

1 Brian A. Wilkins
2 2800 University Avenue #420-296
3 West Des Moines, IA 50266
4 702-218-3225
5 support@veracityobjectives.com
6 Pro Se Petitioner
7
8

9 **IN THE UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

11 BRIAN A. WILKINS,
12
13 Petitioner,
14
15 vs.
16
17 PAYPAL, INC.,
18
19 Respondent.

CASE NO: 5:23-cv-02931-VKD

**FIRST AMENDED PETITION TO
VACATE AND CORRECT ARBITRATION
AWARD, AND DECLARATORY RELIEF**

- 18
- 19 1. PayPal, Inc. (“PayPal”) began taking direct orders from members of the U.S. House
20 of Representatives, the Anti-Defamation League (“ADL”), and Google in July 2021,
21 related to de-platforming websites they deemed “extremist” and/or “spreading
22 COVID-19 misinformation.” **See Exhibit A - Letter from U.S. Congressmen to**
23 **PayPal CEO; and Exhibit B - PayPal partnership with ADL.**
 - 24 2. The Petitioner’s website, thecovidblog.com (“The COVID Blog®”) was launched in
25 January 2021 and quickly garnered a worldwide audience. PayPal and Venmo were
26 the primary means for collecting donations and payments to keep the site funded and
27 running. Less than two weeks after PayPal’s announced partnership with the ADL and
28

1 Google, on August 9, 2021, PayPal banned The COVID Blog® from its platform,
2 citing “restricted activities” in violation of its acceptable use policy (AUP).
3

4 3. That led to 19 months of legal back and forth, culminating in an arbitration award that
5 is inconsistent with the protection of the Petitioner’s statutory rights and conflicts with
6 explicit California legislative expression of public policy.

7 **JURISDICTION**
8

9 4. This Court’s subject matter jurisdiction is invoked pursuant to 28 U.S.C. §§ 1332 and
10 2201. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1). PayPal is headquartered
11 in San Jose, California.

12 5. The PayPal User Agreement provides no specific jurisdictional statement for petitions
13 to vacate arbitration awards, except that “the Federal Arbitration Act (FAA) governs
14 the interpretation and enforcement of this Agreement to Arbitrate.” The FAA provides
15 that the proper court is “the United States court in and for the district wherein the
16 award was made...” 9 U.S. Code § 10(a).
17

18 6. The arbitration proceedings herein were held virtually via email and telephone calls,
19 and in no particular federal court district. Since there is no specific district where the
20 arbitration award was made, and because of this Court’s personal jurisdiction over
21 PayPal, the diversity subject matter jurisdiction herein, the arbitration agreement
22 originating in California (CA Civ. Pro. Code § 1293 (2020)), and all of the unwanted,
23 unlawful 96 spam emails originating from PayPal’s San Jose, California headquarters,
24 this Court is the proper forum.
25
26
27
28

1 **PARTIES**

2 7. Petitioner Brian A. Wilkins (“Wilkins” or “Petitioner”) is a natural person and resident
3 of three states (Iowa, Arizona and Nevada). He is the owner of Veracity Objectives,
4 LLC.¹

5
6 8. PayPal, Inc. (“PayPal” or “Respondent”) is a Delaware corporation with a principal
7 place of business at 2211 North First Street; San Jose, California 95131.
8

9 **BRIEF HISTORY AND LEGAL BACKGROUND**

10 9. Petitioner has grounds for asking this Court to vacate and correct the arbitration
11 award because the arbitrator exceeded his powers and the award cannot be
12 corrected without affecting the merits of the decision upon the controversy submitted.
13 California Code Civ. Proc. § 1286.2(a)(4). The arbitrator also refused to hear
14 evidence material to the controversy. *Id.* at (a)(5).

15
16 10. The Petitioner has a statutory right to opt-out of unwanted, spam emails sent from a
17 California-based company, for any reason he chooses (see Cal. Bus. & Prof. Code §
18 17529(l)), particularly after PayPal voluntarily and on its own volition, terminated the
19 business relationship between the two parties on August 9, 2021.
20

21
22 11. Further, PayPal was contractually obligated, pursuant to its Electronic
23 Communications Delivery Policy, to cease sending the unwanted, spam emails to the
24 Petitioner after he told them THREE TIMES in August and September 2021 to stop
25 sending the spam emails. See **Exhibit C - PayPal Electronic Communications**
26

27
28

¹ The PayPal account at issue herein was under both the names of Veracity Objectives, LLC.
and Brian Wilkins. The American Arbitration Association deemed this case to be a consumer
arbitration (individual), not a commercial arbitration.

1 **Policy; Exhibit D - August 17, 2021 email to PayPal; Exhibit E - August 22, 2021**
2 **Internal message to PayPal; Exhibit F - September 8, 2021 email to PayPal.**

3
4 12. PayPal sent the Petitioner a total of 96 spam emails from August 2021 to May 2022,
5 including several after being served a Notice of Claim in November 2021, and after
6 the commencement of arbitration in March 2022. **See Exhibit G - PayPal 96 Spam**
7 **Emails**². Thus, pursuant to Cal. Bus. & Prof. Code § 17529.5(B)(ii), Petitioner is
8 entitled to liquidated damages of \$1,000 per unwanted, unauthorized, unlawful spam
9 email, or \$96,000.

10
11 **ARBITRATION PROCEEDINGS**

12
13 13. Petitioner, pursuant to the PayPal User Agreement, commenced arbitration with the
14 American Arbitration Association (“AAA”) on March 3, 2022 for breach of contract
15 (failure to cease sending spam emails after the Petitioner opted out three times
16 pursuant to PayPal’s Electronic Communications Policy) and violations of the
17 foregoing California Business & Professional Code. **See Exhibit P - Demand For**
18 **Arbitration**³. PayPal answered with counterclaims seeking over \$300,000, alleging
19 that the Petitioner was “selling a cure for COVID-19” on his website. PayPal alleged
20 that the Petitioner violated its AUP 140-plus times, and owed them \$2,500 per
21
22
23
24
25
26

27 ² The 96 spam emails contain confidential customer account information. The emails were
28 meant to harass and belittle the Petitioner, telling him things like “You didn’t get your money”
from customers and monthly donors. Petitioner, at the Court’s request, will file copies of all 96
spam emails under seal to protect third party information and prevent injuries to said third
parties.

³ Petitioner dropped claims related to Nevada spam laws.

1 violation. **See Exhibit O - PayPal Answer and Counterclaims**⁴. PayPal also alleged
2 that the Petitioner was “spreading COVID-19 misinformation.”

3
4 14. The arbitration proceedings were delayed several times due to PayPal’s efforts to
5 leverage the arbitrators in its favor. PayPal counsel Tara Z. Hall and the first arbitrator,
6 Stephen D. Marso, failed to disclose business and social relationships. Petitioner
7 moved to dismiss Marso due to evident partiality. **See Exhibit H - Evident Partiality.**
8 Marso had denied the Petitioner’s discovery requests, which is what prompted the
9 investigation into him and Hall. The AAA removed Marso on September 21, 2022.
10
11 **See Exhibit I - Marso removed.**

12
13 15. The second arbitrator, Mollie Palowsky, is essentially Hall’s best friend. The AAA
14 removed her on November 8, 2022. **See Exhibit J - Palowsky removal.** Petitioner
15 requested a California-based arbitrator thereafter, but was denied. The Petitioner still
16 had no opportunity at discovery in this case due to the first arbitrator disallowing it
17 and the final arbitrator, Michael J. Streit, upholding that decision. Thus the Petitioner’s
18 right to fair proceedings were also violated due to the arbitrators’ refusal to hear
19 evidence material to the controversy. California Code Civ. Proc. § 1286.2(a)(5).
20
21

22 16. The arbitrator issued an order of dismissal on February 23, 2023. The arbitrator
23 acknowledged that the Petitioner “attempted to stop PayPal from sending these
24
25

26
27 ⁴ It appears PayPal quietly removed its policy of \$2,500 per violation of AUP sometime in early
28 2023 after major backlash and, likely, after the arbitrator herein ruled that the provision was
unenforceable. Here is an archived link to the AUP with the \$2,500 policy. [https://
web.archive.org/web/20221008062017/https://www.paypal.com/us/legalhub/acceptableuse-
full](https://web.archive.org/web/20221008062017/https://www.paypal.com/us/legalhub/acceptableuse-full). And here is the most recent link. [https://www.paypal.com/us/legalhub/acceptableuse-
full](https://www.paypal.com/us/legalhub/acceptableuse-full). However, there are many different pages and links to PayPal user agreements, and said
provision may still exist somewhere.

1 emails but was unsuccessful.” **See Exhibit K - Arbitration dismissal order,**
2 **paragraph 3.**

3
4 17. The arbitrator further ruled, “The email communications received by Wilkins were
5 not spam or advertising, but rather, were legitimate and reasonable communications
6 with Wilkins concerning his account and the trailing consequences of his internet
7 sales. PayPal had no choice in this regard, as they continued receiving payments
8 from Wilkins' customers.” *Id.*

9
10 18. Thus the arbitrator ruled, in contradiction of himself and exceeding his power, that
11 the Petitioner had no right to opt-out of the spam emails, despite California law and
12 public policy clearly and explicitly stating otherwise. Further, PayPal voluntarily and
13 on its own volition, terminated the business relationship between itself and the
14 Petitioner. There was no further need to communicate with the Petitioner thereafter,
15 particularly since the Petitioner told PayPal THREE TIMES to stop sending the
16 unauthorized spam emails and there was no longer a business relationship.

17
18
19 19. The arbitrator ruled that PayPal did not breach its contract because “there has been
20 no showing Paypal breached any provision in the parties' agreement.” *Id.* Paragraph
21 4.

22
23 20. PayPal’s Electronic Communications Delivery Policy clearly states that the Petitioner
24 may “withdraw [your] consent to receive Communications electronically by...
25 contacting us via the 'Contact Us' link at the bottom of each page of the PayPal
26 website.” See Exhibit C. Petitioner did exactly that on August 22, 2021. See Exhibit E.
27 Petitioner also sent two additional emails to PayPal, telling them to stop sending the
28 harassing, spam emails.

1 21. PayPal's primary defense against the Petitioner's claims was its Delaware choice-
2 of-law provision in the User Agreement⁵. Petitioner, in his counter-motion for summary
3 judgment on October 4, 2022, argued, among other things, that the Delaware choice-
4 of-law provision is unenforceable because its sole purpose is to "circumvent
5 [California] state policy-based contractual prohibitions through the promiscuous use
6 of such [choice-of-law] provisions," and that said promiscuous use of these provisions
7 "would eliminate the right of the default state to have control over enforceability of
8 contracts concerning its citizens." *Ascension Ins. Holdings, LLC v. Underwood, C.A.*
9 *No. 9897-VCG, 6 (Del. Ch. Jan. 28, 2015)*. See also *Nedlloyd Lines B.V. v. Superior*
10 *Court, 3 Cal. 4th 467, 11 Cal. Rptr. 2d 330, 834 P.2d 1148 (1992)*(holding "In
11 determining whether a choice-of-law provision is enforceable, the Court must
12 determine (1) whether the chosen state has a substantial relationship to the parties or
13 their transaction, or (2) whether there is any other reasonable basis for the parties'
14 choice of law. If neither of these tests is met, that is the end of the inquiry, and the
15 court need not enforce the parties' choice of law.). **See also Exhibit L - Motion for**
16 **Summary Judgment.**

17 22. The arbitrator not only dismissed the foregoing altogether, but also had no power to
18 issue declaratory relief anyway, as the Petitioner wanted.

19 23. The only thing the arbitrator got correct was dismissing PayPal's frivolous
20 counterclaims seeking \$300,000-plus. The arbitrator ruled, "This provision is not a
21 proper or valid liquidated damages clause. The PayPal customer agreement is a
22 penalty and cannot be enforced." See Exhibit K - Paragraph 7. But PayPal, continuing
23

⁵ PayPal User Agreement. <https://www.paypal.com/us/legalhub/useragreement-full#s6-agreement-arbitrate>

1 to display more evident partiality with the arbitrators, was granted custom edits to the
2 dismissal order, particularly removing the foregoing Paragraph 7 in the original order
3 because it was “clerical error.” **See Exhibit M - March 31, 2023 Amended Dismissal**
4 **Order; See Exhibit N - PayPal Request to Amend Dismissal Order.** The entire
5 arbitration process was skewed in PayPal’s favor from the very beginning,
6 culminating in PayPal being able to choose the specific verbiage in the final dismissal
7 order. The proceedings were never impartial or fair throughout. PayPal, however,
8 essentially admitted that it bought the frivolous counterclaims only to complicate what
9 is the simple matter of the Petitioner’s claims herein.

10 24. The final edited award was issued on March 31, 2023, and the Petitioner had until
11 June 30, 2023 to file the instant petition. *Stevens v. Jiffy Lube Int’l*, 2018 WL 6802644
12 (9th Cir. Dec. 27, 2018).

13 **ARBITRATION AWARD MUST BE REVIEWED DE NOVO AND VACATED**

14 25. Petitioner hereby incorporates Paragraphs 1 to 24 as though set forth fully herein.

15 26. California State Senator Kevin Murray, D-Culver City, authored and sponsored SB
16 186, now codified as Cal. Business & Professions Code § 17529 *et seq.* He explicitly
17 stated in 2003 when the law was passed, “we are saying that unsolicited e-mail
18 cannot be sent and there are no loopholes.” See Exhibit L.

19 27. Both PayPal and the arbitrator continually quibbled over whether or not the 96
20 unwanted, unauthorized spam emails sent by PayPal to the Petitioner, who never
21 consented to receiving said emails, were “advertisements” by the definition of the
22 foregoing statute. Regardless, the Petitioner had both the statutory and contractual
23 right to opt-out of said emails, which he did THREE TIMES. But PayPal continued
24
25
26
27
28

1 sending the emails unabated. PayPal terminated the business relationship with the
2 Petitioner on August 9, 2021. The Petitioner first withdrew consent for PayPal to
3 continue sending spam emails first on August 17, 2021 and two more times within the
4 next several weeks.
5

6 28. The arbitrator revoked the Petitioner's statutory right to opt-out of spam emails sent
7 by PayPal. PayPal breached its own contract by continually sending said emails after
8 the Petitioner opted out.
9

10 29. Petitioner never opted-in to receive e-mails from PayPal after August 9, 2021. He
11 specifically opted-out several times after PayPal terminated the business relationship.
12 Even if the Petitioner had opted in to receive e-mails from PayPal due to the previous
13 business relationship that was terminated by PayPal on August 9, 2021, he
14 specifically opted-out thereafter and thus did not provide direct consent to PayPal to
15 continue sending the spam emails. See *Balsam v. Trancos Inc.*, 203 Cal. App. 4th
16 1083, 1099-1100 (1st Dist. 2012).
17
18

19 30. An arbitrator exceeds their power "by issuing an award that violates a party's
20 unwaivable statutory rights or that contravenes an explicit legislative expression of
21 public policy." *Brown v. TGS Management Co.*, 57 Cal. App. 5th 303 (2020), citing
22 *Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 916.
23
24
25
26
27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Petitioner respectfully prays this Court, upon de novo review of this
3 arbitration, grants the following relief:
4

5 A. Declaratory relief, declaring that the PayPal Delaware choice-of-law provision in its
6 User Agreement exists only to circumvent California law and public policy, and is thus
7 invalid and unenforceable in this case and all others alleging violations of California
8 public policy and law.
9

10 B. Declaratory relief, affirming the arbitrator’s original verbiage from the February 23,
11 2023 award that states PayPal’s AUP and its \$2,500 per violation policy “is not a
12 proper or valid liquidated damages clause. The PayPal customer agreement is a
13 penalty and cannot be enforced.”
14

15 C. Declaratory relief, declaring that California public policy provides consumers the right
16 to opt-out of spam email campaigns originating from California-based companies.
17

18 D. Award the Petitioner \$96,000 for the 96 violations of Cal. Bus. & Prof. Code §
19 17529.5(B)(ii).
20

21 E. Award the Petitioner all costs related to filing and serving the instant lawsuit.
22

23 ON THIS 22nd DAY OF JUNE, 2023.
24

25 /s/Brian A. Wilkins
26 2800 University Avenue #420-296
27 West Des Moines, IA 50266
28 702-218-3225
support@veracityobjectives.com
Pro Se Petitioner