provisionally credited. Id.

13 35. If the consumer reports an error orally, the financial institution may
14 require that the consumer provide written confirmation of the error. If the financial
15 institution requires written confirmation and does not receive such confirmation
16 within ten business days, it need not provisionally credit the consumer's account in
17 accordance with 15 U.S.C. § 1693f(c), among other things. 15 U.S.C. § 1693f(a).

18 36. If the financial institution requires written confirmation of an error, it
19 must provide the address where confirmation must be sent at the time the consumer
20 gives oral notification of the error. 12 C.F.R. § 205.11(b)(2).

21 37. If the financial institution requires written confirmation from the
22 consumer relating to a notice of error, it may not delay initiating or completing an
23 investigation pending receipt of the written confirmation. 12 C.F.R. part 205, Supp.
24 I, § 205.11(b)(1)-2.

25 38. If a financial institution determines that an error did occur, it must
26 correct the error, including the crediting of interest where applicable. 15 U.S.C. §
27 1693f(b).
28

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1 asserts this cause of action on its own behalf and on behalf of the Class alleged
2 herein.

3 43. An actual controversy, over which this Court has jurisdiction, has
4 arisen and now exists between the parties relating to the legal rights and duties of
5 Plaintiff and Defendant for which Plaintiff desires a declaration of rights.

6 44. Defendant's acts, practices and conduct violated 15 U.S.C. §§ 1693c
7 and 1693f, and r, Cal. Bus. & Prof. Code §§ 17200 et seq. (unlawful business
8 practices), as alleged herein.

9 45. A declaratory judgment is necessary in that Plaintiff contends, and
10 Defendant denies, that Defendant violated 15 U.S.C. §§ 1693c and 1693f, and Cal.
11 Bus. & Prof Code §§ 17200 et seq. (unlawful business practices), as alleged herein.
12 Plaintiff, individually and on behalf of the Class, is entitled to a declaration that
13 Defendant violated 15 U.S.C. §§ 1693c and 1693f, and Cal. Bus. & Prof. Code §§
14 17200 et seq. (unlawful business practices), as alleged herein, and that Defendant
15 be required to, among other things, provide corrective disclosures to its current and
16 former customers that comply with 15 U.S.C. §§ 1693c, and continue to provide
17 said disclosures to new customers in the future.

18 THIRD CAUSE OF ACTION

19 (For Conversion)

20 46. Plaintiff incorporates by reference each paragraph set forth above and
21 asserts this cause of action on its own behalf and on behalf of the Class alleged
22 herein.

23 47. Defendant has converted to its own use property belonging to Plaintiff
24 and Class Members through unlawful acts and conduct. The specific sum of each
25 Class Member's money that was converted by Defendant is readily identifiable
26 from information and records in Defendant's possession or control.

27 48. Defendant knowingly and intentionally transferred or retained money
28

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1 of subscribers and even non-subscribers of their Internet service, including Plaintiff
2 and Class Members. Defendant thus converted to its own use property, specifically
3 monies, belonging to Plaintiff and members of the Class.

4 49. The specific sum of each Class Member's money that Defendant
5 converted is readily identifiable from information and records in Defendant's
6 possession or control.

7 50. As a direct and proximate result of Defendant's unlawful acts and
8 conduct, Plaintiffs and Class Members were deprived of the use of their money
9 that was unlawfully converted by Defendant, and are thereby entitled to restoration
10 of their money, along with interest on the money from the date said money was
11 converted by Defendant to the date of judgment, compensatory damages, punitive
12 damages, and other and further relief as set forth below.

13 **FOURTH CAUSE OF ACTION**

14 **(For Money Had And Received)**

15 51. Plaintiff incorporates by reference each paragraph set forth above and
16 asserts this cause of action on its own behalf and on behalf of the Class alleged
17 herein.
18

19 52. Defendant has acquired monies from Plaintiff and Class Members, as
20 a result of unlawful acts and conduct, which Defendant has no right to retain. The
21 specific sum of money unlawfully acquired from each Class Member is readily
22 identifiable from information and records in Defendant's possession or control.

23 53. Defendant has transferred or retained from subscribers and even non-
24 subscribers of their Internet service, including Plaintiff and Class Members, money
25 which Defendant has no right to retain. Accordingly, Defendant is indebted to
26 Plaintiffs and Class Members for money had and received by Defendant.

27 54. As a direct and proximate result of Defendant's unlawful acts and
28 conduct, Plaintiff and Class Members were deprived of the use of their money that

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1 was unlawfully charged and collected by Defendant, and are therefore entitled to
2 restoration of their money, and other and further relief as set forth below.

3 **FIFTH CAUSE OF ACTION**

4 **(For Unjust Enrichment)**

5 55. Plaintiff incorporates by reference each paragraph set forth above and
6 asserts this cause of action on its own behalf and on behalf of the Class alleged
7 herein.

8 56. Defendant has received, and continues to receive, a benefit at the
9 expense of Plaintiffs and the Class Members.

10 57. Defendant has transferred money from the bank accounts of Plaintiff
11 The Weiler Group, Inc. and the proposed Class Members without their knowledge
12 or consent, and improperly froze the PayPal accounts of Plaintiff, The Weiler
13 Group, Inc. and Class Members, and thus has improperly withheld monies
14 rightfully belonging to Plaintiff and Class Members. Accordingly, Defendant has
15 received benefits which it has unjustly retained at the expense of Plaintiff and
16 Class Members.

17 58. As a direct and proximate result of Defendant's unlawful acts and
18 conduct, Plaintiff and Class Members were deprived of the use of their money that
19 was unlawfully transferred and/or retained by Defendant, and are therefore entitled
20 to restoration of their money, and other and further relief as set forth below.

21 **SIXTH CAUSE OF ACTION**

22 **(For Negligence)**

23 59. Plaintiff incorporates by reference each paragraph set forth above and
24 asserts this cause of action on its own behalf and on behalf of the Class alleged
25 herein.

26 60. Defendant has an obligation to establish and maintain adequate
27 procedures to avoid the erroneous transfer of funds. Defendant also had a duty to
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1 comply with the Electronic Fund Transfer Act as well as other laws related to the
2 electronic transfer of funds. Defendant also had a duty to provide Plaintiff and
3 Class Members with readily available information concerning dispute resolution
4 and to create and maintain adequate procedures to accurately resolve disputes over
5 the transfer of funds.

6 61. Defendant breached these obligations by not making dispute
7 resolution information readily available for customers and by making it difficult, if
8 not impossible, for customers to resolve disputes with Defendant in an efficient
9 and appropriate manner. Defendant also breached its obligations to Plaintiff and
10 Class Members by failing to establish and maintain adequate procedures
11 concerning the transfer of funds.

12 62. As a direct and proximate result of Defendant's conduct, Plaintiff and
13 Class Members have been injured in that they have lost the possession and use of
14 Plaintiff's and Class Members' money and have suffered other adverse financial
15 consequences directly caused by Defendant's improper conduct. Plaintiff and Class
16 Members pray for relief as set forth below.

17
18 **SEVENTH CAUSE OF ACTION**

19 **(For Violation of Cal. Bus. & Prof. Code §§ 17200 et seq.:**

20 **Unlawful, Unfair and Fraudulent Business Practices)**

21 63. Plaintiff incorporates by reference each paragraph set forth above and
22 asserts this cause of action on its own behalf and on behalf of the Class alleged
23 herein.

24 64. The acts, conduct and practices of Defendant, as alleged above,
25 constituted and constitute unlawful, unfair, fraudulent and deceptive business
26 practices and acts within the meaning of California Business and Professions Code
27 §§ 17200 et seq.

28 65. In particular, the acts, conduct, and practices of Defendant, as alleged

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- Transfer Act, as alleged herein;
- c) For an order awarding Plaintiff and the Class treble, statutory and punitive damages, together with interest thereon;
 - d) For an order awarding Plaintiff and the Class compensatory damages in an amount which may be proven at trial, together with interest thereon;
 - e) For an order awarding Plaintiff and the Class restitution of all monies acquired by Defendant from Plaintiff, the Class, and the general public, as a result of Defendant's wrongful practices described above;
 - f) For an order awarding Plaintiff and the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' fees pursuant to, *inter alia*, Code of Civil Procedure, §1021.5, and experts' witness fees and other costs;
 - g) For an order imposing a constructive trust upon all monies and assets Defendant has acquired from Plaintiff and the Class as a result of Defendant's unlawful, unfair, fraudulent, and deceptive practices;
 - h) For an order awarding Plaintiff and all other similarly situated individuals equitable and declaratory relief, as the Court deems appropriate; and
 - i) For an order awarding such other and further relief as this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: August 26, 2009

Respectfully submitted,

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