GUTRIDE SAFIER LLP
SETH A. SAFIER (SBN 197427)
seth@gutridesafier.com
MARIE MCCRARY (SBN 262670)
marie@gutridesafier.com
TODD KENNEDY (SBN 250267)
todd@gutridesafier.com
HAYLEY REYNOLDS (SBN 306427)
hayley@gutridesafier.com
100 Pine Street, Suite 1250
San Francisco, California 94111
Telephone: (415) 639-9090
Facsimile: (415) 449-6469

KALI BACKER (admitted *pro hac vice*)
kali@gutridesafier.com
4450 Arapahoe Ave., Suite 100
Boulder, Colorado 80303
Telephone: (415) 639-9090
Facsimile: (415) 449-6469

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

BRANDON BRISKIN on behalf of himself and all others similarly situated, Plaintiff, v. SHOPIFY INC.; SHOPIFY (USA), INC.; and SHOPIFY PAYMENTS (USA), INC., Defendants.	CASE NO. 4:21-cv-06269-PJH **PLAINTIFF'S OPPOSITION TO SHOPIFY PAYMENTS (USA) INC.'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT** Date: April 28, 2022 Time: 1:30 p.m. Judge: Hon. Phyllis Hamilton

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 2

III. LEGAL STANDARD 4

IV. ARGUMENT 4

A. The Court Has Personal Jurisdiction Over Shopify Payments 4

1. *Shopify Payments purposefully directed its activities toward the forum.* 5

2. *Plaintiff's claims arise from Defendants' contact with California.* 9

3. *It is reasonable to exercise jurisdiction over Shopify Payments in California.* 10

B. The SAC Gives Defendants Adequate Notice Pursuant to Rule 8 10

C. Plaintiff Did Not Consent to Defendants' Tortious Conduct. 10

D. Plaintiff States a Claim Under § 631(A). 11

E. Plaintiff States a Claim Under § 635 12

F. Plaintiff States a Claim For Privacy Violations Under The California Constitution and California Common Law Intrusion Upon Seclusion. 13

G. Plaintiff States a Claim Under § 502 13

H. Plaintiff States a Claim Under the UCL Against Shopify Payments. 14

V. CONCLUSION 17

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

TABLE OF AUTHORITIES

CASES

Ashcroft v. Iqbal, 556 U.S. 662 (2009) 4

Baton v. Ledger SAS, 2021 U.S. Dist. LEXIS 215793 (N.D. Cal. Nov. 8, 2021) 9

Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) 4

Bergstein v. Parmar, 2014 WL 12586073 (C.D. Cal. June 23, 2014) 7

Boschetto v. Hansing, 539 F.3d 1011 (9th Cir. 2008) 11

Burger King v. Rudzewicz, 471 U.S. 462 (1985) 8

Calder v. Jones, 465 U.S. 783 (1984) 5

College Source, Inc. v. AcademyOne, Inc., 653 F.3d 1066 (9th Cir. 2011) 6

Collins v. eMachines, Inc., 202 Cal. App. 4th 249 (2011) 17

Daugherty v. Am. Honda Motor Co., 144 Cal. App. 4th 824 (2006) 17

Doe v. Successfulmatch.com, 70 F. Supp.3d 1066 (N.D. Cal. 2014) 18

Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct., 141 S. Ct. 1017 (2021) 8, 10

Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122 (9th Cir. 2003) 5

Hernandez v. Hillsides, Inc., 47 Cal. 4th 272 (2009) 14

Hernandez v. Path, Inc., 2012 U.S. Dist. LEXIS 151035 (N.D. Cal. Oct. 17, 2012) 15

HiQ Labs, Inc. v. LinkedIn Corp., 938 F. 3d 985 (9th Cir. 2019) 7

In re Adobe Sys. Privacy Litig., 66 F. Supp. 3d 1197 (N.D. Cal. 2014) 17

In re Carrier IQ, Inc., Privacy Litig., 78 F. Supp. 3d 1051 (N.D. Cal. 2015) 14

In re Facebook Inc. Internet Tracking Litig., 956 F.3d 589 (9th Cir. 2020) 13

In re iPhone Application Litig., 844 F. Supp. 2d 1040 (N.D. Cal. 2012) 19

In re Nexus 6P Prods. Liab. Litig., 2018 U.S. Dist. LEXIS 23622 (N.D. Cal. Feb. 12, 2018) 12

Kasky v. Nike, Inc., 45 P.3d 243 (Cal. 2002) 16

Lisa McConnell, Inc. v. Idearc, Inc., 2010 WL 364172 (S.D. Cal. 2010) 10

Lukis v. Whitepages, Inc., 454 F. Supp. 3d 746 (N.D. Ill. 2020) 6

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

Mavrix Photo, Inc. v. Brand Techs., Inc.,647 F.3d 1218 (9th Cir. 2011) 5, 6, 8

McCoy v. Alphabet, Inc.,2021 U.S. Dist. LEXIS 24180 (N.D. Cal. Feb. 2, 2021) 19

Myers v. Bennett Law Offices, 238 F.3d 1068 (9th Cir. 2001) 10

Nguyen v. Barnes & Noble, Inc., 763 F. 3d 1171 (9th Cir. 2014) 12

Picot v. Weston, 780 F.3d 1206 (9th Cir. 2015) 8, 11

Ranza v. Nike, Inc., 793 F.3d 1059 (9th Cir. 2015) 4

Ribas v. Clark, 696 P.2d 637 (1985) 18

Rivera v. Peri & Sons Farms, Inc., 735 F.3d 892 (9th Cir. 2013) 12

S.D. v. Hytto Ltd., 2019 WL 8333519 (N.D. Cal. May 15, 2019) 7

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797 (9th Cir. 2004) 4

Sher v. Johnson, 911 F.2d 1357 (9th Cir. 1990) 11

Silver v. Stripe, Inc., 2021 U.S. Dist. LEXIS 141090 (N.D. Cal. July 28, 2021) 12, 15

Usher v. City of Los Angeles, 828 F.2d 556 (9th Cir. 1987) 4

Walden v. Fiore, 134 S. Ct. 1115 (2014) 8

WhatsApp Inc. v. NSO Grp. Techs., Ltd., 472 F. Supp. 3d 649 (N.D. Cal. 2020) 7

Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 433 F.3d 1199 (9th Cir. 2006) 5

STATUTES

Cal. Pen. Code § 631(a) 11

Cal. Penal Code § 502 1

Cal. Penal Code § 635 12

Cal. Penal Code §§ 631 and 635 13

OTHER AUTHORITIES

18 U.S.C. § 2511(1)(a). 11

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

I. INTRODUCTION

Few types of information are more private than a person's finances. The question at the heart of this case is whether Defendants Shopify Inc. ("Shopify"), Shopify (USA), Inc. ("Shopify USA"), and Shopify Payments (USA), Inc. ("Shopify Payments") (collectively "Defendants") can secretly track and collect intimate details about consumers' financial transactions, aggregate those details into profiles, and share the information with their own merchants and third parties to consumers' detriment. Defendants accomplish this surreptitious data collection by concealing their presence on merchants' websites with embedded software. When consumers begin the checkout process on a merchant's website, like IABMFG, for example, they go to a payment form that appears to belong to the merchant, and, as a result, believe they are communicating only with the merchant. In reality, however, Defendants generate the payment form and use it to intercept consumers' information to send directly to their own servers.

Because Defendants do not ask for permission from the outset, consumers have no idea what happens to their data. Behind the scenes, Defendants use it to build individual profiles and provide analysis on transactions to their merchants, thereby allowing them to profit from their unlawful conduct. Those merchants, in turn, use the information to prejudge consumers, including refusing to do business with some consumers entirely. Defendants also share consumer data with third parties, like Stripe, Inc., that also build their own consumer profiles. Because Defendants remain hidden at all points in the transaction, they deprive consumers of the right to opt out of the collection, use, and disclosure of their own data—a right protected under California law.

Given the lengths to which Defendants have exploited consumer data, it should come as no surprise that they launch a litany of defenses. They claim the Court lacks personal jurisdiction over them, even though Defendants subjected themselves to this forum by committing intentional acts that targeted California consumers. Defendants also rely on three policies—two of which were not even posted on websites Plaintiff viewed—to contend that Plaintiff consented to their conduct. But these are unenforceable browsewrap policies.

Defendants' other arguments are equally flawed. Plaintiff states a claim under Cal. Penal Code § 502 because Defendants accessed his data by sending him software code that caused his

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.