

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of  
PAYPAL, INC., a corporation.**

**FILE NO. 162-3102**

**AGREEMENT CONTAINING  
CONSENT ORDER**

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of PayPal, Inc. (“Proposed Respondent”). The Commission’s Bureau of Consumer Protection (“BCP”) has prepared a draft of an administrative Complaint (“draft Complaint”). BCP and Proposed Respondent, through its duly authorized officers, enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

**IT IS HEREBY AGREED** by and between Proposed Respondent and BCP, that:

1. Proposed Respondent PayPal, Inc. is a Delaware corporation with its principal office or place of business at 2211 North First Street, San Jose, California 95131.
2. Proposed Respondent neither admits nor denies any of the allegations in the Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Proposed Respondent admits the facts necessary to establish jurisdiction.
3. Proposed Respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission’s Decision contain a statement of findings of fact and conclusions of law; and

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order issued pursuant to this Consent Agreement.
4. This Consent Agreement will not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, it, together with the draft Complaint, will be placed on the public record for 30 days and information about them publicly released. Acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter. Thereafter, the Commission may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding, which may include an Order. *See* Section 2.34 of the Commission's Rules, 16 C.F.R. § 2.34.
5. If this agreement is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to Commission Rule 2.34, the Commission may, without further notice to Proposed Respondent: (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its Decision and Order; and (2) make information about them public. Proposed Respondent agrees that service of the Order may be effected by its publication on the Commission's website (ftc.gov), at which time the Order will become final. *See* Rule 2.32(d). Proposed Respondent waives any rights it may have to any other manner of service. *See* Rule 4.4.
6. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.

7. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.
8. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date it signs this Consent Agreement. Proposed Respondent understands that it may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

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PAYPAL, INC.  
By:  
Dated:

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ERIC MOGILNICKI  
Covington & Burling LLP  
Attorney for Proposed Respondent

Dated:

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LISA ROTHFARB  
GREGORY A. ASHE  
BEN ROSSEN  
CORA T. HAN  
Federal Trade Commission  
Attorneys for the Bureau of Consumer  
Protection

**APPROVED:**

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MALINI MITHAL  
Acting Associate Director  
Division of Financial Practices

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MANEESHA MITHAL  
Associate Director  
Division of Privacy and Identity Protection

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THOMAS PAHL  
Acting Director  
Bureau of Consumer Protection

Dated:

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Maureen K. Ohlhausen, Acting Chairman  
Terrell McSweeney**

**In the Matter of**

**PAYPAL, INC., a corporation.**

**DECISION AND ORDER**

**DOCKET NO. C-**

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondent with violation of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of

public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

### **FINDINGS**

1. Respondent PayPal, Inc., operating as Venmo, is a Delaware corporation with its principal office or place of business at 2211 North First Street, San Jose, California 95131.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

### **DEFINITIONS**

For purposes of this Order, the following definitions apply:

- A. “Clearly and conspicuously” means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
  1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“triggering representation”) is made through only one means.
  2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
  4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
  5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
  6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
  7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
  8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. “Close proximity” means that the disclosure is very near the triggering representation. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.
- C. “Covered information” means information from or about a User, including: (a) a first and last name; (b) a physical address; (c) an email address or other online contact information, such as a user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a financial institution account number; (g) credit or debit card information; or (h) transaction information.

- D. “Privacy setting” shall include any control or setting provided by Respondent that allows a user to limit or restrict which individuals or entities can access or view covered information.
- E. “Respondent” means PayPal, Inc. and its successors and assigns.
- F. “Transaction information” means information from or about a Payment and Social Networking Service transaction, including (a) the participants to the transaction; (b) the date of the transaction; or (c) any accompanying message or other descriptor related to the transaction.
- G. “User” means any person with a Payment and Social Networking Service account.
- H. “Payment and Social Networking Service” means any app or website owned and operated by Respondent that allows consumers to make payments and to share information regarding such payments with other Users through a social network owned and operated by Respondent.
- I. “Venmo” means the wholly or partially owned subsidiary, unincorporated division or business unit, or affiliate of PayPal, Inc., however denominated, that operates the Payment and Social Networking Service currently branded as Venmo.

## **ORDER**

### **PROHIBITED MISREPRESENTATIONS**

- I. **IT IS ORDERED** that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, sale, or use of any Payment and Social Networking Service must not misrepresent or assist others in misrepresenting, expressly or by implication:

- A. Any material restriction, limitation, or condition to use any Payment and Social Networking Service; and
- B. The extent to which Respondent, in connection with any Payment and Social Networking Service, protects the privacy, confidentiality, security, or integrity of any covered information, including:
  - 1. The extent to which a consumer may exercise control over the disclosure of any covered information from or about a User and the steps a User must take to implement any such controls; and
  - 2. The extent to which Respondent implements or adheres to a particular level of security.

### **REQUIRED DISCLOSURES**

#### **II. IT IS FURTHER ORDERED** that:

- A. Within one hundred and fifty (150) days of the effective date of this Order, Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, when making any representation through any Payment and Social Networking Service, expressly or by implication, about the availability of funds to be transferred or withdrawn to a bank account (1) must disclose, clearly and conspicuously, and in close proximity to such representation (a) that the transaction is subject to review and (b) the fact, if true, that funds could be frozen or removed as a result of transaction reviews performed during the bank transfer or withdrawal process, and (2) the representation must not be otherwise misleading.



B. Respondent must issue a notice to Users, within one hundred and fifty (150) days of the effective date of this Order as follows: (i) for Users who have installed a Payment and Social Networking Service as an app, through the app such that the notice appears when the User next opens the app or (ii) for Users who have not installed a Payment and Social Networking Service as an app, through a text message, email, or other communication sufficient to provide clear and conspicuous notice prior to the User's next transaction. The notice shall disclose, clearly and conspicuously, and separate and apart from any "privacy policy," "terms of use," "end user license agreement," or similar document, the fact, if true, that when a User attempts to transfer or withdraw funds to a bank account, Respondent (1) will perform transaction reviews, and (2) based on such review, may (i) block or delay the transfer or withdrawal, and/or (ii) reverse a payment transaction.

#### **ADDITIONAL PRIVACY DISCLOSURES**

**III. IT IS FURTHER ORDERED** that, within one hundred and fifty (150) days of the effective date of this Order, and continuing thereafter, Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any Payment or Social Networking Service, must clearly and conspicuously disclose to each User, through the Payment and Social Networking Service, and separate and apart from any "privacy policy," "terms of use," "blog," "helpful information" page, or similar document: (1) how the User's transaction information will be shared with other Users; and (2) how the User can use privacy settings to limit or restrict the visibility or sharing of the User's transaction information on the Payment and Social Networking Service. For Users that have already created an account when this disclosure is first issued, this

disclosure must occur at or immediately prior to the time that the User next engages in a transaction through the Payment and Social Networking Service. For Users that have not created an account when this disclosure is first issued, this disclosure must occur at the time the User opens an account. This disclosure must not contain any other information.

#### **GLB RULE PROVISIONS**

**IV. IT IS FURTHER ORDERED** that Respondent, and Respondent’s officers, agents, employees and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any Payment and Social Networking Service, are hereby permanently restrained and enjoined from violating any provision of:

- A. The Privacy of Consumer Financial Information Rule (Regulation P), 12 C.F.R. Part 1016; or
- B. The Standards for Safeguarding Consumer Information Rule, 16 C.F.R. Part 314.

In the event that any of the statutory sections or rules identified in this Part are hereafter amended or modified, compliance with that statutory section or rule as so amended or modified shall not be a violation of this Order.

#### **BIENNIAL ASSESSMENT REQUIREMENTS**

**V. IT IS FURTHER ORDERED** that Respondent, and its successors and assigns, in connection with their compliance with Section IV(A) and (B) of this Order, shall obtain initial and biennial assessments and reports (“Assessments”) of the Venmo Payment and Social Networking Service from a qualified, objective, independent third-party professional, using procedures and standards generally accepted in the profession. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service

of the Order for the initial Assessment, and (2) each two-year period thereafter for ten (10) years after service of this Order for the biennial Assessments. Each Assessment shall:

- A. Set forth the specific administrative, technical, and physical safeguards that Respondent has implemented and maintained during the reporting period;
- B. Explain how such safeguards are appropriate to Respondent's size and complexity, the nature and scope of Respondent's activities, and the sensitivity of the covered information collected from or about consumers;
- C. Explain how the safeguards that have been implemented meet or exceed the protections required by Section IV(B) of this Order; and
- D. Certify that Respondent's security program(s) is operating with sufficient effectiveness to provide reasonable assurance that the confidentiality, security, and integrity of covered information is protected and has so operated throughout the reporting period.

Each Assessment must be completed within 60 days after the end of the reporting period to which the Assessment applies. The Assessment must be obtained from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. A professional qualified to prepare such Assessments must be: an individual qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); an individual holding Global Information Assurance Certification (GIAC) from the SANS Institute; or a qualified individual or entity approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

Respondent must submit the initial Assessment to the Commission within 10 days after the Assessment has been completed. Respondent must retain all subsequent biennial

Assessments, at least until the Order terminates. Respondent must submit any biennial Assessments to the Commission within 10 days of a request from a representative of the Commission.

### **ACKNOWLEDGMENTS OF THE ORDER**

**VI. IT IS FURTHER ORDERED** that Respondent obtains acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 20 years after the issuance date of this Order, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 60 days, a signed and dated acknowledgment of receipt of this Order.

### **COMPLIANCE REPORTS AND NOTICES**

**VII. IT IS FURTHER ORDERED** that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (a) identify the

primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that provides a Payment and Social Networking Service.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re PayPal.

### **RECORDKEEPING**

**VIII. IT IS FURTHER ORDERED** that Respondent must create certain records for 20 years after the issuance date of the Order, and retain each such record for 5 years, unless otherwise specified below. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all Payment and Social Networking Services sold;
- B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. copies or records of all consumer complaints regarding any Payment and Social Networking Service, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. a copy of each unique Payment and Social Networking Service advertisement or other marketing material making a representation subject to this Order; and

- F. for 3 years after the date of preparation of each Assessment required by this Order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of Respondent, including all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials concerning Respondent's compliance with related Provisions of this Order, for the compliance period covered by such Assessment.

### **COMPLIANCE MONITORING**

**IX. IT IS FURTHER ORDERED** that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

### **ORDER EFFECTIVE DATES**

**X. IT IS FURTHER ORDERED** that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

*Provided, further*, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: