

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-22040-CIV-JORDAN/TORRES

ANGELY MARIA and
TODD NARSON, individually,
and on behalf of all others
similarly situated,

Plaintiffs,

vs.

APPLE COMPUTER, INC., a
foreign corporation for profit,

Defendant.

**DEFENDANT APPLE COMPUTER, INC.'S ANSWER AND
DEFENSES TO CLASS ACTION COMPLAINT**

Defendant Apple Computer, Inc. (“Defendant”), hereby responds and answers the Class Action Complaint (“Complaint”) of Plaintiffs Angely Maria and Todd Narson (“Plaintiffs”) as follows:

1. Answering paragraph 1 of the Complaint, Defendant admits that Plaintiffs purport to bring an action pursuant to 15 U.S.C. § 1681, *et seq.*, and that this Court has jurisdiction. Except as expressly admitted, Defendant denies the remaining allegations contained in paragraph 1.
2. Answering paragraph 2 of the Complaint, Defendant admits that it does business in Miami-Dade County, Florida and that venue is proper in this Court. Defendant admits that it sold and provided products, including iPod

products, to residents of this District. Except as expressly admitted, Defendant denies the remaining allegations contained in paragraph 2.

3. Answering paragraph 3 of the Complaint, Defendant is without knowledge or information sufficient to respond to the truth of the allegations contained therein and, on that basis, neither admits nor denies the allegations in paragraph 3 of the Complaint.

4. Answering paragraph 4 of the Complaint, Defendant admits that Plaintiffs purport to bring an action on behalf of themselves and all others similarly situated under 15 U.S.C. § 1681, *et seq.* Except as expressly admitted, Defendant denies the remaining allegations contained in paragraph 4.

5. Answering paragraph 5 of the Complaint, Defendant admits that it is a California corporation, has its principal place of business in Cupertino, California, and is authorized to do business in the State of Florida. Defendant admits that it conducts business with, and accepts credit card payments from, residents in the Southern District of Florida and throughout the United States through the internet. Except as expressly admitted, Defendant denies the remaining allegations contained in paragraph 5.

6. Answering paragraph 6 of the Complaint, Defendant admits that 15 U.S.C. § 1681c(g) provides that: “No person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the

card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.” Except as expressly admitted, Defendant denies the remaining allegations contained in paragraph 6.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and on that basis, denies the allegations contained in paragraph 7.

8. Defendant neither admits nor denies the allegations contained in paragraph 8 as the statements set forth therein purport to describe legal conclusions and recite the law, and not facts.

9. Defendant denies each and every allegation contained in paragraph 9 of the Complaint.

10. Defendant denies the first sentence of paragraph 10. The second sentence of paragraph 10 is a legal conclusion, is argumentative, and requires no response. To the extent a response is necessary, Defendant denies the second sentence of paragraph 10.

11. Defendant denies each and every allegation contained in paragraph 11 of the Complaint.

12. Answering paragraph 12 of the Complaint, Defendant admits that Plaintiffs purport to seek statutory damages, punitive damages, costs and attorneys fees, as well as a permanent injunction pursuant to 15 U.S.C. § 1681 *et seq.* on

behalf of themselves and their proposed class. Except as expressly admitted, Defendant denies that Plaintiffs are entitled to the relief sought and denies the remaining allegations in paragraph 12.

CLASS ACTION ALLEGATIONS

13. Answering paragraph 13 of the Complaint, Defendant admits that Plaintiffs purport to bring an action on behalf of themselves and all others similarly situated, which Plaintiffs refer to as “Class Members.” Defendant denies that this action may be certified as a class action under Fed. R. Civ. P. 23(a) or 23(b) and, except as expressly admitted, denies the remaining allegations of paragraph 13.

14. Answering paragraph 14 of the Complaint, Defendant admits that Plaintiffs purport to bring an action on behalf of a class defined therein. Defendant denies that the class as so defined may be certified and, except as expressly admitted, denies the remaining allegations of paragraph 14.

15. Defendant denies the factual allegations contained in paragraph 15 of the Complaint. Moreover, paragraph 15 of the Complaint contains legal conclusions and arguments to which no response is required. To the extent any response is required, Defendant denies the allegations in paragraph 15.

16. Defendant denies each and every allegation contained in paragraph 16 of the Complaint.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained in paragraph 17 of the Complaint.

18. Defendant denies each and every allegation contained in paragraph 18 of the Complaint.

19. Defendant denies each and every allegation contained in paragraph 19 of the Complaint, including all its subparts.

20. Defendant denies each and every allegation contained in paragraph 20 of the Complaint.

21. Defendant denies each and every allegation contained in paragraph 21 of the Complaint.

22. Defendant denies each and every allegation contained in paragraph 22 of the Complaint.

CLAIM FOR RELIEF
Violation of 15 U.S.C. § 1681 *et seq.*

23. Defendant hereby incorporates as though fully set forth herein its responses to paragraphs 1 through 22 of Plaintiffs' Complaint above.

24. Defendant denies each and every allegation contained in paragraph 24 of the Complaint.

25. Defendant denies each and every allegation contained in paragraph 25 of the Complaint.

26. Defendant denies each and every allegation contained in paragraph 26 of the Complaint.

27. Defendant admits that Plaintiffs do not seek to quantify or recover actual damages in this case, either for themselves or the Class Members. Except as expressly stated, Defendant denies the remaining allegations in paragraph 27 of the Complaint.

28. Defendant denies each and every allegation contained in paragraph 28 of the Complaint.

29. Defendant denies each and every allegation contained in paragraph 29 of the Complaint.

30. Answering paragraph 30 of the Complaint, Defendant is without knowledge or information sufficient to respond to the truth of the allegations contained therein and, on that basis, neither admits nor denies the allegations in paragraph 30 of the Complaint.

31. Any allegation of the Complaint not specifically admitted is denied.

DEFENSES

Defendant hereby asserts the following defenses to Plaintiffs' claims for relief without assuming the burden of proof when such burden would otherwise be on the Plaintiffs.

FIRST DEFENSE
(Failure to State a Claim)

32. The Complaint, and each purported claim for relief therein, fails to state a claim upon which relief can be granted. The facts as pled in the Complaint do not constitute a violation of FACTA, 15 U.S.C. § 1681 *et seq.*

SECOND DEFENSE
(No Liability)

33. Defendant did not commit any wrongful act against Plaintiffs and/or the members of the putative class. Accordingly, Defendant is not responsible for any alleged damages to Plaintiffs and/or the members of the putative class.

THIRD DEFENSE
(Disproportionate Damages)

34. Defendant alleges that the statutory damages, punitive damages, and attorneys' fees and/or costs sought by Plaintiffs if a class is certified are so disproportionate to the lack of any actual harm that such recovery is barred by law.

FOURTH DEFENSE
(Due Process)

35. The application of FACTA to Defendant would violate the Due Process Clause of the Constitution. Such application of FACTA would be void for vagueness because the terms "receipt," "print," and "point of sale or transaction" are not clearly defined to encompass the type of internet transmission at issue in this case. Additionally, the statutory damages demanded in the Complaint would

violate the Due Process Clause because the damages would be highly disproportionate to the actual or potential harm caused by the complained-of conduct.

FIFTH DEFENSE
(Punitive Damages Unavailable and Unconstitutional)

36. Plaintiffs are not entitled to an award of punitive or exemplary damages in this action. The Complaint fails to allege facts sufficient to warrant an award of punitive damages. A punitive damages award would be an unconstitutional breach of Defendant's rights to due process under the fourteenth amendment of the United States Constitution, under *State Farm v. Campbell*, and safeguards provided under the Constitution of the State of California.

SIXTH DEFENSE
(Reasonableness and Good Faith of Defendant)

37. The claims of Plaintiffs and/or the members of the putative class are barred by the fact that Defendant acted reasonably and in good faith at all times material herein, based on the relevant facts and circumstances known by Defendant at the time Defendant so acted.

SEVENTH DEFENSE
(Not Willful)

38. Defendant is informed and believes, and based thereon alleges, that if any violation of 15 U.S.C. § 1681c(g) occurred, which Defendant specifically denies, said violation was not willful within the meaning of 15 U.S.C. § 1681n(a).

EIGHTH DEFENSE
(Compliance with Law)

39. At all times mentioned herein, Defendant's conduct complied with the applicable statutes and laws. The facts as pled in the Complaint do not constitute a violation of FACTA, 15 U.S.C. §1681 *et seq.*

NINTH DEFENSE
(No Basis for Injunctive Relief)

40. Plaintiffs' claims for injunctive relief are barred. There is no basis for injunctive relief for alleged violations of FACTA, 15 U.S.C. §1681 *et seq.* Moreover, Plaintiffs are not entitled to injunctive relief because, at all times mentioned herein, Defendant complied and continues to comply with the applicable statutes and laws.

TENTH DEFENSE
(Reservation of Additional Defenses)

41. Defendant reserves the right to assert and rely upon such other and further defenses as may be supported by the facts to be determined by full and complete discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays as follows:

1. That Plaintiffs take nothing by this action;
2. That the Complaint be dismissed in its entirety;

3. That Plaintiffs be denied each and every demand and prayer for relief;
4. That Defendant recover its costs and attorney's fees in this action; and
5. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 22, 2007

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 2007, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing:

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