

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 FIRST AMENDED
COMPLAINT WITHOUT LEAVE TO
AMEND; AND DISMISSING ACTION
WITH PREJUDICE

[Re: ECF 66]

In this putative class action, Plaintiffs allege that Defendant Google, LLC violates state consumer protection laws by distributing game applications (“apps”) containing “Loot Boxes” through its Play Store. A Loot Box, which may be purchased in-app during play of some games, offers the player a randomized chance to receive an item designed to enhance the gaming experience, such as a better weapon, faster car, or more desirable player appearance. The player does not know what specific item any given Loot Box contains at the time of purchase, so the player runs the risk of being dissatisfied. Plaintiffs allege that Loot Boxes are illegal slot machines¹ under California law, and that Google is civilly liable to all persons in the United States who purchased a Loot Box in an app downloaded from the Google Play Store.

¹ The parties use the terms “slot machine,” “gambling device,” and “gambling machine” interchangeably. For ease of reference, the Court uses the term “slot machine.”

1 Google moves to dismiss the first amended complaint (“FAC”) under Federal Rule of Civil
 2 Procedure 12(b)(6). The Court has considered the parties’ written submissions as well as the oral
 3 arguments of counsel presented at the hearing on October 19, 2021. For the reasons discussed
 4 below, Google’s motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND and the
 5 action is DISMISSED WITH PREJUDICE.

6 I. BACKGROUND

7 Google’s Play Store features more than 2.9 million apps, most of which are free to
 8 download. FAC ¶ 20. Plaintiffs claim that Google works “in concert with game developers” to
 9 monetize free games through in-app purchases, specifically, Loot Boxes. *Id.* Google allegedly
 10 prohibits apps containing other forms of gambling, but encourages developers to place Loot Boxes
 11 in game apps. *Id.* ¶¶ 4-6. According to Plaintiffs, Loot Boxes foster compulsive and addictive
 12 gambling behavior and constitute illegal slot machines under California law. *Id.* ¶¶ 3-5. In 2018,
 13 Loot Boxes generated revenue in excess of \$30 billion. *Id.* ¶ 45. Although Google itself does not
 14 create the game apps available in the Play Store, or the Loot Boxes featured in some games,
 15 Google allegedly has taken steps to ensure that it receives a cut of the profits generated by Loot
 16 Boxes. *Id.* ¶ 9.

17 Plaintiffs allege that such steps include Google’s requirement that developers who wish to
 18 distribute apps through the Play Store must enter into a “Developer Distribution Agreement” that
 19 creates an agency relationship whereby Google acts as each developer’s “Merchant of Record” for
 20 products sold or made available through the Play Store. FAC ¶¶ 22-27. Plaintiffs also point to
 21 Google’s requirement that developers use Google’s Software Development Kit, containing code
 22 written and developed by Google. *Id.* ¶ 33. The Software Development Kit is the means by which
 23 developers access the Google Play payment processor. *Id.* Google processes all in-app purchases,
 24 taking a 30% cut of every purchase before transferring the remainder of the funds to the developer.
 25 *Id.* ¶ 9.

26 Plaintiffs also claim that “Google and its game developers have a revenue sharing
 27 arrangement where Google receives 30% of all revenue from the sale of loot boxes.” FAC ¶ 29.

28 Plaintiffs offer two theories as to how this alleged revenue sharing arrangement works. The first

1 theory is set forth in the FAC, which alleges that a player uses money in the form of a credit card
2 or gift card to purchase virtual currency such as gems or coins through the Play Store, and then
3 uses the virtual gems or coins to make an in-game purchase of a Loot Box. *Id.* ¶ 44. The FAC
4 contains no facts suggesting that Google has any involvement in the second part of this two-step
5 transaction, the purchase of the Loot Box with virtual currency. Plaintiffs do not allege that
6 Google tracks how players spend their virtual currency or that Google derives greater profit if the
7 virtual currency is used to buy Loot Boxes rather than other in-game items. Plaintiffs gloss over
8 the difference between real dollars virtual currency, alleging that “[w]ether the purchase is viewed
9 as being made with fiat currency or with property in the form of virtual currency purchased with
10 money, a loot box play costs real money.” *Id.* Based on the FAC’s explanation of how Loot
11 Boxes are purchased, the Court understands the assertion that Google “receives 30% of all revenue
12 from the sale of loot boxes,” FAC ¶ 29, to mean that Google receives 30% of all revenue from the
13 sale of *virtual currency*, which players in turn use to purchase Loot Boxes.

14 A second theory regarding revenue sharing is offered in Plaintiffs’ opposition and post-
15 hearing submissions. In those filings, Plaintiffs assert that Loot Boxes may be purchased directly
16 from the Play Store with money. To the extent Google processes Loot Box sales made directly
17 through the Play Store and paid for with money, Google presumably retains 30% of the revenue
18 from Loot Box sales. *See* FAC ¶ 9 (alleging that Google handles “all of the transactions with
19 gamers, including taking a 30% cut of all money spent by players before transferring the
20 remainder to the developer”).

21 Plaintiffs assert that Google’s conduct in promoting and selling Loot Boxes renders
22 Google civilly liable to a nationwide class consisting of “[a]ll persons who paid to receive
23 randomized virtual items from a purchase (also known as “loot boxes”) within an app downloaded
24 from the Google Play Store.” FAC ¶ 170. The named Plaintiffs allege that they bought Loot
25 Boxes within apps downloaded from the Play Store in transactions described as follows.

26 Plaintiff John Coffee (“Coffee”) is a citizen and resident of California. FAC ¶ 11. Coffee
27 downloaded the game app Final Fantasy Brave Exvius (“Final Fantasy”) from the Play Store onto

28 his Android mobile device for free. *Id.* ¶ 11-70. Final Fantasy is a role-playing game in which

1 players move their characters through a series of stages with the ultimate goal of confronting and
 2 defeating the “boss.” *Id.* ¶ 70. Players of Final Fantasy may purchase a Loot Box called a
 3 “Summons” using in-game virtual currency called “Lapis Crystals.” *Id.* ¶ 71. Lapis Crystals may
 4 be earned through game play or may be purchased through the Play Store for money. *Id.* ¶¶ 71-72.
 5 Plaintiffs allege that Coffee “purchased virtual coins with money to buy chances on loot boxes and
 6 lost property in the form of the virtual coins he used to buy chances on loot boxes.” *Id.* ¶ 11.
 7 Coffee allegedly spent more than \$500 in the Play Store on virtual currency to purchase Loot
 8 Boxes in a dozen game apps, including Final Fantasy. *Id.* Plaintiffs do not specify what portion
 9 of Coffee’s virtual currency was spent on Loot Boxes in Final Fantasy. *Id.*

10 Plaintiffs Mei-Ling Montanez (“Montanez”), and Montanez’s minor son, S.M., are citizens
 11 and residents of New York. FAC ¶¶ 12-13. S.M. downloaded the game app Dragon Ball Z
 12 Dokkan Battle (“Dragon Ball Z”) from the Play Store onto a Samsung smartphone for free. *Id.* ¶¶
 13 12-13, 75. Dragon Ball Z “is made up of levels that play like a board game, with spots dedicated
 14 to items, power-ups, traps, and fights.” *Id.* ¶ 77. Players may purchase a Loot Box called a
 15 “Summons” using in-game currency called “dragon stones.” *Id.* ¶ 76. Plaintiffs allege that “S.M.
 16 purchased virtual coins to buy chances on loot boxes and lost property in the form of the virtual
 17 coins when he used them to buy chances on loot boxes.” *Id.* ¶ 12. S.M. allegedly has spent more
 18 than \$100 in the Play Store, at least some of which was his parents’ money, on items that included
 19 virtual currency to buy Loot Boxes. *Id.* ¶ 13. Plaintiffs do not specify how much virtual currency
 20 S.M. spent on Loot Boxes in Dragon Ball Z.

21 Plaintiffs filed this suit against Google in June 2020, claiming that Google is civilly liable
 22 to all persons who have purchased Loot Boxes in game apps downloaded from the Play Store.
 23 Compl., ECF 1. Plaintiffs asserted claims for violation of California’s Unfair Competition Law
 24 (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, violation of California’s Consumers Legal
 25 Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, and unjust enrichment. *See* Compl.,
 26 ECF 1. In a written order issued on February 10, 2021 (“Prior Dismissal Order”), the Court
 27 granted Google’s motion to dismiss the complaint with leave to amend. *See* Prior Dismissal

28 Order, ECF 56. The Court observed that the complaint described numerous games, but only two

1 that were downloaded from the Play Store by Plaintiffs. *See id.* at 2. Focusing on those two
2 games, the Court found meritorious Google’s arguments that it is immune from suit under Section
3 230 of the Communications Decency Act of 1996 (“CDA”), 47 U.S.C. § 230, and that Plaintiffs
4 had failed to state a claim. *See id.* at 7-21. The Court did not reach Google’s argument
5 challenging Plaintiffs’ characterization of Loot Boxes as illegal slot machines under California
6 law. *See id.* at 5.

7 Plaintiffs thereafter filed the operative FAC, reasserting their UCL, CLRA, and unjust
8 enrichment claims. *See* FAC, ECF 59. Plaintiffs again make allegations about numerous game
9 apps, but they allege that they themselves downloaded only two: Final Fantasy and Dragon Ball
10 Z. *See id.* ¶¶ 11-13. The FAC contains four claims against Google under California law: (1)
11 violation of the unlawful prong of California’s UCL; (2) violation of the unfair prong of
12 California’s UCL; (3) violation of California’s CLRA; and (4) unjust enrichment under California
13 law. *See* FAC, ECF 59. Plaintiffs seek to represent a nationwide class of “[a]ll persons who paid
14 to receive randomized virtual items from a purchase (also known as ‘loot boxes’) within an app
15 downloaded from the Google Play Store.” FAC ¶ 170. Plaintiffs seek restitution and
16 disgorgement of the revenues obtained from Google’s allegedly wrongful conduct, as well as
17 declaratory and injunctive relief. *See* FAC Prayer.

18 II. LEGAL STANDARD

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

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