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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KATHERINE MURPHY, MONIQUE  
PAYAN, DAMIEN UHL, and those  
similarly situated,  
  
Plaintiffs,  
  
v.  
  
ROBLOX CORPORATION, a Delaware  
corporation,  
  
Defendant.

Case No.: 23-CV-1940 TWR (BLM)  
  
**ORDER GRANTING IN PART  
DEFENDANT’S MOTION TO  
DISMISS PLAINTIFFS’ SECOND  
AMENDED CLASS ACTION  
COMPLAINT**  
  
(ECF No. 35)

Presently before the Court is Defendant Roblox Corporation’s Motion to Dismiss Plaintiffs’ Second Amended Class Action Complaint (“Mot.,” ECF No. 35), as well as Plaintiffs Katherine Murphy, Monique Payan, and Damien Uhl’s Response in Opposition to (“Opp’n,” ECF No. 36), Defendant’s Reply in Support of (“Reply,” ECF No. 37) the Motion, Plaintiffs’ Supplemental Brief (“Pls.’ Supp. Br.,” ECF No. 39), and Defendant’s Supplemental Brief (“Def.’s Supp. Br.,” ECF No. 40). Defendant has also filed a Request for Judicial Notice (“Def.’s RJN,” ECF No. 35-1), which Plaintiffs oppose. (*See* ECF No. 36-2 (“RJN Opp’n”).) The Court held a hearing on June 13, 2024. (*See* ECF No. 41; *see also* ECF No. 42 (“Tr.”).) Having carefully considered the Parties’ arguments, Plaintiffs’ Second Amended Class Action Complaint for Damages (“SACAC,” ECF No. 14), and the

1 applicable law, the Court **DENIES** Defendant’s Request for Judicial Notice, **GRANTS IN**  
2 **PART** Defendant’s Motion, and **DISMISSES WITHOUT PREJUDICE** the causes of  
3 action asserted in Plaintiffs’ Second Amended Class Action Complaint.

## 4 **BACKGROUND**

### 5 **I. Plaintiffs’ Allegations<sup>1</sup>**

#### 6 **A. Defendant and Its Product**

##### 7 **1. Roblox and Robux**

8 Roblox, which was developed by Defendant in 2004, is a gaming platform designed  
9 to bring users together in a virtual universe, or “metaverse,” that “is entirely user  
10 generated.” (See SACAC ¶¶ 2, 23.) Roblox consists of two “layers”: the Roblox Client  
11 and the Roblox Studio. (See *id.* ¶ 25.) “Roblox Studio is a toolkit developers and creators  
12 use to build, publish, and operate 3D experiences and content for the Roblox Client . . . ,  
13 which they sell in a user-to-user marketplace known as the Avatar Shop.” (*Id.*) “Most  
14 experiences on Roblox are created by developer users,” (*id.*), of which there are  
15 approximately seven million. (See *id.* ¶ 23.)

16 “The Roblox Client allows users to explore 3D digital worlds through the eyes of an  
17 avatar, which each user customizes with clothing, gear, animations, simulated gestures,  
18 emotes, or other objects.” (*Id.* ¶ 25.) An average of 36.2 million people from around the  
19 world, more than half of which are under the age of 13, use Roblox daily, averaging 2.6  
20 hours per day. (See *id.* ¶ 23.) “Gameplay interactions, user hubs, direct messaging and  
21 voice chat, and wearable cosmetic items all promote social interactions between users.”  
22 (*Id.* ¶ 24.)

23 “Defendant earns money, in part, by ‘tokenizing’ a platform-exclusive currency  
24 called ‘Robux’ that must be purchased using real-world currency before exchanging  
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26  
27 <sup>1</sup> For purposes of Defendant’s Motion, the facts alleged in Plaintiffs’ Second Amended Class Action  
28 Complaint are accepted as true. See *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007)  
(holding that, in ruling on a motion to dismiss, the Court must “accept all material allegations of fact as true”).

1 ‘Robux’ for digital content in the digital universe’s closed economy.” (*Id.* ¶ 26.) “‘Robux’  
2 may be purchased in a single transaction, or a user may subscribe to receive ‘Robux’ on a  
3 recurring basis for a monthly premium that is automatically deducted from a linked  
4 payment account with a credit card or electronic check.” (*Id.*; *see also id.* ¶ 61.) “When  
5 users purchase Robux, they cannot convert those Robux back into real-world currency.”  
6 (*See id.* ¶ 60 (emphasis omitted).) “Roblox also makes money on the sale of digital content  
7 for ‘Robux[.]’” (*Id.* ¶ 27.) “The company takes a 30% commission from user-to-user  
8 exchanges of user generated content for ‘Robux[,]’ as well as by offering its own  
9 proprietary content for purchase with the in-game currency in the Avatar Shop.” (*Id.*; *see*  
10 *also id.* ¶ 59.)

11 “It is extremely easy to sign up for a user account on the Roblox platform and  
12 Defendant Roblox makes the platform available through a variety of methods including  
13 mobile app stores and direct downloads from their website.” (*Id.* ¶ 28.) “To create an  
14 account, users need not verify their account with an associated email address.” (*Id.* ¶ 30.)  
15 “Although the Roblox Terms of Use state that children must have permission of their  
16 parents before signing up for an account, nothing prevents children from creating their own  
17 accounts on the platform.” (*Id.* ¶ 31.)

18 “After signing up, a child can play in any of hundreds of thousands of ‘experiences’  
19 on the product, which are much like other video games.” (*Id.* ¶ 33.) “Friends can quickly  
20 join each other’s unique ‘experiences[,]’ chat over voice and text, and trade items.” (*Id.* ¶  
21 34.) “A user can add any other user as a ‘friend,’ regardless of age.” (*Id.* ¶ 37.) “Once  
22 friends, users can message each other directly and invite each other to private servers or  
23 other experiences on the platform.” (*Id.*) “And after entering an experience, users can chat  
24 to any other user in the experience, whether or not they are friends.” (*Id.*)

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1                   2.     *Defendant’s Alleged Misrepresentations*<sup>2</sup>

2                   “Roblox advertises its product as ‘family friendly’ despite rampant inappropriate  
3 and predatory conduct,” (SACAC ¶ 42 (quoting Kerry Breen, *Experts, users warn about*  
4 *explicit content on popular gaming platform Roblox*, Today.com (Oct. 20, 2021)  
5 [https://www.today.com/parents/roblox-experts-users-warn-about-inappropriate-content-](https://www.today.com/parents/roblox-experts-users-warn-about-inappropriate-content-t235027)  
6 [t235027](https://www.today.com/parents/roblox-experts-users-warn-about-inappropriate-content-t235027))), and “avers in their Community Guidelines that ‘Roblox is a safe space for  
7 meeting online friends, chatting, and collaborating on creative projects.’” (*Id.* ¶ 43 (quoting  
8 Roblox Support: Legal Documents, Roblox Corporation, Community Standards (updated  
9 June 20, 2023) [https://en.help.roblox.com/hc/en-us/articles/203313410-Roblox-](https://en.help.roblox.com/hc/en-us/articles/203313410-Roblox-Community-Standards)  
10 [Community-Standards](https://en.help.roblox.com/hc/en-us/articles/203313410-Roblox-Community-Standards))).) “Specifically, Roblox tells parents: ‘If your child is under 13, we  
11 make it extremely difficult for strangers on Roblox to contact them.’” (*Id.* ¶ 44 (quoting  
12 Roblox Support: Safety, Roblox Corporation, Age Appropriate Design Code FAQs,  
13 [https://en.help.roblox.com/hc/en-us/articles/4406238486676-Age-Appropriate-Design-](https://en.help.roblox.com/hc/en-us/articles/4406238486676-Age-Appropriate-Design-Code-FAQs)  
14 [Code-FAQs](https://en.help.roblox.com/hc/en-us/articles/4406238486676-Age-Appropriate-Design-Code-FAQs))).) Almost all safeguards to prevent strangers from contacting and grooming  
15 children on Roblox are disabled by default[,]” however, “[a]nd once they are friends with  
16 or in the same ‘experience’ as a child, predators can easily contact them.” (*See id.* ¶ 45.)

17                   “Roblox also says that ‘[a]n automated detection feature ensures that all players are  
18 wearing appropriate attire within the avatar editor and avatar thumbnails’ and that it uses  
19

20                   <sup>2</sup>                   In their Second Amended Class Action Complaint, Plaintiffs explicitly identify the following five  
21 misrepresentations as the basis of their claims for intentional misrepresentation, (*id.* ¶ 104); negligent  
22 misrepresentation, (*id.* ¶ 116); violation of California’s Unfair Competition Law, (SACAC ¶ 140);  
23 violation of California’s False Advertising Law, (SACAC ¶ 154); and violation of California’s Consumer  
24 Legal Remedies Act, (SACAC ¶ 164):

- 24                   a.                   It was extremely difficult for children under 13 to be contacted by strangers on the  
25 Roblox platform;  
26                   b.                   Technological safeguards on the Roblox platform prevent inappropriate (including  
27 sexually explicit) attire on Roblox avatars;  
28                   c.                   Technological safeguards on the Roblox platform prevent inappropriate content  
from being visible to users;  
                    d.                   The Roblox platform was at all times “family friendly”;  
                    e.                   The Roblox platform was at all times a “safe space for meeting online friends,  
chatting, and collaborating on creative projects.”

1 ‘state-of-the-art’ technology to ‘prevent inappropriate content . . . from being visible on the  
2 platform,’” (*id.* ¶ 46 (alterations in original)), but “the program’s systems allegedly  
3 designed to monitor lewd behavior often fail.” (*See id.* ¶ 48.) “For instance, Roblox is  
4 infamous for ‘condo games’ showing nude avatars engaging in forms of intercourse and  
5 using profane language.” (*Id.* ¶ 49.) “These ‘condo games’ also enable online predators  
6 to groom children.” (*Id.* ¶ 50.) “For example, adult players have tried to start separate,  
7 private conversations with underage players to solicit sexualized photos.” (*Id.*)

8 “Roblox knows that this inappropriate and often illegal activity on its site threatens  
9 profitability and survival[,]” (*id.* ¶ 52), and “that what few measures it has put in place to  
10 discourage children from engaging with inappropriate content are easily circumvented.”  
11 (*See id.* ¶ 54.) “Still, the company misleads parents about the safety of its product and the  
12 effectiveness of its safety features because Roblox knows that maximizing the number of  
13 young users is its key to profitability.” (*Id.* ¶ 53.)

#### 14 ***B. Plaintiffs and Their Children***

15 “Plaintiff Katherine Murphy, a California resident, was introduced to Roblox while  
16 setting up her 7-year-old son’s account in January of 2021.” (SACAC ¶ 71.) “Ms. Murphy  
17 has witnessed multiple users send her child abusive and profane messages directly through  
18 the Roblox messaging service.” (*Id.* ¶ 72.) “One user asked her son to perform virtual oral  
19 sex on his avatar in the game.” (*Id.*) “Another user asked her son to show them his genitals,  
20 and yet another called him ‘the N-word[.]’” (*Id.*) Although “Ms. Murphy has spent over  
21 \$4,000 on Roblox with the belief that the platform was a safe environment for her child to  
22 learn, play, and develop his expressive creativity for 30 minutes per day, on average,” she  
23 “would not have spent any amount of money on the Roblox platform if she had known it  
24 was an unsafe environment for her child to learn and play.” (*See id.* ¶ 73.)

25 “Plaintiff Monique Payan, a California resident, was introduced to Roblox by her 9-  
26 year-old daughter who has been playing the game since 2019.” (*Id.* ¶ 74.) By “monitoring  
27 her daughter’s account by linking it to her own[,] Ms. Payan encountered links sent directly  
28 to her daughter’s account from multiple other users that redirected to external pornography

1 websites.” (*See id.* ¶ 75.) Although “Ms. Payan has spent over \$500 on Roblox with the  
2 belief that the platform was a safe environment for her child to learn, play, and develop her  
3 expressive creativity for 30 minutes per day, on average,” she “would not have spent any  
4 amount of money on the Roblox platform if she had known it was an unsafe environment  
5 for her child to learn and play.” (*See id.* ¶ 76.)

6 “Plaintiff Damien Uhl, a California resident, was introduced to Roblox by his 12-  
7 year-old daughter[,] who has been playing the game since 2017[,]” and “allowed all three  
8 of his children to continue playing the game.” (*See id.* ¶ 77.) His daughter later informed  
9 him that, starting in the spring of 2021, she had “formed an online relationship with another  
10 Roblox user that held themself out to be the same age as Mr. Uhl’s daughter.” (*See id.*  
11 ¶ 78.) “In reality, his daughter’s online friend was a senior woman posing as both a child  
12 and the fictitious child’s parent.” (*Id.*) “Upon learning the true nature of his daughter’s  
13 Roblox ‘friend’ in or around June 2022, Mr. Uhl searched their Roblox chat history and  
14 discovered that the woman was attempting to groom his daughter and persuade her into  
15 believing she was of a particular sexual orientation, along with other messages of a sexual  
16 nature.” (*Id.*) Although “Mr. Uhl has spent \$3,000 to \$5,000 or more on Roblox with the  
17 belief that the platform was a safe environment for his children to learn, play, and develop  
18 their expressive creativity for 1–2 hours per day, on average[,]” he “would not have spent  
19 any amount of money on the Roblox platform if he had known it was an unsafe  
20 environment for his children to learn and play.” (*See id.* ¶ 79.)

## 21 **II. Relevant Procedural History**

22 Plaintiffs Ms. Murphy and Ms. Payan filed their initial Class Action Complaint for  
23 Damages in the Superior Court of the State of California, County of San Diego, on August  
24 7, 2023, alleging seven causes of action for (1) intentional misrepresentation; (2) negligent  
25 misrepresentation; (3) unjust enrichment; (4) violations of California’s Unfair Competition  
26 Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200–17210; (5) violations of California’s False  
27 Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500–17606; (6) violations of the  
28 California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750–1784; and



1 (7) violations of the consumer protection laws of California, Connecticut, Illinois,  
2 Maryland, and Missouri. (*See generally* ECF No. 1-4.) On October 2, 2023, Plaintiffs Ms.  
3 Murphy, Ms. Payan, and Mr. Uhl filed a First Amended Class Action Complaint for  
4 Damages, alleging the same seven causes of action. (*See generally* ECF No. 1-2.)

5 Defendant removed to this Court under the Class Action Fairness Act of 2005  
6 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453, 1711–1715, on October 20, 2023. (*See generally*  
7 ECF No. 1.) On October 31, 2023, the Court ordered Plaintiffs to show cause why this  
8 action should not be remanded to the Superior Court of the State of California, County of  
9 San Diego, under the “local controversy,” 28 U.S.C. § 1332(d)(4)(A); mandatory “home  
10 state,” 28 U.S.C. § 1332(d)(4)(B); or discretionary “home state,” 28 U.S.C. § 1332(d)(3),  
11 exceptions to CAFA. (*See generally* ECF No. 10 at 2–5.) In response, Plaintiffs filed the  
12 operative Second Amended Class Action Complaint, in which they dropped their claims  
13 on behalf of a putative Nationwide Class, (*see generally* ECF Nos. 14, 24 (redlined  
14 SACAC)), and moved to remand under 28 U.S.C. § 1332(d)(3). (*See generally* ECF No.  
15 20.) After the motion was fully briefed, (*see* ECF Nos. 22, 23), and the Court held a  
16 hearing, the Court issued an oral ruling denying Plaintiffs’ motion to remand on February  
17 8, 2024. (*See* ECF No. 31.)

18 The instant Motion followed on March 11, 2024. (*See generally* ECF No. 35.) After  
19 briefing had closed but before oral argument, the Ninth Circuit issued a decision in *Calise*  
20 *v. Meta Platforms, Inc.*, No. 22-15910, \_\_\_ F.4th \_\_\_, 2024 WL 2826231 (9th Cir. June 4,  
21 2024), which “clarif[ied]” the “scope of § 230(c)(1) immunity” under the Communications  
22 Decency Act of 1996 (“CDA”), 47 U.S.C. § 230 (“Section 230”). The Court therefore  
23 provided both Plaintiffs and Defendant the opportunity to submit supplemental briefing.  
24 (*See* ECF No. 38.)

### 25 **REQUEST FOR JUDICIAL NOTICE**

26 Before turning to the merits of Defendant’s Motion, the Court should address  
27 Defendant’s Request for Judicial Notice, through which Defendant seeks judicial notice of  
28 and/or incorporation by reference of the following exhibits:

- 1 • Exhibit A: Defendant’s Terms of Use that were “in effect at the time of the filing of
- 2 the original complaint,” (Def.’s RJN at 1);
- 3 • Exhibit B: Defendant’s Age-Appropriate Design Code FAQ;
- 4 • Exhibit C: Defendant’s Settings Page for Under-13 accounts found when a Roblox
- 5 user logs into their account from Defendant’s homepage;
- 6 • Exhibit D: Defendant’s Safety Features: Chat, Privacy & Filtering;
- 7 • Exhibit E: Defendant’s Community Standards that were “in effect at the time of the
- 8 filing of the complaint,” (Def.’s RJN at 2);
- 9 • Exhibit F: Defendant’s FAQ;
- 10 • Exhibit G: Defendant’s For Parents page;
- 11 • Exhibit H: an article by Kerry Green entitled “Experts, users warn about explicit
- 12 content on popular gaming platform Roblox” published on Today.com.

13  
14 (See Def.’s RJN at 1–2.) Specifically, Defendant asks the Court to take judicial notice of  
15 Exhibits A through H and to incorporate by reference exhibits A, B, E, F, G, and H. (See  
16 *id.* at 1.)

17 **I. Judicial Notice**

18 “Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is  
19 ‘not subject to reasonable dispute.’” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988,  
20 999 (9th Cir. 2018) (quoting Fed. R. Evid. 201(b)). “A fact is ‘not subject to reasonable  
21 dispute’ if it is ‘generally known,’ or ‘can be accurately and readily determined from  
22 sources whose accuracy cannot reasonably be questioned.’” *Id.* (quoting Fed. R. Evid.  
23 201(b)(1)–(2)). “Accordingly, ‘[a] court may take judicial notice of matters of public  
24 record without converting a motion to dismiss into a motion for summary judgment.’” *Id.*  
25 (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (alteration in  
26 original)). “But a court cannot take judicial notice of disputed facts contained in such  
27 public records.” *Id.* (quoting *Lee*, 250 F.3d at 689).

28 ///



1 Defendant requests the Court take judicial notice of Exhibits A through H, the first  
2 seven of which are archived links from Defendant’s website and the last of which is an  
3 online article, on the grounds that they are “publicly available . . . such that their accuracy  
4 cannot be reasonably questioned.” (*See* Def.’s RJN at 4–5.) Plaintiffs oppose on the  
5 grounds that the content of the pages is in dispute and it is unclear whether the versions of  
6 the websites provided have any relevance to this case. (*See generally* RJN Opp’n at 10–  
7 12.) The Court agrees with Plaintiffs—given that the Court cannot resolve on the current  
8 record whether the exhibits Defendant seeks judicial notice of accurately reflect the  
9 archived webpages as of the relevant date, which would be when Plaintiffs allegedly  
10 viewed and relied on them, judicial notice would be inappropriate. The Court therefore  
11 declines to take judicial notice of Defendant’s Exhibits A through H.

## 12 **II. Incorporation by Reference**

13 “Unlike rule-established judicial notice, incorporation-by-reference is a judicially  
14 created doctrine that treats certain documents as though they are part of the complaint  
15 itself.” *Khoja*, 899 F.3d at 1002. “The doctrine prevents plaintiffs from selecting only  
16 portions of documents that support their claims, while omitting portions of those very  
17 documents that weaken—or doom—their claims.” *Id.* (citing *Parrino v. FHP, Inc.*, 146  
18 F.3d 699, 706 (9th Cir. 1998), *superseded by statute on other grounds as recognized in*  
19 *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 681–82 (9th Cir. 2006)).

20 “[A] defendant may seek to incorporate a document into the complaint ‘if the  
21 plaintiff refers extensively to the document or the document forms the basis of the  
22 plaintiff’s claim.’” *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003)).  
23 “[T]he mere mention of the existence of a document is insufficient to incorporate the  
24 contents of a document’ under *Ritchie*.” *Id.* (quoting *Coto Settlement v. Eisenberg*, 593  
25 F.3d 1031, 1038 (9th Cir. 2010)). “However, if the document merely creates a defense to  
26 the well-pled allegations in the complaint, then that document did not necessarily form the  
27 basis of the complaint.” *Id.* “Otherwise, defendants could use the doctrine to insert their  
28 own version of events into the complaint to defeat otherwise cognizable claims.” *Id.* (first

1 citing *In re Immune Response Sec. Litig.*, 375 F. Supp. 2d 983, 995–96 (S.D. Cal. 2005);  
 2 then citing *Glob. Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 156–57 (2d  
 3 Cir. 2006)).

4 Defendant alternatively requests that the Court incorporate by reference Exhibits A,  
 5 B, E, F, G, and H. (*See* Def.'s RJN at 3–4.) Again, because it is not clear that the versions  
 6 of these documents that Defendant seeks to incorporate by reference are the same versions  
 7 referenced in Plaintiffs' Second Amended Class Action Complaint, the Court **DENIES**  
 8 Defendant's request.<sup>3</sup>

## 9 MOTION TO DISMISS

### 10 I. Legal Standard

11 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to  
 12 state a claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’”  
 13 *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro*  
 14 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). “A district court’s dismissal for failure to  
 15 state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper if there is a ‘lack of  
 16 a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal  
 17 theory.’” *Id.* at 1242 (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
 18 Cir. 1988)).

19 “Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a ‘short and  
 20 plain statement of the claim showing that the pleader is entitled to relief.’” *Ashcroft v.*  
 21 *Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). “[T]he pleading  
 22

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23 <sup>3</sup> Without formally requesting judicial notice or incorporation by reference, Plaintiffs also attach  
 24 several documents to their Opposition:

- 25 • Defendant's Terms of Use as of April 6, 2022;
- 26 • Defendant's creator guide as of March 26, 2024; and
- 27 • An article entitled “Safety and Civility” written by Defendant's Chief Systems Officer and Head  
 of Safety Product, Policy, and Operations published on Defendant's website on May 17, 2023.

28 (*See generally* ECF Nos. 36-1, 36-3.) For the same reason the Court denies Defendant's Request for  
 Judicial Notice, the Court also declines to consider Plaintiffs' exhibits.

1 standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands  
2 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678  
3 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “[a]  
4 pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a  
5 cause of action will not do.’” *Id.* (quoting *Twombly*, 550 U.S. at 555).

6 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
7 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting  
8 *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads  
9 factual content that allows the court to draw the reasonable inference that the defendant is  
10 liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “[W]here the  
11 well-pleaded facts do not permit the court to infer more than the mere possibility of  
12 misconduct, the complaint has alleged—but it has not ‘show[n]’— ‘that the pleader is  
13 entitled to relief.’” *Id.* at 679 (second alteration in original) (quoting Fed. R. Civ. P.  
14 8(a)(2)).

15 “Rule 9(b) requires that, when fraud is alleged, ‘a party must state with particularity  
16 the circumstances constituting fraud.’” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124  
17 (9th Cir. 2009) (quoting Fed. R. Civ. P. 9(b)). “Rule 9(b) demands that the circumstances  
18 constituting the alleged fraud be specific enough to give defendants notice of the particular  
19 misconduct . . . so that they can defend against the charge and not just deny that they have  
20 done anything wrong.” *Id.* (alteration in original) (internal quotation marks omitted)  
21 (quoting *Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001)). “Averments of  
22 fraud must be accompanied by the who, what, when, where, and how of the misconduct  
23 charged.” *Id.* (internal quotation marks omitted) (quoting *Vess v. Ciba-Geigy Corp. USA*,  
24 317 F.3d 1097, 1106 (9th Cir. 2003)).

25 “If a complaint is dismissed for failure to state a claim, leave to amend should be  
26 granted ‘unless the court determines that the allegation of other facts consistent with the  
27 challenged pleading could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight*  
28 *Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well*

1 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). “A district court does not err in  
 2 denying leave to amend where the amendment would be futile.” *Id.* (citing *Reddy v. Litton*  
 3 *Indus.*, 912 F.2d 291, 296 (9th Cir. 1990), *cert. denied*, 502 U.S. 921 (1991)).

## 4 **II. Analysis**

5 Through the instant Motion, Defendant seeks to dismiss Plaintiffs’ Second Amended  
 6 Class Action Complaint on several grounds.<sup>4</sup> Because the Court concludes that Rule 9(b)  
 7 is dispositive, the Court need not address Defendant’s remaining arguments at this time.<sup>5</sup>

8 Under Rule 9(b), Plaintiffs “must state with particularity the circumstances  
 9 constituting fraud.” *See* Fed. R. Civ. P. 9(b). “In other words, ‘a pleading must identify  
 10 the who, what, when, where, and how of the misconduct charged, as well as what is false  
 11 or misleading about the purportedly fraudulent statement, and why it is false.’” *Moore v.*  
 12 *Mars Petcare US, Inc.*, 966 F.3d 1007, 1019 (9th Cir. 2020) (quoting *Davidson v.*  
 13 *Kimberly-Clark Corp.*, 889 F.3d 956, 964 (9th Cir. 2018)). Essentially, “[t]he allegations  
 14 of fraud ‘must be specific enough to give defendants notice of the particular misconduct  
 15 which is alleged to constitute the fraud charged.’” *Becerra v. Dr Pepper/Seven Up, Inc.*,

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17  
 18 <sup>4</sup> Specifically, Defendant argues that (1) Plaintiffs’ claims are barred by Section 230, (*see* Mot. at  
 19 11–15); (2) Plaintiffs’ claims are barred by the First Amendment, (*see* Mot. at 15–16); (3) Plaintiffs’  
 20 claims fail to comply with Rule 9(b), (*see* Mot. at 16–17); (4) Plaintiffs fail to allege actionable  
 21 misrepresentations and omissions, (*see id.* at 17–23); (5) Plaintiffs fail to allege reasonable reliance, (*see*  
 22 *id.* at 24–25); (6) Plaintiffs fails to allege intent to defraud or induce reliance, (*see id.* at 25); (7) Plaintiffs  
 23 lack standing to bring claims under the consumer protection laws of Connecticut, Illinois, Maryland,  
 24 Missouri, or New York, (*see id.* at 26–27); (8) Plaintiffs fail to allege equitable claims because they do  
 25 not allege that there is an inadequate remedy at law, (*see id.* at 27–28); (9) Plaintiffs fail to state a claim  
 26 under the “unfair prong” of California’s Unfair Competition Law, (*see* Mot. at 28); and (10) Plaintiffs fail  
 27 to allege a cause of action under California’s Consumer Legal Remedies Act because they cannot allege  
 28 a “good” or “service,” (*see* Mot. at 28–29).

<sup>5</sup> Although the Court recognizes that Section 230 immunity is intended to prevent those entitled to  
 its protection “from having to fight costly and protracted legal battles,” *see Fair Housing Council of San*  
*Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008); (*see also* Tr. at 39:1–2  
 (“Section 230 . . . is a threshold immunity.”)), and that, “like other forms of immunity, [it] is generally  
 accorded effect at the first logical point in the litigation process,” *see Nemet Chevrolet, Ltd. v.*  
*Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009), the Court believes that the claim-by-claim  
 analysis required under *Calise* will be better informed by a more robust articulation of Plaintiffs’ causes  
 of action.

1 945 F.3d 1225, 1228 (9th Cir. 2019) (citing *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th  
2 Cir. 2007)). Rule 9(b) applies to Plaintiffs’ state law causes of action, *see Vess v. Ciba-*  
3 *Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003), including their cause of action for  
4 unjust enrichment. *See Drake v. Toyota Motor Corp.*, No. 2:20-CV-01421-SB-PLA, 2020  
5 WL 7040125, at \*10 n.4 (C.D. Cal. Nov. 23, 2020) (“When an unjust enrichment claim is  
6 rooted in the same misrepresentations as other fraud-based claims, it ‘also sounds in fraud  
7 and is subject to Rule 9(b)’s heightened pleading requirements.” (quoting *In re Arris*  
8 *Cable Modem Consumer Litig.*, No. 17-CV-01834-LHK, 2018 WL 288085, at \*10 (N.D.  
9 Cal. Jan. 4, 2018))).

10 Defendants urge that Plaintiffs fail to meet this standard because they fail to “specify  
11 which of the purported misrepresentations they saw,” “where they saw two of the purported  
12 misrepresentations,” or “*when* they saw any of the alleged misrepresentations.” (*See Mot.*  
13 *at 17* (emphasis in original).) Plaintiffs respond that they meet the requirements of Rule  
14 9(b) because they identify the place of Defendant’s misrepresentations as its “website  
15 pages and advertisements,” the time of seeing the misrepresentations as “when Plaintiffs’  
16 children’s accounts were created or when Plaintiffs learned of their children’s accounts,”  
17 and “the falsity of Roblox’s representations.” (*See Opp’n at 9.*) As Defendant notes on  
18 reply, Plaintiffs’ argument that they allege seeing the misrepresentations when they learned  
19 of their children’s accounts “leaves open the possibility that Plaintiffs saw the statements  
20 **long after** their children created their accounts and encountered the third-party content  
21 Plaintiffs complain of.” (*See Reply at 5* (emphasis in original).)

22 Although “Rule 9(b) does not require plaintiffs to identify ‘the precise web pages  
23 viewed and the precise date [they] viewed the representation[,]’” *Shu v. Toyota Motor Sales*  
24 *USA, Inc.*, 669 F. Supp. 3d 888, 898–99 (N.D. Cal.) (first alteration in original) (quoting  
25 *Ehret v. Uber Techs.*, 68 F. Supp. 3d 1121, 1127, 1129 (N.D. Cal. 2014)) (citing *In re*  
26 *Tobacco II Cases*, 46 Cal. 4th 298, 328 (2009)), *appeal dismissed*, No. 23-15717, 2023  
27 WL 5125075 (9th Cir. July 20, 2023), Plaintiffs can—and must—do better to clear Rule  
28 9(b)’s hurdle. Specifically, they must allege “which specific advertisements [they] actually

1 saw and relied upon in deciding” to allow their children to sign up for Roblox or purchase  
2 Robux. *See Tabler v. Panera LLC*, No. 19-CV-01646-LHK, 2020 WL 3544988, at \*7  
3 (N.D. Cal. June 30, 2020) (dismissing consumer protection claims under Rule 9(b) based  
4 on allegedly false “100% clean” advertisements from restaurant chain that sold baked  
5 goods containing residue of glyphosates because the plaintiff failed to “plead which  
6 specific advertisements she saw, believed, and relied upon”); *see also, e.g., Smith v.*  
7 *GlaxoSmithKline Consumer Healthcare Holdings (US) LLC*, 660 F. Supp. 3d 863, 878  
8 (N.D. Cal. 2023) (rejecting consumer protection claims under Rule 9(b) where the plaintiffs  
9 alleged they relied on misrepresentation that appeared on the defendant’s website but failed  
10 to “identify when *they saw* the website” (emphasis in original)); *Shu*, 669 F. Supp. 3d at  
11 898 (dismissing consumer protection claims under Rule 9(b) where the plaintiffs “generally  
12 identif[ied] the sources of the misrepresentations as the websites and brochures” but failed  
13 to “identify the specific advertisements and promotional materials that they relied on, and  
14 when they saw them”).

15       Such allegations are missing here. For example, Plaintiff Murphy alleges that she  
16 “was introduced to Roblox while setting up her 7-year-old son’s account in January of  
17 2021[,]” and, “[a]t the time of creating the account, Ms. Murphy believed the  
18 representations Roblox made about the safety of the platform after reading Roblox’s  
19 Community Guidelines, and Roblox advertisements.” (*See* SACAC ¶ 71.) One of the  
20 “advertisements” Plaintiffs identify is an article published October 20, 2021—after  
21 Ms. Murphy set up her son’s account. (*See id.* ¶ 42 & n.22.) Plaintiffs also cite to Roblox’s  
22 Community Guidelines effective June 20, 2023, (*see id.* ¶ 43 & n.23), and Roblox Support:  
23 Safety, Roblox Corporation, Age Appropriate Design Code FAQs as of July 7, 2023, (*see*  
24 *id.* ¶ 44 & n.24), on which Plaintiffs clearly could not have relied given that Plaintiffs’  
25 children signed up for accounts between 2017 and January 2021. (*See id.* ¶¶ 18–20.) Other  
26 statements attributed to Defendant are utterly unsourced and undated. (*See, e.g., id.* ¶¶ 46,  
27 48.) These allegations clearly do not provide Defendant with sufficient notice to respond—  
28 indeed, Plaintiffs challenge Defendant’s preliminary attempt to identify the sources of the



1 alleged misrepresentations on the grounds that the versions Defendant provided were not  
2 from “the relevant time period for this action where Plaintiffs allege periods of purchases  
3 on the site beginning in 2017, 2019, and 2021 respectively.” (See RJN Opp’n at 3 (citing  
4 SACAC ¶¶ 71, 74, 77).) Accordingly, the Court concludes that Plaintiffs’ claims fail to  
5 satisfy Rule 9(b)’s heightened pleading standard.

6 **CONCLUSION**

7 In light of the foregoing, the Court **DENIES** Defendant’s Request for Judicial Notice  
8 (ECF No. 35-1), **GRANTS IN PART** Defendant’s Motion to Dismiss (ECF No. 35), and  
9 **DISMISSES WITHOUT PREJUDICE** the causes of action in Plaintiffs’ Second  
10 Amended Class Action Complaint for failing to satisfy Rule 9(b)’s heightened pleading  
11 standard. Plaintiffs **MAY FILE** an amended complaint curing the deficiencies identified  
12 above within twenty-one (21) days of the electronic docketing of this Order. *Failure timely*  
13 *to file an amended complaint will result in the dismissal without prejudice of this action.*

14 **IT IS SO ORDERED.**

15 Dated: July 10, 2024

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17 Honorable Todd W. Robinson  
18 United States District Judge  
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