

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Case No. [5:21-md-02985-EJD](#)

Re: Dkt. No. 92

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

Case No. [5:21-md-03001-EJD](#)

Re: Dkt. No. 69

IN RE: FACEBOOK SIMULATED
CASINO-STYLE GAMES LITIGATION

Case No. [5:21-cv-02777-EJD](#)

Re: Dkt. No. 99

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS PURSUANT
TO SECTION 230 OF THE
COMMUNICATIONS DECENCY ACT;
SUA SPONTE CERTIFYING ORDER
FOR INTERLOCUTORY APPEAL**

In this putative class action, Plaintiffs allege that Defendants Apple, Google, and Facebook violate various state consumer protection laws by distributing game applications (“apps”) that

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1 operate as social casinos and thus permit illegal gambling. Defendants separately move to dismiss
 2 the complaints against them, arguing that they are immune from suit under Section 230 of the
 3 Communications Decency Act (“CDA”). Having considered the Parties’ written submissions as
 4 well as the oral arguments of counsel presented at the hearing on August 4, 2022, the Court
 5 **GRANTS IN PART AND DENIES IN PART** Defendants’ respective motions to dismiss.

6 I. BACKGROUND

7 Over the last decade, large social media companies and technology developers have turned
 8 their focus on developing applications or “apps.” As relevant in this case, slot machine companies
 9 have partnered with technology companies to develop “social casino applications.” Plaintiffs’
 10 Master Complaint¹ (“Compl.”) ¶ 1, Dkt. No. 73. Social casinos are playable “apps” that can be
 11 accessed via smartphones, tablets, and internet browsers. These virtual casinos attempt to recreate
 12 an “authentic Vegas-style” slot-machine, gambling experience. Compl. ¶ 2.

13 The simulated social casino apps are designed to look like traditional casino games, such
 14 as slot machines, bingo, or craps. This seemingly makes social casinos apps addictive in the same
 15 way as “in-person” gambling. Compl. ¶¶ 3, 4. Indeed, the social casinos apps function much like
 16 in-person gambling. Users purchase virtual “chips” in exchange for real money. Compl. ¶ 3.
 17 Users then gamble those chips at slot machines games in hopes of winning “still more chips to
 18 keep gambling.” Compl. ¶ 3. For example, in “DoubleDown Casino,” players purchase “chip
 19 packages” costing up to \$499.99, and then use those chips to play. Compl. ¶ 3. However, social
 20 casinos do not allow players to cash out their chips. Compl. ¶ 3. Instead, both purchased and
 21 “won” chips can only be used for more slot machine “spinning.” Compl. ¶ 3. This makes the
 22 social casino apps “extraordinarily profitable and highly addictive.” Compl. ¶ 4. One important
 23 distinction, however, is that social casino developers have access to big data, which allows them to

24
 25 _____
 26 ¹ For ease, the Court references the Master Complaint filed in the “Apple,” 21-md-2985, docket as
 27 “Compl.” and refers generally to that complaint, unless a specific citation to the other two
 28 complaints is needed.

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1 identify, target, and exploit consumers prone to addictive behaviors. Compl. ¶ 4.

2 Plaintiffs allege that these social casino apps do not, and cannot, operate and profit at such
3 a high level from these illegal games on their own. *See* Compl. ¶ 5 (“Their business of targeting,
4 retaining, and collecting losses from addicted gamblers is inextricably entwined with the
5 Platforms.”). The Platforms “retain full control over allowing social casinos into their stores, and
6 their distribution and promotion therein,” and “share directly in a substantial portion of the
7 gamblers’ losses, which are collected and controlled by the Platforms themselves.” Compl. ¶ 5;
8 *see also* Compl. ¶ 6 (“Because the Platforms are the centers for distribution and payment, social
9 casinos gain a critical partner to retain high-spending users and collect player data, a trustworthy
10 marketplace to conduct payment transactions, and the technological means to update their apps
11 with targeted new content designed to keep addicted players spending money.”). Importantly,
12 each complaint alleges that Apple, Facebook, and Google conspired with the social casino app
13 developers to participate in a pattern of racketeering activity in violation of the Racketeer
14 Influenced and Corrupt Organizations Act (“RICO”). Compl. ¶¶ 16, 17, 489–521; Google
15 Complaint ¶¶ 16, 17, 505–37, Dkt. No. 52; Facebook Complaint ¶¶ 16, 17, 467–99, Dkt. No. 80.

16 **A. Offering, Categorizing, and Promoting of the Social Casino Apps**

17 Each year, consumers buy billions of dollars of online casino chips from the Platforms.
18 The Platforms help the social casino app developers target consumers to maximize revenue.
19 Compl. ¶ 87. “For instance, [Defendant] Apple provides marketing guidance, tools, promotional
20 offers, and more to app developers (like the developers of the Illegal Slots) to help drive users’
21 discovery of apps and in-app purchases.” Compl. ¶ 87; *see also* Google Complaint ¶ 85;
22 Facebook Complaint ¶¶ 71, 171 (“Underlying our paid marketing efforts are our *data analytics*
23 that allow us to estimate the expected value of a player and adjust our user acquisition spend to a
24 targeted payback period.” (emphasis added)). Defendant Apple selects apps to “feature” within its
25 App Store, which “increases app installs.” Compl. ¶ 88. Google “offers App Campaigns to
26 promote apps on Google Search, YouTube, Google Play, and more.” Google Complaint ¶ 85.

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1 Likewise, Facebook uses tools like “targeted ads” and “in-game rewards” to encourage new users
2 to play social casinos. Facebook Complaint ¶ 80.

3 Defendant Apple has publicly acknowledged its active participation in the creation of app
4 content, stating that the commissions it charges on all App Store sales reflect the value of the
5 “tools and software for the development, testing and distribution of developers’ apps, and digital
6 content” that it provides. Compl. ¶¶ 90, 92–97; *see also* Google Complaint ¶¶ 90, 91 (“The data
7 that the Illegal Slot companies and the Platforms collect on monetization necessarily contribute to
8 the structure and success of the Social Casino Enterprise.”).

9 **B. Booking Fees**

10 The Platforms also “operate[] as the payment processor for all in-app purchases of virtual
11 chips in the Illegal Slots. [The Platforms] collect[] the money players spend on virtual chips,
12 take[] a cut for itself, and remit[] the rest to the Illegal Slots.” Compl. ¶ 63; Facebook Complaint
13 ¶ 60; Google Complaint ¶ 61. Plaintiffs argue that although the Platforms “do not determine the
14 odds of winning any slot machine spins within the apps, they otherwise act much like the
15 bookmakers in gambling parlance: accepting players’ real money, provisioning casino chips to be
16 wagered on illegal slot machine games, earning 30% of the gross sales for their contribution to the
17 enterprise, and sometime later remitting the purchase amount (net of their fee) to the gambling
18 game developers.” Plaintiffs’ Consolidated Opposition to CDA 230 Motions to Dismiss (“Opp.”)
19 at 5, Dkt. No. 104. When players run out of chips, they cannot continue playing the same slot
20 machine game unless they purchase more chips. Compl. ¶¶ 61–63; Facebook Complaint ¶¶ 58–
21 60; Google Complaint ¶¶ 59–61.

22 Virtual chips cannot be used outside of an individual Illegal Slots app. “The chips can
23 only be used to (1) place wagers on slot machine spins, (2) place wagers on the few card game or
24 bingo titles in the Illegal Slots app, or (3) give a “gift” of virtual chips to another account in the
25 app. Substantially all virtual chips are used on slot machine spins.” Compl. ¶ 65; Facebook
26 Complaint ¶ 62; Google Complaint ¶ 63. As alleged by Plaintiffs, because the challenged apps

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1 derive most of their revenue from slot machine games, it is “substantially certain” that when a user
 2 buys virtual chips from the Platforms within a social casino app, those chips will be used to wager
 3 on a slot machine spin. Compl. ¶ 56; Facebook Complaint ¶ 53; Google Complaint ¶ 54.

4 **C. Targeted Advertising**

5 Plaintiffs allege that the Platforms are closely involved in social casinos’ business
 6 strategies. For example, the Platforms and developers work together to “monitor the game activity
 7 and use the collected data to increase user spending.” Compl. ¶ 91; Facebook Complaint ¶ 81;
 8 Google Complaint ¶ 88. Because the Platforms handle all payment processing for the social
 9 casinos, the developers often only have access to user data from the Platforms. Compl. ¶ 91;
 10 Facebook Complaint ¶ 81; Google Complaint ¶ 88. The Platforms and developers also “work
 11 together to target and exploit high-spending users, or ‘whales.’” Compl. ¶ 92; Facebook
 12 Complaint ¶ 82; Google Complaint ¶ 89. For example, Apple “aids in the design and direction of
 13 targeted advertising, both on and within its App Store and other related Apple platforms, all aimed
 14 at driving new customers to [socials casinos] and retaining current gamblers.” Compl. ¶ 94.
 15 Facebook provides “App Ads [which] allow Illegal slot companies to target high spending users
 16 and activate non-spending users.” Facebook Complaint ¶ 84. Facebook also “sends targeted ads
 17 offering in-game rewards to users who invite their Facebook friends to play the [social casinos],
 18 and provides online “tournaments” which “driv[es] . . . chip sales.” Facebook Complaint ¶ 80.
 19 Google “aids in the design and direction of targeted advertising, both on Google.com, its larger
 20 Display Network, and within other apps and platforms, all aimed at driving new customers to the
 21 [social casinos] and retaining current gamblers.” Google Complaint ¶ 91.

22 **D. Claims Asserted**

23 Plaintiffs assert multiple claims against the Platforms. For instance, Plaintiffs pursue
 24 comparable claims under California, Alabama, Georgia, Connecticut, Illinois, Indiana, Minnesota,
 25 Mississippi, Missouri, New Mexico, New York, Ohio, and Oregon (among other states). These
 26 claims are similar—Plaintiffs pursue claims under unfair competition laws, unjust enrichment,

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