

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

RICO VIGLIETTI, on behalf of)	
himself and all others similarly)	
situated,)	
)	
Plaintiff,)	
)	
v.)	Case No.:
)	
APPLE, INC.,)	
)	
Defendant.)	

STATEWIDE CLASS ACTION COMPLAINT

Plaintiff Rico Viglietti, on behalf of himself and others similarly situated, brings this action against defendant defendant Apple, Inc. to recover money lost to illegal gambling pursuant to Section 29-19-104 of the Code of Tennessee. See also Tenn. Code Ann. §§ 39-17-501 et seq. Apple promotes, enables, and profits from games downloaded from the App Store and played by numerous Tennessee residents that constitute illegal gambling under the statutory law and the strong public policy of the state of Tennessee. Plaintiff seeks to represent a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Rico Vigliette is an adult resident citizen of the state of Tennessee, residing in Fayette County, Tennessee.

2. Defendant Apple, Inc. is a corporation organized and existing under the laws of the state of California, with its principal place of business in Cupertino, California. Apple does business by agent in this state, district, and division.

3. This is a class action brought by Tennessee citizens against a California company. The amount in controversy exceeds \$5 million, exclusive of interest and costs. Subject matter jurisdiction exists pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

4. Venue is proper under 28 U.S.C. § 1391(b)(2), because this is a “judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.”

FACTUAL BACKGROUND

5. Apple is the most valuable company in the world, with a market capitalization exceeding \$2 trillion as of mid-2020. It is by far the world’s biggest technology company, now roughly double the size of both Microsoft Corporation and Alphabet Inc., the parent company of Google, respectively. Gone are the days when Steve Jobs’s little company began its quixotic quest to take market share away from Microsoft’s dominance of the computer software market with its introduction of the upstart MacIntosh personal computer. Applications for personal computers, both desktops and laptops, are now a relatively small part of the software market.

Mobile devices are now the name of the game and Apple undisputedly dominates that lucrative market.

6. Apple's operating system for the iPhone smartphone and the iPad tablet, known as the iOS, is a rigidly controlled closed system that has the ability to run numerous applications, or apps, available exclusively through Apple's App Store. Apple takes up to 30% of all revenue generated by app sales in the App Store and in-app purchases made on apps obtained through the App Store.¹ Millions of software developers make applications for the Apple iOS. In order to sell apps in the App Store, developers must submit their programs to Apple, which then decides whether the app may be included in the App Store and thus downloaded to iOS devices.

7. Many apps, including those that are the subject of this lawsuit, are initially free to download but contain in-app purchases that a customer can choose to purchase inside the app. Apple provides the payment interface for all such purchases and, as noted, takes a hefty percentage of the money for itself. A 30% processing fee is many times the charge that other payment processors outside the Apple ecosystem, such as Western Union, charge for processing such payments.

¹ Apple takes 30% of all initial app purchases and in-app purchases made during the first year after the customer downloads the app. After that, the percentage drops to 15%.

8. The money charged for in-app purchases is paid to Apple. An Apple customer is required to provide a method of payment, usually a credit or debit card, for all purchases made in the App Store, including in-app purchases. Apple then has a contractual obligation to the software developers to remit a portion of the money Apple receives from the purchases, typically 70%, to the developers. This contractual arrangement is between Apple and the developers who sell products in the App Store. As between plaintiff and the class members and Apple, however, all in-app and other purchases involve the payment of money *to Apple*, not the developers.

9. This case concerns Apple's profiting from illegal gambling machine games that it sells in its App Store. Apple and its chief mobile device software competitor, Google, both allow customers to purchase games that are no more or no less than casino-style slot machines, casino style table games, and other common gambling games.

10. There are numerous such gambling games that Apple makes available in the App Store, and there is very little variation on how they work. When a customer downloads the game and opens it for the first time, the customer has a set number of free starting "coins," for example, 100,000 or 1,000,000, to play the slots. The games themselves work precisely like a casino slot machine or other games in Las Vegas. In addition to slots, customers can play blackjack, roulette, poker, keno,

bingo, and other card and gambling games. A loss results in a loss of “coins,” but the customer has the chance to win more coins. Eventually a customer runs out of coins, and is prompted to use real money to buy more coins for the opportunity to keep playing the game. Hundreds of these games exist. The following table contains the 200 most popular games.

1	Slotomania™ Vegas Casino Slots	101	Lucky Play Casino Slots Games
2	Jackpot Party - Casino Slots	102	Vegas Downtown Slots & Words
3	DoubleDown™- Casino Slots Game	103	Slots-Fortune 777 Classic Slot
4	Playtika Santa Monica, LLCBingo Blitz™ - Bingo Games	104	Gambino Slots Wheel of Fortune
5	Cashman Casino Las Vegas Slots	105	mychoice casino jackpot slots
6	Cash Frenzy™ - Slots Casino	106	FoxwoodsONLINE
7	World Series of Poker - WSOP	107	Gold Fortune Casino
8	Heart of Vegas Slots-Casino	108	GSN Grand Casino: Slots Games
9	POP! Slots™ Live Vegas Casino	109	Take5 Casino - Slot Machines
10	House of Fun™ - Casino Slots	110	Bid Wars: Pawn Empire
11	Lightning Link Slots-Casino	111	Slots Master-Vegas Casino Game
12	Big Fish Casino: Slots & Games	112	Slots of Vegas
13	DoubleU Casino: Vegas Slots	113	Slingo Arcade - Bingo & Slots
14	Huuuge Casino Slots Vegas 777	114	PokerStars Play – Texas Holdem
15	VEGAS Slots – Casino Slots	115	Blazing 7s Casino: Slots Games
16	Caesars® Casino: Vegas Slots	116	Mystic Slots: Fun Casino Games
17	Jackpot Magic Slots™ & Casino	117	Lucky City™ - 3D Slot Machine
18	Lotsa Slots: Casino SLOTS	118	Governor of Poker 3 - Friends
19	Hit it Rich! Lucky Vegas Slot	119	Casino Roulette: Roulettist
20	my KONAMI - Real Vegas Slots	120	Seminole Social Casino
21	Bingo Party! Lucky Bingo Games	121	Blackjack·
22	Zynga Poker - Texas Holdem	122	Tap Poker Social
23	Wizard of Oz: Casino Slots	123	Slots-Heart of Diamonds Casino
24	Quick Hit Slots - Casino Games	124	Triple Win Slots-Vegas Casino
25	Jackpot Mania™ - DAFU Casino	125	Texas Holdem - Scatter Poker
26	Game of Thrones Slots Casino	126	MONOPOLY Bingo!
27	Gold Fish Casino Slots Games	127	San Manuel Slots
28	Cash Tornado Slots - Casino	128	Wheel of Fortune Slots
29	Scatter Slots - Vegas Casino	129	Ultimate Slots: Casino Slots
30	Billionaire Casino Slots 777	130	Lucky Slots: Vegas Casino

31	Double Win Slots Casino Game	131	Stardust Casino™ Slots - Vegas
32	Texas Hold'em Poker: Pokerist	132	Slots of Vegas - Slot Machine
33	Bingo Journey - Classic Bingo	133	Xtreme Slots
34	Bingo Bash: Online Bingo Games	134	Video Poker Deluxe Casino
35	Bingo Story Live Bingo Games	135	Win Vegas Slots Casino: Nascar
36	Willy Wonka Slots Vegas Casino	136	Bid Wars: Storage Auctions
37	Poker Face - Live Texas Holdem	137	Coin Trip
38	Classic Casino Slots Games	138	Royal Slot Machine Games
39	GSN Casino: Slot Machine Games	139	World Poker Tour - PlayWPT
40	Bingo Pop - Bingo Games	140	Absolute Bingo! Play Fun Games
41	88 Fortunes Slots Casino Games	141	Bingo Holiday - BINGO Games
42	MONOPOLY Slots - Casino Games	142	Vegas Slots - Slot Machines!
43	Vegas Live Slots Casino	143	Solitaire
44	Ignite Classic Slots	144	Video Poker Games
45	Hot Shot Casino - Slots Games	145	Slots™
46	Wynn Slots - Las Vegas Casino	146	Sanh Rong - Game danh bai
47	Wild Classic Slots™ Casino	147	Slot Bonanza- 777 Vegas casino
48	Slots - Classic Vegas Casino	148	HighRoller Vegas: Casino Slots
49	Slot Machines 777 - Slots Era	149	Video Poker by Ruby Seven
50	Club Vegas Slots: Casino 777	150	Slots Craze: Casino Games 2020
51	Blackjack 21: Blackjackist	151	VIP Poker - Texas Holdem
52	Tycoon Casino™ - Vegas Slots	152	Cash Dozer: Lucky Coin Pusher
53	Double Hit Casino: Vegas Slots	153	VIP Deluxe Slot Machine Games
54	Bingo Showdown -> Bingo Live!	154	Vegas Slots: Deluxe Casino
55	Rock N' Cash Casino Slots	155	Casino Frenzy-Fantastic Slots
56	Winning Slots Las Vegas Casino	156	Video Poker - Classic Games
57	Cash Mania - Casino Slots	157	Epic Diamond Slots: Casino Fun
58	Slots GoldenHoYeah-Casino Slot	158	Ellen's Road to Riches Slots
59	Huge Win! Classic Slots Game	159	Empire City Casino Slots
60	Slots DoubleDown Fort Knox	160	Diamond Sky: Slots & Lottery
61	Casino Games - Infinity Slots	161	Poker Night in America
62	Backgammon - Lord of the Board	162	Slots - Pharaoh's Way
63	Double Rich ! Vegas Casino Slots	163	HOLD'EM OR FOLD'EM
64	Pokerrrr 2- Holdem, OFC, Omaha	164	Slingo Adventure
65	Poker Heat: Texas Holdem Poker	165	Dragon King Fishing Online
66	Golden Casino - Vegas Slots	166	Baba Wild Slots - Vegas Casino
67	Blackjack 21 - HOB	167	Royal Slots:Slot Machine Games
68	High 5 Casino: Home of Slots	168	Praia Bingo - Bingo Games
69	Show Me Vegas Slots Casino App	169	Bingo Infinity
70	Texas Poker: Pokerist Pro	170	Vegas Craps by Pokerist
71	Texas Holdem Poker	171	Real Casino Slots
72	Billion Cash Slots-Casino Game	172	Bonus of Vegas Slots Casino
73	Multi-Strike Poker™	173	Hit 7 Casino : Vegas Slots

74	Vegas Slots - 7Heart Casino	174	Real Slots Best Bet Casino™
75	DoubleDown Classic Slots	175	Fantasy Springs Slots Casino
76	Coin Dozer	176	Live Play Bingo
77	Mega Hit Poker: Texas Holdem	177	Blackjack
78	Hard Rock Social Casino	178	Teen Patti by Octro
79	Bingo !	179	SpinToWin Slots & Sweepstakes
80	Viva Slots Vegas Slot Machines	180	Teen Patti Gold, Poker & Rummy
81	Bingo Frenzy: BINGO Cooking!	181	Texas Poker
82	Slots Casino - Jackpot Mania	182	Hard Rock Blackjack & Casino
83	Slots Casino: Vegas Slot Games	183	Vegas Nights Slots
84	Slots Games: Hot Vegas Casino	184	Lucky North Casino Slot Games
85	Magic Vegas Casino	185	Bingo!™
86	Vegas Casino Slots - Mega Win	186	HD Poker: Texas Holdem
87	SLOTS - Black Diamond Casino	187	Cashmania Slots: Slot Games
88	Backgammon Live™ Board Game	188	Blackjack 21-World Tournament
89	The Walking Dead Casino Slots	189	Blackjack 21: Live Casino game
90	Jackpotjoy Slots: Vegas Casino	190	Super Jackpot Slots Casino
91	Old Vegas Classic Slots Casino	191	Keno 4 Multi Card
92	FaFaFa™ Gold Slots Casino	192	Binion's Casino
93	Lucky Time Slots™ Vegas Casino	193	Lottery Scratchers
94	Video Poker Classic - 39 Games	194	Fishing Casino - Ocean King
95	Stars Casino Slots	195	Bingo PartyLand: BINGO! & Spin
96	Clubillion™: casino slots game	196	GamePoint Bingo
97	Lucky Lottery Scratchers	197	American Scratchers Lottery
98	Bingo Drive: Play & Win Online	198	Ever Rich Slots
99	Abradoodle Bingo: Fun Bingo!	199	Keno Bonus Play
100	Cash Fever Slots™-Vegas Casino	200	Spider Solitaire: Card Game

11. Plaintiff Rico Viglietti downloaded and played several of these casino-style gambling games, including Lightning Link, Cashman, and Heart of Vegas. Mr. Viglietti downloaded these games from the Apple App Store at least two years ago. More than ninety days ago, he began purchasing coins through the app so he could continue to play for a chance to win free coins that would enable him to enjoy the games for a longer period of time. In the ninety days prior to the filing of this

complaint, he paid \$106.00 to Apple for the privilege of continuing to play the illegal gambling games.

12. A customer such as plaintiff does not have the ability to collect actual cash as a result of “winning” games, but he does have the ability to win and therefore acquire more playing time. Tennessee law prohibits paying to win anything of value, including free plays. Section 39-7-501 declares:

(1) Gambling is contrary to the public policy of this state and means risking anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.

Tenn. Code Ann. § 39-17-501(1). This code section replaced a prior law that allowed such gaming devices if one could win only 15 or fewer replays. See Brackner v. Estes, 698 S.W.2d 637, 641 (Tenn Ct. App. Eastern 1985). A game where a patron pays money for the chance to win more playing time without charge violates Tennessee law.

13. Apple is not some minor or incidental participant in these illegal gambling games. It is the principal promoter and facilitator of the illegal activity. Apple maintains dictatorial control over what apps can be downloaded from the App Store, and the payment method to purchase in-app items. As the maker of the Fortnite game alleged in a recent antitrust injunction lawsuit against Apple:

Apple also imposes unreasonable restraints and unlawfully maintains a total monopoly in the iOS In-App Payment Processing Market. Among the oppressive terms that app developers have to accept, Apple coerces

all app developers who wish to use its App Store—the only means with which to distribute apps to iOS users—to use exclusively Apple’s own payment processing platform for all in-app purchases of in-app content.

Complaint for Injunctive Relief, Epic Games v. Apple, Inc., in the United States District Court for the Northern District of California, August 13, 2020 ¶ 10 (copy attached). As noted, Apple uses its unfettered control over apps played on iOS to extract a hefty 30% tax on all purchases made to buy apps or in-app content such as “coins” to gamble with.

14. Apple has the ability, which it has employed on other apps, to geo-restrict games so that they can only be played in certain states. In fact, with cash-out gambling games it regularly restricts those game so that they can only be played in states where that type of gambling is legal. Apple has also restricted gambling games such as the ones made the basis of this lawsuit so that minors cannot download or play them. It has the ability with existing technology it currently uses to prevent the games at issue here from being played in this state.

15. Apple’s App Store is not just a venue to buy iOS apps. It is a promotional tool. Apple heavily promotes apps, such as the illegal gambling games that form the basis of this complaint, that promise to bring in revenue. Revenue from the App Store is the reason Apple is the most valuable company on the planet.

16. Thus, Apple enables, permits, promotes, and profits from illegal gambling.

TENNESSEE LEGAL FRAMEWORK

17 Tennessee has a strong public policy against gambling in this state, explicitly declared in the state's code. Tenn. Code Ann. § 39-17-501(1). The state's strong public policy against gambling includes a statutory right of persons who spend money on gambling to recover their money.

18. The Tennessee criminal laws pertaining to gambling are codified at Sections 39-17-501 through 39-17-509 of the Code of Tennessee Annotated. Section 39-17-503 defines the crime of gambling promotion:

(a) A person commits an offense who knowingly induces or aids another to engage in gambling, and:

(1) Intends to derive or derives an economic benefit other than personal winnings from the gambling; or

Tenn. Code Ann. § 39-17-503(a)(1). When Apple facilitates customers downloading these apps from its app store and paying for credits, it "aids another to engage in gambling." When it collects 30% of the payments it facilitates it "derives an economic benefit other than personal winnings from the gambling."

19. The Tennessee code also contains the offense of "Aggravated gambling promotion" defined as follows:

(a) A person commits an offense who knowingly invests in, finances, owns, controls, supervises, manages or participates in a gambling enterprise.

(b) For purposes of this section, “gambling enterprise” means two (2) or more persons regularly engaged in gambling promotion as defined in § 39-17-503.

Tenn. Code Ann. § 39-17-504. By allowing hundreds of gambling apps (not just two or more) on the app store and facilitating and profiting from their collection of payments, Apple participates in a gambling enterprise and commits the offense of aggravated gambling promotion.

20. As noted above, Tennessee law bans “risking anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.” Tenn. Code Ann. § 39-17-501. This blanket prohibition replaced a code section that allowed up to 15 free replays on a machine of this type.

21. Tennessee provides a statutory civil cause of action to recover money paid and lost due to gambling. Section 29-19-104 of the Tennessee Code Annotated provides:

Any person who has paid any money, or delivered anything of value, lost upon any game or wager, may recover such money, thing, or its value, by action commenced within ninety (90) days from the time of such payment or delivery.

CLASS ALLEGATIONS

22. Plaintiff seeks to certify and represent a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. The class sought to be certified is:

All Tennessee residents who downloaded, played, and paid money for additional coins within games from the Apple App Store that featured slots, roulette, blackjack, poker, keno, craps, and other kinds of casino-style gambling games, bingo, or simulations thereof, where the player had a chance to win coins or other means to play for additional periods of time, during a period commencing 90 days before the filing of this complaint and continuing to a date to be set by the Court following certification. All employees of the Court, and plaintiff's counsel and their families are excluded.

23. This class action satisfies the numerosity requirement of Rule 23(a)(1) because joinder of all members of the plaintiff class is impracticable. There are thousands of Tennessee residents who are members of the class.

25. It also satisfies the commonality requirement of Rule 23(a)(2) because there are central questions of fact and law that are common to the class. Such common questions include, at a minimum, (a) whether these virtually identical gambling games sold through the App Store violate Tennessee's prohibition of illegal gambling; (b) whether gambling for additional play-time is prohibited under Tennessee law; (c) whether Apple promoted gambling through its participation in the sale of in-app purchases through the App Store; (d) whether Apple participated in a gambling enterprise; and (e) whether plaintiff and the class members are entitled to recover their money pursuant to Section 29-19-104 of the Tennessee Code Annotated.

25. The proposed class satisfies the typicality requirement of Rule 23(a)(3) because the named plaintiff's claims are typical of the claims of the class members.

Both plaintiff and the class members lost money in an effort to win additional play-time on these illegal gambling games.

26. The named plaintiff will fairly and adequately represent the interests of the class pursuant to Rule 23(a)(4). Plaintiff has no interests that conflict with the interests of the class. Furthermore, plaintiff has retained competent and experienced counsel with decades of experience litigating class cases.

27. Plaintiff seeks certification of a class pursuant to Rule 23(b)(3), which allows class treatment of a claim where:

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

28. The common questions of law and fact in this case vastly predominate over any individual issues affecting only individual class members. The *only* individual issue presented by these class members is the exact amount of money damages to which each class member is entitled. Such damages issues are routinely

held not to predominate over common questions in cases like this. Indeed, the individual damages issues will be quickly and accurately determined by examining Apple's own records.

29. Class treatment is by far superior to individual litigation as a fair and efficient way to adjudicate this controversy. Given the relatively small individual amounts at issue, it unlikely whether there would be any adjudication at all without use of the class device. No individual class member would rationally commence and prosecute a lawsuit where the individual amount in controversy likely would not exceed the filing fees.

30. For this reason, none of the class members have any interest in controlling the prosecution of separate actions.

31. Likewise, to our knowledge, no class member has already commenced an action concerning this controversy.

32. It would much more desirable to concentrate this case in one action rather than allow the prosecution of individual actions because, as noted, such individual actions would likely never be filed because there would be no motivation for any individual class member to file an individual suit.

33. We foresee no particular difficulties in managing this case as a class action because 100% of the necessary information to compensate the individual class

members is contained in Google's own records concerning purchases made through the Apple Play Store.

CAUSE OF ACTION

33. Plaintiff, on his own behalf and on behalf of those similarly situated, seek recovery of all sums paid through in-app purchases in these games made through the App Store pursuant to Section 29-19-104 of the Tennessee Code Annotated.

PRAYER FOR RELIEF

WHEREFORE, the premises considered, plaintiff asks the Court to:

1. Take jurisdiction of this cause;
2. Following discovery, certify this case as a class action pursuant to Rule 23(b)(3);
3. Appoint the undersigned as Class Counsel and the named plaintiff as class representative;
4. Enter a final judgment against Apple awarding plaintiff and the class members a refund of all money paid through the illegal gambling games described herein;
5. Award Class Counsel reasonable attorneys' fees and expenses to be paid out of the judgment in favor of the class;

6. Award the named plaintiff a reasonable sum of money for his services in this case on behalf of the class, also to be paid out of the judgment in favor of the class;
7. Award interest and costs; and
8. Award any other relief to which the Court finds plaintiff and the class are entitled.

Respectfully submitted this 22nd day of October, 2020,

/s/ D. Frank Davis
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