

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Todd Narson,  
Plaintiff,

vs.

GoDaddy.Com, Inc.; The Go Daddy  
Group, Inc.,  
Defendants.

No. CV-08-0177-PHX-SRB

**ORDER**

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'

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

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

7           Plaintiff explains that a copy of the alleged receipt is attached to the Complaint as  
8           Exhibit A. Exhibit A is a document that appears to have been printed from the  
9           GoDaddy.com website, and is dated August 22, 2007. Exhibit A is labeled “Receipt#:  
10          78359475” and displays several transactions for domain name registrations. (Compl., Ex.  
11          A.) The words “printable” and “OrderHistory” appear on the page, and there appears to be  
12          a button labeled “PRINT.” (Compl., Ex. A.) The first eleven digits of Plaintiff’s credit card  
13          number are represented by the number symbol (#). It appears that Exhibit A displays the last  
14          five digits and the expiration date of Plaintiff’s credit card. Plaintiff has redacted his credit  
15          card expiration date, the last five digits of his credit card number, and his address, telephone  
16          number, and email address.

17          Plaintiff filed suit individually and on behalf of all others similarly situated in the  
18          United States District Court for the Southern District of Florida on August 31, 2007.  
19          Plaintiff claims relief for violation of the Fair and Accurate Credit Transactions Act  
20          (“FACTA”), 15 U.S.C. § 1681 *et seq.* (2005). Plaintiff seeks statutory damages for willful  
21          violations of FACTA and punitive damages. Defendants filed a Motion to Dismiss for  
22          improper venue under Federal Rule of Civil Procedure 12(b)(3), and alternatively for failure  
23          to state a claim under Rule 12(b)(6). The action was transferred to this Court on January 22,  
24          2008. The Court now considers Defendants’ Motion to Dismiss for failure to state a claim  
25          under Rule 12(b)(6).

26           **II.    LEGAL STANDARDS AND ANALYSIS**

27           **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.

26 (2) Limitation

27 This subsection shall apply only to receipts that are electronically  
28 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](http://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  
or indirectly by offsetting an image onto an intermediate roller.
- 6 2. to reproduce (a design or pattern) by engraving on a plate or block.
- 7 3. to form a design or pattern upon, as by stamping with an engraved  
plate or block: to print calico.
- 8 4. to cause (a manuscript, text, etc.) to be published in print.
- 9 5. to write in letters like those commonly used in print: Print your  
name on these forms.
- 10 6. Computers. to produce (data) in legible alphanumeric or graphic  
form.
- 11 7. to indent or mark by pressing something into or upon (something).
- 12 8. to produce or fix (an indentation, mark, etc.), as by pressure.
- 13 9. to impress on the mind, memory, etc.
- 10 10. to fingerprint.
- 11 11. to apply (a thing) with pressure so as to leave an indentation,  
12 mark, etc.: The horses printed their hoofs on the wet grass.
- 13 12. Photography. to produce a positive picture from (a negative) by  
the transmission of light.

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

26 Furthermore, the other subsections of §1681c(g) confirm that the statute aims to reach  
27 the generation of tangible paper receipts, not the onscreen display of information on a  
28 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).

25

26

27

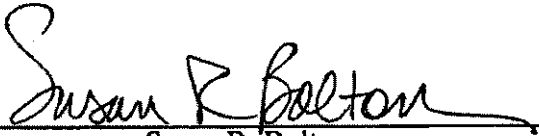
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 5<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
Susan R. Bolton  
United States District Judge