

1 Jerry S. Smith (SBA #19599)
2 JERRY S. SMITH, PLLC
3 145 S. Sixth Avenue
4 Tucson, Arizona 85701-2007
5 Phone: (520) 326-0134
6 E-mail: jsmith@jsslawpllc.com
7 PCC #65342
8 Attorney for Plaintiff

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 **Andrew P. Knych,**

12
13 Plaintiff,

14
15 v.

16
17 **PayPal, Inc.**, a Delaware
18 corporation, and **eBay, Inc.**, a
19 Delaware corporation,

20 Defendants.

Case # 4:13-CV-

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

21 Plaintiff Andrew P. Knych, by and through Jerry S. Smith, his
22 undersigned attorney of record, seeks relief in this Complaint and Demand
23 for Trial by Jury against Defendants PayPal, Inc., a Delaware corporation,
24 and eBay, Inc., a Delaware corporation, on his claims for relief for
25 violations of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.
26 (hereinafter referred to as the "ADA").

1 This Complaint and Demand is filed pursuant to Federal Rules of Civil
2 Procedure, Rules 3, 7(a)1, 8(a) and 38(a,b), and 42 U.S.C. 1981a(c).

3
4 **1. The Parties**

5 1. The Plaintiff, Andrew P. Knych (“Knych”) is now an adult resident
6 of Pima County, Arizona.

7 2. At all times material to this Complaint, Knych has been:

8 (A) an “employee” of the Defendants as that term is defined in
9 42 U.S.C. 12111(4); and

10 (B) a person with a “disability” as that term is defined in 42
11 U.S.C. 12102, to-wit: a chronic psychiatric disorder which makes him
12 hypersensitive to distractions, particularly audio distractions, when he
13 concentrates or focuses on a subject, giving him an attention deficit
14 which can impair his ability to work effectively; and

15 (C) a “qualified individual” as that term is defined in 42 U.S.C.
16 12111(8); and

17 (D) a “complaining party” as that term is defined in 42 U.S.C.
18 1981a(d)1.

19 3. Defendant PayPal, Inc., is, and has been at all times material to
20 this Complaint:

21 (A) a “covered entity” as that term is defined in 42 U.S.C.
22 12111(2); and

23 (B) an “employer” as that term is defined in 42 U.S.C.
24 12111(5)(A), in relation to Knych; and

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1 (C) engaged in interstate commerce as a business that provides
2 a secure method of online payments for purchases; and

3 (D) a subsidiary corporation of co-Defendant eBay, Inc.

4 4. Defendant eBay, Inc., is, and has been at all times material to this
5 Complaint:

6 (A) a “covered entity” as that term is defined in 42 U.S.C.
7 12111(2); and

8 (B) an “employer” as that term is defined in 42 U.S.C.
9 12111(5)(A), in relation to Knych; and

10 (C) engaged in interstate commerce as a business providing a
11 service where persons may make person-to-person sales and
12 purchases on-line.

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14 **2. The Plaintiff’s Claims, Jurisdiction and Venue**

15 5. This Complaint contains two claims arising under the ADA,
16 specifically 42 U.S.C. 12112 and 42 U.S.C. 12203(a).

17 6. Based upon the foregoing, supra, the United States District Court
18 for the District of Arizona has jurisdiction for this action pursuant to 28
19 U.S.C. 1331, 28 U.S.C 1343(a), and 42 U.S.C. 2000e-5(f)3.

20 7. All events alleged herein occurred at the Defendants’ place of
21 business in Chandler, Arizona. Plaintiff Knych has been a resident of
22 Arizona at all times material to this Complaint. The District of Arizona is the
23 correct venue for this action, pursuant to 28 U.S.C. 1391(b & c).
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1 **3. Fact Allegations in Support of Plaintiff's Claims**

2 8. At all times material to this Complaint, Defendants PayPal, Inc. and
3 eBay, Inc. jointly owned and operated a customer service office (“call
4 center”) in Chandler, Arizona, wherein they employed persons. These two
5 Defendants are hereinafter collectively referred to as “PayPal”.

6 9. Knych was employed by PayPal as a “customer solutions agent”
7 (“CSA”) at its Chandler, Arizona office from February 14, 2011, until
8 February 24, 2012, when his disability (supra) had been aggravated and
9 exacerbated to the point where he could no longer work, and he has been
10 totally disabled since then.

11 10. His duties as a CSA were primarily taking inbound calls from
12 PayPal customers who were presenting complaints or concerns or asking
13 questions about their accounts, and trying to answer or resolve such
14 matters.

15 11. During his first five months at PayPal, Knych performed his job
16 duties very well, continuously improving, and he enjoyed his job.

17 12. However, on June 22, 2011, another CSA was placed at a cubicle
18 next to his. The new CSA “neighbor” was very nervous, noisy and
19 distracting, constantly throwing darts, Lego blocks, and throwing a ball
20 against a wall, which made it very difficult for Knych to concentrate on his
21 work and thus frustrating Knych and causing great anxiety.

22 13. Wanting to keep his job and perform his work efficiently, late in
23 June, 2011, Knych told his supervisor at PayPal that he suffered from a
24 diagnosed psychiatric disorder that made it hard for him to concentrate on
25 his work if there were unusual distractions nearby, such as loud noises and
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1 the sounds made by his new cubicle “neighbor” who was constantly in
2 motion with his darts, Legos, and ball throwing. Knych expected PayPal to
3 take his complaint seriously and respond by moving him to a different
4 cubicle away from the distracting co-worker, or that the distracting worker
5 would be ordered not to engage in his unnecessary and disruptive conduct.

6 14. However, in response to his request for a reasonable
7 accommodation, supra, he was told to just “live with it” and his complaints
8 were ignored, and the “neighbor’s” distractions continued for Knych,
9 diminishing his efficiency.

10 15. Instead of investigating and then taking appropriate remedial
11 action, PayPal retaliated and (A) gave him a disciplinary warning (called “a
12 conversation memo”) on July 24, 2011, and (B) then imposed upon Knych a
13 disciplinary Performance Improvement Plan (“PIP”) on September 27, 2011,
14 warning that he might be terminated.

15 16. Knych persisted in seeking some reasonable accommodations
16 from PayPal, and in trying to meet the PIP requirements, but the only
17 accommodation he was given was relocating him to an even noisier cubicle
18 location, where his stress and anxiety increased because he was even
19 more distracted than before, while feeling the extreme pressure of avoiding
20 the termination threatened by the PIP.

21 17. One accommodation that Knych asked for starting in August, 2011
22 was a type of headset that would effectively cancel outside noises, so that
23 he could concentrate on the calls he was processing, which would have
24 been a reasonable accommodation that PayPal could easily have afforded
25 and provided which would have solved his problem from noises from other
26 workers in nearby cubicles. However, PayPal refused such an

1 accommodation, then eventually said it would consider getting him the
2 headset, and then much later got a headset for him on January 17, 2012.

3 18. Between June 22, 2010 and January 10, 2012, without any
4 appropriate accommodation, Knych's attention deficit continued and his
5 efficiency and ability to concentrate suffered, and his stress level and
6 anxieties over the noise and the threatened termination of the PIP (which
7 was the direct result of not accommodating his disability) had caused so
8 much stress and anxiety and fear that Knych was forced to take a leave of
9 absence because his workplace stress had become intolerable.

10 19. Knych returned to work at PayPal on February 22 and 23, 2012,
11 but he felt so much pressure to perform and hostility from his co-workers
12 who had learned that he had a psychiatric disorder that he went on a short-
13 term disability leave on February 24, 2012, which leave expired on July 11,
14 2012. Since July 11, 2012, Knych has been unable to work or seek new
15 employment because of his psychiatric disability which was worsened by
16 PayPal, which could have accommodated him and allowed him to have a
17 successful career, but instead refused to accommodate him, which refusal
18 exacerbated his disability.

19 20. A result of the deliberate failures to accommodate and retaliation
20 by PayPal, Knych has suffered damages, including the loss of a promising
21 career, the loss of income, loss of self-esteem from being gainfully
22 employed, the present inability to support himself and his dependency on
23 others, and depression and worry about his future.

24 21. The conduct of PayPal alleged herein was done with malice or
25 reckless indifference to the ADA rights of Knych to be free of discrimination
26 and retaliation, because PayPal knew well its legal duties under the ADA

1 and easily could have provided Knych with the reasonable accommodations
2 he requested or other reasonable accommodations, without unlawfully
3 denying such accommodations or delaying in their responses to such
4 requests and without retaliating against him when they gave him the PIP on
5 September 27, 2011, paragraph 15, supra. Therefore, Knych is entitled to
6 recover punitive damages from the Defendants.
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8 **4. Exhaustion of Administrative Remedies (EEOC)**

9 22. Based upon these facts, supra, on March 2, 2012, Knych filed a
10 timely "Charge of Discrimination" with the United States Equal Employment
11 Opportunity Commission ("EEOC") against both Defendants, alleging, inter
12 alia, that he suffered disability discrimination in employment and retaliation,
13 in violation of the ADA, in EEOC Charge # 540-2012-01071. A true copy of
14 this Charge is attached and incorporated by reference as Exhibit #1,
15 pursuant to Federal Rules of Civil Procedure, Rule 10(c).

16 23. On April 4, 2013, the EEOC signed and mailed to Knych its notice
17 of "Dismissal and Notice of Rights (to Sue)". A true copy of this notice is
18 attached and incorporated by reference as Exhibit #2, pursuant to Federal
19 Rules of Civil Procedure, Rule 10(c).

20 24. This Complaint is filed on July 6, 2013, within ninety days of
21 Knych's receipt of the notice from the EEOC, supra.
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1 **5. Demand for Trial by Jury**

2 Plaintiff Knych demands a trial by jury, pursuant to the U.S.
3 Constitution Seventh Amendment, Federal Rules of Civil Procedure Rule 38
4 (a,b), and 42 U.S.C. 1981a(c).

5 **6. Relief Requested**

6 Based upon the foregoing, Plaintiff Knych respectfully requests
7 judgment and orders granting him the following relief against both
8 Defendants, jointly and severally, on his claims of discrimination and
9 retaliation in violation of the ADA:

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11 **Count One: ADA Disability Discrimination in Employment: Failure to**
12 **Provide Reasonable Accommodations, 42 U.S.C. 12112(a & b)**

- 13 1. Compensatory damages, as provided for by 42 U.S.C. 1981a(b).
14 2. Punitive damages, as provided for by 42 U.S.C. 1981a(b).
15 3. Injunctive relief, as provided for by 42 U.S.C. 12117(a) and 42
16 U.S.C. 2000e-5(g)1.
17 4. Expert fees, as provided for by 42 U.S.C. 2000e-5(k) and 42 U.S.C.
18 1988(c).
19 5. Reasonable attorney's fees, as provided for by 42 U.S.C. 12205, 42
20 U.S.C. 2000e-5(k), 42 U.S.C. 1988(b), and Federal Rules of Civil
21 Procedure, Rule 54(d)2.
22 6. Taxable costs, pursuant to Federal Rules of Civil Procedure, Rule
23 54(d)1, and 28 U.S.C. 1920.
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1 Count Two: Retaliation for Assertion of Rights Under the ADA (based
2 upon the PIP, Paragraph 15 supra), 42 U.S.C. 12203(a)

3 1. Injunctive relief, as provided for by 42 U.S.C. 12117(a) and 42
4 U.S.C. 2000e-5(g)1.

5 2. Expert fees, as provided for by 42 U.S.C. 2000e-5(k).

6 3. Reasonable attorney's fees, as provided for by 42 U.S.C. 12205, 42
7 U.S.C. 2000e-5(k), and Federal Rules of Civil Procedure, Rule 54(d)2.

8 4. Taxable costs, pursuant to Federal Rules of Civil Procedure, Rule
9 54(d)1, and 28 U.S.C. 1920.

10
11 Respectfully submitted this 6th day of July, 2013

12
13 s/Jerry S. Smith

14 Jerry S. Smith, Attorney for Plaintiff

15 Jerry S. Smith, PLLC

16 **Attached Exhibits**

17 1. EEOC Charge #540-2012-01071 (filed March 2, 2012)

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19 2. Notice of Right-to-Sue for EEOC Charge #540-2012-01071
20 (dated April 4, 2013)

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