

1 DANIEL L. WARSHAW (Bar No. 185365)
dwarshaw@pswlaw.com

2 **PEARSON, SIMON & WARSHAW, LLP**
15165 Ventura Boulevard, Suite 400
3 Sherman Oaks, California 91403
Telephone: (818) 788-8300
4 Facsimile: (818) 788-8104

5 HASSAN A. ZAVAREEI (Bar No. 181547)
hzavareei@tzlegal.com

6 **TYCKO & ZAVAREEI LLP**
1828 L Street NW, Suite 1000
7 Washington, D.C. 20036
Telephone: (202) 973-0900
8 Facsimile: (202) 973-0950

9 *Attorneys for Plaintiffs and the Proposed Class*

10 *[Additional counsel appears on signature page]*

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

13
14 JOSHUA MCDONALD and MICHAEL
15 HELSEL, on behalf of themselves and all
16 others similarly situated,

17 Plaintiffs,

18 v.

19 APPLE INC., a California corporation,

20 Defendant.

CASE NO.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Joshua McDonald (“Plaintiff McDonald”) and Michael Helsel (“Plaintiff Helsel”)
2 (together, “Plaintiffs”), individually and on behalf of all persons similarly situated, and through their
3 attorneys of record, allege the following against Apple Inc. (“Apple” or “Defendant”), based upon
4 personal knowledge with respect to themselves, 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 Apple’s profiting from illegal gambling games
8 developed by DoubleU Games Co., Ltd. (“DoubleU”) and offered, sold, and distributed by Apple
9 through its App Store for consumers to download and play. Apple offers, sells, and distributes
10 casino-style slot machines, casino-style table games, and other common gambling games to
11 consumers through its App Store, which, for the reasons set forth herein, constitutes illegal gambling
12 pursuant to the law of various states.

13 **PARTIES**

14 2. Plaintiff McDonald is an adult citizen and resident of the state of Oregon.
15 3. Plaintiff Helsel is an adult citizen and resident of the state of Alabama.
16 4. Apple Inc. is a California corporation with its principal place of business in
17 Cupertino, California.

18 **JURISDICTION AND VENUE**

19 5. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
20 of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum of \$5,000,000
21 exclusive of interest and costs, there are more than 100 putative class members, and minimal
22 diversity exists because putative class members are citizens of a different state than Defendant.

23 6. This Court has personal jurisdiction over Defendant because it is authorized to and
24 regularly conducts business in California and its principal place of business is in California.

25 7. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because Defendant
26 resides in this District and a substantial part of the events or omissions giving rise to Plaintiffs’
27 claims occurred in this District.

28 ///

FACTUAL ALLEGATIONS

8. Apple designs, manufactures, and markets smartphones, personal computers, tablets, wearables and accessories, and sells a variety of related services.

9. As part of the related services that it sells, Apple operates various platforms, including its App Store. The App Store is a digital distribution platform, developed and maintained by Apple, for mobile applications (“Apps”) on its iOS & iPadOS operating systems. The App Store allows consumers to browse and download Apps developed with Apple’s iOS Software Development Kit. Apps can be downloaded on the iPhone smartphone, the iPod Touch handheld computer, or the iPad tablet computer, and some can be transferred to the Apple Watch smartwatch or to 4th-generation or newer Apple TVs as extensions of iPhone Apps.

10. The Apps sold and delivered by Apple through the App Store are developed by third parties (i.e., developers). As of October 2020, the App Store features around 1.96 million Apps available for download.¹

11. Developers and Apple have several options for monetizing an App, including the “Freemium Model,” which is utilized by Apple and Apps developed by DoubleU that are the subject of this lawsuit.² Under the Freemium Model, consumers can download the App for free (i.e., “free-to-play” Apps), but consumers are then offered optional additional in-app features that require payments (i.e., “in-app purchases”).³

12. Apple provides in-app payment processing services to iPhone app developers, including DoubleU, and consumers through the App Store.⁴

13. Apple consumers who want to purchase an App or make in-app purchases through the App Store must pay money directly to Apple, which provides the payment interface. Apple consumers must create an Apple ID and register a valid method of payment to make payments to

¹ See <https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/> (last visited March 22, 2021).

² See <https://developer.apple.com/app-store/business-models/> (last visited March 22, 2021); <https://support.apple.com/en-us/HT202023> (last visited March 22, 2021).

³ *Id.*

⁴ <https://www.cnbc.com/2020/07/22/apple-defends-app-stores-30percent-cut-ahead-of-tim-cook->

1 Apple for any purchases made through the App Store (including in-app purchases).⁵

2 14. Likewise, Apple mandates that App developers who offer and distribute their Apps
3 in the App Store must process all payments for Apps and in-app purchases through Apple.⁶ Apple
4 takes a commission of up to 30% of all revenue generated by sales of Apps in its App Store and in-
5 app purchases made on Apps obtained through the App Store.⁷ Apple characterizes the commission
6 as a fee for distribution of the App and the cost of running the App Store. The developer receives
7 the remaining 70%.⁸

8 15. The Apps referenced herein could not be downloaded by Apple consumers, and
9 Apple consumers would not be able to make in-app purchases, without Apple's offering and
10 distributing of the Apps (and selling of coins through in-app purchases) through the App Store.

11 16. Apple also provides marketing guidance, tools, promotional offers, and more to help
12 drive discovery of Apps and in-app purchases.⁹ For example, Apple features select Apps on the
13 App Store.¹⁰

14 17. When considering apps to feature, Apple's editors look for high-quality apps across
15 all categories, with a particular focus on new apps and apps with significant updates. There is no
16 paid placement or checklist of requirements for apps the App Store features.¹¹

17 18. "[O]n average, the Apple App Store drives 50% of all app installs. Of that, roughly
18 21% of installs come from users who discover and install apps through browsing the featured apps
19 or sifting through app categories."¹²

21 ⁵ See <https://support.apple.com/en-us/HT202631> (last visited March 22, 2021).

22 ⁶ Damien Geradin and Dimitrios Katsifis, *The Antitrust Case Against the Apple App Store* (April
23 22, 2020), at 13, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3583029 (last
24 visited March 22, 2021) (hereinafter "Geradin and Katsifis"); see also
<https://developer.apple.com/in-app-purchase/> (last visited March 22, 2021).

⁷ See <https://www.cnbc.com/2020/11/18/apple-will-cut-app-store-fees-by-half-to-15percent-for-small-developers.html> (last visited March 22, 2021).

⁸ Geradin and Katsifis at 18-19, *supra* note 3.

26 ⁹ See <https://developer.apple.com/app-store/promote/> (last visited March 22, 2021).

27 ¹⁰ *Id.*

¹¹ <https://developer.apple.com/app-store/discoverability/> (last visited March 22, 2021).

28 ¹² See <https://www.storemaven.com/ios-12-and-app-store->

19. Apple is also responsible, in part, for the creation or development of its Apps. Apple encourages App developers to incorporate Apple’s “cutting-edge Apple technologies” into their Apps “to create useful and engaging user experiences.”¹³ For example, Apple urges developers to “[i]ntegrate with Siri to let users can get things done [*sic*] using just their voice, use Apple Pay to sell a variety of items directly from within your app, enable your apps to store app data in iCloud, and much more.”¹⁴ Apple contributes materially to the illegality of the casino-style apps referenced herein by engaging in the foregoing conduct with DoubleU.

Casino-Style Apps Offered Through the App Store

20. Apple permits and facilitates illegal gambling by operating as an unlicensed casino.

21. Apple sells, offers, and distributes several free-to-play casino-style games (i.e., slot machines and casino-style table games) developed by DoubleU through the App Store for consumers to download and play, including, but not limited to, DoubleU Casino, Take 5 Slots, Hello Vegas Slots, and DoubleU Bingo (collectively, the “DoubleU Casino Apps”).

22. When a consumer downloads and initially opens the DoubleU Casino Apps, the consumer is given free “coins” or “chips” to start with, e.g., 100,000 or 1,000,000 to play the game. The DoubleU Casino Apps work essentially like a casino slot machine or other Las Vegas-style games like blackjack, roulette, poker, keno, bingo, and other card and gambling games. A loss results in a loss of coins or chips, but the consumer has an opportunity to win additional coins or chips. Ultimately, the consumer will run out of coins or chips and will be prompted to use real money to purchase additional coins or chips for the chance to continue playing the game.

23. Consumers do not have the ability to collect actual cash as a result of “winning” games, but they do have the ability to win and therefore acquire more playing time.

24. Paying money in a game for a chance to win more playing time violates the anti-gambling laws of the twenty-five states that are at issue in this case. *See* Ala. Code § 13A-12-20 (Alabama); Ark. Code Ann. § 16-118-103 (Arkansas); Conn. Gen. Stat. § 53-278a (Connecticut); OCGA § 16-12-20 (Georgia); 720 ILCS 5/28-1 (Illinois); IC §35-45-5-1 (Indiana); KRS 528.101

¹³ <https://developer.apple.com/programs/> (last visited March 22, 2021).

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