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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 JOHN SPARKS, individually and on behalf
of all others similarly situated,

16 Plaintiff,

17 v.

18 GOOGLE, LLC and GOOGLE
19 PAYMENT CORP.,

20 Defendants.

CASE NO.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiff John Sparks (“Plaintiff”), individually and on behalf of all other persons similarly
2 situated, and through his attorneys of record, alleges the following against Defendants Google, LLC
3 (“Google LLC”) and Google Payment Corp. (“GPC”) (together, “Google” or “Defendants”), based
4 upon personal knowledge with respect to himself, on information and belief derived from
5 investigation of counsel, and review of public documents as to all other matters.

6 **INTRODUCTION**

7 1. This is a class action arising from Google’s profiting from illegal gambling games
8 developed by Zynga, Inc. (“Zynga”) and offered, sold, and distributed by Google through its Google
9 Play Store (“Google Play”) for consumers to download and play. Google offers, sells, and
10 distributes casino-style slot machines, casino-style table games, and other common gambling games
11 to consumers through Google Play, which, for the reasons set forth herein, constitutes illegal
12 gambling pursuant to the law of various states.

13 **PARTIES**

14 2. Plaintiff is an adult citizen and resident of the state of Tennessee.

15 3. Google LLC is a Delaware limited liability company with its principal place of
16 business in Mountain View, California. Google LLC is the primary operating subsidiary of the
17 publicly traded holding company, Alphabet Inc.

18 4. GPC is a Delaware corporation with its principal place of business in Mountain
19 View, California. GPC provides in-app payment processing services to Android app developers and
20 consumers through Google Play. Google requires app developers who distribute their apps on
21 Google Play to use its billing system if they offer in-app purchases of digital goods, and to pay a
22 service fee from a percentage of the purchase, as explained in detail below.¹

23 **JURISDICTION AND VENUE**

24 5. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
25 of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum of \$5,000,000
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27 _____
28 ¹ See <https://android-developers.googleblog.com/2020/09/listening-to-developer-feedback-to.html>
(last visited March 2, 2021).

1 exclusive of interest and costs, there are more than 100 putative class members, and minimal
2 diversity exists because putative class members are citizens of a different state than Defendants.

3 6. This Court has personal jurisdiction over Defendants Google LLC and GPC because
4 they are authorized to and regularly conduct business in California and their principal place of
5 business is in California.

6 7. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because Defendants
7 Google LLC and GPC reside in this District and a substantial part of the events or omissions giving
8 rise to Plaintiff's claims occurred in this District.

9 FACTUAL ALLEGATIONS

10 8. Google is an American multinational technology company that specializes in
11 Internet-related services and products, which include online advertising technologies, a search
12 engine, cloud computing, software, and hardware. It is considered one of the Big Five companies
13 in the U.S. information technology industry, alongside Amazon, Facebook, Apple, and Microsoft.²
14 As per its 2019 Annual Report, Google generates most of its revenues from advertising. This
15 includes sales of apps, in-app purchases, digital content products, and hardware; and licensing and
16 service fees.³

17 9. Google operates Google Play, which is a digital distribution service that serves as the
18 official app store for certified devices running on the Android operating system ("Android"),
19 allowing consumers to browse and download applications developed with the Android software
20 development kit and published through Google ("Apps"), among other things.⁴

21 10. Google Play presents consumers with personalized collections of Apps and games,
22 based on criteria such as the user's past activity, actions they are trying to complete, location, and
23 major events. These collections are curated automatically as well as by the Google Play editorial
24 team.⁵

25
26 ² See <https://en.wikipedia.org/wiki/Google> (last visited January 28, 2021).

27 ³ See <https://www.sec.gov/Archives/edgar/data/1652044/000165204419000004/goog10-kq42018.htm> (last visited January 28, 2021).

28 ⁴ See https://en.wikipedia.org/wiki/Google_Play (last visited January 28, 2021).

⁵ See <https://www.google.com/about/play/> (last visited January 28, 2021).

1 11. By 2017, Google Play featured more than 3.5 million Apps. Google subsequently
2 purged many Apps from Google Play, but the number of Apps has risen back to over 3 million.⁶

3 12. Apps are available through Google Play either free of charge or at a cost. They can
4 be downloaded directly on an Android device through the proprietary Google Play mobile app or
5 by deploying the App to a device from the Google Play website.⁷

6 13. Certain Apps are initially free to download (*i.e.*, “free-to-play”), but offer additional
7 content or services for sale within the App, otherwise known as “in-app purchases,” that consumers
8 can purchase while using the App.⁸

9 14. Android consumers who want to purchase an App or make in-app purchases through
10 Google Play must pay money directly to Google (through GPC), which provides the payment
11 interface.⁹ Google consumers must register a valid method of payment to make payments to GPC
12 for any purchases made through Google Play (including in-app purchases).¹⁰

13 15. Likewise, Google mandates that App developers who distribute their Apps on
14 Google Play must use Google Play’s billing system as the method of payment if they offer in-app
15 purchases of digital goods, and to pay a service fee from a percentage of the purchase.¹¹ Google is
16 contractually obligated to these App developers to facilitate a transaction between the developers
17 and end users, for which it earns a commission.¹² Specifically, Google retains a service fee from
18 sales of Apps and in-app purchases offered through Google Play equivalent to 30% of the payment.
19 The developer, here, Zynga, receives 70% of the payment.¹³

20
21 ⁶ See https://en.wikipedia.org/wiki/Google_Play (last visited January 28, 2021).

22 ⁷ *Id.*

23 ⁸ See <https://support.google.com/googleplay/answer/1061913?hl=en> (last visited January 28,
2021).

24 ⁹ See <https://play.google.com/about/play-terms/index.html> (last visited January 28, 2021).

25 ¹⁰ See [https://payments.google.com/payments/apis-
secure/get_legal_document?ldo=0&ldt=buyertos&ldr=us](https://payments.google.com/payments/apis-secure/get_legal_document?ldo=0&ldt=buyertos&ldr=us) (last visited January 28, 2021).

26 ¹¹ See <https://android-developers.googleblog.com/2020/09/listening-to-developer-feedback-to.html>
(last visited January 28, 2021); [https://support.google.com/googleplay/android-
developer/answer/9858738?hl=en](https://support.google.com/googleplay/android-developer/answer/9858738?hl=en) (last visited January 28, 2021).

27 ¹² See [https://www.sec.gov/Archives/edgar/data/1652044/000165204419000004/goog10-
kq42018.htm](https://www.sec.gov/Archives/edgar/data/1652044/000165204419000004/goog10-kq42018.htm) (last visited January 28, 2021).

28 ¹³ See <https://support.google.com/googleplay/android-developer/answer/112622?hl=en> (last
visited January 28, 2021).

1 16. The Apps referenced herein could not be downloaded by Google consumers, and
2 Google consumers would not be able to make in-app purchases in these Apps, without Google’s
3 offering and distributing of the Apps (and selling of coins through in-app purchases) through Google
4 Play.

5 17. Google also provides marketing guidance, tools, promotional offers, and more to
6 help drive discovery of Apps and in-app purchases.¹⁴ For example, Google offers App Campaigns
7 to promote Apps through Google Play and ensure that developers’ Apps are shown to consumers
8 who are most likely to drive the Apps’ business by optimizing installations and engagement.¹⁵

9 18. In fact, Google even advises developers that it may “run promotional activities
10 offering coupons, credits, and/or other promotional incentives for paid transactions and/or user
11 actions for Your Products and in-app transactions solely in connection with Google Play promotions
12 and, for gift card promotions, also on Google authorized third-party channels.”¹⁶ Notably, these
13 promotional activities, which are aimed at increasing in-app purchases and increase Google’s
14 profits, are provided by Google to developers free of charge.¹⁷

15 19. Google and Zynga are both responsible for the creation or development of the Apps
16 at issue here. Google reassures its developers that they will work together as a team: “Your
17 innovation is what drives our shared success, but with it comes responsibility. These Developer
18 Program Policies, along with the Developer Distribution Agreement, ensure that together we
19 continue to deliver the world’s most innovative and trusted apps to over a billion people through
20 Google Play....”¹⁸

21 **Casino-Style Apps Offered Through Google Play**

22 20. Google permits and facilitates illegal gambling by operating as an unlicensed casino.
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25 ¹⁴ See <https://ads.google.com/home/campaigns/app-ads/> (last accessed February 10, 2021).

26 ¹⁵ See *id.*

27 ¹⁶ See <https://play.google.com/about/developer-distribution-agreement.html> (last visited February
10, 2021).

28 ¹⁷ See *id.*

¹⁸ See <https://support.google.com/googleplay/android-developer/topic/9858052?hl=en> (last visited
February 10, 2021).

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