

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JOHN COFFEE, MEI-LING MONTANEZ,
AND S.M., a minor by MEI-LING
MONTANEZ, S.M.’S parent and guardian,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

GOOGLE, LLC,
Defendant.

Case No. 20-cv-03901-BLF

ORDER GRANTING MOTION TO
DISMISS COMPLAINT WITH LEAVE
TO AMEND

[Re: ECF 17]

In this putative nationwide class action, Plaintiffs allege that Loot Boxes – a feature of certain video games – constitute illegal “slot machines or devices” under California’s gambling laws. Compl. ¶ 7, ECF 1. Loot Boxes may be purchased during game play, using virtual currency. Each Loot Box offers a randomized chance at receiving an item designed to enhance game play, such as a better weapon, faster car, or more desirable player appearance (“skin”). Plaintiffs characterize buying a Loot Box as “a gamble, because the player does not know what the Loot Box actually contains until it is opened.” Compl. ¶ 4.

Defendant Google, LLC operates the Google Play store from which software applications (“apps”), including video games containing Loot Boxes, may be downloaded. Google does not create the video game apps or Loot Boxes. Plaintiffs nonetheless allege that Google violates state consumer protection laws by offering video games containing Loot Boxes in its Google Play store

1 Google moves to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6),
 2 arguing that it is immune from liability under Section 230 of the Communications Decency Act of
 3 1996 (“CDA”), 47 U.S.C. § 230; Plaintiffs’ core premise that Loot Boxes are illegal under
 4 California’s gambling laws lacks merit; and Plaintiffs have not alleged essential elements of their
 5 claims. Plaintiffs oppose dismissal. The Court has considered the briefing, oral argument, and
 6 relevant legal authorities.

7 The motion to dismiss is GRANTED WITH LEAVE TO AMEND.

8 **I. BACKGROUND**

9 Plaintiffs are John Coffee (“Coffee”), Mei-Ling Montanez (“Montanez”), and Montanez’s
 10 minor son, S.M. Coffee is a citizen and resident of California, while Montanez and S.M. are
 11 citizens and residents of New York. Compl. ¶¶ 14-16, ECF 1. Although the complaint describes
 12 numerous video games, only two are identified as having been downloaded from the Google Play
 13 store by Plaintiffs. Coffee downloaded Final Fantasy Brave Exvius (“Final Fantasy”) from the
 14 Google Play store onto his Android mobile device in 2018. Compl. ¶ 14. S.M. downloaded
 15 Dragon Ball Z Dokkan Battle (“Dragon Ball Z”) from the Google Play store onto a Samsung
 16 smartphone in 2019. Compl. ¶ 16.

17 Final Fantasy, the app downloaded by Coffee, is a free “role-playing game where players
 18 command their characters to attack and move through a series of stages until they encounter and
 19 defeat the boss.” Compl. ¶ 66. Within the game, virtual currency called “Lapis Crystals” may be
 20 used to “summon” a single, randomized character. Compl. ¶ 67. “Summons are the in-game Loot
 21 Boxes that offer random rewards and characters.” *Id.* “The best characters are the most rare and
 22 difficult to get in the summons.” *Id.* Players may obtain the Lapis Crystals necessary to buy a
 23 summons either as a reward for game play or by purchasing them with real money. Compl. ¶¶ 13,
 24 67-68. Coffee allegedly was “induced to spend money to purchase ‘Loot Boxes’ in-game” while
 25 playing Final Fantasy and other video games. Compl. ¶ 14. “Coffee estimates he has spent in
 26 excess of \$500 on in-game Loot Boxes.” *Id.*

27 Dragon Ball Z, the app downloaded by S.M., “is a free-to-play mobile game based on the

1 levels that work similarly to board games, with spots dedicated to items, power-ups, traps, and
2 fights.” Compl. ¶ 73. “Gamers can unlock new characters with ‘Summons,’ which are the in-
3 game Loot Boxes that offer random rewards and characters.” *Id.* “The best characters are most
4 rare and difficult to get in the Summons.” *Id.* Players must use virtual currency called “dragon
5 stones” to purchase summons. *Id.* Dragon stones may be earned through game play or purchased
6 with real money. Compl. ¶ 74. S.M. allegedly “has been induced to spend his parents’ money to
7 purchase ‘Loot Boxes’ in-game” while playing Dragon Ball Z. Compl. ¶ 17. “Montanez
8 estimates S.M. has spent more than \$100 on in-game purchases including Loot Boxes.” Compl. ¶
9 18.

10 “Google does not itself create these games and the Loot Box mechanism.” Compl. ¶ 13.
11 Most of the video games available for download from the Google Play store are free, including the
12 two apps downloaded by Plaintiffs. Compl. ¶¶ 24, 66, 72. Plaintiffs allege that Google
13 nonetheless profits from apps containing Loot Boxes because “[p]ayment for the Apps, including
14 all in-game purchases after the game is downloaded by the consumer (e.g., Loot Boxes), is
15 controlled entirely by Google.” Compl. ¶ 28. Plaintiffs allege that payments for in-game
16 purchases are made “[u]sing Google Play’s payment system, the payments go directly to Google
17 and, after Google takes its 30% of the total, the remainder is distributed to the App developer.” *Id.*
18 Thus, according to Plaintiffs, “for every Loot Box sale in a game downloaded from the Google
19 Play store, Google receives 30% of the revenue before the developer gets any money at all.” *Id.*

20 These and other allegations suggest that players buy Loot Boxes directly from Google with
21 real money. *See, e.g.*, Compl. ¶ 4 (“Loot Boxes are purchased using real money”). However, the
22 complaint makes clear that Loot Boxes may be purchased only in-game, and only with virtual
23 currency. *See* Compl. ¶¶ 67 (alleging that in Final Fantasy a summons must be purchased with
24 virtual currency called Lapis Crystals), 73 (alleging that in Dragon Ball Z “Summons can only be
25 purchased with the in-game currency, called ‘dragon stones’”). Reading the complaint as a whole,
26 the Court understands Plaintiffs to allege that players may use Google Play’s payment system to
27 buy virtual currency from an app developer; Google takes a 30% commission and transmits the
28 remainder of the purchase price to the app developer, and the virtual currency then may be used

1 for in-app purchases of items such as Loot Boxes. *See* Compl. ¶¶ 26-28, 67, 73.

2 Plaintiffs assert that “Google’s predatory Loot Box scheme” entices consumers, including
 3 children, to engage in gambling and similar addictive conduct. Compl. ¶¶ 1, 18. According to
 4 Plaintiffs, “Loot Boxes have all the hallmarks of a Las Vegas-style slot machine, including the
 5 psychological aspects to encourage and create addiction – especially among adolescents.” Compl.
 6 ¶ 7. In fact, Plaintiffs assert that under California law Loot Boxes “constitute illegal ‘slot
 7 machines or devices’ when played on a mobile phone, tablet, computer, or other similar device.”
 8 *Id.* Plaintiffs allege that “Governments, regulators, and psychologists all agree that Loot Boxes,
 9 like the ones in games Defendant offers through its Google Play store, operate as gambling
 10 devices for those that play the game, including minors, and that they create and reinforce addictive
 11 behaviors.” Compl. ¶ 8. Comparing Google’s conduct to the “Joe Camel” advertising campaign,
 12 Plaintiffs contend that “Google relies on creating addictive behaviors in kids to generate huge
 13 profits for the Company.” Compl. ¶ 2.

14 Plaintiffs assert three state law claims against Google: (1) unlawful and unfair business
 15 practices in violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §
 16 17200, *et seq.*; (2) unfair and deceptive acts and practices in violation of California’s Consumers
 17 Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*; and (3) unjust enrichment under
 18 unspecified state law. Google seeks dismissal of all three claims under Rule 12(b)(6).

19 II. LEGAL STANDARD

20 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
 21 claim upon which relief can be granted tests the legal sufficiency of a claim.” *Conservation Force*
 22 *v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quotation marks and citation omitted). While
 23 a complaint need not contain detailed factual allegations, it “must contain sufficient factual matter,
 24 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
 25 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is
 26 facially plausible when it “allows the court to draw the reasonable inference that the defendant is
 27 liable for the misconduct alleged.” *Id.* When evaluating a Rule 12(b)(6) motion, the district court

1 reference, and matters which are subject to judicial notice. *See Louisiana Mun. Police Employees'*
2 *Ret. Sys. v. Wynn*, 829 F.3d 1048, 1063 (9th Cir. 2016) (citing *Tellabs, Inc. v. Makor Issues &*
3 *Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

4 **III. DISCUSSION**

5 Google disputes Plaintiffs' characterization of Loot Boxes as illegal slot machines or
6 devices under California's gambling laws. However, Google argues that the Court need not reach
7 the legality of Loot Boxes in order to grant the motion to dismiss, because Google is immune from
8 liability under Section 230 of the CDA. Google also asserts that Plaintiffs have not alleged
9 essential elements of their claims. In opposition, Plaintiffs argue that Google is not immune from
10 liability under the CDA, that Loot Boxes constitute illegal slot machines or devices under
11 California law, and that all claims in the complaint are adequately alleged.

12 At the hearing, the Court indicated that it would dismiss the complaint on immunity
13 grounds under Section 230 of the CDA, with leave to amend, and that it might defer to a later
14 stage of the proceedings the question of whether Loot Boxes constitute illegal gambling devices.
15 That question presents several thorny issues, the resolution of which could have a profound impact
16 on video games, developers, and players. The Court concludes that it would be imprudent to
17 address those issues on the scant record before it, particularly when all claims in the complaint are
18 subject to dismissal on other grounds. For purposes of the present motion, it is unnecessary to
19 determine whether Loot Boxes are illegal slot machines or devices under California's gambling
20 laws.¹

21 Accordingly, the Court limits its evaluation of the motion to Google's arguments that it is
22 entitled to immunity under the CDA and that Plaintiffs have not alleged essential elements of their
23 claims. Before taking up those arguments, however, the Court addresses the parties' requests for
24 judicial notice.

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¹ The Court's decision to defer consideration of issues relating to Loot Boxes' alleged illegality
does not preclude Plaintiffs from amending their allegations regarding illegality, with the *caveat*
that Plaintiffs may not add new claims or parties absent prior leave of the Court. At the hearing,
the Court and counsel engaged in a robust discussion of Plaintiffs' theory of the case, and

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