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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Todd Narson,)	No. CV-08-0177-PHX-SRB
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
GoDaddy.Com, Inc.; The Go Daddy)	
Group, Inc.,)	
)	
Defendants.)	
)	

This matter was transferred to this Court on January 22, 2008 from the Southern District of Florida. The Court now considers Defendants' Motion to Dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) (Doc. 18).

I. BACKGROUND

Defendants GoDaddy.Com, Inc. and The Go Daddy Group, Inc. are Arizona corporations with their principal places of business in Scottsdale, Arizona. GoDaddy.Com, Inc. is a domain name registrar, and The Go Daddy Group, Inc. offers online products and services. Defendants market their products and services electronically on the Internet. Plaintiff alleges that:

GoDaddy creates an electronic transaction with customers and creates a receipt that is generated by GoDaddy and printed out with each purchase by the consumer. The receipt is intended and expected by GoDaddy to be printed and used by the consumer in the same manner as any consumer transaction purchase. Plaintiff utilized Defendants'

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GoDaddy.com internet site to make a consumer transaction and was provided with receipts for their [sic] purchases.

(Compl. at 2.) Plaintiff alleges that he “utilized a debit or credit card issued in his name to transact business with GoDaddy and had more than the last five digits of the debit or credit card’s account number and/or the card’s expiration date printed on the receipt provided to him by Defendants.” (Compl. at 3.)

Plaintiff explains that a copy of the alleged receipt is attached to the Complaint as Exhibit A. Exhibit A is a document that appears to have been printed from the GoDaddy.com website, and is dated August 22, 2007. Exhibit A is labeled “Receipt#: 78359475” and displays several transactions for domain name registrations. (Compl., Ex. A.) The words “printable” and “OrderHistory” appear on the page, and there appears to be a button labeled “PRINT.” (Compl., Ex. A.) The first eleven digits of Plaintiff’s credit card number are represented by the number symbol (#). It appears that Exhibit A displays the last five digits and the expiration date of Plaintiff’s credit card. Plaintiff has redacted his credit card expiration date, the last five digits of his credit card number, and his address, telephone number, and email address.

Plaintiff filed suit individually and on behalf of all others similarly situated in the United States District Court for the Southern District of Florida on August 31, 2007. Plaintiff claims relief for violation of the Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681 *et seq.* (2005). Plaintiff seeks statutory damages for willful violations of FACTA and punitive damages. Defendants filed a Motion to Dismiss for improper venue under Federal Rule of Civil Procedure 12(b)(3), and alternatively for failure to state a claim under Rule 12(b)(6). The action was transferred to this Court on January 22, 2008. The Court now considers Defendants’ Motion to Dismiss for failure to state a claim under Rule 12(b)(6).

II. LEGAL STANDARDS AND ANALYSIS

A. Rule 12(b)(6)

1 The Federal Rules of Civil Procedure require a “short and plain statement of the claim
2 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Gilligan v. Jamco Dev.*
3 *Corp.*, 108 F.3d 246, 248 (9th Cir. 1997). Thus, dismissal for insufficiency of a complaint
4 is proper if the complaint fails to state a claim on its face. *Lucas v. Bechtel Corp.*, 633 F.2d
5 757, 759 (9th Cir. 1980). A Rule 12(b)(6) dismissal for failure to state a claim can be based
6 on either: (1) the lack of a cognizable legal theory; or (2) insufficient facts to support a
7 cognizable legal claim. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
8 1990); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984).

9 In determining whether an asserted claim can be sustained, all allegations of material
10 fact are taken as true and construed in the light most favorable to the non-moving party.
11 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). As for the factual
12 allegations, the Supreme Court has explained that they “must be enough to raise a right to
13 relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007).
14 In ruling on a motion to dismiss, the issue is not whether the plaintiff will ultimately prevail,
15 but whether the claimant is entitled to offer evidence to support the claims. *Gilligan*, 108
16 F.3d at 249.

17 **B. § 1681c(g)**

18 Plaintiff alleges a violation of 15 U.S.C. § 1681c(g), which regulates the truncation
19 of credit card and debit card numbers and expiration dates. Defendants argue that their
20 alleged conduct does not violate § 1681c(g) because this subsection does not apply to online
21 receipts made available over the Internet. Section 1681c(g) provides that:

22 (1) In general

23 Except as otherwise provided in this subsection, no person that
24 accepts credit cards or debit cards for the transaction of business shall
25 print more than the last 5 digits of the card number or the expiration
26 date upon any receipt provided to the cardholder at the point of the
27 sale or transaction.

28 (2) Limitation

 This subsection shall apply only to receipts that are electronically
 printed, and shall not apply to transactions in which the sole means
 of recording a credit card or debit card account number is by
 handwriting or by an imprint or copy of the card.

1 (3) Effective date

This subsection shall become effective--

2 (A) 3 years after December 4, 2003, with respect to any cash register
3 or other machine or device that electronically prints receipts for credit
4 card or debit card transactions that is in use before January 1, 2005;
5 and

6 (B) 1 year after December 4, 2003, with respect to any cash register
7 or other machine or device that electronically prints receipts for credit
8 card or debit card transactions that is first put into use on or after
9 January 1, 2005.

10 15 U.S.C. § 1681c(g) (2005). The issue is whether Defendants' providing an onscreen
11 display of an Internet receipt which may be printed by the consumer constitutes "print[ing]"
12 more than the last 5 digits of the card number or the expiration date upon any receipt
13 provided to the cardholder at the point of the sale or transaction." 15 U.S.C. § 1681c(g)(1).

14 The few courts to have addressed the issue of whether the onscreen display of an
15 Internet receipt constitutes a receipt that is "printed" and "provided to the cardholder at the
16 point of the sale or transaction" have come to opposite conclusions. *Harris v. Best Buy Co.,*
17 *Inc.*, Case No. 07-C-2559 (N.D. Ill. Mar. 20, 2008) (granting motion for class certification
18 and concluding that § 1681c(g) applies to computer screen displays) (Doc. 53, Ex. B); *King*
19 *v. Movietickets.com*, Case No. 07-22119-CIV-GOLD/TURNOFF (S.D. Fla. Feb. 13, 2008)
20 (granting motion to dismiss and holding that the restrictions in § 1681c(g) apply only to
21 tangible, paper receipts provided by merchants to cardholders, not to information displayed
22 onscreen) (Doc. 46, Ex. 1); *Harris v. Circuit City Stores, Inc.*, Case No. 07-C-2512 (N.D. Ill.
23 Feb. 7, 2008) (declining to address whether a receipt that was transmitted by email was a
24 "receipt" within the meaning of FACTA because the issue is not germane to class
25 certification) (Doc. 54, Ex. A); *Grabein v. 1-800-Flowers.com, Inc.*, 2008 WL 343179 at *5
26 (S.D. Fla. Jan. 29, 2008) (denying motion to dismiss because defendants failed to
27 demonstrate that plaintiff's interpretation of "print" and "point of sale" extending §
28 1681c(g)'s coverage to receipts provided on a merchant's website was unreasonable) (Doc.
53, Ex. A). The question of whether § 1681c(g) applies to Internet merchants who provide
onscreen receipts to customers has been certified for interlocutory appeal to the United States

1 Court of Appeals for the Eleventh Circuit. *Grabein v. 1-800-Flowers.com, Inc.*, Case No.
2 07-22235-CIV-Huck (S.D. Fla. Mar. 12, 2008) (Doc. 55, Ex. 1).

3 In the absence of any controlling authority, the Court will construe the relevant terms
4 in light of § 1681c(g) as a whole. The first step in statutory construction “is to determine
5 whether the language at issue has a plain and unambiguous meaning with regard to the
6 particular dispute in the case.” *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002)
7 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). The inquiry ceases “if the
8 statutory language is unambiguous and ‘the statutory scheme is coherent and consistent.’”
9 *Id.* The Court concludes that the language at issue has a plain and unambiguous meaning,
10 and that Defendants’ providing an onscreen display of an Internet receipt which may be
11 printed by the consumer does not constitute “print[ing] more than the last 5 digits of the card
12 number or the expiration date upon any receipt provided to the cardholder at the point of the
13 sale or transaction.” 15 U.S.C. § 1681c(g)(1).

14 Plaintiff alleges that Defendants “create” and “generate” a receipt that is then printed
15 *by the consumer*. (Compl. at 2.) This allegation is insufficient to state a claim under §
16 1681c(g), which requires that the merchant who accepts the credit or debit card print the
17 receipt in order to violate the statute. Plaintiff alleges that the “receipt is intended and
18 expected by GoDaddy to be printed and used by the consumer,” but the statute does not
19 discuss a merchant’s intentions and expectations. (Compl. at 2.) The statute’s language
20 states that “no person who accepts credit cards or debit cards for the transaction of business
21 shall print”; it does not proscribe expecting someone else to print an offending receipt. 15
22 U.S.C. § 1681c(g)(1).

23 Despite the fact that Plaintiff’s Complaint alleges that the consumer is the one who
24 is expected to print the onscreen receipt, Plaintiff now argues that the word “to print” should
25 be construed to mean “to display on a surface (as a computer screen) for viewing” or
26 “*Computers*. to produce (data) in legible alphanumeric or graphic form.” (Pl.’s Mem. of Law
27 in Opp’n to Defs.’ Mot. to Dismiss at 9 (citing Merriam-Webster’s Collegiate Dictionary 924
28 (10th ed. 2002); Dictionary.com Unabridged (v 1.1), Random House, Inc., *available at*

1 <http://dictionary.reference.com/browse/print>.) Thus, Plaintiff argues that Defendants “print”
2 a receipt merely by displaying the information on the consumer’s computer screen while the
3 consumer is viewing the Defendants’ webpage.

4 “To determine the meaning of a term in a federal regulation, we look to the common
5 meaning of the word.” *Cleveland v. City of L.A.*, 420 F.3d 981, 989 (9th Cir. 2005) (citing
6 *United States v. Willfong*, 274 F.3d 1297, 1301 (9th Cir. 2001)). “When a statute does not
7 define a term, a court should construe that term in accordance with its ‘ordinary,
8 contemporary, common meaning.’” *Id.* (quoting *San Jose Christian Coll. v. City of Morgan*
9 *Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004)). Defendants argue that the ordinary common
10 meaning of the verb “to print” is to transfer words to a tangible medium, usually paper. In
11 the context of computers, Defendants argue that “to print” commonly means to transfer
12 computer files to a tangible medium, such as to send a file or document displayed on a
13 computer screen to a printer to generate a paper output. Defendants argue that to define “to
14 print” to mean the generation of a computer file is at odds with the word’s commonly
15 understood meaning.

16 “To determine the ‘plain meaning’ of a term undefined by a statute, resort to a
17 dictionary is permissible.” *Id.* The common dictionary definitions of “to print” support
18 Defendants’ position that the ordinary, contemporary, and common meaning of “to print” is
19 to transfer information to a tangible medium, such as paper. The two dictionaries cited by
20 Plaintiff include other definitions of the verb “to print” which are among the more commonly
21 understood meanings. Merriam-Webster’s full dictionary entry for the transitive verb
22 includes the following definitions:

- 23 1a: to impress something in or on b: to stamp (as a mark) in or on
24 something
25 2a: to make a copy of by impressing paper against an inked printing
26 surface b(1): to impress (as wallpaper) with a design or pattern (2):
27 to impress (a pattern or design) on something c: to publish in print d:
28 PRINT OUT; *also*: to display on a surface (as a computer screen) for
viewing
3: to write in letters shaped like those of ordinary roman text type
4: to make (a positive picture) on a sensitized photographic surface
from a negative or positive

1 Merriam-Webster's Collegiate Dictionary 924 (10th ed. 2002), *available at*
2 <http://www.merriam-webster.com/dictionary/print>. The entry available at
3 www.dictionary.com includes the following definitions:

- 4 1. to produce (a text, picture, etc.) by applying inked types, plates,
5 blocks, or the like, to paper or other material either by direct pressure
6 or indirectly by offsetting an image onto an intermediate roller.
- 7 2. to reproduce (a design or pattern) by engraving on a plate or block.
- 8 3. to form a design or pattern upon, as by stamping with an engraved
9 plate or block: to print calico.
- 10 4. to cause (a manuscript, text, etc.) to be published in print.
- 11 5. to write in letters like those commonly used in print: Print your
12 name on these forms.
- 13 6. Computers. to produce (data) in legible alphanumeric or graphic
14 form.
- 15 7. to indent or mark by pressing something into or upon (something).
- 16 8. to produce or fix (an indentation, mark, etc.), as by pressure.
- 17 9. to impress on the mind, memory, etc.
- 18 10. to fingerprint.
- 19 11. to apply (a thing) with pressure so as to leave an indentation,
20 mark, etc.: The horses printed their hoofs on the wet grass.
- 21 12. Photography. to produce a positive picture from (a negative) by
22 the transmission of light.

23 Dictionary.com Unabridged (v 1.1), Random House, Inc., *available at*
24 <http://dictionary.reference.com/browse/print>. The Oxford English Dictionary also assigns
25 a particular meaning to the verb "to print" in the context of computing: "d. *Computing*. To
26 produce a paper printout of (information stored or accessed on a computer)." Oxford English
27 Dictionary (2008), *available at* <http://www.dictionary.oed.com>. These dictionary entries
28 make clear that the common and ordinary meaning of "to print," both generally and in the
context of computers, is to produce text by applying ink to a tangible medium, such as paper.
The definitions highlighted by Plaintiff fail to show that the common meaning of "to print"
includes the display of a webpage on a computer screen. Therefore, the Court concludes that
the common and ordinary meaning of the verb "to print" is to transfer information to a
tangible medium, such as paper, not to generate information that is displayed on a computer
screen.

Furthermore, the other subsections of §1681c(g) confirm that the statute aims to reach
the generation of tangible paper receipts, not the onscreen display of information on a
webpage. Section 1681c(g)(1) specifies that the receipt is one which is "provided to the

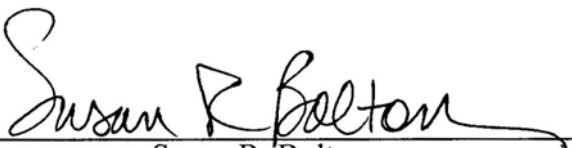
1 cardholder at the point of the sale or transaction.” This language clearly contemplates a
2 transaction where the customer is present in the location where the sale is made, and where
3 the merchant provides the receipt to the customer at that same location. Section 1681c(g)(2)
4 further limits the application of the subsection to “receipts that are electronically printed, and
5 shall not apply to transactions in which the sole means of recording a credit card or debit card
6 account number is by handwriting or by an imprint or copy of the card.” This limitation also
7 contemplates a tangible paper receipt, in which the credit card information is physically
8 transferred by hand, carbon copy, or photocopy onto a tangible medium. Section 1681c(g)(3)
9 discusses the effective date of the statute, and specifies two different effective dates, based
10 on the date the “cash register or other machine or device that electronically prints receipts”
11 is put into use. This distinction shows that the statute applies to receipts electronically
12 printed with a “cash register or other machine or device that electronically prints receipts,”
13 not to displays on a consumer’s computer screen. 15 U.S.C. § 1681c(g)(3).

14 The language of § 1681c(g) as a whole clearly shows that the statute contemplates
15 transactions where receipts are physically printed using electronic point of sale devices like
16 electronic cash registers or dial-up terminals. The plain language of § 1681c(g) shows that
17 it does not apply to a merchant’s generation of an Internet webpage or the onscreen display
18 of information, which may be printed by the consumer on his or her own printer.
19 Defendants’ alleged conduct, creating an online receipt that is viewed by the consumer
20 onscreen and able to be printed by the consumer on his or her own printer, does not violate
21 § 1681c(g). Therefore, the Court concludes that Plaintiff has failed to state a claim for
22 violation of § 1681c(g), and does not reach Defendants’ other arguments that § 1681c(g) is
23 unconstitutionally vague as applied to Go Daddy, and that the Complaint fails to sufficiently
24 plead a willful violation of § 1681c(g).

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IT IS ORDERED granting Defendants' Motion to Dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) (Doc. 18). The Clerk of the Court is directed to enter judgment for Defendants and terminate this case.

DATED this 5th day of May, 2008.



Susan R. Bolton
United States District Judge