HERRERA PURDY LLP
Shawn M. Kennedy (SBN 218472)
skennedy@herrerapurdy.com
Andrew M. Purdy (SBN 261912)
apurdy@herrerapurdy.com
Bret D. Hembd (SBN 272826)
bhembd@herrerapurdy.com
4590 MacArthur Blvd., Suite 500
Newport Beach, CA 92660
Tel: (949) 936-0900
Fax: (855) 969-2050

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
Rachel Geman (Pro Hac Vice)
rgeman@lchb.com
Rhea Ghosh (Pro Hac Vice)
rghosh@lchb.com
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel: (212) 355-9500
Fax: (212) 355-9592

BURNS CHAREST LLP
Warren T. Burns (Pro Hac Vice)
wburns@burnscharest.com
Russell Herman (Pro Hac Vice)
rherman@burnscharest.com
900 Jackson Street, Suite 500
Dallas, TX 75202
Tel: (469) 904-4550
Fax: (469) 444-5002

Interim Co-Lead Class Counsel

(Additional counsel on signature page)

GIBSON DUNN & CRUTCHER LLP
ETHAN D. DETTMER, SBN 196046
edettmer@gibsondunn.com
ABIGAIL A. BARRERA, SBN 301746
abarrera@gibsondunn.com
ASHLEY J. HODGE, SBN 287653
ahodge@gibsondunn.com
ANTHONY D. BEDEL, SBN 324065
tbedel@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, CA 94105
Telephone: 415.393.8200
Facsimile: 415.393.8306

GIBSON, DUNN & CRUTCHER LLP
ALEXANDER H. SOUTHWELL (*pro hac vice*)
asouthwell@gibsondunn.com
200 Park Avenue, 48th Floor
New York, NY 10166
Telephone: 212.351.4000
Facsimile: 212.351.4035

Attorneys for Defendant PLAID INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE PLAID INC. PRIVACY LITIGATION	Master Docket No.: 4:20-cv-03056-DMR
THIS DOCUMENT RELATES TO: ALL ACTIONS	**JOINT RULE 26(F) REPORT AND INITIAL CASE MANAGEMENT CONFERENCE STATEMENT** Hon. Donna M. Ryu Action Filed: May 4, 2020 Trial Date: None Set

Counsel for Plaintiffs and Defendant Plaid Inc. ("Plaid" or "Defendant") have met and conferred as required by Fed. R. Civ. P. 26(f). Pursuant to Rule 26(f), Civil Local Rule 16-9, and the Standing Order for All Judges of the Northern District of California, the Plaintiffs and Plaid submit the following Joint Rule 26(f) Report and Initial Case Management Conference Statement. The parties were able to reach agreement on certain issues. Topics upon which the parties were not able to agree are addressed with separate statements setting forth their respective positions.

1. JURISDICTION AND SERVICE

a. Plaintiffs' Statement

As set forth in Plaintiffs' Consolidated Class Action Complaint, filed on August 5, 2020 (Dkt. 61, the "Complaint"), this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332 and 1367, and has personal jurisdiction over Defendant as it operates a business headquartered in the Northern District of California. Plaid, the sole defendant named in the Complaint, has been properly served with process.

b. Plaid's Statement

Plaintiffs contend that the Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1332(d), and 1367. No issues exist with respect to personal jurisdiction or venue. Plaid's Motion to Dismiss challenges whether this case presents a justiciable controversy. No parties remain to be served.

2. FACTS

a. Plaintiffs' Statement

This litigation addresses Plaid's collection and use of Plaintiffs' financial account login credentials, and unauthorized extraction, sale, and use of Plaintiffs' sensitive banking information, in violation of their privacy rights and state and federal statutes.

Plaid's Acquisition of Sensitive Login Credentials Via Spoofing Bank Websites

Plaid takes consumers' financial account login credentials by means of its "Plaid Link" software that it embeds in consumer-facing financial technology (fintech) apps such as Venmo, Coinbase, Cash App, and Stripe. Plaid's technology mimics, or "spoofs" bank login screens, complete with the bank's logo and branding, and directs consumers to enter their financial account credentials. Plaid does not disclose that the login screens are created and controlled by Plaid, not banks. Plaid has acquired access to consumers' financial accounts in this way, with increasing sophistication over time, since at least 2013. Plaid executives have acknowledged its technology was "optimized" to provide a false sense of comfort to consumers by concealing that they are interacting with Plaid rather than their financial institutions. Plaid's deceit was purposeful and intentional. Plaintiffs are users of fintech apps whose financial accounts were linked via Plaid's software.

Plaid's Unauthorized Collection of Private Banking Data

Upon obtaining consumers' login credentials, Plaid establishes direct, unlimited, and ongoing access of their financial account information. For each consumer, Plaid downloads years' worth of transaction history for *every single account* they have connected to that bank (such as checking, savings, credit card, and brokerage accounts), regardless of whether the data in any of the accounts bears any relationship to the app for which the consumer signed up. Financial account data includes not only details about transaction amounts, but also other private information such as the time and place that transactions occurred. Plaid automatically and consistently updates its cache of consumers' private information, every few *hours*, regardless of whether the consumer takes any further action. Thus, a consumer who makes a single mobile payment on an app from a checking account unwittingly gives Plaid years' worth of forward- and backward-looking insights into their private lives from every account the consumer maintains with the bank, including accounts maintained for others such as relatives and children. As of early 2020, Plaid had amassed a trove of data from over 200 million distinct financial accounts.

Plaid's Unauthorized Sale and Use of Private Banking Information

Plaid exploits its ill-gotten information in a variety of ways, including selling the data to its app customers, analyzing the data to derive insights into consumer behavior, and, most recently, selling its data to Visa as part of a multi-billion dollar acquisition.

Plaid has admitted that it routinely sells the consumer banking data it collects, including at a minimum to the Participating Apps who use its services. Plaid calibrates its prices based on the information being purchased. Plaid fails to exercise control or oversight into how purchasers store and use the sensitive banking and other private consumer data it sells. Plaid also derives additional valuable benefits for its business by "enriching" the data (*e.g.*, combining it with other data), applying machine learning and other analytics, and creating services from the data to further enrich Plaid.

Principal Factual Issues in Dispute

Plaid's motion to dismiss (Dkt. 78) raises a host of fact-bound questions that cannot be resolved without discovery (while at the same failing to acknowledge the detailed facts Plaintiffs actually alleged). Principal among the fact-bound questions are: (1) whether Plaid omitted and failed to disclose information to Plaintiffs and the Classes; (2) whether the information omitted and withheld was material; (3) whether Plaid's omissions and nondisclosures were intentional; (4) whether Plaintiffs in fact had their financial account credentials acquired by Plaid; (5) whether Plaid sells or profits from the data it collects; (6) whether Plaid's acquisition and use of Plaintiffs' data violates a privacy interest; and (7) whether Plaid's conduct is a serious breach of social norms.

Plaintiffs further observe that Plaid's characterization of the facts is contradicted by the allegations in the Complaint, Plaid's own documents as cited in the Complaint, and, at minimum, are proper subjects of discovery.

b. Plaid's Statement

Plaintiffs' CAC is rife with inaccuracies and misrepresentations regarding Plaid, its business, and its data-processing practices, and most of those inaccuracies and misrepresentations depend on simply ignoring Plaid's publicly-available Privacy Policy and Plaid Link consent flow. Plaid is a technology company, headquartered in San Francisco, that enables end users to connect their financial accounts to the apps of their choosing. By enabling end users to control and share their data, Plaid makes it possible for end users to use the financial services provided by their chosen apps, thereby democratizing access to financial services.

Plaintiffs' CAC—which is based on the claim that Plaid does not disclose how it operates—cannot be squared with Plaid's fulsome public disclosures to end users about how it collects and uses data. Plaid makes its data policies and practices clear on its website and in its End User Privacy Policy (the "Privacy Policy"), to which all Plaintiffs had reasonable access, consistent with applicable legal standards. Contrary to Plaintiffs' claim, Plaid has *not* failed to disclose its practices to end users and in fact obtains consent to access and collect end users' data. Plaid does not sell or rent data, and

Plaintiffs' assertion that Plaid has admitted to routinely selling consumer banking data is false. These facts are made clear in Plaid's Privacy Policy. In addition, Plaintiffs' assertion that "Plaid calibrates its prices based on the information being purchased" is fundamentally wrong and based on the assertion—falsified by Plaid's Privacy Policy—that Plaid sells the data it collects, which it does not.

Plaintiffs also falsely characterize Plaid Link—Plaid's technology through which apps enable end users to connect their financial accounts to their apps so they can use financial services provided by those apps. Plaintiffs reproduce one Plaid Link screen in the CAC, but ignore the others that give the lie to their false narrative that Plaid Link is a tool that imitates bank login screens to "trick" end users into providing their login credentials. That is a red herring. The vast majority of financial institutions have not implemented (and do not have the technological resources to implement) an OAuth protocol, which entails building and providing a dedicated API endpoint to enable end users to share their data after the institution itself verifies the user's identity. Plaid aims to provide all end users—regardless of the sophistication of the end user's financial institution—access to the fintech marketplace, and Plaid successfully does this by streamlining the authentication and authorization process for end users through Plaid Link. Plaid does not "spoof" bank login screens in order to more easily enable end users to connect their financial accounts to the apps of their choice. As evidenced by Plaintiffs' own CAC, end users connecting their accounts through Plaid Link are told their chosen app "uses Plaid to link to your bank," and that by choosing to "continue" (*i.e.*, to engage with and proceed through the linking process), end users consent to Plaid's Privacy Policy, which clearly explains how Plaid collects and processes their data. *See*, *e.g.*, CAC ¶ 67. The claim that Plaid does not have authorization to collect such data is belied by the disclosures in its Privacy Policy.

Plaintiffs also ignore the fact that end users choosing to connect their accounts through certain apps that have implemented Plaid Link can choose not to use Plaid or can disconnect their accounts at any time. Notably, Plaintiffs fail to allege that they even linked their financial accounts to their chosen apps using Plaid or that they ever asked Plaid to delete their data.

Further, Plaid's data-processing practices do not "invade users' reasonable expectation of privacy[,]" as Plaid clearly discloses how it collects and process data. As explained in Plaid's Motion to Dismiss (Dkt No. 78) (which does not raise any factual disputes), Plaintiffs have failed to allege any facts to support their CAC and Plaintiffs' claims are barred by the relevant statutes of limitation.

Contrary to Plaintiffs' claims, there are not numerous questions of fact pertinent to this case, and Plaintiffs' laundry list of alleged factual issues in dispute are largely legal issues Plaintiffs cast as factual questions to bolster their response to Plaid's Motion to Dismiss, or are based on Plaintiffs simply ignoring inconvenient publicly-available documents.

3. <u>LEGAL ISSUES</u>

a. <u>Plaintiffs' Statement</u>

As alleged in the Complaint, there are numerous questions of law or fact common to the Classes. (*See, e.g.*, Complaint (Dkt. 61), ¶¶ 145(1)-(25).) At the center of this litigation are Plaid's policies and practices which it carries out uniformly with respect to Plaintiffs and the proposed Classes. Questions for the eventual trier-of-fact to determine will include whether Plaid's practices invaded users' reasonable expectation of privacy and constitute an actionable breach of societal norms, and what are the appropriate legal and equitable remedies for the Classes.

In its motion to dismiss, Plaid raises arguments about standing and about the sufficiency of Plaintiffs' claims. Plaid's arguments lack merit, as will be explained in detail in Plaintiffs' opposition brief, and as Plaintiffs previewed in their opposition to Plaid's Motion to Continue.

b. <u>Plaid's Statement</u>

Plaid does not agree that the CAC raises disputed factual issues regarding Plaid's conduct, in light of Plaid's publicly-available disclosures. Should the case proceed past the pleadings, the disputed legal issues include:

1. Whether Plaintiffs had any actionable interactions with Plaid supporting a legally cognizable claim;
2. Whether Plaintiffs and other putative class members sustained any harm or incurred any damages as a result of Plaid's alleged conduct;
3. Whether Plaintiffs and other putative class members' claims are redressable;
4. Whether Plaintiffs' claims are barred by the applicable statutes of limitation;

5. Whether Plaintiffs' equitable claims are barred because they have an adequate remedy at law;
6. Whether Plaintiffs' and other putative class members' claims meet the requisite pleading standards;
7. Whether Plaintiffs can establish any elements of any of the causes of action they allege; and
8. Whether Plaintiffs' and other putative class members' claims meet the class certification requirements of Fed. R. Civ. P. 23.

4. MOTIONS

a. Plaintiffs' Statement

On September 14, 2020, Plaid filed a motion to dismiss the Complaint (Dkt. 78). Plaintiffs' opposition brief is due November 13, 2020, and Plaid's reply thereto will be due December 4, 2020 (*see* Dkt. 57). Various administrative motions also have been filed, none of which remain pending.

Plaintiffs anticipate filing a motion for class certification. Following determination on Rule 23 issues, Plaintiffs reserve the right to move for affirmative summary judgment on discrete issues or claims, as appropriate, mindful of the high burden on summary judgment.

Plaid's statement is vague as to the timing of its motions, but to the extent Plaid's statement proposes early or placeholder motions on summary judgment, far before the close of discovery and before class certification, Plaintiffs observe this is inefficient and premature. *See True Health Chiropractic Inc v. McKesson Corp.*, No. 13-02219, 2015 WL 273188, at *2 (N.D. Cal. Jan. 20, 2015) (rejecting request for period of "initial discovery" regarding the plaintiffs for summary judgment purposes in light of inefficiencies and the delay it would cause in court's ability to adjudicate class certification); *see also Zell v. InterCapital Income Sec., Inc.*, 675 F.2d 1041, 1049 (9th Cir. 1982) (reversing grant of summary judgment as premature before "plaintiff ha[d] been afforded reasonable discovery"); *United States v. Real Prop. & Improvements*, No. 13-02027, 2014 WL 3704041, at *3 (N.D. Cal. 2014) (where the court "recently extended all case deadlines, including discovery deadlines ... the [c]ourt would be spinning its wheels by considering a summary judgment motion when the parties have not had time to develop an adequate factual record"). Even if, *arguendo*, Plaid wanted to challenge the claims of a particular Plaintiff, other Plaintiffs would remain as class representatives, or, subject to Court approval, would be substituted in.[1] Plaintiffs' additional responses to Plaid's proposed subjects for discussion are in section 8 below.

b. Plaid's Statement

Plaid's Motion to Dismiss the CAC is currently being briefed to the Court.

Plaid anticipates opposing Plaintiffs' motion for class certification under Rule 23, and may file motions for summary judgment or partial summary judgment. Plaid anticipates opposing any motion for summary judgment filed by Plaintiffs. Plaid further anticipates filing motions *in limine*, motions to exclude expert testimony, and motions to strike and/or compel, if necessary.

5. AMENDMENT OF PLEADINGS

a. Plaintiffs' Statement

Plaintiffs reserve their right to amend the Complaint consistent with Fed. R. Civ. P. 15, including to the extent any order from the Court requires or permits further amendment.

b. Plaid's Statement

Plaid submits that any amendment of the pleadings would be futile and reserves all rights to oppose any such amendment.

6. EVIDENCE PRESERVATION

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information and have met and conferred pursuant to Federal Rule of Civil Procedure 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. The parties represent that they are aware of and complying with their preservation obligations under Pretrial Order No. 1 to take reasonable steps to preserve all documents, data, and tangible things containing information potentially relevant to the subject matter of this litigation. The parties will submit any unresolved disputes to the Court by appropriate motion and will submit a separate proposed order covering the discovery of electronically stored information.

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[1] *Robichaud v. SpeedyPC Software*, No. C 12 04730 LB, 2013 WL 818503, at *8 (N.D. Cal. Mar. 5, 2013) (in "class actions, where a named Plaintiff's individual claims fail or become moot for a reason that does not affect the viability of the class claims, courts regularly allow or order the plaintiffs' counsel to substitute a new representative plaintiff") (collecting cases; internal citations omitted).

A. Plaintiffs' Statement

Plaintiffs will request that Plaid produce relevant electronically stored information pursuant to a Stipulated ESI protocol.

B. Plaid's Statement

Plaid is aware of and complying with its preservation obligations. Plaid requests that all Plaintiffs represent that they are preserving all relevant electronically stored information in compliance with their preservation obligations.

In response to Plaintiffs' statement regarding production, Plaid will produce relevant, responsive, and non-privileged electronically stored information at the appropriate time, pursuant to the proportionality requirements of Rule 26 and a Stipulated ESI protocol, on which Plaid agrees to meet and confer with Plaintiffs. Plaid expects that Plaintiffs will do the same.

7. DISCLOSURES

The parties will serve their initial disclosures on October 5, 2020.

8. DISCOVERY

With regard to the timing and scope of discovery, the parties submit the following statements.

a. Plaintiffs' Statement

The parties conducted their Rule 26(f) conference on September 30, 2020. Upon the conclusion of the Rule 26(f) conference, discovery opened for all purposes.

i. Plaintiffs' Burden on Rule 23 and Implications for Discovery

Plaintiffs will propound discovery to adequately prepare for class certification and trial. To that end, they must be permitted to develop a complete record before class certification. *See Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011) (class certification determination requires a "rigorous analysis" that necessarily "will entail some overlap with the merits of the plaintiff's underlying claim" to assess whether Rule 23 satisfied). Although certification is not an actual "mini-trial" with the "formal strictures of trial," "[a] plaintiff seeking class certification bears the burden of affirmatively demonstrating "through evidentiary proof that the class meets the prerequisites of Rule 23(a)." *Sali v. Corona Regional Medical Ctr.*, 909 F.3d 996, 1003-04 (9th Cir. 2018) (internal citations omitted).

Thus, as this Court has noted, "the 'rigorous analysis' contemplated by the Supreme Court's recent class certification rulings requires discovery and development of the record." Mason v. Ashbritt, Inc., No. 18-CV-07181-DMR, 2020 WL 789570, at *4 (N.D. Cal. Feb. 17, 2020). It simply "ignores the realities" of "class action litigation today" to limit discovery pre-certification. *Ahmed v. HSBC Bank USA, Nat'l Ass'n*, No. 152057, 2018 WL 501413, at *3–4 (C.D. Cal. Jan. 5, 2018). Gone are the days, for example, when it arguably made some sense to bifurcate certain discovery subjects as related to class certification only. *See, e.g.*, *Hibbs-Rines v. Seagate Techs., LLC*, No. 08-5430, 2009 WL 513496, at *3 (N.D. Cal. Mar. 2, 2009) (because "class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action," pre-certification merits discovery "is integral to developing the shape and form of a class action") (internal quotation marks omitted); H. Newberg and A. Conte, *Newberg on Class Actions*, § 7.8 (4th Ed. 2002) ("Discovery on the merits should not normally be stayed pending so-called class discovery, because class discovery is frequently not distinguishable from merits discovery, and classwide discovery is often necessary as circumstantial evidence even when the class is denied. Such a discovery bifurcation will often be counterproductive in delaying the progress of the suit for orderly and efficient adjudication."). In a class action case such as this one, all or virtually all discovery must be open from the beginning. *See Garcia v. Enter. Holdings, Inc.*, No. 14-00596, 2014 WL 4623007, at *2 (N.D. Cal. Sept. 15, 2014); *Chen-Oster v. Goldman, Sachs & Co.*, 285 F.R.D. 294, 299-300 (S.D.N.Y. 2012) (collecting cases "illustrat[ing] the need to develop the record fully before a class motion is considered").

In accordance with their well-established burden, Plaintiffs anticipate that discovery will be required on a number of topics relevant to the parties' claims or defenses and proportional to the needs of the case, including the following[2]:

(a) Plaid's use of spoofed bank login screens in its software, including research or data

[2] Plaintiffs will also seek standard discovery about company organization and document/data existence and location. Plaintiffs further note that as to certain topics the parties may be able to use stipulations or Requests for Admission to the extent Plaid may be willing to concede to certain facts, such as (among many others) the fact, reflected in its API, that it scrapes consumer data multiple times a day.

relating to the benefits of using bank logos and color schemes and increased customer conversion;

(b) Disclosures made by Plaid and/or its clients to consumers;

(c) Versions of Plaid's software from 2013 to the present, including the software development kits Plaid released for use in web, iOS, and Android apps;

(d) The identity and business model of each Participating App, as well as the Plaid products used at various dates;

(e) Methods Plaid used to access consumers' financial accounts using their login information, then collect and transfer consumer data from various financial institutions and the scope of data collected;

(f) The ways in which Plaid used the consumer data, financially and otherwise, that it accessed from financial institutions;

(g) Agreements between Plaid and (1) various financial institutions, and (2) its clients;

(h) The nature of Plaid's monitoring, oversight, or approval of its clients' disclosures to consumers and use of consumer data, including compliance with federal and state standards for disclosures, privacy, and data protection;

(i) Plaid's public-facing characterizations of its activities, including but not limited to testimony and written responses to government entities;

(j) Revenues and profits generated by Plaid;

(k) Plaid's motives, intent, and knowledge with respect to non-disclosures and omissions alleged in the operative Complaint;

(l) Documents about the Named Plaintiffs;

(m) The formation of Plaid in 2012; and

(n) The sale of Plaid and its consumer data to Visa.

Plaintiffs propose a schedule for discovery to proceed as set forth in Section 17 below.

Plaintiffs anticipate requiring discovery from Plaid of certain electronically stored information in its native form. To ensure that all such information is identified and any disputes over form of production are handled efficiently at the outset, Plaintiffs have suggested that the parties engage in informal discussions about Plaid's electronically stored information, followed by an early deposition under Rule 30(b)(6) to identify all potential sources of relevant electronically stored information.

ii. Response to Plaid's Statement

Plaid's statement, below, seeks a dramatic and unjustified deviation from the rules of discovery and the precedent in this Circuit, in that Plaid seeks to produce limited material only on subjects of its choosing (rather than those subjects relevant to the claims). This is not the law. Fed. R. Civ. P. 26(b)(1); *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (request to limit discovery requires a showing of "good cause"); *see also In re Seagate Tech. II Sec. Litig.*, No. 89-2493, 1993 WL 293008, at *1 (N.D. Cal. June 10, 1993) (rejecting proposal to limit discovery as "artificial, arbitrary and designed to avoid the production of relevant documents . . . Discovery is not to be arbitrarily limited because it is intended to help clarify the issues."). In seeking to truncate discovery, Plaid also (and improperly) seeks to re-litigate its failed motion to stay discovery (Dkt. No. 89), without even attempting to show any change in the law or the facts, as would be required in a properly-postured motion for reconsideration.

To illustrate the practical inefficiency of Plaid's proposal (in addition to its procedural unsuitability), Plaintiffs respond to the two specific topics on which Plaid seeks to limit discovery: (a) a subset of Named Plaintiff-related information, and (b) damages. Limiting discovery to the Named Plaintiffs is untenable because this is a class action case, and the Plaintiffs have the obligation to show (*and the right to discovery to demonstrate*) their claims are typical of those of the class and common. Fed. R. Civ. P. 23(a)(2), (3). They also have the obligation to show (*and the right to discovery to demonstrate*) the other elements of Rule 23(a) as well as 23(b). Thus, Plaid must produce documents and ESI reflecting its practices in first obtaining consumers' private banking information, continuing to scrape that information, and use of that information.

Limiting discovery to damages, without producing discovery on liability, likewise is unjustified for a number of reasons. One, it is unclear what discovery on economic harm means in a vacuum, unaccompanied by discovery showing the fact and scope of Plaid's *liability*. For example, recoverable damages and economic remedies turn in part upon the defendant's enrichment through conduct that is *unjust*, requiring an evaluation of the liability case.[3] Similarly, with respect to another category of damages, Plaintiffs would not be able to prove their entitlement to punitive damages without showing whether Plaid's conduct rose to applicable levels of willfulness/wantonness. Two, even aside from Plaintiffs' actual damages, Plaintiffs seek statutory damages for many of their claims. Compl. at ¶¶ 297, 355, 311, 348, 363, 378. It therefore makes no sense to carve out one category of damages to litigate before liability. Three, Plaintiffs seek equitable and injunctive relief, including data purging, which Plaid foreseeably would resist doing absent a liability determination. Plaid's proposal, at best, invites the odd and patently inefficient phasing of damages, liability, damages again, and other remedies. Plaid cites no authority for its proposal.

Even if any limitations comported with the law and regular practice (which they do not), and even if these particular limitations made sense (which they do not), an additional, and fundamental, problem is that it would be difficult to delimit when Plaid's proposed categories begin and end. *See also, e.g., Ahmed*, 2018 WL 501413, at *3 (analyzing dozens of cases and concluding that bifurcation is highly inefficient because it simply creates "additional litigation" about the difference between class and merits discovery); *In re Plastics Additives Antitrust Litig.*, No. 03-2038, 2004 WL 2743591, at *3-4 (E.D. Pa. Nov. 29, 2004) ("[T]he distinction between merits-based discovery and class-related discovery is often blurry, if not spurious."). In short, Plaid ignores that this is a class case, and even beyond that wants to unilaterally determine the bounds of (and severely limit) discovery. This flouts Rule 26(b)(1) as well as Rule 23 of the Federal Rules of Civil Procedure, is inconsistent with established practice in similar cases (as noted above), and is impracticable and prejudicial.[4]

With respect to Plaid's suggestion that entry of a protective order should impact the timing of the parties' exchange of "information or discovery," Plaintiffs disagree to the extent such information

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[3] *See, e.g., In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 600 (9th Cir. 2020) ("[W]here a benefit has been received by the defendant but the plaintiff has not suffered a corresponding loss, or in some cases, any loss, but nevertheless the enrichment of the defendant would be unjust, the defendant may be under a duty to give to the plaintiff the amount by which the defendant has been enriched.") (citation and quotation marks omitted).

[4] Given that the parties have not yet exchanged Initial Disclosures, it is premature to estimate the precise number of depositions and written discovery requests Plaintiffs will require for adequate discovery in this action. However, enlargements to the limits established by the Federal Rules are often warranted in consolidated complex litigation such as this, and Plaintiffs will seek such enlargements by stipulation or administrative motion if, as anticipated, the need becomes apparent.

or discovery is not properly subject to protection under the Federal Rules. Plaintiffs further submit that, consistent with this Court's standing order ¶ 15 that the parties "shall, where practicable, use one of the model stipulated protective orders," the appropriate model protective order for this action is the Model Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets. In the event the parties are unable to reach agreement on the precise terms of a stipulated protective order within two weeks of the Case Management Conference, Plaintiffs submit that the parties should comply with the terms set forth in that model order. Alternatively, Plaintiffs request that the Court order that a stipulated Protective Order be submitted within two weeks of the Case Management Conference, as has been effective in other privacy cases. *See, e.g. In re Yahoo! Inc. Customer Data Security Breach Litigation*, (N.D. Cal.), ECF No. 68. Plaid should not be permitted to use the possibility of delay in reaching agreement on the terms of the protective order as yet another means of attempting to stall discovery in this action.

b. Plaid's Statement

Status of discovery. No discovery has occurred to date.

Limitations or modifications. At this time, and in light of the limited discovery Plaid submits is needed to address the threshold questions of Plaintiffs' interactions with Plaid (or lack thereof) and/or lack of damages in order to maximize efficiencies for the parties and the Court, Plaid submits that the discovery rules related to requests for admission and the number of and time allowed for fact depositions should not be modified. Plaid reserves its right to seek additional limitations or modifications at a later date.

E-discovery order. Plaid agrees to meet and confer with Plaintiffs regarding a Stipulated ESI protocol governing the disclosure, discovery, and preservation of electronically stored information. In the event the parties reach agreement regarding the terms of such an ESI protocol, it will be submitted to the Court for review and approval. If the parties cannot reach agreement, they reserve all rights to seek guidance from the Court.

Rule 26(f) discovery plan and proposed Court orders. The scope of discovery will depend on the Court's ruling on Plaid's Motion to Dismiss, as well as whether Plaintiffs even interacted with Plaid or suffered any cognizable damage. Plaid submits that discovery should be stayed until after the Court rules on Plaid's Motion to Dismiss, which provides a basis for complete dismissal of this case or of substantial portions of this case. However, in light of the Court's ruling denying Plaid's Motion to Continue the CMC, Plaid submits that fact discovery should be prioritized with initial fact discovery focusing on the issues of: (1) whether Plaintiffs in fact used Plaid to link their financial accounts with their apps; and (2) whether Plaintiffs suffered any cognizable harm based on their use of Plaid (if any). Prioritizing discovery in this manner is likely to lead to a very early, focused motion for summary judgment or summary adjudication on the grounds that Plaintiffs did not interact with Plaid, and/or suffered no harms as a result of Plaid's acts or omissions. Such focused discovery and early dispositive motions will maximize the efficient management of the litigation consistent with Rule 1, either resolving the case, or significantly altering its scope to avoid unnecessary and costly discovery and potentially lead to negotiated settlement. Plaid submits that this first phase of fact discovery commence when discovery opens, with a cutoff date of February 12, 2021.

Based on this discovery, the parties will have the opportunity to file early, focused motions for summary judgment based on the interactions with Plaid or lack thereof, and/or damages. Plaid submits that motions for summary judgment should be filed by March 5, 2021, oppositions thereto should be filed on April 5, 2021, and replies should be filed on April 19, 2021.

At that point, the parties can complete additional fact discovery, if appropriate, and then complete expert discovery.

Plaintiffs' description of the issues for potential discovery are significantly overbroad and unwarranted, and they are also premature given the current posture of the case. Plaid further submits that an early 30(b)(6) deposition to identify potential sources of relevant electronically stored information is premature at this time, particularly in light of the fact that the focused discovery Plaid proposes is likely to substantially narrow the issues potentially relevant to a 30(b)(6) deposition, or render such a deposition unnecessary because Plaintiffs have not alleged that they interacted with Plaid or suffered any damages from interacting with Plaid, as stated above.

Prior to exchanging information or documents in discovery, Plaid submits that the parties enter into a stipulated protective order covering commercially sensitive, confidential or otherwise protected information that may be produced in this litigation by the parties or third parties. In the event the parties reach agreement regarding the terms of such an order, it will be submitted to the Court for review and approval. If the parties cannot reach agreement, they reserve all rights to seek guidance from the Court. The parties anticipate that this order will include provisions governing the inadvertent production of privileged or work product-protected materials. The parties will further request that the Court enter an order under Fed. R. Evid. 502 that the parties' privileges and protections over documents disclosed or used in this case will not be waived by such disclosure or use in any other federal or state proceeding.

Plaintiffs improperly added lengthy legal argument to this joint statement at the eleventh hour. Plaid submits that this Rule 26(f) Report is not the place to litigate the proper handling of this matter. Plaid will be prepared to address such arguments at the case management conference and respectfully requests the opportunity to be heard on the late-added and improper legal argument. Suffice it to say in this Report that Rule 26(f)(3)(B) explicitly provides that the parties and the Court should determine whether the matter can be resolved in a more efficient manner through phasing. Given the Rules' explicit endorsement of such an approach, this Court's broad discretion to phase discovery to carry out the purposes of Rule 1, and the good sense of this approach, Plaid respectfully submits that Plaintiffs' position is incorrect and should be disregarded.

9. CLASS ACTIONS

a. Plaintiffs' Statement

Plaintiffs suggest filing for class certification according to a schedule as set forth in Section 17, "Scheduling," below.

b. Plaid's Statement

Plaid opposes any effort by Plaintiffs to certify a class under Fed. R. Civ. P. 23. Because class certification briefing will likely require fact discovery, expert reports, and expert discovery, Plaid believes setting a class certification briefing schedule is premature at this time.

10. RELATED CASES

The parties are not aware of any related cases other than those consolidated herein.

11. RELIEF

a. Plaintiffs' Statement

Plaintiffs seek judgment against Plaid and that the Court grant the following:

- An order determining that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;
- Judgment for monetary damages against Plaid for Plaintiffs' and Class Members' asserted causes of action;
- Appropriate declaratory relief against Plaid;
- Injunctive relief in the form of, *inter alia*, an order requiring Plaid to: (1) purge the data it has unlawfully collected; (2) plainly and conspicuously disclose, on the first screen of its Plaid Link software, if and when presented to consumers, (a) that Plaid is a third party data aggregator providing connection services to consumers' financial institutions for the purpose of collecting private data from their financial institutions, (b) that it is not necessary for consumers to connect to their banks using Plaid; and (c) that using Plaid's services will eliminate consumers' indemnification rights provided by financial institutions; (3) obtain, before it connects with a consumer's financial account, affirmative permission from the consumer for each action Plaid takes in connection with the account, including accessing, copying, selling, storing, and using data; (4) before it connects with a consumer's financial account, require the consumer to review the full text of Plaid's privacy policy, acknowledge all of the terms and conditions by checking boxes to indicate their consent to those provisions, and acknowledge receipt and approval of the notice; (5) obtain a consumer's affirmative consent each time Plaid accesses that consumer's financial account and financial data; and (6) notify consumers of Plaid's actions to remedy its unlawful conduct alleged herein, and steps consumers can take to prevent future and additional privacy invasions by Plaid and other actors to whom Plaid has sold or otherwise delivered their personal information.
- Injunctive relief in the form of, *inter alia*, an order enjoining Plaid from: (1) accessing,

attempting to access, or procuring transmission of any California Class member's identifying information through their financial accounts; (2) representing that any solicitation, request, or action by Plaid is being done by a financial institution; (3) retaining any copies, electronic or otherwise, of any identifying information obtained through the phishing scheme alleged herein; (4) retaining any copies, electronic or otherwise, of any other information obtained from any of Plaintiffs' or California Class members' financial institutions using identifying information obtained through the phishing scheme alleged herein; and (5) engaging in any unlawful activities alleged herein;

- An award of actual, statutory, special, and/or incidental damages as well as restitution;
- An award of punitive damages, dignitary damages, and exemplary damages;
- Reasonable attorney's fees and costs reasonably incurred; and
- Any and all other and further relief to which Plaintiffs and the Classes may be entitled.

b. Plaid's Statement

Plaid denies that Plaintiffs are entitled to recover any damages, fees, costs, or any injunctive or other relief whatsoever. Plaid further denies that Plaintiffs may maintain this action as a class action. Plaid reserves its right to seek fees and costs associated with defending Plaintiffs' frivolous lawsuit.

12. SETTLEMENT AND ADR

a. Plaintiffs' Statement

Plaintiffs submit that private mediation may be appropriate after the ruling on the motion to dismiss and after receiving Plaid's responses to the initial set of discovery.

b. Plaid's Statement

The parties have not made an effort to resolve or settle this case at this time. If and when there is a prospect of settlement, then, at the appropriate time, the parties will seek to settle this matter through an appropriate and mutually agreeable alternative dispute resolution mechanism, including private mediation.

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The parties have consented to have the Honorable Donna M. Ryu conduct all further proceedings including trial and entry of judgment.

14. OTHER REFERENCES

The parties have not determined that the case is suitable for a special master or the Judicial Panel on Multidistrict Litigation.

15. NARROWING OF ISSUES

a. Plaintiffs' Statement

Plaintiffs respectfully submit that permitting the reasonable and proportional discovery they have proposed to proceed at this time will provide a means to an efficient resolution of this action and assist in the narrowing of issues.

b. Plaid's Statement

Plaid submits that its pending Motion to Dismiss should resolve or substantially narrow many, if not all, of the issues in this case. And as noted above, Plaid also submits that—as Plaintiffs have not alleged that any of them used Plaid, or interacted with Plaid, at any time, or that they suffered any legally cognizable harm—discovery in this case should be prioritized to focus on these critical issues first, as this approach is likely to lead to a potential early resolution of this matter, whether through a dispositive motion or by making a negotiated settlement more likely.

16. EXPEDITED TRIAL PROCEDURE

The parties agree this is not the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A.

17. SCHEDULING

The parties have met and conferred about a potential pretrial schedule and submit the following separate proposals.

a. Plaintiffs' Statement

Plaintiffs propose the following schedule.

Discovery open for all purposes	September 30, 2020
Exchange of initial disclosures	October 5, 2020

Informal discussions / Rule 30(b)(6) deposition into Plaid's ESI	October 2020
Last date for parties to begin rolling document production[5]	12/7/2020
Deadline for completion of document production and production of complete privilege logs	4/2/2021
Close of discovery	7/16/2021
Plaintiffs serve class certification motion and Rule 23 expert witness report(s), if any	9/17/2021
Plaid serves class certification opposition and Rule 23 expert witness report(s), if any	11/1/2021
Plaintiffs serve reply in support of motion for class certification and rebuttal expert report(s), if any	12/15/2021
Class certification hearing	1/7/2022
Deadline for parties to meet and confer re any additional merits discovery	1/21/2022
Parties serve merits expert reports	2/4/2022
Parties serve opposing/rebuttal merits expert reports	3/4/2022
Parties serve reply merits expert reports	3/25/2022
Expert discovery closes	4/8/2022
Deadline for Rule 56 and Daubert motions	5/6/2022
Rule 56 and Daubert oppositions	6/6/2022
Rule 56 and Daubert replies	6/20/2022
Hearing on Rule 56 and Daubert motions	7/8/2022
First Final Pretrial Conference	9/2/2022
Second Final Pretrial Conference	9/30/2022
Trial	Approx. 30 days after Second Final Pretrial Conference

[5] The parties are expected to produce documents along with responses and objections, if any, to document requests. This deadline recognizes that some lag time often exists between the formal response date and the actual start of rolling production, but puts an absolute end date on the start of document production. It is not intended to be a mechanism for either party to withhold document production before that date.

b. Plaid's Statement

Plaid submits that setting a class certification briefing schedule is premature at this time. Accordingly, Plaid proposes the following schedule, for the reasons discussed in Section 8 above:

Event	Date
Initial, focused discovery opens	9/30/2020
Exchange of initial disclosures	10/5/2020
Close of initial, focused discovery	2/5/2021
Deadline for Rule 56 motions on focused discovery topics and any related motions (motions to strike evidence, Daubert motions, etc.)	2/26/2021
Rule 56 and related motion oppositions	3/19/2021
Rule 56 and related motion replies	4/2/2021
Hearing on Rule 56 and related motions	To follow at the Court's convenience.

In the event that the case is not resolved as a result of this focused discovery and motion practice, then the parties and the Court can set an expeditious schedule to complete discovery, further dispositive motions, and trial.

18. TRIAL

Plaintiffs seek, and Plaid reserves its right to, a trial by jury. The parties request that the trial length, date, and other pretrial deadlines be addressed with the Court after ruling on the relevant motions.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

a. Plaintiffs' Statement

Plaintiffs have filed Certifications of Interested Entities or Persons with the Court. Other than putative Class Members and those disclosed by Plaid, Plaintiffs are unaware of any additional non-party interested entities or persons at this time.

b. Plaid's Statement

In its May 21, 2020 filing, Plaid disclosed that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: New Enterprise Associates, a private company; Spark Capital, a private company; Goldman Sachs Investment Partners, a private company; Zach Perret and William Hockey, co-founders of Plaid Inc., individuals; Visa, Inc., a publicly traded company (as was publicly announced on January 13, 2020, Visa, Inc. entered into an agreement to acquire Plaid Inc.).

20. PROFESSIONAL CONDUCT

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. OTHER MATTERS

The parties at this time do not request the attention of the Court with respect to matters other than those outlined above.

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In accordance with Civil Local Rule 5-1, the filer of this document hereby attests that the concurrence to the filing of this document has been obtained from the other signatory, below.

Dated: October 5, 2020

/s/ Shawn M. Kennedy

Shawn M. Kennedy (SBN 218472)
Andrew M. Purdy (SBN 261912)
Bret D. Hembd (SBN 272826)
HERRERA PURDY LLP
4590 MacArthur Blvd., Suite 500
Newport Beach, CA 92660
skennedy@herrerapurdy.com
apurdy@herrerapurdy.com
bhembd@herrerapurdy.com
Telephone: (949) 936-0900
Fax: (855) 969-2050

Nicomedes Sy Herrera (SBN 275332)
Laura E. Seidl (SBN 269891)
HERRERA PURDY LLP
1300 Clay Street, Suite 600
Oakland, CA 94612
nherrera@herrerapurdy.com
lseidl@herrerapurdy.com
Telephone: (510) 422-4700

Rachel Geman (pro hac vice)
Rhea Ghosh (Pro Hac Vice)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
rgeman@lchb.com
rghosh@lchb.com
Telephone: (212) 355-9500
Fax: (212) 355-9592

Michael W. Sobol (SBN 194857)
Melissa A. Gardner (SBN 289096)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
msobol@lchb.com
mgardner@lchb.com
Telephone: (415) 956-1000
Fax: (415) 956-1008

Christopher J. Cormier (*pro hac vice*)
BURNS CHAREST LLP
4725 Wisconsin Avenue, NW
Suite 200
Washington, DC 20016
Telephone: (202) 577-3977
Email: CCormier@BurnsCharest.com

Warren T. Burns (pro hac vice)
Russell Herman (pro hac vice)
BURNS CHAREST LLP
900 Jackson Street, Suite 500
Dallas, TX 75202
wburns@burnscharest.com
rherman@burnscharest.com
Telephone: (469) 904-4550
Fax: (469) 444-5002

C. Jacob Gower (pro hac vice)
BURNS CHAREST LLP
365 Canal Street, Suite 1170
New Orleans LA 70130
jgower@burnscharest.com
Telephone: (504) 799-2845
Fax: (504) 881-1765

Interim Co-Lead Class Counsel

Dated: October 5, 2020

<u>/s/ Ethan D. Dettmer</u>
Ethan D. Dettmer (SBN 196046)
Abigail Augus Barrera (SBN 301746)
Anthony Doc Bedel (SBN 324065)
Ashley Jada Hodge (SBN 287653)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
edettmer@gibsondunn.com
abarrera@gibsondunn.com
tbedel@gibsondunn.com
ahodge@gibsondunn.com
Telephone: (415) 393-8200
Fax: (415) 986-5309

Alexander H. Southwell (pro hac vice)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
asouthwell@gibsondunn.com
Telephone: (212) 351-4000
Fax: (212) 351-4035

Counsel for Defendant Plaid Inc.