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

10 IN RE: APPLE INC. APP STORE
SIMULATED CASINO-STYLE GAMES
11 LITIGATION

Case No. 5:21-md-02985-EJD

Judge: Hon. Edward J. Davila

**PLAINTIFFS' CONSOLIDATED
OPPOSITION TO
MOTIONS TO DISMISS
UNDER SECTION 230 OF THE
COMMUNICATIONS DECENCY ACT**

Date: August 4, 2022

Time: 9:00 a.m.

Judge: Hon. Edward J. Davila

Room: Courtroom 4 – 5th Floor

18 IN RE: GOOGLE PLAY STORE
19 SIMULATED CASINO-STYLE GAMES
20 LITIGATION

Case No. 5:21-md-03001-EJD

Judge: Hon. Edward J. Davila

**PLAINTIFFS' CONSOLIDATED
OPPOSITION TO
MOTIONS TO DISMISS
UNDER SECTION 230 OF THE
COMMUNICATIONS DECENCY ACT**

Date: August 4, 2022

Time: 9:00 a.m.

Judge: Hon. Edward J. Davila

Room: Courtroom 4 – 5th Floor

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1 IN RE: FACEBOOK SIMULATED
2 CASINO-STYLE GAMES LITIGATION

Case No. 5:21-cv-02777-EJD

Judge: Hon. Edward J. Davila

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4 **PLAINTIFFS' CONSOLIDATED**
5 **OPPOSITION TO**
6 **MOTIONS TO DISMISS**
7 **UNDER SECTION 230 OF THE**
8 **COMMUNICATIONS DECENCY ACT**

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United States District Court Cases

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1 *Goddard v. Google, Inc.*,
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