UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RACHAEL SHAY, individually and on behalf of all others similarly situated,

Plaintiff,

v.

APPLE INC. and APPLE VALUE SERVICES, LLC,

Defendant.

Case No.: 20cv1629-GPC(BLM)

**ORDER GRANTING DEFENDANTS' PARTIAL MOTION TO DISMISS THE SECOND AMENDED COMPLAINT WITHOUT LEAVE TO AMEND**

**[DKT. NO. 21.]**

Before the Court is Defendants' partial motion to dismiss the second amended complaint. (Dkt. No. 21.) Plaintiff filed an opposition and Defendants replied. (Dkt. Nos. 23, 24.) Based on the reasoning below, the Court GRANTS Defendants' partial motion to dismiss the second amended complaint without leave to amend.

**Background**

This case was removed from state court on August 21, 2020. (Dkt. No. 1.) On January 8, 2021, the Court granted in part and denied in part Defendants' motion to dismiss the first amended complaint with leave to amend. (Dkt. No. 17.) On January 28, 2021, Plaintiff Rachael Shay ("Plaintiff") filed the operative putative second amended class action complaint ("SAC") against Defendants Apple, Inc. and Apple Value

Services, LLC ("Defendants" or "Apple") for claims under the 1) California Legal Remedies Act, ("CLRA"), California Civil Code §1750 *et seq*.; 2) violations of the Unfair Competition Law ("UCL"), California Business &Professions Code section 17200 *et. seq*.; 3) negligent misrepresentation; and 4) breach of the implied warranty of merchantability. (Dkt. No. 18, SAC ¶¶ 41-88.)

The SAC alleges that Defendants manufactured, marketed, sold and/or distributed valueless Apple gift cards that they knew or should have known was subject to an "ongoing scam where the funds on the gift cards are fraudulently redeemed by third parties accessing the Personal Identification Number ("PIN") prior to use by the consumer." (*Id.*, SAC ¶ 2.) On April 3, 2020, Plaintiff purchased a $50 Apple gift card from Walmart in Encinitas, CA as a gift for her son. (*Id.* ¶ 10.) When her son attempted to load the gift card, he received a message that the gift card had already been redeemed. (*Id.*) Plaintiff contacted Defendants and was informed that the gift card was redeemed by another account on April 3, 2020, the same day she bought the card, and the card no longer had any value. (*Id.*) Defendants would not provide any additional information about who redeemed the code, other than it was an account unrelated to Plaintiff or her son. (*Id.*) Defendants informed her that there was nothing they could do for her, that her case was closed, and any further contact would go unanswered. (*Id.*) If Plaintiff had known about the truth about the defect of Defendants' gift card, she would not have purchased it. (*Id.*)

Plaintiff seeks to bring this class action on behalf of the following:

> Nationwide Class:
> All consumers in the United States who purchased an Apple gift card wherein the funds on the Apple gift card was (sic) redeemed prior to use by the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.
>
> California Subclass:
> All consumers in the State of California who purchased an Apple gift card wherein the funds on the Apple gift card was (sic) redeemed prior to use by

> the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.

(*Id.* ¶ 32.)

Defendants move to dismiss the UCL claim in its entirety, the CLRA to the extent she seeks equitable relief in addition to or in lieu of damages, and the breach of the implied warranty of merchantability. (Dkt. No. 21.) Plaintiff filed an opposition and Defendants filed a reply. (Dkt. Nos. 23, 24.)

## Discussion

### A. Legal Standard on Federal Rule of Civil Procedure 12(b)(6)

Federal Rule of Civil Procedure ("Rule") 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't.,* 901 F.2d 696, 699 (9th Cir. 1990). Under Federal Rule of Civil Procedure 8(a)(2), the plaintiff is required only to set forth a "short and plain statement of the claim showing that the pleader is entitled to relief," and "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007).

A complaint may survive a motion to dismiss only if, taking all well-pleaded factual allegations as true, it contains enough facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling

the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted). In reviewing a Rule 12(b)(6) motion, the Court accepts as true all facts alleged in the complaint, and draws all reasonable inferences in favor of the plaintiff. *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009).

Where a motion to dismiss is granted, "leave to amend should be granted 'unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.'" *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). In other words, where leave to amend would be futile, the Court may deny leave to amend. *See DeSoto*, 957 F.2d at 658; *Schreiber*,

**B. UCL and CLRA Claims for Failing to Plead Inadequate Remedy at Law**

Defendants move to dismiss the UCL claim and the CLRA claim to the extent it seeks equitable relief arguing that Plaintiff has not alleged an inadequate remedy at law relying on *Sonner v. Premier Nutrition Corp*., 971 F.3d 834 (9th Cir. June 17, 2020). (Dkt. No. 21 at 8-11.[1]) Plaintiff opposes arguing it can seek both actual damages and equitable relief relying on *Moore v. Mars Petcare U.S., Inc.*, 966 F.3d 1007, 1021 n. 13 (9th Cir. July 28, 2020).

Under the UCL, a plaintiff may only seek the equitable relief of restitution and/or an injunction. *Korea Supply Co. v. Lockheed Martin Corp*., 29 Cal. 4th 1134, 1144 (2013) ("Through the UCL a plaintiff may obtain restitution and/or injunctive relief against unfair or unlawful practices."). The CLRA allows for a number of remedies including actual damages, restitution, injunctive relief and punitive damages. *See* Cal. Civ. Code § 1780.

[1] Page numbers are based on the CM/ECF pagination.

The SAC seeks restitution and injunctive relief under the CLRA and UCL claims and alleges that "[i]n the event adequate legal remedies are lacking", Plaintiff seeks an injunction and restitution. (Dkt. No. 18, SAC ¶¶ 46, 65.)

In *Sonner*, the Ninth Circuit, relying on United States Supreme Court precedent, held that "traditional principles governing equitable remedies in federal courts, including the requisite inadequacy of legal remedies, apply when a party requests restitution under the UCL and CLRA in a diversity action.[2]" *Sonner v. Premier Nutrition Corp*., 971 F.3d 834, 844 (9th Cir. 2020). In line with this, the court held that a plaintiff must allege that she "lacks an adequate remedy at law before securing equitable restitution for past harm under the UCL and CLRA." *Id.* (citations omitted). Pointing out that the operative complaint did not allege that Sonner lacked an adequate legal remedy and the equitable restitution she sought was the same as damages she sought to compensate for the same past harm, the Ninth Circuit affirmed dismissal of the equitable restitution claim under the UCL and CLRA. *Sonner*, 971 F.3d at 844 (citing *O'Shea v. Littleton*, 414 U.S. 488, 502 (1974) (holding that a complaint seeking equitable relief failed because it did not plead "the basic requisites of the issuance of equitable relief" including "the inadequacy of remedies at law")).

While *Sonner*'s holding was limited to the equitable relief of restitution, *Sonner*, 971 F.3d at 842 (noting that "injunctive relief [was] not at issue"), district courts have held that the "adequate remedy at law" requirement applies to equitable relief, which includes injunctive relief claims. *See Audrey Heredia v. Sunrise Senior Living LLC*, Case No. 8:18-cv-01974-JLS-JDE, 2021 WL 819159, at *4 (C.D. Cal. Feb. 10, 2021) (inadequate remedy at law applies to all claims for equitable relief) (citing *IntegrityMessageBoards.com v. Facebook, Inc*., No. 18-CV-05286-PJH, 2020 WL

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[2] The SAC alleges CAFA jurisdiction. (Dkt. No. 18, SAC ¶ 6). CAFA vests federal courts with "'original' diversity jurisdiction over class actions." *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020–21 (9th Cir. 2007). Thus, the reasoning of *Sonner* applies to this case.

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