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December 2, 2019

Jeff Jordan, Esq.
Assistant General Counsel
Complaints Examination
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Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7649

Dear Mr. Jordan:

On behalf of PayPal Holdings, Inc. (“Respondent”), we submit this letter in response to the Complaint the Respondent received on October 18, 2019.

The Complainants, Augustus Invictus for President, Inc. and Sean Dougherty in his official capacity as Treasurer for that organization, allege that the Respondent made excessive contributions in violation of 52 U.S.C. § 30016 and impermissible corporate contributions in violation of 52 U.S.C. § 30018 when the Respondent shut down the PayPal account opened by Sean Dougherty for Augustus Invictus for President, Inc. and the PayPal account of “The Law Office of Augustus Invictus, P.A.” (collectively, the “accounts”). Specifically, under a novel theory of accounting, the Complainants contend that because the Augustus Invictus for President, Inc. account received \$1,000 in contributions in the five-day period when the account was “live,” it would have received \$1,000 every five days until the primary election (the Republican convention) in August 2020, for a total of \$73,000. Under an equally novel theory of the law, the Complainants posit that this resulted in the Respondent making excessive and prohibited contributions to every other candidate in the election.

As discussed in greater detail below, the Complainants’ allegations are patently false and unsupported by the law. PayPal had the right to shut down the accounts under the express terms of the User Agreement and Acceptable Use Policy applicable to those

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accounts. There is nothing in the Federal Election Campaign Act or the Commission's regulations that would prohibit a commercial entity from terminating the account of a customer that violated the commercial entity's User Agreement and Acceptable Use Policy, and the result of so doing does not constitute a contribution or expenditure under those same laws. Accordingly, because the Complainants provide no facts that describe any violation of any statute or regulation, the Commission should find no reason to believe PayPal committed any violation and close the file in this matter. *See* 11 C.F.R. § 111.4(d)(3).

Respondent is a leading technology platform and digital payments company that enables digital and mobile payments on behalf of consumers and merchants worldwide. Their service allows their customers to send and receive payments through a two-sided network where both merchants and consumers have PayPal accounts. Customers can use their accounts to purchase and receive payment for goods and services, as well as to transfer and withdraw funds using a variety of funding sources, which may include credit and debit cards and bank accounts.

Every customer that opens a PayPal account (either for business or personal reasons) is required to review and agree to the terms of Respondent's User Agreement, which can be found here: (https://www.paypal.com/us/webapps/mpp/ua/useragreement-full?locale.x=en_US). In turn, the User Agreement requires compliance with Respondent's Acceptable Use Policy, which can be found here: (https://www.paypal.com/us/webapps/mpp/ua/acceptableuse-full?locale.x=en_US). The User Agreement also prohibits users from "control[ling] an account that is linked to another account that has engaged in any of the[] restricted activities" set forth in the User Agreement or Acceptable Use Policy. Respondent has a Compliance Team that is responsible for monitoring customers' compliance with the User Agreement and Acceptable Use Policy and addressing potential violations thereof.

If the Compliance Team believes that a customer has violated applicable terms, per the User Agreement, it may take actions "at any time in our sole discretion," that "include, but are not limited to," (1) terminating the User Agreement, limiting the customer's PayPal account, and/or closing or suspending their PayPal account immediately and without penalty to Respondent; (2) refusing to provide the PayPal services to the customer in the future; or (3) limiting the customer's access to the Respondent's websites, software, systems, the customer's PayPal account, or any of the PayPal services.

PayPal does not have accounts or other products that are specifically designed for political committees. Political committees that wish to open an account with PayPal for the purpose of receiving political contributions do so on the same terms, and are subject to the same "usual and normal" fees, as any other customer. Similar to a credit card processor, PayPal merely provides the technology platform to make electronic payment transactions, and it provides these services to all customers that abide by PayPal's User Agreement and

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Acceptable Use Policy.¹ The Complainants admit that PayPal previously shut down the personal and business accounts of the candidate, Augustus Invictus, for violations of PayPal's User Agreement and Acceptable Use Policy. The Complainants make no attempt to claim that those accounts were shut down for partisan political reasons. Furthermore, Complainants do not deny that Mr. Invictus violated the User Agreement and Acceptable Use Policy, and the facts would contradict any such denial had one been asserted.

As set forth in User Agreement, customers that violate the User Agreement with respect to one account are prohibited from opening other accounts that they control. A candidate would certainly have "control" over the accounts of his own campaign committee and law firm. When PayPal's Compliance Team discovered the newly opened accounts of "Augustus Invictus for President, Inc." and "The Law Office of Augustus Invictus, P.A.," which on their face were clearly tied to Mr. Invictus, they took the action expressly permitted by the User Agreement by closing the accounts and providing notice of the action and the reason.² The Complainants provide no actual evidence whatsoever that the closing of the accounts was motivated by partisan political interests, because no such evidence nor motivation exists.

Moreover, there is nothing in the Federal Election Campaign Act or the Commission's regulations that require commercial entities to offer their services to all committees without regard to commercial considerations. Indeed, there are numerous advisory opinions in which the Commission has confirmed that service providers have broad latitude in determining which committees they provide services to, so long as the determination is commercially reasonable and at the "usual and normal" charge. *See, e.g.*, Advisory Opinion 2012-35 (GTSG) (permitting the requestor to "develop eligibility criteria based upon commercial considerations and therefore [] decide to accept only proposals from some political committees and not others").

In short, nothing contained in the Complaint supports a finding that the Respondent made excessive contributions in violation of 52 U.S.C. § 30016 and impermissible corporate contributions in violation of 52 U.S.C. § 30018 when the Respondent terminated the PayPal accounts at issue. PayPal was operating entirely within the bounds of its reasonable

¹ In considering the use of technology to make contributions, the Commission has previously "interpreted the Act and its regulations in a manner consistent with contemporary technological innovations . . . where the use of the technology would not compromise the intent of the Act or regulations." Advisory Opinion 1999-09 (Bradley for President) (approving Federal matching funds for contributions received over the Internet through the use of a credit card).

² The Complainant asserts that a law office account opened by Mr. Invictus in 2018 was allowed to remain open "because it was a legitimate law office." Respondents dispute this assertion. Based on an internal review, it appears that the fact the account was permitted to operate for several months was an oversight, and was only discovered during the Compliance Team's subsequent investigation.

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commercial prerogative and its contractual rights when it closed the accounts and notified their owner.

For the foregoing reasons, we respectfully request that the Commission find no reason to believe PayPal committed any violation of the Federal Election Campaign Act or the Commission's regulations and close the file in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kate Belinski", with a stylized flourish at the end.

Kate Belinski

KB