# California Judge Allows Public Nuisance Claims Against Social Media Companies

**November 21, 2024**

On November 15, 2024, Judge Yvonne Gonzales Rogers of the United States District Court for the Northern District of California issued a ruling on a motion by social media companies seeking to dismiss public nuisance claims brought by school districts and local governments in 19 states. These plaintiffs made the novel claim that the defendants created a public nuisance by designing social media platforms in a manner intended to attract and addict youths, thereby creating a mental health crisis. The Court dismissed claims brought under Illinois, New Jersey, Rhode Island and South Carolina law because the supreme courts in those states "expressed reluctance" to expand the public nuisance doctrine—but let the claims under the remaining 15 states' laws go forward. This opinion is significant both for social media companies and consumer product manufacturers, many of whom have been targeted by plaintiffs bringing public nuisance claims alleging that the sales, marketing or distribution of products or technology platforms created a public health crisis.

The court's opinion wades into the hotly debated question as to the scope of the public nuisance doctrine—decidedly in the plaintiffs' favor. Traditionally, public nuisance concerned real property-based torts; for example, a factory that releases chemicals that taint a local water supply could be sued and required to pay for "abatement" in the form of a cleanup. For several decades, the plaintiffs' bar has been attempting to expand the doctrine to cover the claim that the sale and marketing of lawful consumer products (including, for example, fast food, guns, and prescription opioids) created public health crises that could be addressed through the public nuisance doctrine and abated through costly social programming. Courts and leading legal commentators have cautioned against this approach, warning that this type of expansion of the doctrine would create "a monster that would devour in one gulp the entire law of tort"[1] and open the floodgates of litigation against any company that allegedly contributed to a social harm. Plaintiffs in this litigation have taken these claims a step further, arguing that the

[1] *Camden Cnty. Bd. of Chosen Freeholders v. Beretta, U.S.A. Corp.*, 273 F.3d 536, 540 (3d Cir. 2001).

operation of social media platforms (which the court termed a "virtual public square") created a public nuisance.

The court here adopted a plaintiff-friendly interpretation of the public nuisance doctrine, claiming that it "provides a flexible mechanism to redress evolving means for causing harm."[2] Although the court recognized that many authorities—including several state supreme courts and federal courts of appeals—have rejected attempts to expand the public nuisance doctrine beyond property-based torts, the court decided to let cases proceed under state laws where the courts have either "rejected the limitation or [] have not addressed the issue."[3] The court thus adopted a default presumption that such novel causes of action were permissible unless proven otherwise.

As for concerns about the expansion of the nuisance doctrine opening the floodgates of litigation, the court accepted (without significant analysis) the school districts' sweeping claim that "defendants targeted minors *at the school level* [and therefore] readily could foresee the strain their addictive platform design would impose on *schools*, and in some cases knew of those direct impacts *to schools*."[4] That same argument, however, could be applied to any practice that allegedly created youth harm.

The court also rejected the defendants' argument that public nuisance claims should not be permitted because product liability law is more appropriately applied to these claims. First, the court noted that it is unclear "whether a 'product' even exists" in this case, observing that the defendants had previously argued in personal injury suits that their social media platforms should not be treated as products for purposes of products liability law.[5] Nonetheless, the court concluded that "the high courts have not *per se* prohibited" plaintiffs' theory and noted that if social media platforms were not products, the public nuisance doctrine would give plaintiffs another route to establish liability.[6]

The court's opinion is unlikely to be the final word on the question of whether the design and operation of a social media platform can give rise to a public nuisance claim because the supreme court in each state is the ultimate authority regarding the scope of the state's public nuisance doctrine. The court cited to opinions in Alaska and Ohio in support of a broad application of the public nuisance doctrine—while neglecting to mention that the supreme courts in those states, as well as West Virginia, are currently hearing appeals in those states regarding the scope of the public nuisance doctrine. Here too, if the plaintiffs prevail on their public nuisance theories and the matter is appealed

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2 *In re: Social Media Adolescent Addictions/Personal Injury Products Liability Litigation* No. 4:22-md-30347, ECF No. 1332, slip op. at 1.
3 *Id.* at 9.
4 *Id.* at 20.
5 *Id.* at 18.
6 *Id.* at 19; n.16

to an appellate court, it may well ask the supreme courts in each state to determine whether the public nuisance doctrine in each state permits such causes of action. In the past, state supreme courts have been hostile to even narrower expansions of the doctrine than what plaintiffs advocate here—but what they will do remains to be seen.

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Please do not hesitate to contact us with any questions.

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