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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. 5:20-cv-03901-BLF

**PLAINTIFFS' OPPOSITION TO
DEFENDANT GOOGLE LLC'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

CLASS ACTION

District Judge Beth Labson Freeman
Courtroom 3, 5th Floor, San Jose
Magistrate Judge Susan van Keulen
Courtroom 6, 4th Floor, San Jose

Complaint Filed: June 12, 2020
Trial Date: Not Set

JURY TRIAL DEMANDED

Pursuant to Civil Local Rules 3-12 and 7-11, Plaintiffs John Coffee, Mei-Ling Montanez and S.M., a minor by Mei-Ling Montanez, S.M.'s parent and guardian, hereby oppose Defendant Google LLC's Administrative Motion to consolidate the instant "loot box" case with the following factually distinct "casino" cases:

Case Name	Case Number	Assigned Judge	Filing Date
<i>Sparks v. Google LLC, et al.</i>	5:21-cv-01516-NC	Judge Nathanael M. Cousins	03/03/2021
<i>Long v. Google LLC, et al.</i>	5:21-cv-01589-NC	Judge Nathanael M. Cousins	03/05/2021
<i>Lords v. Google LLC, et al.</i>	5:21-cv-01725-NC	Judge Nathanael M. Cousins	03/11/2021
<i>Bruschi v. Google LLC, et al.</i>	5:21-cv-01992-SVK	Judge Susan van Keulen	03/22/2021
<i>Andrews v. Google LLC</i>	3:21-cv-02100-WHO	Judge William H. Orrick III	03/25/2021

Pursuant to Local Rule 3-12(a), relation is only appropriate if "(1) The actions concern substantially the same parties, property, transaction or event; and (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges." At least as to *Coffee*, which is the "loot box" case, none of these factors are met. Plaintiffs in *Coffee* take no position on whether any of the above-listed "casino" cases should be related to each other.

The iconic song from the children's show "Sesame Street" applies. As the song goes, "One of these things is not like the others. One of these things just doesn't belong." Here, in addition to meeting none of Local Rule 3-12(a)'s requirements, *Coffee* has nothing in common with the other cases. The crux of *Coffee* concerns Google's partnership with videogame developers to market and sell loot boxes to minors and others within certain videogames. *See* ECF No. 59, ¶¶ 1-10. None of the other cases involve loot boxes. And to the *Coffee* Plaintiffs' knowledge, loot boxes are not found in any of the "social casino" games that are the subject of the other cases. Notably, Google itself does not claim there is a single game in any of the other cases that is also the subject of the instant case.

1 Further, these cases only involve a single overlapping party – Google. All the other parties
2 are different. Even the members of the proposed classes are different, at least as to *Coffee*.

3 Similarly, there is no “property, transaction, or event” in common between *Coffee* and the
4 casino cases – and Google fails to identify any. Instead, Google asserts it intends to raise a legal
5 issue – immunity under 47 U.S.C. § 230, *et seq.* – in each case. But that is a legal issue, not a party,
6 property, transaction, or event. The fact that it will seek to apply a legal rule to a variety of cases
7 does not make those cases related. In fact, one other court has already decided that very same legal
8 issue in a much more factually similar loot box case that is not related. *See Taylor, et al. v. Apple*
9 *Inc.*, Case No. 3:20-cv-03906 (N.D. Cal. March 19, 2021); ECF Nos. 15 and 16. Similarly, Google’s
10 assertion that there is overlap of a dispositive issue regarding each Plaintiff’s unjust enrichment
11 claim is specious – it did not even make this argument in its Motion to Dismiss *Coffee*. *See* ECF No.
12 17 at pp. 22-24.

13 Google’s fixation on its payment system does not help it. As even Google admits, all money
14 received from app game players must go through the Google Play system. Under Google’s analysis,
15 that would mean every lawsuit concerning apps in its Google Play Store should be deemed related,
16 regardless of the parties or subject matter.

17 Nor are there any notable economies to be gained in discovery if the cases are related and
18 litigated before the same judge. While there may be one or two similar legal issues to resolve in a
19 motion to dismiss, there is not a sufficient factual similarity to justify relating the cases. Contrary to
20 Google’s claim, any “burden” caused by potentially “duplicative” discovery (which Google does
21 not identify) is not “unduly” so, and in any event, is easily remedied by counsels’ good faith
22 obligation to work with each other throughout the litigation – present in every case.

23 Finally, although there are several loot box cases filed in this District that assert generally
24 similar theories as asserted in *Coffee*, on October 13, 2020, this Court rejected an attempt by a game
25 developer that includes loot boxes in its games to relate the actions against Google and Apple for
26 their roles in facilitating and selling loot boxes. *See* ECF No. 46. If relation was not appropriate
27 there, it certainly is not appropriate here, where the actions are factually distinct, involve different
28 parties, and do not involve the same property, transaction, or event.

1 Accordingly, Plaintiffs Coffee and Montanez respectfully request that the cases be deemed
2 not related to the instant action.

3
4 Dated: April 1, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify:

1. That on April 1, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List as follows:

Attorneys for Defendant Google LLC, Case No. 5:20-cv-03901-BLF

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2. That on April 1, 2021, I caused the foregoing to be served on the non-CM/ECF participants by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the **attached Service List**.

3. That there is regular communication by mail between the place of mailing and the places so addressed

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 1, 2021.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

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