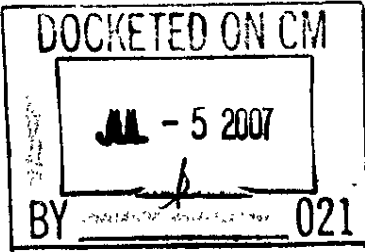


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**(ORIGINAL)**

SCANNED

**CIVIL MINUTES - GENERAL**

Case No. CV 07-1328 PSG (SSx) Date 7/02/07  
Title Vasquez-Torres v. Stubhub, Inc.

Present: The Honorable Philip S. Gutierrez, United States District Judge

<u>Wendy K. Hernandez</u>	<u>Not Present</u>	<u>n/a</u>
<u>Deputy Clerk</u>	<u>Court Reporter</u>	<u>Tape No.</u>

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

**Proceedings: (In Chambers) Stubhub, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Rule 12(b)(6)**

Before this Court is Defendant Stubhub, Inc.'s Motion to Dismiss for failure to state a claim. The Court finds the matter appropriate without oral argument. Fed. R. Civ. P. 78; L.R. 7-15. Accordingly, the hearing set for June 18, 2007 was taken under submission and off calendar. After a full consideration of the submitted pleadings, the Court now DENIES Defendant's Motion.

**I. BACKGROUND**

Liliana Vasquez-Torres ("Plaintiff"), on behalf of herself and others similarly situated, brought a class action suit against Stubhub, Inc. ("Defendant"). Plaintiff is a resident of the County of Los Angeles. Defendant is a Delaware corporation, headquartered in California, that sells event tickets through their website, www.stubhub.com.

Plaintiff claims a right to relief under 15 U.S.C. § 1681c(g) of the Fair and Accurate Transactions Act of 2003 ("FACTA"), an amendment to the Fair Reporting and Credit Act. The provision states that "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction." 15 U.S.C. § 1681c(g)(1). Plaintiff's First Amended Complaint ("FAC") alleges Defendant violated 15 U.S.C. § 1681(c)(g) by "provid[ing] Plaintiff with one or more electronically printed receipts on each of which Defendants printed . . . the expiration [date] of Plaintiff's credit or debit card." (FAC ¶ 32.) Plaintiff seeks statutory damages, punitive damages, costs, and attorney's fees under 15 U.S.C. §1681(n), as well as a permanent injunction against Defendant.

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Defendant now moves to dismiss Plaintiff's FAC under FED. R. CIV. P. ("FRCP") 12(b)(6). In support of its motion, the Defendant also request the Court take judicial notice of the Fair and Accurate Credit Transactions Act of 2003, the Plaintiff's alleged receipt from Defendant's website, a Federal Trade Commission Business Alert, and four court orders denying a plaintiff's motion for class certification in other Central District of California cases.<sup>1</sup>

II. LEGAL STANDARD

FRCP 12(b)(6) allows a party to dismiss a claim if the claimant fails to state a claim upon which relief can be granted. The FRCP require that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a). Although detailed factual allegations are unnecessary, a claimant's "obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 167 L. Ed. 2d 929, 940 (2007). The complaint must allege sufficient facts to raise a right to relief above a speculative level. *Id.* In evaluating the sufficiency of a complaint under FRCP 12(b)(6), a court must accept as true all factual allegations in the complaint, view all allegations in the light most favorable to the claimant, and determine whether claimant can prove any set of facts to support a claim that would merit relief. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

III. DISCUSSION

The FACTA provision at issue states that "no person that accepts credit cards or debit cards for the transaction of business shall *print* more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or

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<sup>1</sup>Defendant's unopposed request that the Court take judicial notice of FACTA (Rhodes Decl., Ex. A), the FTC Business Alert (Rhodes Supp. Decl., Ex. 2), and four Central District of CA court orders (Rhodes Supp. Decl., Ex. 3-6) is hereby GRANTED. Defendant's request for notice of Plaintiff's alleged receipt with redactions (Rhodes Decl., Ex. B) is unopposed but is incapable of "immediate and accurate determination by resort to easily accessible sources of indisputable accuracy," FED. R. EVID. 201(b), and is hereby DENIED. The receipt is a private document obtained from the exclusive possession of the Plaintiff and has been heavily redacted by the Defendant of pertinent information. However, as discussed above, the lack of judicial notice of the receipt does not change the Court's analyses.

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transaction.” 15 U.S.C. § 1681c(g)(1) (emphasis added). Defendant’s sole assertion is that “Plaintiff’s [FAC] does not and indeed cannot state a claim for relief under [15 U.S.C. §] 1681c(g) because [Defendant] did not “print” the [receipt] within any reasonable interpretation of the word.”<sup>2</sup> (Motion, p. 5, lines 24-26.) Defendant argues that Plaintiff’s factual allegations, even if accepted, would not constitute a legally-cognizable basis of relief.

Plaintiffs are not saved by having pleaded legal conclusions that would support the claim where the facts pleaded are inconsistent with those legal conclusions. *See Weisbuch v. County of Los Angeles*, 119 F.3d 778, 783 n. 1 (9th Cir. 1997); *Bender v. Suburban Hosp., Inc.*, 159 F.3d 186, 192 (4th Cir. 1998) (“while notice pleading does not demand that a complaint expound the facts, a plaintiff who does so is bound by such exposition”). After stating that Defendant printed in violation of the statute, Plaintiff explained that the printing requirement was satisfied by sending “electronic transmission to the class members’ computers and/or monitors.” (FAC ¶ 13.) Defendant moves to dismiss Plaintiff’s FAC under FRCP 12(b)(6), claiming electronic transmissions are not sufficient to establish that Defendant printed, in violation of the statute, under any reasonable interpretation of the statute.

It is the court’s function to interpret the language of a statute and it need not accept Plaintiff’s characterization of a statutory term as true. *See Western Mining Council v. Watt*, 643 F.2d 618, 630 (9th Cir. 1981). Since the statute does not explicitly define the term “print,” the statute should be construed to give the term its ordinary meaning. *See BP Am. Prod. Co. v. Burton*, 127 S.Ct. 638, 643, 166 L. Ed. 2d 494, 502 (2006). Defendant relies on one dictionary definition and an Illinois district court case to support its interpretation of “print” as clearly not encompassing information presented on a computer screen (Motion, p. 7, lines 7-14, 20-21).

Dictionary definitions are commonly consulted to “clarify . . . ordinary meanings.” *United States v. Carter*, 421 F.3d 909, 911 (9th Cir. 2005). Defendant refers to *Webster’s Third New Int’l Dictionary* to suggest a definition of “print” reading in part, “to make an impression in or upon.” (Defendant’s Memo, p. 7, line 7-14.) But even under Defendant’s definition, Plaintiff’s FAC is sufficient to defeat a 12(b)(6) motion to dismiss. Plaintiff’s FAC is consistent with the claim that Defendant “ma[d]e an impression” on Plaintiff’s computer screen including credit or debit card information in violation of 15 U.S.C. § 1681c(g). Furthermore, other definitions of “print” clearly include Plaintiff’s version. *See, e.g., Merriam-Webster’s Collegiate Dictionary*, 10th ed. p. 924 (2002) (defining “print” as “to display on a surface (as a computer screen) for viewing”).

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<sup>2</sup>Defendant does not challenge the sufficiency of Plaintiff’s claims about the appropriateness of the class action, or reference to Defendant’s website as a receipt.

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Furthermore, Defendant's reliance on *Chicago Lawyer's Comm. for Civil Rights Under the Law, Inc. v. Craigslist, Inc.*, 461 F.Supp.2d 681, 698-99, n 18 (N.D. Ill. 2006), is misplaced. *Chicago Lawyer's* is a Seventh Circuit case decided based on a statute, motion, and grounds all different from the instant case. In *Chicago Lawyer's*, Plaintiff sought relief under 42 U.S.C. § 3604(c) against a website for "print[ing on their website] . . . any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any [discriminatory notices]." *Id.* at 682. The court granted the motion for judgment on the pleadings for the defendant finding that the defendant did not "print" the offending material within "any reasonable interpretation of that word." *Id.* at 698-99, n 18. *Chicago Lawyer's* is distinguished from this case by the fact that it was a third party, and not the Defendant, that printed the text in controversy on Defendant's website. *See id.* at 691. In the instant case, Plaintiff alleges Defendant corporation itself printed the offending information through the act of sending it to Plaintiff's computer screen. *Chicago Lawyer's* is inapposite to determining the meaning of "print" in 15 U.S.C. § 1681c(g)(1).

In interpreting a statute, the "goal . . . is to ascertain the intent of Congress in order to give effect to its legislative will." *See Alarcon v. Keller Indus., Inc.*, 27 F.3d 386, 389 (9th Cir. 1994). FACTA was enacted with the stated purpose of "amend[ing] the Fair Credit Reporting Act[ ] to prevent identity theft." (Def.'s Ex. "A" pg. 002.) Congress likely intended to prevent identity theft in all its forms, including common online identity theft, and did not intend to limit safeguards to a narrow subset of paper-printed receipts. Plaintiff's interpretation of print, including information transmitted to a computer screen, better comports to the purposes of FACTA than Defendant's narrow definition. Furthermore, had Congress desired such an exclusion, they would have explicitly done so, as they did for "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." 15 U.S.C. § 1681c(g). Failure to do so supports Plaintiff's interpretation of "print" as being facially reasonable.

The Defendant has failed to demonstrate that Plaintiff's interpretation of "print" is outside any reasonable interpretation. Therefore, Defendant cannot establish that Plaintiff could not recover as a matter of law based on the alleged facts. Plaintiff may be able to establish a valid claim at trial and Plaintiff's FAC cannot be dismissed at this early stage.

Failing on a challenge of legal sufficiency, Defendant's claim amounts to a mere denial of "printing" in violation of the statutory provision. However, whether or not Plaintiff will be able to demonstrate the validity of their assertion at trial is not at issue in a 12(b)(6) motion. *See Allison v. Cal. Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969). For the purposes of a motion to dismiss under Rule 12(b)(6), factual allegations must be accepted as true. *See Cahill*, 80 F.3d

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at 337-38. The Plaintiff's FAC plainly alleges that Defendant "printed more than the last five digits of Plaintiff's credit card or debit card [ ] or printed the expiration." (FAC ¶ 32). Accepted as true, Plaintiff's FAC satisfactorily alleges the elements of 15 U.S.C. § 1681(c)(g)(1), and provides a basis of relief under the statute.

IV. CONCLUSION

For the foregoing reasons, the Court hereby DENIES Defendant's FRCP 12(b)(6) motion to dismiss. The Court hereby GRANTS Defendant's Request for Judicial Notice of FACTA, the FTC Business Alert, and the four Central District court order. The Court DENIES Judicial Notice of Plaintiff's alleged receipt.

**IT IS SO ORDERED.**

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