

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISCTRICT OF NEW YORK

X

FRIENDS NYC, EMMA KADAR-PENNER and
MARY MEYER,

Plaintiffs,

CIVIL COMPLAINT

Case No.: 21 civ 5920

-against-

Jury Trial Demanded

PAYPAL HOLDINGS INC.,

Defendant.

X

Plaintiffs, FRIENDS NYC, EMMA KADAR-PENNER and MARY
MEYER, by their attorneys, GOUCHEV LAW, as and for their Verified
Complaint respectfully allege as follows:

PARTIES AND VENUE

1. Plaintiff, FRIENDS NYC, is a domestic organization, with a principal place of business located at 56 Bogart Street, Brooklyn, NY 11206. Plaintiffs, EMMA KADAR-PENNER and MARY MEYER, are the owners of FRIENDS NYC. Hereinafter, FRIENDS NYC, EMMA KADAR-PENNER and MARY MEYER, are collectively referred to as "Plaintiffs."

2. Defendant, PAYPAL HOLDINGS INC. (PAYPAL), is a foreign business, doing business in San Jose, California, hereinafter “Defendant.”
3. Venue is proper and based on Plaintiffs principal place of business, which is located in Brooklyn, NY, within the Eastern District of New York.

JURISDICTION

4. This Court has jurisdiction over this matter based on a federal question pursuant to 28 U.S.C. 1331, et seq.
5. Specifically, the 2018 Hemp Farm Act (the “Act”) provides:

"[n]o State ... shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 ... through the State."
Pub. L. 115-334, § 10114 (codified at 7 U.S.C. § 1639 note).
6. Additionally, the Act removed hemp, defined as cannabis (*Cannabis sativa* L.) and derivatives of cannabis with extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC) (no more than 0.3 percent THC on a dry weight basis), from the definition of marijuana in the Controlled Substances Act (CSA).
7. Plaintiffs request that this court hear whether the Defendant violated the Act based on an alleged violation of its Acceptable Use Policy based on deeming Plaintiffs to have been engaged in the sale of narcotics for products that contained less than 0.3 percent THC.

FACTS COMMON TO ALL CAUSES OF ACTION

8. Plaintiffs opened an account with Defendant on or about December 2012.

9. The following email addresses are linked to Plaintiffs account and bank accounts with Defendant:

Emma Kadar Penner emmakpenner@gmail.com, personal

Mary Meyer Clothing mary@marymeyerclothing.com, business

Mary Meyer hello@friendsnyc.com, business

Mary Meyer friendsnycpayments@gmail.com, business

Mary Meyer marymeyershops@gmail.com, personal

10. Plaintiffs sold various goods using Defendant's platform without incident for 8 years.

11. Plaintiff's goods included home, gift and clothing as merchandise.

12. During 2018, Plaintiffs expanded their product line into certain CBD oil products containing less than 3% THC, while most products contained 0% (CBD Products).

13. Plaintiffs used Defendant as a third party vendor to collect payment for the sale of these CBD Products.

14. On December 2, 2020, Plaintiffs received a notice from Defendant that both their business and personal accounts were locked, that Plaintiffs were permanently barred from transacting any business sales with Defendant and

furthermore, that a hold was placed on approximately \$ 9,000.00 in total representing various of Plaintiffs funds (“Plaintiff’s Funds”). Exhibit “A”

15. Pursuant to the Defendant’s User Agreement (“User Agreement”),

Defendant informed Plaintiffs that it would be holding the Plaintiffs Funds for up to 180 days pending an investigation.

16. Plaintiffs made numerous attempts to resolve this matter with the Defendant but were given no information as to the cause for a 6 month period.

17. Defendant responded stating that it would only release information about Plaintiffs PayPal accounts if they received a legal subpoena. Exhibit B.

18. Plaintiffs attempted to resolve this with Defendant over the course of the 180 days, with no avail.

19. Defendant never contacted Plaintiffs regarding the investigation, as such Plaintiffs were never afforded an opportunity to evaluate the cause of the suspension or provide any facts to dispute the same.

20. On May 20, 2021, Plaintiffs received notice from Defendant that \$3, 958.01 was withdrawn from their account as “damages caused by Acceptable Use Policy violation.” This same notice provides a link to dispute this withdrawal and when followed, sets forth that there is no recourse available for the claim. See Exhibit C.

21.. The only information Plaintiffs were able to ascertain during this 6 month period from Defendant was a vague allegation that Plaintiffs violated Defendant's "Acceptable Use Policy."

22. During this time, Defendant withheld and converted these funds of Plaintiffs, without notice and later revealed that it was based on a violation of Defendant's Acceptable Use Policy which is repugnant and violates the Act.

23. A review of Defendant's Acceptable Use Policy sets forth four categories relating to Prohibited activities.

24. Plaintiffs reviewed the same due to Defendant's failure to set forth any cause based on the list and were unable to determine the cause since all activities listed were outside the scope of their business model and products.

25. On June 11, 2021, Defendant sent a message setting forth a reason for cutting off the business relationship citing sale of narcotics resulting in loss of funds and/or damages. In relevant part the email provided:

"After a review of your account activity, we've determined that you're in violation of PayPal's Acceptable Use Policy. Specifically, the sale of narcotics, steroids, drug paraphernalia, certain controlled substances, or other products that present a risk to consumer safety. As a result, your account has been permanently limited and you won't be able to conduct any further business using PayPal. This is permitted under the PayPal User Agreement sections Restricted Activities and Actions We May Take."

Exhibit D

FIRST CAUSE OF ACTION

26. Plaintiffs restate and reiterate each and every allegation set forth in paragraphs 1-25 above as if stated fully herein.

27. Plaintiffs and Defendant entered into a contract for services in or about December, 2012.

28. Pursuant to the contract, Plaintiffs utilized Defendant's services as a third party platform for the receipt of payments for products it sold.

29. Plaintiffs accepted the terms of the contract, including Defendant's Acceptable Use Policy.

30. Defendant breached the contract on December 2, 2020, and multiple times thereafter by barring them and restricting them from doing business without providing a basis or notice of any kind, and placed a hold on approximately \$ 9,000.00 in total.

31. Defendant breached the contract on May 20, 2021, when Plaintiffs received notice from Defendant that \$3,958.01 was withdrawn from their account as "damages caused by Acceptable Use Policy violation" without providing a basis or notice of any kind.

32. Defendant breached the contract on June 11, 2021, when Defendant sent a message setting forth a reason for cutting off the business relationship citing sale of narcotics resulting in loss of Plaintiffs funds and/or damages.

33. That by reason of said breaches of contract, Plaintiffs have been damaged and continue to sustain damages.

SECOND CAUSE OF ACTION

34. Plaintiff restates and reiterates each and every allegation set forth in paragraphs 1-33 above as if stated fully herein.

35. Plaintiffs provided the Defendant with access to their bank accounts linked to their email addresses set forth above herein.

36. On December 2, 2020, and multiple times thereafter, Defendant intentionally interfered to the exclusion of Plaintiffs rights the funds that were held in the Plaintiffs bank accounts that were linked as set forth above in para.9.

37. On December 2, 2020, and multiple times thereafter, Defendant intentionally interfered with the possession and right to possession of Plaintiffs rights to the funds held in the Plaintiffs bank accounts that were linked as set forth above in para.9.

38. That by reason of said conduct caused by Defendant, Plaintiffs have been damaged and continue to sustain damages.

39. Therefore, Plaintiff demands judgment in her favor as set forth below.

THIRD CAUSE OF ACTION

40. Plaintiff restates and reiterates each and every allegation set forth in paragraphs 1-39 above as if stated fully herein.

41. On December 2, 2020, Plaintiffs received a notice from Defendant that both their business and personal accounts linked at set forth above in para. 9 were locked, that Plaintiffs were permanently barred from transacting any business sales with Defendant and furthermore, and that a hold was placed on approximately \$ 9,000.00 in total representing various of Plaintiffs funds (“Plaintiff’s Funds”).

42. On May 20, 2021, Plaintiffs received another notice from Defendant that \$3, 958.01 was withdrawn from their account as “damages caused by Acceptable Use Policy violation.” This same notice provides a link to dispute this withdrawal and when followed, sets forth that there is no recourse available for the claim. See Exhibit C.

43. On June 11, 2021, Defendant sent a third a message setting forth a reason for cutting off the business relationship citing sale of narcotics resulting in loss of funds and/or damages. In relevant part the email provided:

“After a review of your account activity, we've determined that you're in violation of PayPal's Acceptable Use Policy. Specifically, the sale of narcotics, steroids, drug paraphernalia, certain controlled substances, or other products that present a risk to consumer safety. As a result, your account has been permanently limited and you won't be able to conduct any further business using PayPal. This is permitted under the PayPal User Agreement sections Restricted Activities and Actions We May Take.”

Exhibit D

44. Defendant withheld and converted these funds of Plaintiffs, without notice and based on a violation of Defendant's Acceptable Use Policy which is repugnant and violates the Act.

45. Defendant breached its contract with Plaintiffs based on a violation of Defendant's Acceptable Use Policy which is repugnant and violates the Act.

46. As a result of Defendant's conduct, Plaintiffs suffered a deprivation of property without due process and related to a finding repugnant to US law, and suffered damages, including but not limited to economic and consequential damages.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- a. Nine percent interest from December 2, 2020, regarding the hold that Defendant placed on Plaintiffs funds for approximately \$ 9,000.00, and
- b. Damages in the amount of \$3, 958.01 plus nine percent interest from May 20, 2021, and
- c. Punitive damages, attorney's fees, costs and disbursements for the entire action no less than \$100,000.00, and
- d. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 25, 2021

GOUCHEV LAW

BY:

A handwritten signature in dark ink, appearing to read "Dorothy H. Riggio", is written over a horizontal line.

Dorothy H. Riggio, Esq.

45 Rockefeller Plaza, 20th Floor

New York NY 10111

Tel. (212) 537-9209

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐
☐
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☐ Yes ☒ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☒ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒

Yes

☐

No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐

Yes (If yes, please explain

☒

No

I certify the accuracy of all information provided above.

Signature: _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

FRIENDS NYC, EMMA KADAR-PENNER and
MARY MEYER,

Plaintiff(s)

v.

PAYPAL HOLDINGS INC.,

Defendant(s)

Civil Action No.

21 CIV 5920

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* PAYPAL HOLDINGS INC.
2211 North First Street
San Jose, CA 95131

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

GOUCHEV LAW
Dorothy H. Riggio, Esq.
45 Rockefeller Plaza, 20th Floor
New York NY 10111
Tel. (212) 537-9209

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 10/25/2021

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: