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Attorneys for Defendant
Plaid Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DISTRICT

IN RE PLAID INC. PRIVACY LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Case No. 4:20-cv-03056-DMR

DECLARATION OF WHITTY SOMVICHIAN IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAID INC.'S REPLY INS SUPPORT OF MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED AMENDED COMPLAINT

Date: TBA
Time: 1:00 p.m.
Dept: Courtroom 4 – 3rd Floor
Judge: Donna M. Ryu

Trial Date: None Set
Date Action Filed: May 4, 2020

I, Whitty Somvichian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm Cooley LLP, counsel for Defendant Plaid Inc. ("Plaid") in the above-titled action. I make this declaration based on my personal knowledge of the matters stated herein, if called as a witness, I could and would testify competently about them.

2. I submit this Declaration in support of Plaid's Request for Judicial Notice in Support of Plaid Inc.'s Reply in Support of Motion to Dismiss Plaintiffs' Consolidated Amended Complaint ("Plaid's RJN") filed concurrently herewith.

3. Attached hereto as **Exhibit A** is a true and correct copy of the document available at https://web.archive.org/web/20150326011404/https://www.plaid.com/legal/, which contains Plaid's Privacy Policy as of March 26, 2015 (as indicated by the Wayback Machine capture date), with an effective date of November 11, 2013 (as shown on page 7 of the PDF).

4. Attached hereto as **Exhibit B** is a true and correct copy of the document available at https://web.archive.org/web/20141010160817/www.plaid.com/legal/ which contains Plaid's Privacy Policy as of October 10, 2014 (as indicated by the Wayback Machine capture date), with an effective date November 11, 2013 (as shown on page 12 of the PDF).

5. Attached hereto as **Exhibit C** is a true and correct copy of the document available at https://web.archive.org/web/20160319102837/www.plaid.com/legal/ which contains Plaid's Privacy Policy as of March 19, 2016 (as indicated by the Wayback Machine capture date), with an effective date of November 11, 2013 (as shown on page 7 of the PDF).

6. Attached hereto as **Exhibit D** is a true and correct copy of the document available at https://web.archive.org/web/20150919214748/www.plaid.com/legal/ which contains Plaid's Privacy Policy as of September 19, 2015 (as indicated by the Wayback Machine capture date), with an effective date of November 11, 2013 (as shown on page 12 of the PDF).

7. Attached hereto as **Exhibit E** is a true and correct copy of the document available at https://web.archive.org/web/20190101181607/https://plaid.com/legal/ which contains Plaid's End User Privacy Policy as of as of January 1, 2019 (as indicated by the Wayback Machine capture date), with an effective date of June 14, 2018 (as shown on page 1 of the PDF).

8. Attached hereto as **Exhibit F** is a true and correct copy of the document available at https://web.archive.org/web/20190530174759/https://plaid.com/legal/#end-user-privacy-policy which contains Plaid's End User Privacy Policy as of as of May 30, 2019 (as indicated by the Wayback Machine capture date), with an effective date of May 29, 2019 (as shown on page 4 of the PDF).

9. Attached hereto as **Exhibit G** is a true and correct copy of the document available at https://web.archive.org/web/20200101210746/https://plaid.com/legal/ which contains Plaid's End User Privacy Policy as of January 1, 2020 (as indicated by the Wayback Machine capture date), effective December 30, 2019 (as shown on page 2 of the PDF).

10. Each exhibit was downloaded by visiting the publicly available website https://archive.org/web/ (the "Wayback Machine"), searching www.plaid.com/legal, and identifying the version that was captured on the closest date preceding the date when each Plaintiff alleges to have connected their financial accounts to Venmo according to the Consolidated Amended Complaint ("CAC") (the Exhibits' "Capture Date"). CAC ¶¶ 100, 111, 121, 130, 140, 150, 159, 168, 178, 188, 199. While Exhibits A, B, C and D were captured by the Wayback Machine on different dates, they all reflect the same Privacy Policy with the same effective date of November 11, 2013.

11. For Plaintiffs Mullen, Yeomelakis and Sacks, the Wayback Machine did not capture Plaid's Privacy Policy prior to the date when they allegedly linked their financial accounts, but Exhibit A, captured on March 26, 2015 shows an effective date of November 11, 2013, which precedes the dates when they allegedly linked their financial accounts.

12. For Plaintiff Umali and Evans, whose sign-up dates are only listed as a year, 2015 and 2016 respectively, the capture dates are the closest available from the Wayback Machine that predate January 1, 2015 and January 1, 2016, respectively.

13. For Plaintiff Anderson, whose sign-up date is only listed as 2019, the applicable version is either Exhibit E (captured on January 1, 2019 with an effective date of June 14, 2018) or Exhibit F (captured on May 30, 2019 with an effective date of May 29, 2019).

14. Exhibit G, which applies to Plaintiff Sotelo, contains the Privacy Policy effective

December 30, 2019, which is the same effective date as Exhibit A (EFC No. 79-1) attached to the Dettmer Declaration (EFC No. 79) in support of Plaid's Motion to Dismiss (EFC. No 78). Exhibit F confirms that this December 30, 2019 version of the Privacy Policy, previously submitted with Plaid's original Request for Judicial Notice, was in effect before Plaintiff Sotelo allegedly linked his financial account.

15. For the Court's convenience, below is a chart that identifies, for each Plaintiff, the applicable Exhibit, with the Exhibit's Capture Date as shown in the Wayback Machine and the effective date of the Privacy Policy contained therein, as shown by the "Last Updated" dated in the document.

Plaintiff	**App Sign-Up Date**	**Relevant Exhibit**	**Capture Date**	**Privacy Policy Effective Date**
Mullen	**Mar. 2014** Venmo (CAC ¶ 150)	Ex. A	March 26, 2015	November 11, 2013
Yeomelakis	**Mar. 2014** Venmo (CAC ¶ 199)	Ex. A	March 26, 2015	November 11, 2013
Sacks	**June 2014** Venmo (CAC ¶ 159)	Ex. A	March 26, 2015	November 11, 2013
Curtis	**Apr. 2015** Venmo (CAC ¶ 121)	Ex. A	March 26, 2015	November 11, 2013
Mitchell	**Aug. 2015** Venmo (CAC ¶ 140)	Ex. A	March 26, 2015	November 11, 2013
Umali	**2015** Venmo (CAC ¶ 188)	Ex. B	October 10, 2014	November 11, 2013
Schoeneman	**July 2016** Venmo (CAC ¶ 168)	Ex. C	March 19, 2016	November 11, 2013
Evans	**2016** Venmo (CAC ¶ 130)	Ex. D	September 19, 2015	November 11, 2013
Cottle	**Jan. 2019** Venmo (CAC ¶ 111)	Ex E.	January 1, 2019	June 14, 2018
Anderson	**2019** Venmo (CAC ¶ 100)	Ex. E	January 1, 2019	June 14, 2018
		Ex. F	May 30, 2019	May 29, 2019
Sotelo	**Feb. 2020** Venmo (CAC ¶ 178)	Ex. G	January 1, 2020	December 30, 2019

16. Attached hereto as Attachment 1 is the chart from pages 4-5 of Plaid's Motion to

Dismiss, with three columns added to show the analogous disclosures from each version of the Privacy Policy attached as Exhibits A-G hereto.

I declare under penalty of perjury under the law of the United States that the foregoing is true and correct. Executed this 11th day of December 2020 in Oakland, California.

/s/ Whitty Somvichian
Whitty Somvichian

Attorneys for Defendant
Plaid Inc.

Attachment 1

Information Plaintiffs Allege Plaid's End User Privacy Policy Fails To Disclose CAC ¶ 74(h).	**Current[1] Plaid Privacy Policy (ECF No. 79-A) Effective December 30, 2019 & Exhibit G**	**Privacy Policy Effective November 11, 2013** **Exhibits A, B, C, and D**	**Privacy Policy Effective June 14, 2018** **Exhibit E**	**Privacy Policy Effective June 14, 2018** **Exhibit F**
"Plaid collects consumer bank login information directly[.]"	"[W]e collect identifiers and login information required by the provider of your account, such as your username and password, or a security token. In some cases, we also collect your phone number, email address, security questions and answers, and one-time password (OTP) to help verify your identity before connecting your financial accounts." (Ex. G at 4-5).	"[As an end user] you are agreeing to share financial information with us including but not limited to, your account credentials, transactional histories, account numbers and balances/limits as well as general identify data including names and addresses of all account holders. You are enabling us to interact with and through your financial institutions on your behalf and with your consent." (Ex. A at 9; Ex. B at 15-16; Ex. C at 9 and Ex. D at 15).	"When you connect your financial accounts with a developer application, you may provide, through our integrated services, login information required by your financial institution to access your account, such as your username and password, answers to challenge questions, or a security token." (Ex. E at 3).	"[W]e collect login information required by the provider of your account, such as your username and password, answers to challenge questions, or a security token. In some cases, we also collect your phone number to help verify your identity before connecting your financial accounts." (Ex. F at 5.)
"Plaid uses bank login information to access consumers' accounts."	"When providing this information, you give the developer and Plaid the authority to act on your behalf to access and transmit your End User Information from the relevant bank or other entity that provides your financial accounts." (Ex. G at 5).	"You are enabling us to interact with and through your financial institutions on your behalf and with your consent." (Ex. A at 9; Ex. B at 16; Ex. C at 9 and Ex. D at 15).	"When providing this information, you give the developer, and Plaid as its service provider, the authority to act on your behalf to access and transmit your information from the relevant financial institution." (Ex. E at 3).	"When providing this information, you give the developer and Plaid the authority to act on your behalf to access and transmit your information from the relevant financial institution and other financial service provider." (Ex. F at 5.)
"Plaid collects all available private financial and other identifying data	"The data collected from your financial accounts includes information from all your accounts (e.g.,	"[As an end user] you are agreeing to share financial information with us including *but not limited to*, your account credentials,	"The data may include information from all your sub-accounts (e.g., checking, savings, and credit card) accessible	"The data collected from your financial accounts includes information from all your sub-accounts (e.g., checking, savings,

[1] Current in this chart means current as of December 11, 2020, the date of this filing.

from every available account once it accesses the 'linked' account[.]"	checking, savings, and credit card) accessible through a single set of account credentials." (Ex. G at 6). "The information we receive from the financial product and service providers that maintain your financial accounts varies depending on the specific Plaid services developers use to power their applications, as well as the information made available by those providers." (Ex. G at 5).	transactional histories, account numbers and balances/limits as well as general identify data including names and addresses *of all account holders*. You are enabling us to interact with and through your financial institutions on your behalf and with your consent." (emphasis added) (Ex. A at 9; Ex. B at 15-16; Ex. C at 9 and Ex. D at 15).	through a single set of account credentials, even if only a single sub account is designated by you." (Ex. E at 4). "The information we receive from the financial institutions that maintain your financial accounts may vary depending on the specific Plaid services our developers use to power their applications, as well as the information made available by your financial institutions." (Ex. E at 3).	and credit card) accessible through a single set of account credentials." (Ex. F at 6.) "The information we receive from the financial institutions and other financial service providers that maintain your financial accounts varies depending on the specific Plaid services our developers use to power their applications, as well as the information made available by those institutions and providers" (Ex. F at 5.)
Plaid sells the consumer banking data it collects to its clients[.]"	"We do not sell or rent personal information that we collect." (Ex. G at 9). "We share your End User Information for a number of business purposes: With the developer of the application you are using and as directed by that developer (such as with another third party if directed by you)." (Ex. G at 8).	"Plaid does not sell or rent any personal information to marketers or third parties that have not been explicitly authorized (e.g. in the case of a client)." (Ex. A at 10; Ex. B at 17; Ex. C at 10 and Ex. D at 16). "If you authorize an application to access your Plaid account, you acknowledge that we may share financial information with the third party that provides the authorized application." (Ex. A at 10; Ex. B at 17; Ex. C at 10 and Ex. D at 17).	"We do not sell or rent end user information to marketers or other third parties." (Ex. E at 5). "But we do share end user information with third parties as described in this Policy. For example, we share your information with the developer of the application you are using and as directed by that developer." (Ex. E at 5).	"We do not sell or rent end user information to marketers or other third parties." (Ex. F at 7.) "[W]e share your information with the developer of the application you are using and as directed by that developer (such as with another third party if so directed by you)." (Ex. F at 7.)
"Plaid otherwise uses and monetizes the consumer banking data it collects[.]"	"We use your End User Information for a number of business and commercial purposes, including to operate, improve, and protect the services we provide, and	"Plaid uses your personal information as follows: To operate and maintain the Service (such as, overall operating and maintenance, providing customer service, fixing malfunctions, testing our security systems etc.)"	"We use the information we collect to operate, improve, and protect the services we provide, and to develop new services." (Ex. E at 4).	"We use the information we collect to operate, improve, and protect the services we provide, and to develop new Services." (Ex. F at 20.)

	to develop new services." (Ex. G at 7).	(Ex. A at 10; Ex. B at 16; Ex. C at 10 and Ex. D at 16).	.	
"Plaid stores the consumer banking data it collects[.]"	"As permitted under applicable law, even after you stop using an application or terminate your account with one or more developer, we may still retain your information (for example, if you still have an account with another developer)." (Ex. G at 9-10).	"All content submitted by you to the Service or collected on your behalf from a third-party (e.g., client) application or a financial institution (e.g., a bank) may be retained by us indefinitely, even after you terminate your account." (Ex. A at 8; Ex. B at 14; Ex. C at 8 and Ex. D at 13).	"As permitted under applicable law, even after you stop using an application or terminate your account with our developers we may still retain your information (for example, if you still have an account with another developer or if there is residual information within our databases or systems)." (Ex. E at 6).	"As permitted under applicable law, even after you stop using an application or terminate your account with one of our developers, we may still retain your information (for example, if you still have an account with another developer)." (Ex. F at 7.)
Venmo purchases, uses, and stores the consumer banking data collected by Plaid[.]"	"We share your End User Information for a number of business purposes: With the developer of the application you are using and as directed by that developer (such as with another third party if directed by you)." (Ex. G at 8).	"If you authorize an application to access your Plaid account, you acknowledge that we may share financial information with the third party that provides the authorized application." (Ex. A at 10; Ex. B at 17; Ex. C at 10 and Ex. D at 17).	"But we do share end user information with third parties as described in this Policy. For example, we share your information with the developer of the application you are using and as directed by that developer." (Ex. E at 5).	"[W]e share your information with the developer of the application you are using and as directed by that developer (such as with another third party if so directed by you)." (Ex. F at 7.)
"Plaid continues to access accounts and collect, sell and use consumer banking data after the initial connection is made, regardless of whether the consumer continues using the Venmo app[.]"	"As permitted under applicable law, even after you stop using an application or terminate your account with one or more developer, we may still retain your information (for example, if you still have an account with another developer)." (Ex. G at 9-10).	"All content submitted by you to the Service or collected on your behalf from a third-party (e.g., client) application or a financial institution (e.g., a bank) may be retained by us indefinitely, even after you terminate your account." (Ex. A at 8; Ex. B at 14; Ex. C at 8 and Ex. D at 13).	"As permitted under applicable law, even after you stop using an application or terminate your account with our developers we may still retain your information (for example, if you still have an account with another developer or there is residual information within our data bases or systems)." (Ex. E at 6).	"As permitted under applicable law, even after you stop using an application or terminate your account with one of our developers, we may still retain your information (for example, if you still have an account with another developer)." (Ex. F at 7.)

"Plaid does not exercise adequate oversight over how consumer banking data is stored or used after it sells that data to Venmo[.]"	"Please note that this Policy only covers the information that Plaid collects, uses, and shares. It does not explain what developers do with any End User Information we provide to them (or any other information they may collect about you separately from Plaid). This Policy also does not cover any websites, products, or services provided by others. We encourage you to review the privacy policies or notices of developers or those third parties for information about their practices." (Ex. G at 4).	"This policy does not apply to any website, product or service of any third-party company even if the website or application links to (or from) the Service. Plaid does not operate those websites, products, or services - please always review the privacy practices of a company before deciding whether to provide any information to them." (Ex. A at 8; Ex. B at 13; Ex. C at 8 and Ex. D at 12).	"Please note that this Policy only covers the information that Plaid collects, uses, and shares, and it does not explain what our developers do with any end user information we provide to them (or any other information they collect about you, their end user). This Policy also does not cover any websites, products, or services provided by others. We encourage you to review the privacy policies or notices of our developers or those third parties for information about their practices." (Ex. E at 2-3).	Please note that this Policy only covers the information that Plaid collects, uses, and shares, and it does not explain what our developers do with any end user information we provide to them (or any other information they collect about you, their end user). This Policy also does not cover any websites, products, or services provided by others. We encourage you to review the privacy policies or notices of our developers or those third parties for information about their practices. (Ex. F at 5.)