UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE PLAID INC. PRIVACY LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 4:20-cv-03056-DMR

**[PROPOSED] ORDER GRANTING DEFENDANT PLAID INC.'S MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED AMENDED COMPLAINT**

**ORAL ARGUMENT REQUESTED**

Action Filed: May 4, 2020

Judge: Hon. Donna M. Ryu

Defendant Plaid Inc. ("Plaid") moves to dismiss Plaintiffs' Consolidated Amended Complaint ("CAC"). The Court, having considered all of the papers submitted by the parties, the relevant authorities, and oral argument, hereby GRANTS Plaid's Motion to Dismiss with prejudice.

*First*, the Court finds that Plaintiffs lack standing to assert any of the claims in their CAC because they fail to plead an injury in fact sufficient to provide standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016). Plaintiffs allege only speculative, abstract harms to their "dignitary and privacy rights" and highly attenuated claims for potential economic damages which fail to satisfy the requirements of Article III standing. *See Whitmore v. Arkansas*, 495 U.S. 149, 155-56 (1990). Plaintiffs also fail to sufficiently plead causation or a redressable harm, both of which are also required elements for Article III standing. For these reasons, Plaintiffs' CAC is dismissed with prejudice.

*Second*, the following claims are time-barred by the relevant statutes of limitation as a matter of law and must be dismissed with prejudice: **all** claims by Plaintiffs Curtis, Mitchell, Mullen, Sacks, and Yeomelakis; all claims except Unfair Competition Law ("UCL") claims by Plaintiffs Schoeneman and Evans; and all claims by Plaintiff Umali (except his UCL-Coinbase claim). Plaintiffs have failed to meet their burden of pleading facts to show that the statutes were tolled by the discovery rule, fraudulent concealment, or equitable estoppel. *See Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935, 940 (9th Cir. 2009); *Hexcel Corp. v. Ineos Polymer, Inc.*, 681 F.3d 1055, 1060 (9th Cir. 2012); *Diaz v. Safeway Inc.*, No. C-07-01902 RMW, 2007 WL 2793367, at *5 (N.D. Cal. Sept. 26, 2007).

*Third*, because Plaintiffs have (and allege) an adequate legal remedy (monetary damages), and do not allege the inadequacy of that remedy, Count 4 (for declaratory and injunctive relief), Count Five (for unjust enrichment), and Count Six (for violation of California Business & Professions Code § 17200 *et seq.*) are hereby dismissed with prejudice, as are all equitable remedies sought, including restitution, disgorgement, and injunctive and declaratory relief. *See Sonner v. Premier Nutrition Corp.*, -- F.3d --, 2020 WL 4882896, at *7 (9th Cir. June 17, 2020).

*Fourth*, Plaintiffs fail to state a claim for any of their federal, state, or common law causes of action under Federal Rule of Civil Procedure 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Collectively, Plaintiffs' claims are not plausible in light of Plaid's Privacy Policy and the policies of the apps the Plaintiffs used to link to their bank accounts and other financial accounts, because Plaid's Privacy Policy details Plaid's collection and use of data and other relevant activities. CAC ¶ 71 (admitting that Plaid's Privacy Policy discloses collection of account numbers, balances, transactions, and other information). Indeed, each of Plaintiffs' alleged omissions is not an omission, but a demonstrably false misstatement (as shown by judicially-noticeable information) or an express disclosure contained in the Privacy Policy.

Plaintiffs' Sixth Cause of Action under the Unfair Competition Law ("UCL") fails as a matter of law. Plaintiffs fail to plausibly allege that they lost money or property. *Birdsong v. Apple, Inc.*, 590 F.3d 955, 959 (9th Cir. 2009). Moreover, Plaintiffs allege no unlawful, unfair, or fraudulent business practice. *Avila v. Countrywide Home Loans*, 2010 WL 5071714, at *6 (N.D. Cal. Dec. 7, 2010); *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009); *In re Tobacco II Cases*, 46 Cal. 4th 298, 326 (2009).

Plaintiffs' Second and Tenth Causes of Action under the CFAA (18 U.S.C. §§ 1030(a)(2), (4), (5)(A)-(C), (6)) and the CDAFA (Cal. Penal Code §§ 502(c)(1)-(4), (6)-(8)) both fail as a matter of law. These narrow statutes are intended "to punish hacking—the circumvention of technological access barriers" and should not be transformed "from an anti-hacking statute into an expansive misappropriation statute." *United States v. Nosal*, 676 F.3d 854, 863, 857 (9th Cir. 2012); *see also Custom Packaging Supply, Inc. v. Phillips*, 2015 WL 8334793, at *3 (C.D. Cal. Dec. 7, 2015). Moreover, Plaintiffs have failed to plead any of the elements required under the many subsections of both statutes, including tangible harm, an economic loss of at least $5,000, or that Plaid accessed a computer or data without authorization. *See, e.g.*, *In re iPhone Application Litig.*, 844 F. Supp. 2d 1040, 1064 (N.D. Cal. 2012); *Gonzales v. Uber Techs., Inc.*, 305 F. Supp. 3d 1078, 1090 (N.D. Cal. 2018); *In re Apple & ATTM Antitrust Litig.*, No. C07-05152 JW, 2010 WL 3521965, at *7 (N.D. Cal. July 8, 2010).

Plaintiffs' Third Cause of Action under the SCA fails as a matter of law. The SCA does not apply here as Plaintiffs have not alleged that the relevant financial institutions are facilities through which an electronic communication service is provided. *Backhaut v. Apple, Inc.*, 74 F. Supp. 3d 1033, 1041 (N.D. Cal. 2014). Moreover, Plaintiffs do not sufficiently allege Plaid accessed an "electronic communication" under § 2701(a). *Cline v. Reetz-Laiolo*, 329 F. Supp. 3d 1000, 1044 (N.D. Cal. 2018). Finally, Plaintiffs do not plausibly allege Plaid intentionally accessed data without authorization. *Stern v. Weinstein*, 512 F. App'x 701, 702 (9th Cir. 2013).

Plaintiffs' First and Seventh Causes of Action for invasion of privacy and violation of California's constitution fail as a matter of law. Plaid's disclosures undermine any allegation of a reasonable expectation of privacy as required by these causes of action. *In re Yahoo Mail Litig.*, 7 F. Supp. 3d 1016, 1038 (N.D. Cal. 2014). Indeed, where data collection practices are disclosed to end users, as they have been here, there is no reasonable expectation of privacy. *See, e.g.*, *TBG Ins. Servs. Corp. v. Super. Ct.*, 96 Cal. App. 4th, 443, 452 (2002). Moreover, disclosure of personal or financial information, without more, is not an egregious breach of social norms sufficient to establish invasion of privacy. *Low v. LinkedIn Corp.*, 900 F. Supp. 2d 1010, 1025 (N.D. Cal. 2012).

Plaintiffs' Eighth Cause of Action under the California Anti-Phishing Act (Cal. Bus. & Prof. Code § 22948.2) fails as a matter of law because it does not apply to Plaid, as Plaid is a legitimate business, and is not engaged in phishing to "facilitate identity theft." Cal. Bill Anal., S.B. 355 Sen., July 5, 2005.

Plaintiffs' Ninth Cause of Action for deceit fails as a matter of law because they do not plead the required elements, including a duty to disclose, intent to defraud, or reasonable reliance, with particularity as required by Federal Rule of Civil Procedure 9(b). *London v. New Albertson's, Inc.*, No. 08-CV-1173 H (CAB), 2008 WL 4492642, at *7 (S.D. Cal. Sept. 30, 2008); *O'Hara v. W. Seven Trees Corp.*, 75 Cal. App. 3d 798, 804 (1977). Moreover, given Plaid's disclosures in its Privacy Policy, Plaintiffs cannot plausibly or specifically allege concealment of a material fact. *Lewis v. Google LLC*, No. 20-CV-00085-SK, 2020 WL 2745253, at *14 (N.D. Cal. May 20, 2020).

Plaintiffs' Fifth Cause of Action for unjust enrichment fails as a matter of law because "unjust enrichment is a remedy and not an independent claim" and therefore must be "dismissed with

prejudice." *McLellan v. Fitbit, Inc.*, No. 3:16-cv-00036-JD, 2018 WL 2688781, at *4 (N.D. Cal. June 5, 2018). Even if construed as a quasi-contract cause of action, Plaintiffs "fail[] to sufficiently plead an actionable misrepresentation or omission." *Rojas-Lozano v. Google, Inc.*, 159 F. Supp. 3d 1101, 1120 (N.D. Cal. 2016).

Plaintiffs' Fourth Cause of Action for Declaratory and Injunctive Relief fails because Plaintiffs have an adequate remedy at law and these are equitable remedies, not causes of action. *Curtis v. Option One Mortg. Corp.*, No. 109CV1982AWISMS, 2010 WL 1729770, at *8 (E.D. Cal. Apr. 28, 2010); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950); *Simmons First Nat'l Bank v. Lehman*, No. 13-CV-02876-DMR, 2015 WL 1503437, at *7 (N.D. Cal. Apr. 1, 2015). Moreover, because Plaintiffs' request for a declaratory judgment derives from and depends on their other causes of action, this derivative claim also fails. *Jackson v. Atl. Sav. of Am.*, No. 13-cv-05755-CW, 2014 WL 4802879, at *3-4 (N.D. Cal. Sept. 26, 2014).

Finally, because amendment would be futile and redundant, especially given that Plaintiffs, represented by 12 law firms and 19 named plaintiffs, have already amended their 112-page CAC once and consolidated five complaints, the matter shall be dismissed with prejudice. *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 356 (9th Cir. 1996). Indeed, amendment at this state would be an improper "[sixth] bite at the apple." *Carter v. Bank of Am., NA*, No. EDCV-15-1474-MWF (DTBx), 2016 WL 6571264, at *4 (C.D. Cal. Jan. 20, 2016).

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT Plaid's Motion to Dismiss is GRANTED WITHOUT LEAVE TO AMEND. Plaintiffs' Consolidated Amended Complaint is hereby dismissed with prejudice, and judgment is entered in favor of Plaid and against Plaintiffs.

**IT IS SO ORDERED.**

DATE: _____

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Hon. Donna M. Ryu
United States Magistrate Judge