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11 Securities and Exchange Commission

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 **SECURITIES AND EXCHANGE**
17 **COMMISSION,**

18 Plaintiff,

19 vs.

20 **BRYAN B. LONG,**

21
22 Defendant.

Case No.

COMPLAINT

23
24 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

25 **SUMMARY**

26 1. This action involves insider trading by Bryan B. Long (“Long”), who
27 in May 2015 learned confidential information while employed at eBay, Inc.
28 (“eBay”) that eBay’s subsidiary at the time, PayPal Holdings, Inc. (“PayPal”), was

1 planning to acquire Xoom Corporation (“Xoom”). In May and June 2015, Long
2 bought speculative call options on Xoom stock based on material nonpublic
3 information about the planned acquisition that he misappropriated from his
4 employer, in advance of the announcement of the deal. At the time of Long’s
5 trades, he was eBay’s Director of SEC Reporting.

6 2. Long first purchased over \$10,500 of Xoom call options on May 20,
7 2015, within five days of PayPal making its initial offer to acquire Xoom. Then,
8 after learning that the deal could be announced in early July, Long made a second
9 purchase of another \$5,000 of Xoom call options on June 22, 2015, which were set
10 to expire less than thirty days after his purchase. These were Long’s first-ever
11 purchases of any securities of Xoom. After the market closed on July 1, 2015,
12 PayPal’s acquisition of Xoom was made public. The next morning, Xoom stock
13 opened trading at \$25.50 per share, a 52-week high, and Long sold all of his Xoom
14 options, reaping almost \$36,000 in illegal insider trading profits.

15 3. Long violated and, unless restrained and enjoined by this Court, will
16 continue to violate Section 10(b) of the Securities Exchange Act of 1934
17 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
18 240.10b-5.

19 4. The SEC seeks permanent injunctive relief, disgorgement of all ill-
20 gotten gains together with prejudgment interest, and civil penalties pursuant to
21 Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

22 **JURISDICTION AND VENUE**

23 5. This Court has jurisdiction over this action pursuant to Sections 21(d),
24 21(e), and 27 of the Exchange Act, 15 U.S.C. § 78u(d), 78u(e), and 78aa.

25 6. Venue lies in this Court pursuant to Sections 21(d), 21A, and 27 of the
26 Exchange Act, 15 U.S.C. § 78u(d), 78u-1, and 78aa. Certain of the acts, practices,
27 transactions, and courses of business alleged in this Complaint occurred within this
28 district. Long resides in Alameda County, in the San Francisco district. PayPal
and eBay are headquartered in San Jose, and Long worked at eBay’s offices within

1 this district when the illegal trades occurred.

2 **DEFENDANT**

3 7. Long, age 42, resides in Pleasanton, California. Long holds a
4 Bachelor of Arts degree in accounting and a Masters of Business Administration
5 degree with a focus on accounting. Long became a licensed Certified Public
6 Accountant (“CPA”) in 2003, and maintains an active CPA license in Virginia.
7 Long was the Director of SEC Reporting at eBay from October 2013 to July 2015,
8 and then at PayPal from July 2015 to December 2015. Prior to his employment at
9 eBay and PayPal, Long worked for ten years at a prominent accounting and
10 auditing firm in a variety of roles related to auditing. During investigative
11 testimony about his trading, Long asserted his Fifth Amendment privilege against
12 self-incrimination in response to all questions about his trading in Xoom securities.

13 **RELEVANT ENTITIES**

14 8. **eBay, Inc.** is a Delaware corporation headquartered in San Jose,
15 California that owns and operates, among other things, an online marketplace and,
16 prior to July 17, 2015, PayPal’s digital payments business. eBay’s common stock
17 is registered with the Commission pursuant to Section 12(b) of the Exchange Act
18 and trades on the NASDAQ Global Select Market (symbol: EBAY). eBay files
19 periodic reports with the Commission pursuant to Section 13(a) of the Exchange
20 Act and related rules thereunder. On July 17, 2015, eBay and PayPal separated
21 into independent publicly traded companies.

22 9. **PayPal Holdings, Inc.** is a Delaware corporation headquartered in
23 San Jose, California that operates a digital payment network. PayPal’s common
24 stock is registered with the Commission pursuant to Section 12(b) of the Exchange
25 Act and trades on the NASDAQ Global Select Market (symbol: PYPL). PayPal
26 files periodic reports with the Commission pursuant to Section 13(a) of the
27 Exchange Act and related rules thereunder. Prior to July 17, 2015, PayPal was a
28 subsidiary of eBay.

10. **Xoom Corporation** was a Delaware corporation headquartered in San

1 Francisco, California that provided international money transfer and remittances
2 across a number of cross-border corridors. Xoom's common stock was registered
3 with the Commission pursuant to Section 12(b) of the Exchange Act and traded on
4 the NASDAQ Stock Market (symbol: XOOM). On July 1, 2015, PayPal and
5 Xoom jointly announced that PayPal would acquire Xoom for approximately \$890
6 million net of cash. On November 12, 2015, PayPal's acquisition of Xoom closed.
7 Xoom now operates as a separate service within PayPal.

8 **FACTUAL ALLEGATIONS**

9 **A. Long is Hired as eBay's Director of SEC Reporting**

10 11. On October 7, 2013, Long joined eBay as its Director of SEC
11 Reporting and a member of the company's chief accounting organization, also
12 known as the "Controllershship Team." Long's primary responsibility was preparing
13 all the SEC filings of eBay and its subsidiary, PayPal.

14 12. Long's employment at eBay prohibited him from using the material
15 nonpublic information he obtained in the course of his employment to trade
16 securities. Long's offer letter, which he signed in September 2013, included the
17 following language:

18 All employees are subject to eBay's Insider Trading Agreement, which
19 outlines the procedures and guidelines governing securities trades by
20 company personnel. Enclosed is a copy of eBay's Insider Trading
21 Agreement. Please review the Agreement carefully, execute the
22 certification and submit it to eBay's human resources department.

23 13. On October 1, 2013, Long certified that he had read eBay's "insider
24 trading agreement" to eBay's human resource department. Long formally
25 acknowledged having read and understood eBay's insider trading agreement which
26 provided, among other things, that an eBay employee "may not . . . trade the
27 securities of any other public company while you have material non-public
28 information about that company obtained through your work for eBay."

14. In August 2014, Long formally acknowledged having read eBay's

1 “Code of Business Conduct & Ethics” which provided, in pertinent part:

2 In our work, we may come across confidential information that could
3 impact . . . another company’s stock price. This type of ‘inside’
4 knowledge cannot be used to gain financial advantage when buying or
5 selling stock or passing this information on to others who may trade on
6 it. Any information that has not been disclosed to the public and that a
7 reasonable investor might use to buy, sell or hold stock in a company is
8 considered to be inside knowledge or ‘material non-public
9 information.’ This may include: . . . Anticipated mergers, acquisitions,
10 or divestitures. . . . You are not permitted to use . . . confidential
11 information for stock trading purposes.

12 15. Long completed his annual training on eBay’s Code of Business
13 Conduct on June 10, 2015.

14 16. Long received “SEC Refresher” training while attending an offsite
15 meeting of the newly-formed team that would comprise PayPal’s Controllershship
16 group from June 16-18, 2015. The “SEC Refresher” included a segment in insider
17 trading.

18 **B. Long’s Insider Trading in Xoom Securities**

19 17. Long, in the course of his employment at eBay, obtained and traded
20 based on material nonpublic information about PayPal’s impending acquisition of
21 Xoom in the weeks leading up to the deal’s public announcement on July 1, 2015.

22 **1. April 2015 and PayPal’s Approach of Xoom**

23 18. On April 3, 2015, a senior executive at PayPal contacted Xoom’s
24 chief executive officer to express interest in discussing a partnership with Xoom.
25 On April 10, PayPal representatives met with Xoom’s senior management and
26 investment banking representatives to gain a better understanding of Xoom’s
27 business.

28 19. On April 17, 2015, PayPal and Xoom signed a non-disclosure
agreement as to PayPal’s intention to acquire Xoom. About a week later, eBay and

1 PayPal employees began the financial and accounting review of Xoom and the
2 potential transaction.

3 20. In or around late April 2015, PayPal signed a letter of intent with
4 Xoom, and retained financial and legal advisors.

5 21. As eBay's Director of SEC Reporting and a member of eBay's
6 Controllership Team, Long had frequent interaction with eBay and PayPal
7 employees who were working on the Xoom acquisition.

8 22. By late April 2015, several members of the Controllership Team,
9 including Long's supervisor, who was eBay's Chief Accounting Officer ("eBay
10 CAO"), and eBay's Director of M&A Diligence and Accounting, knew of PayPal's
11 efforts to acquire Xoom.

12 **2. Long Buys Xoom Call Options in May 2015**

13 23. In or around the spring of 2015, Long was working on a project
14 whereby eBay would spin off PayPal into a separate legal entity that would be a
15 publicly traded company. As Director of SEC reporting, Long headed up the effort
16 to prepare an amendment to PayPal's Form 10 that had been filed with the SEC
17 registering PayPal's securities for public trading.

18 24. In connection with this project, the eBay CAO, who was aware of the
19 potential Xoom acquisition, had ongoing discussions with his staff, including
20 Long, to keep them apprised of major developments in the business so that they
21 could perform their jobs. The eBay CAO communicated information about the
22 potential acquisitions, including the Xoom acquisition, and other transactions that
23 his staff needed to know in order to ensure that PayPal and eBay met their
24 disclosure obligations including disclosures made in PayPal's Form 10.

25 25. On May 5, 2015, members of the eBay Controllership Team,
26 including Long, met to discuss amendments to PayPal's Form 10.

27 26. On May 6, 2015, Long logged into his online brokerage account via
28 his eBay-issued laptop. Long had not logged into this account in approximately
nine months.

1 27. During the next 60 days, while trading in Xoom securities, Long
2 logged into this account 436 times.

3 28. The following day, May 7, 2015, Long sent an email introducing
4 himself to PayPal's Director of Finance, who worked on PayPal merger and
5 acquisition activities, and who was specifically working on PayPal's effort to
6 acquire Xoom. Long's email stated, in part: "I figured I would reach out to you in
7 your new M&A role with PayPal." Long requested a meeting with the PayPal
8 Director of Finance to discuss GAAP-related issues arising out of PayPal's
9 mergers and acquisitions activity.

10 29. On May 13, 2015, Long wired \$10,000 from his savings account to
11 his online brokerage account, which had an existing balance of only \$644.

12 30. On May 15, 2015, PayPal made its initial offer to Xoom to acquire the
13 company for between \$21 and \$22.50 per share.

14 31. Before arriving at work on May 20, 2015, Long paid a total of
15 \$10,527 to purchase sixty contracts for Xoom call options through his online
16 brokerage account.

17 32. A call option gives the holder the right, but not the obligation, to
18 purchase the company's stock at a set price (the "strike price") for a certain period
19 of time (through "expiration," which occurs on the third Friday of the specified
20 month). Generally, the buyer of a call option anticipates the stock price will
21 increase during the specified amount of time. If the call option's strike price is
22 above the price at which the stock is then trading, the call option is considered to
23 be "out-of-the-money" because it would be unprofitable to exercise the call and
24 pay more for the stock than if it were purchased on a stock market.

25 33. The chart below lists the number of options contracts that Long
26 purchased in each series and depicts Long's trades as a percentage of total volume
27 traded in those particular options series on that day:
28

QUANTITY	OPTIONS SERIES	% OF DAY'S TRADING VOLUME
20	July 17.50 calls	100
20	July 20 calls	95
10	October 17.50 calls	100
10	October 20 calls	67

34. In the chart, for example, each of the July 20 call options gave Long the right to purchase 100 shares of Xoom stock at a price of \$20.00 per share, from the date of purchase through the third Friday in July, when the option expired.

35. On the date that Long made these purchases, Xoom's common stock was trading at about \$19 per share.

36. Long's purchase of Xoom call options were his first self-directed purchases of any security in 16 months, and his very first trades in Xoom securities.

37. On May 21, 2015, Xoom rejected PayPal's initial offer, and on May 27, PayPal made a revised offer of \$25 per share.

3. After Learning More Information About the Timing of the Deal, Long Buys More Xoom Call Options in June 2015

38. On June 2, 2015, PayPal and Xoom entered into an exclusivity agreement, and PayPal conducted confirmatory due diligence through the end of June 2015.

39. In early June 2015, Long continued to communicate with the PayPal Director of Finance about potential SEC reporting issues associated with PayPal's mergers and acquisitions activity. As part of these discussions, on June 3, 2015, Long emailed slides to PayPal's Director of Finance "to help facilitate some of the thoughts I wanted to convey related to some acquisition-related considerations from an SEC perspective." Long also stated: "it was good to talk the other day about some SEC considerations around acquisitions and to begin the brainstorming

1 around how you and I stay coordinated going forward.” That same day, PayPal’s
 2 Director of Finance replied, “this is helpful and highlights the need for you and I to
 3 stay connected on any large deals . . . we should meet monthly or so to check in on
 4 deal pipeline and any potential changes in rules.”

5 40. On June 5, 2015, Long wired \$5,000 from his savings account to his
 6 online brokerage account.

7 41. On June 16, 2015, PayPal’s Director of Finance emailed Long seeking
 8 his advice and providing a “quick update on target as discussed.” Although the
 9 email did not list Xoom by name, it listed the company’s annual revenue, net
 10 income, and net assets. PayPal’s Director of Finance closed the email by stating,
 11 “Let me know if you need any additional info.”

12 42. On June 22, 2015, Long emailed PayPal’s Director of Finance asking
 13 him to provide the target’s “pretax income for 2014 (full year), and . . . total assets
 14 as of 12/31/2014 (assuming the target is a calendar year company).”

15 43. On June 22, 2015, in response to Long’s request, PayPal’s Director of
 16 Finance emailed to Long the “target’s” pretax income and total assets. Long
 17 replied, and asked about the “expected timing for the announcement.” Later that
 18 same day, after the market had closed, Long received a reply informing him that
 19 the deal could be announced in “early July.”

20 44. Early the next day, on June 23, 2015, between 6:44 a.m. and 7:05 a.m.
 21 (PT), Long bought another 40 Xoom call option contracts, at a cost of \$5,101,
 22 through his online brokerage account as follows:

QUANTITY	OPTIONS SERIES	% OF DAY’S TRADING VOLUME
10	July 20 calls	50
30	July 22.50 calls	75

27
 28 45. Xoom’s common stock traded at around \$22.34 per share when Long
 made these purchases.

1 **4. Long Reaps his Ill-gotten Profits After Xoom Announces the**
2 **Acquisition in July 2015**

3 46. On July 1, 2015, Xoom stock ended the trading day at \$20.70 per
4 share. Five minutes after the close of the market, Xoom and PayPal jointly
5 announced that Xoom had agreed to be acquired by PayPal for \$25 per share, or
6 \$890 million net of cash. This was PayPal's largest acquisition to date.

7 47. The next day, July 2, 2015, Xoom stock opened at \$25.50 per share,
8 which was a 52-week high and an increase of over 20% from the previous day's
9 closing price. In addition, the volume of trading in Xoom shares was 30 times
10 higher than the prior day.

11 48. Between 6:40 a.m. and 7:01 a.m. (PT), Long sold all of his Xoom call
12 options through his online brokerage account for \$51,471, netting a profit of
13 approximately \$35,842.

14 49. At all relevant times, Long acted with scienter. Long knew, or was
15 reckless in not knowing, that he was trading on material nonpublic information that
16 he misappropriated from his employer.

17 **CLAIM FOR RELIEF**

18 **Fraud in the Connection with the Purchase and Sale of Securities**
19 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

20 50. The SEC realleges and incorporates by reference paragraphs 1
21 through 49 above.

22 51. At the time that Long, traded Xoom securities as alleged above, he
23 was in possession of material nonpublic information about a potential corporate
24 acquisition of Xoom that he obtained because of his employment with eBay.

25 52. eBay treated information about the PayPal-Xoom transaction as
26 confidential, including through policies and procedures designed to protect such
27 information and to prohibit its employees from trading on such information.

28 53. Long knew or was reckless in not knowing that the information he
traded on was material and nonpublic, and that he owed eBay a fiduciary duty, or

1 obligations arising from a similar relationship of trust or confidence, to keep the
2 information confidential, and to refrain from trading on it.

3 54. Long breached a fiduciary duty, or a similar duty of trust and
4 confidence to eBay by trading for his own benefit on the basis of material
5 nonpublic information he obtained through his employment with eBay.

6 55. By engaging in the conduct described above, defendant Long directly
7 or indirectly, in connection with the purchase or sale of a security, by the use of
8 means or instrumentalities of interstate commerce, of the mails, or of the facilities
9 of a national securities exchange: (a) employed devices, schemes, or artifices to
10 defraud; (b) made untrue statements of a material fact or omitted to state a material
11 fact necessary in order to make the statements made, in the light of the
12 circumstances under which they were made, not misleading; and/or (c) engaged in
13 acts, practices, or courses of business which operated or would operate as a fraud
14 or deceit upon other persons.

15 56. By engaging in the conduct described above, Long violated, and
16 unless restrained and enjoined will continue to violate, Section 10(b) of the
17 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
18 240.10b-5.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the SEC respectfully requests that the Court:

21 **I.**

22 Issue findings of fact and conclusions of law that Long committed the
23 alleged violations.

24 **II.**

25 Issue a judgment, in a form consistent with Rule 65(d) of the Federal Rules
26 of Civil Procedure, permanently enjoining Long, and his agents, servants,
27 employees, and attorneys, and those persons in active concert or participation with
28 any of them, who receive actual notice of the judgment by personal service or
otherwise, and each of them, from violating Section 10(b) of the Exchange Act, 15

1 U.S.C. § 78j(b), and Rules 10b-5 and thereunder, 17 C.F.R. § 240.10b-5.

2 **III.**

3 Order Long to disgorge all funds received from his illegal conduct, together
4 with prejudgment interest thereon.

5 **IV.**

6 Order Long to pay civil penalties under Section 21A of the Exchange Act,
7 15 U.S.C. § 78u-1.

8 **V.**

9 Retain jurisdiction of this action in accordance with the principles of equity
10 and the Federal Rules of Civil Procedure in order to implement and carry out the
11 terms of all orders and decrees that may be entered, or to entertain any suitable
12 application or motion for additional relief within the jurisdiction of this Court.

13 **VI.**

14 Grant such other and further relief as this Court may determine to be just and
15 necessary.

16
17 Dated: September 28, 2018

/s/ John B. Bulgozdy

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