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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW PRICE,
Plaintiff,
v.
APPLE, INC.,
Defendant.

Case No. 21-cv-02846-HSG

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 32

United States District Court
Northern District of California

Plaintiff Matthew Price brings this putative class action lawsuit challenging Defendant Apple, Inc.’s alleged policy of terminating the Apple ID accounts of its users who seek credit or debit card payment returns for app purchases that do not work. Plaintiff asserts eight counts of fraud, tort, and unfair competition violations based on Apple’s policy. Apple now moves to dismiss all eight counts, and the motion is fully briefed.¹ See Dkt. No. 32 (“Mot.”), 34 (“Opp.”), 43 (“Reply”). For the reasons below, the Court **GRANTS** the motion.

I. BACKGROUND

For purposes of deciding the motion, the Court accepts the following as true:

Apple is a California corporation that designs and sells smartphones, personal computers, and tablets. These devices run apps and other services for customers to use. To purchase and access the apps, Apple requires its customers to have an Apple ID account and agree to Apple’s terms and conditions (the “Apple Terms”). The Apple Terms contain a termination of services section that reads:

¹ The Court finds the motion appropriate for disposition without oral argument and deems the

TERMINATION AND SUSPENSION OF SERVICES

If you fail, or Apple suspects that you have failed, to comply with any of the provisions of this Agreement, Apple may, without notice to you: (i) terminate this Agreement and/or your Apple ID, and you will remain liable for all amounts due under your Apple ID up to and including the date of termination; and/or (ii) terminate your license to the software; and/or (iii) preclude your access to the Services.

Apple further reserves the right to modify, suspend, or discontinue the Services (or any part or Content thereof) at any time with or without notice to you, and Apple will not be liable to you or to any third party should it exercise such rights.

Dkt. No. 31-1 (Ex. A to First Amended Complaint) at 12.

Plaintiff has had an Apple ID since 2015. Using his Apple ID, Plaintiff has purchased over \$24,000 in apps and services to use on his Apple devices. After some of the apps did not work, Plaintiff complained to Apple. In response, Apple advised him to contact the app developer. When Plaintiff contacted the app developer, the app developer told Plaintiff that it could not return his money or otherwise help him because Plaintiff's purchases were made with Apple. When Plaintiff went back to Apple with his complaints, Apple advised Plaintiff to institute "chargebacks" – requesting payment returns from the bank of the credit or debit card associated with his Apple ID – for those purchases. Following Apple's advice, Plaintiff sought chargebacks for Apple ID purchases of apps that did not work.

In October 2020, after Plaintiff processed his chargebacks, Apple terminated Plaintiff's Apple ID based on its determination that Plaintiff had breached the Apple Terms. As a result, Plaintiff was no longer able to use his Apple ID or the \$24,000 of app services he had purchased using the Apple ID.

Plaintiff first filed this putative class action lawsuit against Apple in April 2021. Dkt. No. 1. Five months later, Plaintiff submitted an amended complaint, bringing the following claims: (1) impermissible liquidated damages clause in violation of California Civil Code Section 1671; (2) unconscionable contract provision in violation of the CLRA; (3) unconscionable liquidated damages clause in violation of the UCL; (4) unfair business practice under the UCL; (5) fraudulent business practice under the UCL; (6) conversion; (7) trespass to chattels; and (8) unjust enrichment. Dkt. No. 31 ("Compl."). Apple now moves to dismiss.

II. LEGAL STANDARD

1 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain
2 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A
3 defendant may move to dismiss a complaint for failing to state a claim upon which relief can be
4 granted under Rule 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only where the
5 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.”
6 *Mendondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule
7 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is plausible on
8 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
9 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that
10 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11 In reviewing the plausibility of a complaint, courts “accept factual allegations in the
12 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.”
13 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nonetheless,
14 courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of
15 fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
16 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). The Court
17 also need not accept as true allegations that contradict matter properly subject to judicial notice or
18 allegations contradicting the exhibits attached to the complaint. *Sprewell*, 266 F.3d at 988.

III. DISCUSSION

19 The Court begins its analysis by noting that Apple’s motion and reply brief repeatedly ask
20 the Court to draw inferences in its favor based on allegations not in the complaint. *See* Mot. at 9
21 (suggesting that “[i]t is far more plausible that [Plaintiff’s] Apple ID was terminated because of
22 his fraudulent activity and breaches of the Terms”); Reply at 8 (stating that Plaintiff “admit[ed] he
23 was terminated for misconduct”). These claims are inaccurate, and Plaintiff did not concede any
24 misconduct. The only relevant statement in the complaint simply says that “Apple determined
25 [Plaintiff] breached its terms and conditions.” Compl. ¶ 21.
26

27 “As a general rule, ‘a district court may not consider any material beyond the pleadings in
28

1 ruling on a Rule 12(b)(6) motion.’ *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)
 2 (quoting *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994)). There are two exceptions:
 3 “material which is properly submitted as part of the complaint” and judicial notice of “matters of
 4 public record.” *Id.* at 688-89 (citations omitted). The suggestion that Plaintiff’s Apple ID was
 5 terminated based on admitted misconduct appears nowhere in the complaint, any exhibits, or any
 6 judicially-noticeable material. The Court thus declines to consider Apple’s improper
 7 characterizations at this stage and warns Apple not to overreach in this manner again in any
 8 renewed motion to dismiss.

9 **A. Liquidated Damages (Claim 1)**

10 Plaintiff’s first claim asserts that the Apple Terms’ termination clause is an unlawful
 11 liquidated damages clause under California Civil Code Section 1671. Plaintiff contends that the
 12 provision “provides a formula by which the amount is certain or readily ascertainable” – namely
 13 the amount an Apple user spent using his Apple ID before termination. Compl. ¶¶ 55-56.

14 Section 1671 of the California Civil Code sets out that:

15 [a liquidated damages clause] is void except that the parties to such a
 16 contract may agree therein upon an amount which shall be presumed
 17 to be the amount of damage sustained by a breach thereof, when, from
 the nature of the case, it would be impracticable or extremely difficult
 to fix the actual damage.

18 Cal. Civ. Code § 1671(c)-(d). In other words, “liquidated damages” is “an amount of
 19 compensation to be paid in the event of a breach of contract, the sum of which is fixed and certain
 20 by agreement[.]” *See Chodos v. W. Publ’g Co.*, 292 F.3d 992, 1002 (9th Cir. 2002) (holding
 21 entitlement to 15% revenue not “liquidated debt” because “revenues to which that percentage
 22 figure is to be applied cannot be calculated with reasonable certainty”); *see also Bayol v. Zipcar,*
 23 *Inc.*, 78 F. Supp. 3d 1252, 1256 (N.D. Cal. 2015) (“To be sufficiently fixed and certain to qualify
 24 as ‘liquidated damages,’ a provision must either set the exact amount (i.e., a single number), or
 25 provide some formula by which the amount is ‘certain or readily ascertainable.’” (quoting *Chodos*,
 26 292 F.3d at 1002)).

27 Here, the formula Plaintiff asserts based on the challenged termination provision leads to

1 terminates a user's Apple ID under the termination provision, Plaintiff's claimed formula leads to
2 damages equal to the value of the apps and services the user purchased and can no longer access –
3 in Plaintiff's case, over \$24,000. The exact amount thus necessarily varies from user to user: it
4 depends on when the Apple ID account was terminated, what the user purchased through his
5 Apple ID account, and what balance he had in his Apple ID account.² Plaintiff's "liquidated
6 damages" theory fails because the termination provision does not contain a fixed or readily
7 ascertainable sum as defined in Section 1671, meaning that it is not a liquidated damages
8 provision at all.

9 Accordingly, the Court grants Apple's motion to dismiss as to Plaintiff's first claim.

10 **B. Unconscionability (Claims 2 and 3)**

11 Apple moves to dismiss Plaintiff's second and third claims on the grounds that the
12 complaint fails to adequately plead unconscionability.

13 "Unconscionability is a question of law for the court." *Williams v. Tesla, Inc.*, No. 20-CV-
14 08208-HSG, 2021 WL 2531177, at *5 (N.D. Cal. June 21, 2021) (quoting *Seifi v. Mercedes-Benz*
15 *USA, LLC*, No. 12-CV-5493 TEH, 2013 WL 2285339, at *4 (N.D. Cal. May 23, 2013)). "Under
16 California law, an agreement is enforceable unless it is both procedurally and substantively
17 unconscionable. Procedural and substantive unconscionability need not be present in equal
18 amounts. The two are evaluated on a 'sliding scale,' which means that the more evidence of
19 procedural unconscionability there is, the less evidence of substantive unconscionability is needed
20 to render the agreement unenforceable, and vice versa." *Id.* (citing *Armendariz v. Foundation*
21 *Health Psychcare Svcs. Inc.*, 24 Cal. 4th 83, 114 (Cal. 2000)). "However, both forms of
22 unconscionability must be present in some amount 'for a court to exercise its discretion to refuse
23 to enforce a contract or clause under the doctrine of unconscionability.'" *Id.* (quoting *Stirlen v.*
24 *Supercuts, Inc.*, 51 Cal. App. 4th 1519, 1521 (Ct. App. 1997), *as modified* (Feb. 10, 1997)).

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26 _____
27 ² Plaintiff's opposition brief offers two entirely different formulas for the purported "liquidated
28 damages," underscoring Apple's contention that the claimed damages are not readily discernible.
29 Opp. at 14-15 (suggesting damages amount is: (1) forfeiting the entire value of apps and services
30 purchased with Apple ID and additional money remaining in Apple ID account; and (2) "all

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