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AMERICAN ARBITRATION ASSOCIATION

MICHAEL LINEAR,

 Claimant,

 v.

SECURUS TECHNOLOGIES, d.b.a.
JPAY, LLC,

 Defendant.

NO. 01-22-0000-3053

CLAIMANT MICHAEL LINEAR'S
STATEMENT OF CLAIMS AND
DAMAGES

I. INTRODUCTION

Claimant Michael Linear brings this cause of action against Defendant Securus Technologies, d.b.a. JPay, L.L.C. ("JPay" or "Defendant"), for exploiting its monopoly power over the communications and media products and services that are made available to prison inmates at state and county facilities throughout the State of Washington. JPay is Claimant's sole means of access to any electronic content, email, games, music, or internet access.

Since entering into an exclusive contract with the state Department of Corrections in 2010, JPay has abused its monopoly by devising a scheme that baits inmates into purchasing excessively priced products and services, withholds the terms and conditions on those products and services from inmate review, and subjects inmates to a protracted, sham trouble-shooting process that neither results in a repair nor refund.

1 Claimant brings this action on behalf of himself against JPay for committing unfair
2 and deceptive practices in violation of Washington’s Consumer Protection Act, Chapter
3 19.86 RCW, for unlawful conversion, unjust enrichment, and intentional infliction of
4 emotional distress.

5 II. PARTIES

6 1. Claimant Michael Linear is a citizen of the State of Washington and
7 currently resides in Mason County, Washington. Claimant alleges damages in excess
8 of \$50,000.

9 2. Defendant JPay, L.L.C., is a foreign entity doing business in Mason
10 County and throughout the State of Washington. Since 2010, JPay has operated under
11 an exclusive contract with the Washington State Department of Corrections to provide
12 communications and media products and services to inmates.

13 3. JPay has alleged that that Claimant’s claims exceed \$75,000 in
14 controversy and, on that basis, alleged that this case is subject to diversity jurisdiction
15 in federal court.

16 4. Upon information and belief, JPay is controlled in whole or in part by
17 Securus Technologies.

18 III. FACTS

19 5. In or about 2010, JPay entered into a contract with the Washington State
20 Department of Corrections (“DOC”) authorizing JPay to act as the exclusive provider of
21 communication and media products and services to prison inmates in Washington under
22 the custody of DOC and/or a local jurisdiction.

23 6. At all times pertinent to this complaint, Michael Linear has been
24 incarcerated with DOC.
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1 7. If inmates do purchase JPay products or services but do not agree to
2 JPay's terms of service, they are deprived from any electronic communications to
3 individuals outside of the prison or jail.

4 8. JPay is the sole means of electronic communication for inmates to the
5 outside world, including communications with legal counsel, family members, and
6 friends.

7 9. JPay is the sole means of access for inmates to games, music and the
8 online world.

9 10. Over the last thirty years, and especially during the COVID-19 pandemic,
10 communications are increasingly done online.

11 11. JPay, however, controls inmates' access to the online world.

12 12. Courts throughout the state of Washington require that documents be
13 served and filed electronically.

14 13. Inmates can only receive electronic documents through JPay.

15 14. JPay requires that inmates waive attorney client privilege to receive legal
16 documents electronically.

17 15. JPay hinders access to counsel by asserting that the privilege is waived,
18 and no communications can be made to counsel electronically without their access and
19 review.

20 16. JPay's monopoly directly hinders Mr. Linear's access to the courts and
21 counsel.

22 17. In order to access digital products or services offered by JPay, an inmate
23 must also purchase JPay equipment, including, for instance, a JPay tablet.

24 18. JPay has the exclusive right to install kiosks in prisons to facilitate inmates'
25 purchase of JPay's products and services.

1 19. However, JPay requires an inmate to accept JPay’s terms of service as a
2 precondition to accessing any content on a kiosk, including JPay’s products and
3 services,

4 20. JPay exploits its control by charging exorbitant and unfair charges for
5 services which are provided to the non-incarcerated individuals by numerous other
6 providers for nominal or zero charges.

7 21. JPay exploits Mr. Linear’s vulnerability for its own profit.

8 22. Despite the exorbitant and unconscionably high fees, JPay’s service is
9 vastly below the standard of even the most basic competitors servicing the non-
10 incarcerated community.

11 23. Inmates are denied a meaningful choice between isolation from online
12 communication with the outside world, including their legal counsel, family, and friends,
13 or agree to JPay’s terms of service.

14 24. Inmates are denied a meaningful choice between isolation from music,
15 games, and entertainment, or agree to JPay’s terms of service.

16 25. JPay does not, however, make its terms of service accessible to inmate
17 review.

18 26. Inmates cannot review the terms of service at their kiosks and must accept
19 the terms of service in their entirety before using JPay’s kiosk.

20 27. However, the kiosks “fall asleep” or “time out” within one to two minutes
21 after an inmate begins reviewing the terms of service.

22 28. When the kiosk times out or enters sleep mode, an inmate cannot reinitiate
23 their session.

24 29. Prisons and jails impose limitations on an individual inmate’s use of kiosks,
25 and inmates are often required to end their session and return the following day.

26 30. Claimant only has access to a kiosk for 20 minutes at a time, during which
27 other inmates are waiting for access.

1 31. JPay's terms of service are written in legal jargon in dense paragraphs
2 meant to confuse or dissuade the average inmate from reading the terms of service.

3 32. An average inmate with an eighth grade reading level could not be
4 apprised of what the terms of service contain before the kiosk times out.

5 33. Inmates cannot review the terms service they are forced to accept as a
6 precondition on any other platform.

7 34. JPay's practices make it impossible to read the terms of service in its
8 entirety on their kiosks.

9 35. The arbitration clauses are complicated and towards the end of the terms
10 of service.

11 36. JPay's terms of service provide for scenarios wherein Claimant is required
12 to pay JPay's attorneys' fees.

13 37. Claimant would not have to pay attorneys' fees if this case were to proceed
14 in Washington State courts.

15 38. JPay causes the kiosk to enter sleep mode before allowing inmates'
16 sufficient time to access the kiosk under prison rules.

17 39. An inmate's review of the terms of service can continue for several days
18 or weeks, of successive visits, without an inmate having enough time to fully review and
19 understand JPay's terms of service.

20 40. This process precludes inmates from reviewing, much less understanding,
21 JPay's terms of service.

22 41. In order to obtain full access to JPay's terms of service, inmates are
23 required to take the extraordinary step of filing a lawsuit against JPay.

24 42. If inmates do not agree to the JPay terms of service, they are deprived
25 access to electronic information, entertainment, or communications, regardless of
26 whether such information, entertainment, or communications have already been
27 purchased.

1 43. JPay filed multiple different versions of its terms of service as the
2 controlling terms of service in the same court proceedings.

3 44. In fact, Mr. Linear has had to find relief from these terms of service in state
4 court and in arbitration, and JPay has attacked those attempts at relief in Texas, a forum
5 Mr. Linear cannot enter as a prisoner.

6 45. JPay failed to provide Mr. Linear full access to its terms of service.

7 46. JPay intended to deprive inmates from reviewing and understanding
8 portions of its terms of service, including a waiver of the right to seek judicial relief and
9 to instead require them resolve any disputes by paying out-of-pocket for out-of-state
10 arbitration in different jurisdictions.

11 47. JPay's terms of service purport to require Mr. Linear to enter into
12 commercial arbitration, despite the fact that his claims reside in consumer protection
13 law.

14 48. JPay's terms of service do not allow for arbitration to be conducted
15 according to Washington law.

16 49. JPay's terms of service require, without notice or an opportunity to opt-out,
17 waiver of fundamental constitutional rights of plaintiffs.

18 50. The terms of service JPay intended to deprive inmates from reviewing and
19 understanding includes a waiver of the right to pursue relief through a class action.

20 51. The purported waiver of the right to seek judicial relief and to pursue relief
21 through a class action is placed at the bottom of JPay's terms of service.

22 52. JPay's terms of service also purport to disclaim and/or limit the
23 functionality and workmanship of its products and services.

24 53. The only way an inmate can access content within a kiosk before it times
25 out or falls asleep is by clicking a phrase on the kiosk that states 'I Agree' to JPay's
26 terms of service.

1 54. Only after clicking 'I Agree,' is the inmate permitted to access content from
2 a kiosk.

3 55. JPay's terms of service are provided on a "take it or leave it" basis.

4 56. The arbitration process offered by the arbitration clause is contrary to the
5 law and the intent of the Washington State legislature and deprives Mr. Linear of his
6 statutory rights as a consumer and victim of a violation of the Consumer Protection Act.

7 57. Mr. Linear had no bargaining power when JPay presented the terms of
8 service to them and the mandatory arbitration under commercial dispute resolution
9 terms which deprive him of due process and infuses the entire process with
10 oppressiveness.

11 58. Inmates are denied a meaningful choice whether to enter into JPay's terms
12 of service.

13 59. The process by which JPay presented and purported to get agreement
14 from Mr. Linear was procedurally unconscionable.

15 60. JPay's terms of service delegate unconscionability to the arbitrator.

16 61. Delegation of unconscionability to an arbitrator is unconscionable in and
17 of itself.

18 62. JPay's terms of service are also substantively unconscionable.

19 63. The parties do not have an established contract with JPay whereby there
20 is valid and enforceable meeting of the minds or enforceable agreement to mandatory
21 arbitration or a class action waiver.

22 64. The parties do not have an established contract with JPay whereby there
23 is valid and enforceable delegation of the determination over whether the arbitration and
24 class action waivers are conscionable to an arbitrator.

25 65. Due to the manner in which the contract was entered, and the denial of a
26 reasonable opportunity to read, review, and understand the terms of the contract hidden
27

1 in a maze of shutting down and fine print, Mr. Linear lacked a meaningful choice to the
2 terms of service, including but not limited to the arbitration and class action waivers.

3 66. Over the years, Mr. Linear was never able to review a complete copy of
4 JPay's terms of service until he filed suit and JPay filed a copy in State Court.

5 67. JPay has purported to supersede the copy of its terms of service in State
6 Court with a new and different terms of service providing for a change in venue.

7 68. Despite the fact that Claimant already filed its lawsuit for actions by JPay
8 which occurred prior to the lawsuit, JPay purports to change the venue retroactively to
9 a case in mid-process.

10 69. In 2018, Claimant Linear purchased a JPay tablet, the JP5.

11 70. Mr. Linear made his purchases through JPay's kiosks.

12 71. Purchases made through the kiosk are transacted either through a transfer
13 from an inmate's individual prison account or by a third-party sending funds on the
14 inmate's behalf through JPay, either by phone or online.

15 72. If a third-party sends funds on Mr. Linear's behalf through JPay's online
16 portal, JPay deducts a significant portion of the fund transfer—approximately 25% of the
17 fund transfer—as a cost.

18 73. The cost JPay imposes on third-party fund transfers are unreasonable and
19 significantly higher than market rates.

20 74. Mr. Linear sent JPay numerous trouble tickets regarding the videos he
21 purchased.

22 75. JPay only allows for one trouble ticket to be open at any time.

23 76. JPay takes up to 14 days to respond to a trouble ticket and, even then,
24 often does not resolve the issue within 14 days.

25 77. It took weeks or months for Mr. Linear to download content to his new
26 tablets because the transfer was so slow.

1 78. Worse, the products and services purchased by Mr. Linear often did not
2 function or operate as represented by JPay or any reasonable consumer would expect.

3 79. When purchasing products and services from JPay, funds were
4 immediately withdrawn from Mr. Linear, regardless of whether the product or service
5 was available or functional.

6 80. To keep his tablet functional, Mr. Linear was required to connect his tablet
7 to a JPay kiosk approximately every two weeks.

8 81. Since 2018, Mr. Linear attempted to download numerous games, videos,
9 and/or songs that he purchased from JPay but the content would not download or when
10 it did download it was not functional.

11 82. JPay did not remove content from its stores that was known to be
12 dysfunctional.

13 83. Mr. Linear requested a refund of the amount paid in a trouble ticket.

14 84. Once a trouble ticket has been submitted, an inmate cannot raise any
15 other issues until JPay responds to a pending trouble ticket.

16 85. After submitting a trouble ticket, JPay reserves to itself 14 days to respond.
17 On each occasion in which JPay's response fails to address the problem raised in a
18 trouble ticket, JPay requires the inmate to initiate another trouble ticket.

19 86. If JPay fails to resolve the problem, the inmate must again submit a new
20 trouble-ticket and wait.

21 87. As a result, JPay's trouble-ticket submission process often delays
22 resolution for months and beyond.

23 88. JPay's trouble-ticket submission process is intended to deter inmates from
24 complaining about dysfunctional products and services.

25 89. JPay's trouble-ticket submission process allows JPay to obtain and
26 withhold inmates' financial resources without providing the benefit of the bargain, viz.,
27 functional products and services.

1 90. JPay disregards the delay and deprivation of inmates the benefit of
2 products and services that they have already purchased.

3 91. Despite inmates having purchased products and services that do not
4 function and/or are not accessible, JPay's pattern and practice is to refuse to repair
5 products and services.

6 92. JPay failed to resolve the issues Mr. Linear raised in his trouble tickets.

7 93. JPay also refused to tender a refund to Mr. Linear.

8 94. In or about April 2020, Mr. Linear purchased music from JPay.

9 95. However, the purchases both failed to download and/or were not
10 accessible to Mr. Linear.

11 96. Mr. Linear sent JPay numerous trouble tickets regarding the music he
12 purchased.

13 97. However, JPay refused to resolve the issues raised in his trouble tickets.

14 98. JPay refused to tender a refund.

15 99. Mr. Linear has also purchased video visits from JPay.

16 100. A video visit costs \$14.95 and permits an inmate to visit with someone for
17 approximately 30 minutes.

18 101. Between January 2020 and the present date, Mr. Linear was frequently
19 unable to utilize this service to visit with members of his family because the service
20 alleged that it was "trying to connect" or the service indicated only one person was there
21 or that a participant could not be seen.

22 102. When Mr. Linear's wife contacted JPay customer service to complain
23 about ongoing service issues, JPay forced her to wait on hold for 1 to 2 hours.

24 103. When Mr. Linear's wife finally connected with JPay, JPay falsely claimed
25 that one party failed to show up for the video visit or asserted that the system was waiting
26 for someone to arrive.

27

1 104. JPay refused to address the issues raised in Mr. Linear's trouble tickets
2 and through customer service complaints and refused requests for a refund.

3 105. JPay only offered a credit for another video visit but Mr. Linear and his
4 family were unable to use the credit because the video visit service was not functional.

5 106. JPay also charges unconscionably high prices to inmates, like Mr. Linear
6 for other services.

7 107. The products and services available for inmates to purchase include email,
8 video visits, video grams, video games, music, and movie rentals.

9 108. The price of each email is unreasonable and can cost up to 25 cents for
10 each email.

11 109. JPay limits the number of characters the inmate can send in an email.

12 110. It does not cost JPay more to send or receive emails based on the number
13 of characters used.

14 111. JPay's costs for Claimant's emails do not vary based on the number of
15 characters used.

16 112. JPay's charges for games are unconscionable and range between \$6.99
17 and \$7.99 per game.

18 113. The prices JPay charges for video rentals are unconscionable and cost
19 approximately \$7.00 for a 48-hour rental.

20 114. The costs of JPay's products and services are unreasonable and
21 significantly higher than market rates.

22 115. JPay exploits its monopolistic control of inmate digital communications and
23 entertainment by charging exorbitant and unfair fees and costs for services which are
24 provided to the non-incarcerated individuals by numerous other providers for nominal or
25 zero charges.

26 116. JPay deceptively represents that its products and services that are
27 available for purchase are compatible with its devices, but those products and services

1 frequently do not function or operate as represented or as any reasonable consumer
2 would expect.

3 117. Mr. Linear estimates spending hundreds of hours of his time dealing with
4 issues as a result of JPay's faulty products and services and sham resolution processes.

5 118. JPay's practice and pattern is one of total disregard for inmates' rights.
6 JPay's conduct constitutes an intentional or reckless indifference to inmates' rights.

7 119. JPay's conduct is intentional and/or reckless.

8 120. As a proximate result of JPay's conduct, Mr. Linear incurred damages in
9 an amount to be proven at trial.

10 121. The damages incurred by Mr. Linear include economic damages, statutory
11 damages, and damages for mental and emotional distress.

12 **IV. Individual Arbitration with a Class Action Waiver is Unconscionable under**
13 **Washington Law**

14 122. Claimant's claims are ideally suited for resolution on a class wide basis.

15 123. Claimant is similarly situated to other incarcerated individuals in the state
16 of Washington.

17 124. Thousands of incarcerated individuals are subject to the same poor quality
18 JPay service, under the same terms of service, and subject to the same monopoly
19 powers as Claimant.

20 125. Claimant, like other incarcerated individuals in the State of Washington,
21 has no alternative to JPay's goods and services but to use JPay.

22 126. Claimant, like other incarcerated individuals in the State of Washington,
23 has no alternative to JPay's terms of service.

24 127. Claimant, like other incarcerated individuals in the State of Washington,
25 purportedly have to go to Texas or Florida to litigate aspects of JPay's terms of service,
26 including injunctive relief and class action claims.
27

1 128. Claimant, like other incarcerated individuals in the State of Washington,
2 has no alternative to JPay's goods and services but to use JPay's tablets.

3 129. Claimant, like other incarcerated individuals in the State of Washington,
4 has no alternative to JPay's poor-quality customer service for JPay's exorbitantly priced
5 poor-quality goods and services.

6 130. Claimant, like other incarcerated individuals in the State of Washington,
7 are not given physical copies of JPay's terms of service and can only access the terms
8 of service through JPay's kiosks.

9 131. Claimant, like other incarcerated individuals in the State of Washington,
10 can only have one trouble ticket open at a time and is subject to the same poor quality
11 customer service from JPay.

12 132. Claimant, like other incarcerated individuals in the State of Washington,
13 has claims based on numerous small dollar transactions which collectively amount to
14 substantial damages but are difficult if not impossible to bring on an individual basis.

15 133. JPay benefits from scattering claims to individual arbitrations to avoid
16 accountability for its poor-quality service and exorbitant fees.

17 134. JPay's terms of service assign venue to United States District Court for
18 claims that amount to material exposure to JPay: class claims and injunctive relief.

19 135. JPay's terms of service purport to provide for fee shifting from an
20 incarcerated individual to JPay for claims assigned to United States District Court.

21 136. Unfair and unlawful fee shifting is a basis for finding terms of service
22 unconscionable. *See e.g., Hill v. Garda* (Washington Supreme Court Decision finding
23 terms of service unconscionable because, *inter alia*, of fee shifting).

24 137. JPay relies on the fact that individual claims for damages are effectively
25 without recourse in arbitration.

26 138. JPay's doesn't care about customer service because they don't have to:
27 they are a monopoly, and their customers have no alternative.

1 **B. Conversion**

2 150. Claimant re-alleges each and every allegation set forth above.

3 151. Defendant JPay's practices as set forth above constitute an unjustified
4 interference with the financial resources and property of Claimant depriving him of the
5 right of possession.

6 152. Defendant JPay's wrongful conduct is continuing.

7 153. As a direct and proximate cause of Defendant JPay's practices, Claimant
8 has suffered damages in an amount to be proven at the time of this Arbitration's hearing.

9 **C. Unjust Enrichment**

10 154. Claimant re-alleges each and every allegation set forth above.

11 155. Claimant has conferred benefits on Defendant JPay through providing
12 JPay his financial resources and property.

13 156. Defendant JPay has knowingly accepted the benefits provided by
14 Claimant.

15 157. The circumstances are such that it would be unjust and inequitable for
16 Defendant JPay to retain the benefits conferred upon it by Claimant.

17 158. As a direct and proximate cause of Defendant JPay's practices, Claimant
18 has suffered damages in an amount to be proven at the time of this Arbitration's hearing.

19 **D. Intentional Infliction of Emotional Distress**

20 159. Claimant re-alleges each and every allegation set forth above.

21 160. Defendant JPay's conduct goes beyond all bounds of decency and is
22 otherwise intolerable in a civilized society.

23 161. As a direct and proximate cause of Defendant JPay's practices, Claimant
24 has suffered severe emotional distress and damages in an amount to be proven at the
25 time of this Arbitration's hearing.

26 **VI. PRAYER FOR RELIEF**

27 Claimant requests that the Court grant the following relief as a matter of law and equity:

- 1 a. Enjoining the Defendant under the CPA from continuing its wrongful conduct
2 as described herein;
- 3 b. Awarding Claimant actual damages pursuant to RCW19.86.090;
- 4 c. Awarding Claimant treble damages pursuant to RCW 19.86.090;
- 5 d. Awarding Claimant out-of-pocket and investigative expenses as well as
6 compensation for time spent responding to unfair and/or deceptive practices;
- 7 e. Awarding Claimant costs and reasonable attorneys' fees based on all
8 applicable statutes and other grounds, including RCW 19.86.090;
- 9 f. Pre-judgment interest on all amounts awarded as allowed by law;
- 10 g. Post-judgment interest;
- 11 h. Disgorgement of excessive fees;
- 12 i. Injunctive relief to provide reasonable customer service, multiple trouble
13 tickets, at reasonable fees to Claimant and other incarcerated individuals in
14 the State of Washington;
- 15 j. Injunctive relief to allow Claimant and other incarcerated individuals in the
16 State of Washington to have paper copies of JPay's terms of service prior to
17 accepting those terms; and
- 18 k. Awarding Claimant such further legal or additional relief as may be
19 appropriate or just.

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1 DATED: December 30, 2022.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that I sent this document by email to the following email addresses:

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Dated December 30, 2022.

By: s/ Mynor R. Lopez
Mynor R. Lopez, Associate Attorney