UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL BROWN, on behalf of himself and all others similarly situated,

Plaintiff,

-against-

GOOGLE, LLC, and GOOGLE PAYMENT CORP.,

Defendants.

STATEWIDE CLASS ACTION COMPLAINT
8:20-cv-1311 (BKS/DJS)

Plaintiff Michael Brown, on behalf of himself and others similarly situated, brings this action against defendants Google LLC and Google Payment Corporation (hereafter "Google") to recover money lost to illegal gambling pursuant to New York General Obligations Law § 5-421. *See also* N.Y. Penal Code §§ 225.00 through 225.95. Google promotes, enables, and profits from games downloaded from the Google Play Store and played by numerous New York residents that constitute illegal gambling under the statutory law and the strong public policy of the state of New York. 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 Michael Brown is an adult resident citizen of the state of New York, residing in Clinton County, New York.

2. Defendant Google LLC is a Delaware limited liability company with its principal place of business in Mountain View, California. Google LLC is the primary operating subsidiary

of the publicly traded holding company Alphabet Inc. Google LLC does business by agent in this state, district, and division.

3. Defendant Google Payment Corp. is a Delaware corporation with its principal place of business in Mountain View, California. It is a wholly-owned subsidiary of defendant Google LLC. Google Payment Corp. provides in-app payment processing services to Android app developers and Android users, collecting a 30% commission on most in-app purchases such as the ones made the basis of this lawsuit. It does business by agent in this state, district, and division. For ease of reference, Google LLC and Google Payment Corp. will be referred to hereinafter collectively as "Google."

4. This is a class action brought by New York citizens against corporations with citizenship in California and Delaware. 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).

5. 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

6. Google is one of the leading technology companies in the world. Its parent company Alphabet Inc. has a market capitalization approaching $1 trillion. One of its leading businesses stems from its ownership and control of the Android mobile operating system, which is installed on virtually every smart phone and tablet not manufactured by Apple. Nearly all applications that run on the Android operating system are downloaded via the Google Play Store.

7. While the Android OS was originally touted as an "open" system that allowed for installation of software applications not controlled by Google, today the truth is quite different.

Google has erected contractual and technological barriers that foreclose any competing methods to distribute apps to Android users. As a result, the Google Play Store maintains an almost-total monopoly on the distribution of apps made to run on the Android OS, including in-app purchases. As noted, Google takes up to 30% of all revenue generated by app sales in the Google Play Store and in-app purchases made on apps obtained through the Google Play Store. Millions of software developers make applications for the Android OS that as a practical matter are available only via the Google Play Store.

8. 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. Google 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 Android ecosystem, such as Western Union, charge for processing such payments.

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

10. This case concerns Google's profiting from illegal gambling machine games that it sells in its Google Play Store. Google and its chief mobile software competitor, Apple, 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.

11. There are numerous such gambling games that Google makes available in the Google Play 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 such games exist. The 200 most downloaded games are in the following table:

1	Slotomania™ Free Slots: Casino Slot Machine Games	101	Bingo Adventure-Free casino game with bingo bonus
2	Jackpot Party Casino Games: Spin FREE Casino Slots	102	Superb Casino - HD Free Slots Games
3	Cash Frenzy™ Casino – Free Slots Games	103	FoxwoodsONLINE - Free Casino
4	POP! Slots ™- Play Vegas Casino Slot Machines!	104	Gambino Slots: Free Online Casino Slot Machines
5	Cashman Casino: Vegas Slot Machines! 2M Free!	105	Blazing 7s™ Casino Slots - Free Slots Online
6	DoubleU Casino - Free Slots	106	Bravo Casino- Free Vegas Slots
7	Vegas Slots - DoubleDown Casino	107	Baba Wild Slots - Slot machines Vegas Casino Games
8	House of Fun™: Free Slots & Casino Slots Machines	108	VegasStar™ Casino - FREE Slots
9	Lotsa Slots - Free Vegas Casino Slot Machines	109	Grand Win Casino - Hot Vegas Jackpot Slot Machine
10	Huuuge Casino Slots - Slot Machines 777	110	MONOPOLY Bingo!
11	Slots: Heart of Vegas™ – Free Slot Casino Games	111	Texas HoldEm Poker Deluxe

12	Big Fish Casino - Play Slots and Casino Games	112	Vegas World Casino: Free Slots & Slot Machines 777
13	Lightning Link Casino: Free Vegas Slots! 10M Bonus	113	Casino X - Free Online Slots
14	Caesars Casino: Free Slots Games	114	Lucky Play Casino – Free Las Vegas Slots Machines
15	Wizard of Oz Free Slots Casino	115	Bingo Holiday: Free Bingo Games
16	Hit it Rich! Lucky Vegas Casino Slot Machine Game	116	Bingo City 75: Free Bingo & Vegas Slots
17	Quick Hit Casino Games - Free Casino Slots Games	117	Real Casino - Free Vegas Casino Slot Machines
18	Billionaire Casino Slots - Slot Machines 777	118	Double Win Vegas - FREE Slots and Casino
19	Jackpot Magic Slots™: Social Casino & Slot Games	119	DoubleX Casino - Free Slots
20	Gold Fish Casino Slots - FREE Slot Machine Games	120	Lucky Draw - 3D Casino Slots
21	Scatter Slots - Hot Vegas Slot Machines Casino 777	121	Slot Bonanza - Free casino slot machine game 777
22	myVEGAS Slots - Las Vegas Casino Slot Machines	122	Real Casino Vegas:777 Classic Slots & Casino Games
23	Zynga Poker – Free Texas Holdem Online Card Games	123	Wheel of Fortune Slots Casino
24	Game of Thrones Slots Casino - Slot Machine Games	124	WinStar Online Casino & eGames
25	Jackpot Mania™ - DAFU Casino Vegas Slots	125	Stardust Casino Slots – FREE Vegas Slot Machines
26	my KONAMI Slots - Free Vegas Casino Slot Machines	126	World Poker Tour - PlayWPT Free Texas Holdem Poker
27	Bingo Pop - Live Multiplayer Bingo Games for Free	127	Epic Diamond Slots – Free Vegas Slot Machines
28	Club Vegas: Online Slot Machines with Bonus Games	128	Quick Cash Classic Slots - Free Vegas Slots Games
29	MONOPOLY Slots Free Slot Machines & Casino Games	129	Win Vegas x NASCAR: 777 Classic Slots, Free Casino
30	Cash Tornado Slots - Vegas Casino Slots	130	Magic Vegas Casino: Slots Machine
31	Willy Wonka Slots Free Casino	131	mychoice casino jackpot slots + free casino games
32	Vegas Live Slots : Free Casino Slot Machine Games	132	Vegas Casino Slots 2020 - 2,000,000 Free Coins
33	GSN Casino: Play casino games- slots, poker, bingo	133	Slots Vacation - FREE Slots
34	88 Fortunes - Casino Games & Free Slot Machines	134	Slots Billionaire: Free Slots Casino Games Offline
35	Bingo Journey - Lucky & Free Bingo Games	135	The Big Jackpot

36	Slots (Golden HoYeah) - Casino Slots	136	DoubleDown Classic Slots - FREE Vegas Slots!
37	Neverland Casino Slots 2020 - Social Slots Games	137	Buffalo 5-Reel Deluxe - Free Classic Slots Casino
38	Cash Mania Slots - Free Slots Casino Games	138	Best Casino Slots - 777 Vegas Slots Games
39	Classic Slots-Free Casino Games & Slot Machines	139	Video Poker - Classic Casino Games Free Offline
40	Tycoon Casino™: Free Vegas Jackpot Slots	140	Play Las Vegas - Casino Slots
41	Jackpot Slot Machines - Slots Era™ Vegas Casino	141	Vegas Night Slots - HOT&FREE VEGAS CASINO GAMES
42	Double Win Casino Slots - Real Vegas Night Slots	142	Full House Casino - Free Vegas Slots Machine Games
43	Vegas Friends - Casino Slots for Free	143	Ultimate Slots: 2019 Vegas Casino Slot Machines
44	Hot Shot Casino: Free Casino Games & Blazing Slots	144	Let's Vegas Slots
45	High 5 Casino: The Home of Fun & Free Vegas Slots	145	Bingo 90 Live: Vegas Slots & Free Bingo
46	Rock N' Cash Casino Slots -Free Vegas Slot Games	146	Slots of Vegas
47	Ignite Classic Slots	147	Lucky Lottery Scratchers
48	Casino Slots DoubleDown Fort Knox Free Vegas Games	148	San Manuel Slots
49	Bingo Blaze - Free Bingo Games	149	Diamond Sky Casino – Classic Vegas Slots & Lottery
50	Winning Slots casino games:free vegas slot machine	150	Best Bet Casino™ | Best Free Slots & Casino Games
51	Huge Win Slots - Real Casino Slots in Vegas Nights	151	Vegas Craps by Pokerist
52	Double Rich - Hottest Vegas Casino Slots Games	152	Vegas Slots Galaxy Free Slot Machines
53	Slots Casino - Jackpot Mania	153	Slots : FREE Vegas Slot Machines - 7Heart Casino!
54	Jackpot Fever – Free Vegas Slot Machines	154	麻將 明星3缺1麻將–台灣16張麻將 Mahjong 、SLOT、Poker
55	Slots™ - Classic Slots Las Vegas Casino Games	155	Woohoo Slots : Play Free Casino Slot Machine Games
56	Wild Classic Slots™ - Best Wild Casino Games	156	Slots™
57	Casino Jackpot Slots - Infinity Slots™ 777 Game	157	Casino Frenzy - Free Slots
58	星城Online	158	Manly Slots: Slots for Men
59	Stars Slots Casino - Vegas Slot Machines	159	Spin 4 Win Slots - Real Vegas for Senior Slot Fan

60	Wynn Slots - Online Las Vegas Casino Games	160	Multi-Strike Poker ™ | Free Multi-Play Video Poker
61	Bingo: Lucky Bingo Games Free to Play at Home	161	Seminole Social Casino
62	Clubillion™- Vegas Slot Machines and Casino Games	162	Ellen's Road to Riches Slots & Casino Slot Games
63	Coin Dozer: Sweepstakes	163	Players Paradise Casino Slots - Fun Free Slots!
64	Lucky Time Slots Online - Free Slot Machine Games	164	SLOTS GRAPE - Free Slots and Table Games
65	Show Me Vegas Slots Casino Free Slot Machine Games	165	Bingo PartyLand 2 - Free Bingo Games
66	Bingo Frenzy! Bingo Cooking Free Live BINGO Games	166	Star Spins Slots: Vegas Casino Slot Machine Games
67	Cash Storm Casino - Online Vegas Slots Games	167	Slots! CashHit Slot Machines & Casino Games Party
68	Slots: DoubleHit Slot Machines Casino & Free Games	168	DoubleU Bingo - Free Bingo
69	FaFaFa™ Gold Casino: Free slot machines	169	VIDEO POKER OFFLINE FREE!
70	SLOTS - Black Diamond Casino	170	Poker Night in America
71	NEW SLOTS 2020—free casino games & slot machines	171	Super Jackpot Slots - Vegas Casino Slot Machines
72	Bingo Club--Pop bingo games online with numbers	172	City of Dreams Slots - Free Slot Casino Games
73	Cash Blitz - Free Slot Machines & Casino Games	173	Sunny's Rooster Reels
74	Bingo Drive – Free Bingo Games to Play	174	Vegas Deluxe Slots:Free Casino
75	Vegas Downtown Slots™ - Slot Machines & Word Games	175	Binion's Casino
76	Old Vegas Slots – Classic Slots Casino Games	176	CLUE Bingo!
77	Jackpotjoy Slots: Slot machines with Bonus Games	177	OMG! Fortune Slots - Grand Casino Games
78	HighRoller Vegas - Free Slots & Casino Games 2020	178	بوكر تكساس بويا (Texas Boya Poker)
79	Golden Tiger Slots - Online Casino Game	179	Bingo Infinity™ - Free Casino Slots & Bingo Games
80	ManganDahen Casino - Free Slot	180	777 Slots - Free Vegas Slots!
81	Coin Trip	181	Coin Dozer: Casino
82	Golden Casino: Free Slot Machines & Casino Games	182	Bingo Town - Live Bingo Games for Free Online
83	Free Slot Machines & Casino Games - Mystic Slots	183	High Rollin' Vegas Slots
84	The Walking Dead: Free Casino Slots	184	Lucky North Casino- Free Slots
85	Take5 Free Slots – Real Vegas Casino	185	Lucky Win Casino™- FREE SLOTS

86	DH Texas Poker - Texas Hold'em	186	NPlay Pro
87	Gold Fortune Casino™ - Free Vegas Slots	187	Lucky Duck Slots
88	ZitoBox	188	Slots Free - Vegas Casino Slot Machines
89	Grand Jackpot Slots - Pop Vegas Casino Free Games	189	Tongits Go - The Best Card Game Online
90	Video Poker Classic Free	190	Play To Win: Win Real Money in Cash Sweepstakes
91	Jackpot Planet - a New Adventure of Slots Games	191	Dragon 88 Gold Slots - Free Slot Casino Games
92	Slingo Arcade: Bingo Slots Game	192	777 Classic Slots: Free Vegas Casino Games
93	Super Win Slots - Real Vegas Hot Slot Machines	193	Link It Rich! Hot Vegas Casino Slots FREE
94	GSN Grand Casino – Play Free Slot Machines Online	194	Golden Wins Casino Slots
95	Hard Rock Social Casino	195	Slots on Tour Casino - Vegas Slot Machine Games HD
96	Slots Free - Big Win Casino™	196	Cash Fever Slots™-Vegas Casino
97	Epic Jackpot Slots - Free Vegas Casino Games	197	Teen Patti Gold - 3 Patti, Rummy, Poker Card Game
98	Slots Pharaoh's Way Casino Games & Slot Machine	198	HD Poker: Texas Holdem Online Casino Games
99	GamePoint Bingo - Free Bingo Games	199	Cashmania Slots 2020: Free Vegas Casino Slot Game
100	Vegas Slots: Deluxe Casino	200	Live Poker Tables–Texas holdem and Omaha

12. Plaintiff Michael Brown downloaded and played several of these casino-style gambling games, including Goldfish Casino, Cashman, and Jackpot Party. He downloaded the first of these games from the Google Play Store prior to April 3, 2016, and began purchasing coins through the app so he/she could continue to play for a chance to win free coins that would enable him/her to enjoy the games for a longer period of time on that date. In the three months prior to the filing of this complaint, he paid $1,014.87 to Google for the privilege of continuing to play the illegal gambling games.

13. 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. New York's gambling statutes make clear that paying money in a game for a chance to win more playing time constitutes illegal gambling under New York law. Section 225.00 of the New York Penal Code defines "something of value" for purposes of the state gambling laws as:

> "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, ***or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.***

A game where a patron pays money for the chance to win more playing time without charge violates New York law.

14. Google is not some minor or incidental participant in these illegal gambling games. It is the principal promoter and facilitator of the illegal activity. Google maintains dictatorial control over what apps can be downloaded from the Google Play 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 Google:

> Google has eliminated competition in the distribution of Android apps using myriad contractual and technical barriers. Google's actions force app developers and consumers into. Google's own monopolized "app store"—the Google Play Store. Google has thus installed itself as an unavoidable middleman for app developers who wish to reach Android users and vice versa. Google uses this monopoly power to impose a tax that siphons monopoly profits for itself every time an app developer transacts with a consumer for the sale of an app or in-app content

Complaint for Injunctive Relief, *Epic Games v. Google LLC, et al*, in the United States District Court for the Northern District of California, August 13, 2020, C3:20-cv-05671 ¶ 10 (copy attached). As noted, Google uses its unfettered control over apps played on the Android OS to extract a hefty 30% tax on all purchases made to buy apps or in-app content such as "coins" to gamble with.

15. Google 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. Google 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.

16. Google's Play Store is not just a venue to buy Android apps. It is a promotional tool. Google 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 Google Play Store is the reason Google is such a dominant force in the technology world.

17. Thus, Google enables, permits, promotes, and profits from illegal gambling.

NEW YORK LEGAL FRAMEWORK

18. New York has a strong public policy against gambling in this state. The state's strong public policy against gambling includes a statutory right of persons who spend money on illegal gambling to recover their money.

19. The New York criminal laws pertaining to gambling are codified in the Penal Law at Sections 225.00 through 225.95. Section 225.05 states "A person is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity." Section 225. According to Section 225.95, a person commits the crime of "unlawful manufacture, sale, distribution, marking, altering or modification of equipment and devices associated with gaming" when he or she "[m]anufactures, sells or distributes any cards, chips, cheques, tokens, dice, vouchers, game or device and he or she knew or reasonably should have known it was intended to be used to violate any provision of this article." N.Y. Penal Law § 225.95.

20. As already noted, "something of value" is not limited under New York law to the situation where one gambles in the hopes of winning actual cash money. Rather, "something of value" specifically includes anything "involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge." N.Y. Penal Law § 225.00. As a matter of law, paying money to get "coins" one bets hoping to win more "coins" so as to gain the "privilege of playing at a game or scheme without charge" is gambling a thing of value under New York law.

21. As to the prohibition of "promoting" gambling in Section 225.05, the statute states that a person is guilty of this crime if he "knowingly advances or profits from unlawful gambling activity." N.Y. Penal Law § 225.05. By promoting, and receiving the proceeds from the illegal gambling games, Google clearly "advances" and "profits from" illegal gambling. It is therefore guilty of promoting gambling in the second degree under Section 225.05.

22. New York provides a statutory civil cause of action to recover money paid and lost due to gambling. Section 5-421 of the General Obligation Law provides:

> Every person who shall, by playing at any game, or by betting on the sides or hands of such as do play, lose at any time or sitting, the sum or value of twenty-five dollars or upwards, and shall pay or deliver the same or any part thereof, may, within three calendar months after such payment or delivery, sue for and recover the money or value of the things so lost and paid or delivered, from the winner thereof.

N.Y. General Obligations Law § 5-421.

CLASS ALLEGATIONS

23. 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 New York residents who downloaded, played, and paid money for additional coins within games from the Google Play 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 three months 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.

24. 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 New York 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 Google Play Store violate New York's prohibition on illegal gambling; (b) whether gambling for additional play-time is a thing of value under New York law; (c) whether Google promoted gambling through its participation in the sale of in-app purchases through the Google Play Store; and (d) whether plaintiff and the class members are entitled to recover their money pursuant to Section 5-421 of the General Obligation Law.

26. 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.

27. 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.

28. 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.

29. 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 Google's own records.

30. 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.

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

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

33. 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.

34. 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 Google Play Store.

CAUSE OF ACTION

35. 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 Google Play Store pursuant to Section 5-421 of the New York General Obligations Law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that the Court:

1. Take jurisdiction of this cause;
2. Following discovery, certify this case as a class action pursuant to Rule 23(b)(3);
3. Appoint plaintiff's counsel as Class Counsel and the named plaintiff as class representative;
4. Enter a final judgment against Google LLC and Google Payment Corporation 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 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.

Dated: New York, New York
October 22, 2020

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC., Plaintiff, vs. APPLE INC., Defendant.	Case No. _____ **COMPLAINT FOR INJUNCTIVE RELIEF**

TABLE OF CONTENTS

NATURE OF THE ACTION 1

PARTIES 8

JURISDICTION AND VENUE 10

INTRADISTRICT ASSIGNMENT 12

RELEVANT FACTS 12

I. Apple Monopolizes the iOS App Distribution Market. 12

A. The iOS App Distribution Market. 16

B. Apple's Monopoly Power in the iOS App Distribution Market. 17

C. Apple's Anti-competitive Conduct in the iOS App Distribution Market 19

i. Technical Restrictions 19

ii. Contractual Restrictions 19

iii. Lack of Procompetitive Justification 22

D. Anti-competitive Effects in the iOS App Distribution Market. 23

II. Apple Monopolizes the iOS In-App Payment Processing Market. 27

A. The iOS In-App Payment Processing Market. 28

B. Apple's Monopoly Power in the iOS In-App Payment Processing Market 30

C. Apple's Anti-competitive Conduct in the iOS In-App Payment Processing Market. 32

i. Contractual and Policy Restrictions 32

ii. Lack of Procompetitive Justification 33

D. Anti-competitive Effects in the iOS In-App Payment Processing Market 34

III. Competition in the Sale of Mobile Devices Cannot Discipline Apple's Conduct in the iOS App Distribution or iOS In-App Payment Processing Markets. 38

A. Apple's Mobile Device Customers Face Substantial Switching Costs and iOS Lock-In. 38

B. Apple's Sticky iOS Ecosystem Protects its Dominance in the Sales of Mobile Devices 42

C. Information Costs and Other Market Inefficiencies in the iOS App Distribution and iOS In-App Payment Processing Markets. 44

COUNT 1: Sherman Act § 2 (Unlawful Monopoly Maintenance in the iOS App Distribution Market) 47

COUNT 2: Sherman Act § 2 (Denial of Essential Facility in the iOS App Distribution Market) 48

COUNT 3: Sherman Act § 1 (Unreasonable Restraints of Trade in the iOS App Distribution Market) 49

COUNT 4: Sherman Act § 2 (Unlawful Monopoly Maintenance in the iOS In-App Payment Processing Market) 51

COUNT 5: Sherman Act § 1 (Unreasonable Restraints of Trade in the iOS In-App Payment Processing Market) 52

COUNT 6: Sherman Act § 1 (Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market) 53

COUNT 7: California Cartwright Act (Unreasonable Restraints of Trade in the iOS App Distribution Market) 55

COUNT 8: California Cartwright Act (Unreasonable Restraints of Trade in the iOS In-App Payment Processing Market) 56

COUNT 9: California Cartwright Act (Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market) 58

COUNT 10: California Unfair Competition Law 61

PRAYER FOR RELIEF 61

Plaintiff Epic Games, Inc. ("Epic"), by its undersigned counsel, alleges, with knowledge with respect to its own acts and on information and belief as to other matters, as follows:

NATURE OF THE ACTION

1. In 1984, the fledgling Apple computer company released the Macintosh—the first mass-market, consumer-friendly home computer. The product launch was announced with a breathtaking advertisement evoking George Orwell's *1984* that cast Apple as a beneficial, revolutionary force breaking IBM's monopoly over the computing technology market. Apple's founder Steve Jobs introduced the first showing of the 1984 advertisement by explaining, "it appears IBM wants it all. Apple is perceived to be the only hope to offer IBM a run for its money . . . . Will Big Blue dominate the entire computer industry? The entire information age? Was George Orwell right about 1984?"

2. Fast forward to 2020, and Apple has become what it once railed against: the behemoth seeking to control markets, block competition, and stifle innovation. Apple is bigger, more powerful, more entrenched, and more pernicious than the monopolists of yesteryear. At a market cap of nearly $2 trillion, Apple's size and reach far exceeds that of any technology monopolist in history.

3. This case concerns Apple's use of a series of anti-competitive restraints and monopolistic practices in markets for (i) the distribution of software applications ("apps") to users of mobile computing devices like smartphones and tablets, and (ii) the processing of consumers' payments for digital content used within iOS mobile apps ("in-app content"). Apple imposes unreasonable and unlawful restraints to completely monopolize both markets and prevent software developers from reaching the over one billion users of its mobile devices (*e.g.*, iPhone and iPad) unless they go through a single store controlled by Apple, the App Store, where Apple exacts an oppressive 30% tax on the sale of every app. Apple also requires software developers who wish to sell

digital in-app content to those consumers to use a single payment processing option offered by Apple, In-App Purchase, which likewise carries a 30% tax.

4. In contrast, software developers can make their products available to users of an Apple personal computer (*e.g.*, Mac or MacBook) in an open market, through a variety of stores or even through direct downloads from a developer's website, with a variety of payment options and competitive processing fees that average 3%, a full ***ten times*** lower than the exorbitant 30% fees Apple applies to its mobile device in-app purchases.

5. The anti-competitive consequences of Apple's conduct are pervasive. Mobile computing devices (like smartphones and tablets)—and the apps that run on those devices—have become an integral part of people's daily lives; as a primary source for news, a place for entertainment, a tool for business, a means to connect with friends and family, and more. For many consumers, mobile devices are their primary computers to stay connected to the digital world, as they may not even own a personal computer. When these devices are unfairly restricted and extortionately "taxed" by Apple, the consumers who rely on these mobile devices to stay connected in the digital age are directly harmed.

6. Epic brings this suit to end Apple's unfair and anti-competitive actions that Apple undertakes to unlawfully maintain its monopoly in two distinct, multibillion dollar markets: (i) the iOS App Distribution Market, and (ii) the iOS In-App Payment Processing Market (each as defined below). Epic is not seeking monetary compensation from this Court for the injuries it has suffered. Nor is Epic seeking favorable treatment for itself, a single company. Instead, Epic is seeking injunctive relief to allow fair competition in these two key markets that directly affect hundreds of millions of consumers and tens of thousands, if not more, of third-party app developers.

7. Apple imposes unreasonable restraints and unlawfully maintains a total monopoly in the iOS App Distribution Market. To live up to its promise to users that "there's an app for that", Apple, after a short initial attempt to go it alone, opened up

iOS and invited third-party app developers to develop a wide array of apps for the iOS ecosystem. Those apps contribute immense value to that ecosystem and are one of the primary marketing features for iPhones and iPads. But Apple completely bans innovation in a central part of this ecosystem, namely, any app that could compete with Apple for the distribution of apps in iOS. Through its control over iOS, and through a variety of unlawful contractual restrictions that it forces app developers to accept, Apple prevents iOS users from downloading any apps from any source other than Apple's own storefront, the App Store.

8. The result is that developers are prevented from selling or distributing iOS apps unless they use Apple's App Store, and accede to Apple's oppressive terms and conditions for doing so (some of which are discussed further below). For example, as the sole distributor of iOS apps, Apple collects the money from every iOS user's app purchase, remits only 70% of that payment to the app developer, and retains a 30% tax for itself. iOS developers are thus forced to increase the prices they charge consumers in order to pay Apple's app tax. There is no method app developers can use to avoid this tax, as Apple has foreclosed any alternative ways to reach the over one *billion* users of iOS devices. As Representative Hank Johnson aptly summed up at a recent Congressional hearing on technology monopolies: "developers have no choice but to go along with [Apple's policies] or they must leave the App Store. That's an enormous amount of power."

9. Apple's anti-competitive conduct with respect to iOS app distribution results in sweeping harms to (i) app distributors, who are foreclosed from competing with Apple and innovating new methods of distributing iOS apps to users outside the App Store (such as, for example, curated app stores targeting particular categories of apps, like gaming or travel); (ii) app developers, who are denied choice on how to distribute their apps, are forced to fork over more of their revenue on paid apps than they would if Apple faced competition, and on occasion have to abandon their apps altogether if they cannot earn a profit given Apple's 30% tax; and (iii) consumers, who are likewise denied choice

and innovation in app distribution channels and are forced to pay higher prices and suffer inferior customer service from Apple, the unwelcome middleman. (Part I.)

10. 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. Apple thus requires third-party app developers to agree they will not even offer iOS users the *choice* of additional payment processing options *alongside* Apple's. And Apple goes as far as to gag app developers, preventing them from even *mentioning* to users the option of buying the same content outside of the app—for example, by purchasing content directly from the app developer, or using a web browser. Because Apple has a monopoly over the distribution of iOS apps, app developers have no choice but to assent to this anti-competitive tie; it is Apple's way or the highway.

11. In this market too, Apple thus stands as the monopolist middleman, positioning itself between developers and consumers. As the sole payment processor, Apple is able to take an exorbitant 30% fee on all in-app purchases of in-app content.

12. Apple's anti-competitive conduct with respect to iOS in-app payment processing harms: (i) other payment processors, who are foreclosed from competing with Apple on price and innovating new methods of in-app payment processing (such as, for example, rewards points or payment through carrier billing); (ii) app developers, who are denied choice on how to process payments and the benefits of innovation in payment processing, and are forced to pay Apple's tax—set by fiat—rather than by competitive market forces; and (iii) consumers, who are also denied choice and innovation in payment processing and suffer higher prices and inferior service. (Part II.)

13. Apple's anti-competitive conduct in these markets is unchecked; Apple faces little, if any, constraint on its monopoly power in both the iOS App Distribution and iOS In-App Payment Processing Markets, as Apple has foreclosed all

direct competition in these markets. And Apple stands as the sole middleman between a vast and dispersed group of iOS users, and a vast and dispersed group of app developers, each with little power individually to constrain Apple.

14. Further, competition in the sale of mobile devices does not limit Apple's market power. The threat of users switching to non-iOS devices does not constrain Apple's anti-competitive conduct because Apple's mobile device customers face significant switching costs and lock-in to the Apple iOS ecosystem, which serves to perpetuate Apple's substantial market power. This power manifests itself in the data, as Apple is able to gobble up over *two thirds* of the total global smartphone operating profits. Furthermore, when making mobile device purchases, consumers are either unaware of, or cannot adequately account for, Apple's anti-competitive conduct in the downstream app distribution and payment processing markets. The cost of app downloads and in-app purchases will play an insignificant (if any) role in swaying a consumer's smartphone purchase decision. (Part III.)

15. Epic is one of the many app developers affected by Apple's anti-competitive conduct. Epic is a developer of entertainment software for personal computers, smart mobile devices and gaming consoles. The most popular game Epic currently makes is *Fortnite*, which has connected hundreds of millions of people in a colorful, virtual world where they meet, play, talk, compete, dance, and even attend concerts and other cultural events. *Fortnite* is beloved by its millions of users. In the first year after *Fortnite*'s release in 2017, the game attracted over 125 million players; in the years since, *Fortnite* has topped 350 million players and has become a global cultural phenomenon.

16. Epic—and *Fortnite*'s users—are directly harmed by Apple's anti-competitive conduct. But for Apple's illegal restraints, Epic would provide a competing app store on iOS devices, which would allow iOS users to download apps in an innovative, curated store and would provide users the choice to use Epic's or another third-party's in-app payment processing tool. Apple's anti-competitive conduct has also

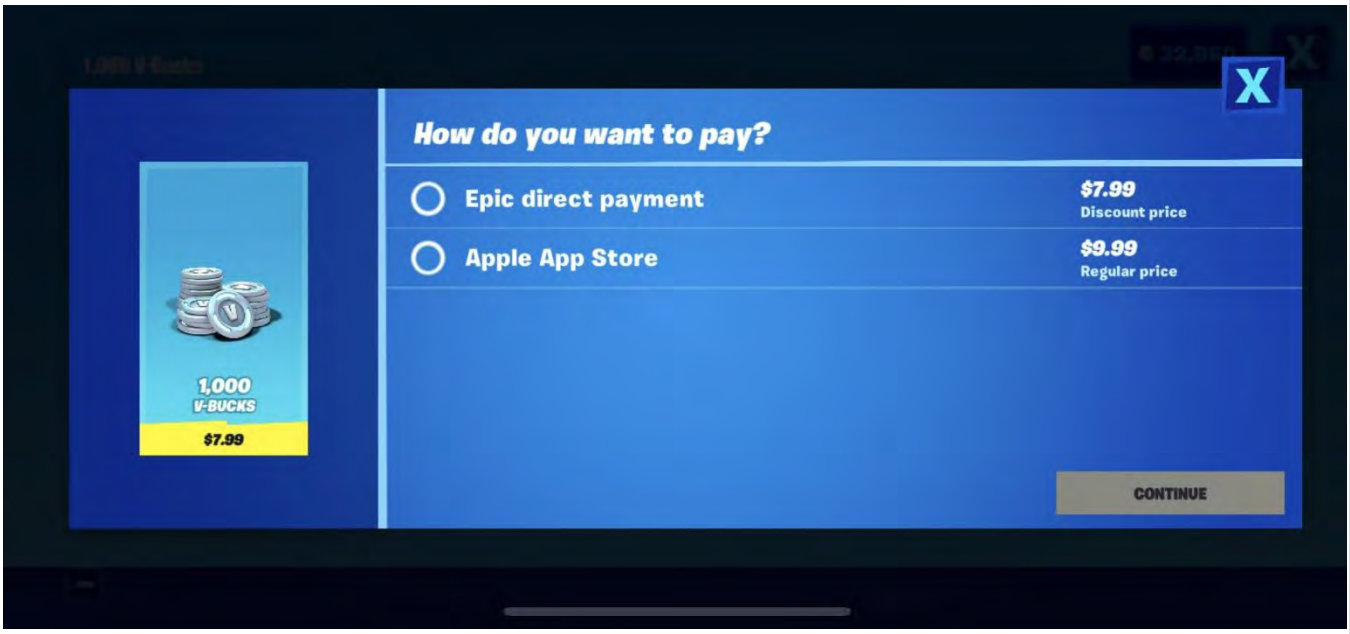
injured Epic in its capacity as an app developer by forcing Epic to distribute its app exclusively through the App Store and exclusively use Apple's payment processing services. As a result, Epic is forced, like so many other developers, to charge higher prices on its users' in-app purchases on *Fortnite* in order to pay Apple's 30% tax.

17. Contrast this anti-competitive harm with how similar markets operate on Apple's own Mac computers. Mac users can download virtually any software they like, from any source they like. Developers are free to offer their apps through the Mac computer App Store, a third-party store, through direct download from the developer's website, or any combination thereof. Indeed, on Macs, Epic distributes *Fortnite* through its own storefront, which competes with other third-party storefronts available to Mac users. App developers are free to use Apple's payment processing services, the payment processing services of third parties, or the developers' own payment processing service; users are offered their *choice* of different payment processing options (*e.g.*, PayPal, Amazon, and Apple). The result is that consumers and developers alike have choices, competition is thriving, prices drop, and innovation is enhanced. The process should be no different for Apple's mobile devices. But Apple has chosen to make it different by imposing contractual and technical restrictions that prevent any competition and increase consumer costs for every app and in-app content purchase—restrictions that it could never impose on Macs, where it does not enjoy the same dominance in the sale of devices. It doesn't have to be like this.

18. Epic has approached Apple and asked to negotiate relief that would stop Apple's unlawful and unreasonable restrictions. Epic also has publicly advocated that Apple cease the anti-competitive conduct addressed in this Complaint. Apple has refused to let go of its stranglehold on the iOS ecosystem.

19. On the morning of August 13, 2020, for the first time, Apple mobile device users were offered competitive choice. Epic added a direct payment option to *Fortnite*, giving players the *option* to continue making purchases using Apple's payment processor or to use Epic's direct payment system. *Fortnite* users on iOS, for the first

time, had a competitive alternative to Apple's payment solution, which in turn enabled Epic to pass along its cost savings by offering its users a 20% reduction in in-app prices as shown below:



20. Rather than tolerate this healthy competition and compete on the merits of its offering, Apple responded by removing *Fortnite* from sale on the App Store, which means that new users cannot download the app, and users who have already downloaded prior versions of the app from the App Store cannot update it to the latest version. This also means that *Fortnite* players who downloaded their app from the App Store will not receive updates to *Fortnite* through the App Store, either automatically or by searching the App Store for the update. Apple's removal of *Fortnite* is yet another example of Apple flexing its enormous power in order to impose unreasonable restraints and unlawfully maintain its 100% monopoly over the iOS In-App Payment Processing Market.

21. Accordingly, Epic seeks injunctive relief in court to end Apple's unreasonable and unlawful practices. Apple's conduct has caused and continues to cause Epic financial harm, but as noted above, Epic is not bringing this case to recover these damages; Epic is not seeking any monetary damages. Instead, Epic seeks to end Apple's

dominance over key technology markets, open up the space for progress and ingenuity, and ensure that Apple mobile devices are open to the same competition as Apple's personal computers. As such, Epic respectfully requests this Court to enjoin Apple from continuing to impose its anti-competitive restrictions on the iOS ecosystem and ensure 2020 is not like "1984".

PARTIES

22. Plaintiff Epic is a Maryland corporation with its principal place of business in Cary, North Carolina. Epic's mission is "to create fun games we want to play and to build the art and tools needed to bring those games to life".

23. Epic was founded in 1991 by a college student named Tim Sweeney who was studying mechanical engineering. Mr. Sweeney ran Epic out of his parents' garage and distributed by mail Epic's first commercial personal computer software, a game named *ZZT*. Since then, Epic has developed several popular entertainment software products that can be played on an array of platforms—such as personal computers, gaming consoles, and mobile devices.

24. Currently, Epic's most popular game is *Fortnite*, which has connected hundreds of millions of people in a colorful virtual world where they meet, play, talk, compete, dance, and even attend concerts and other cultural events.

25. Although some video games or other apps require users to pay before they download and use the software, *Fortnite* is free to download and play. Epic generates revenue by offering users various in-app purchases of in-app content. For example, players who wish to further express themselves within *Fortnite* through digital avatars, costumes, dances, or other cosmetic enhancements may purchase them within the *Fortnite* app. Through this model, Epic makes *Fortnite* widely accessible at no cost to consumers, while earning a return on its artistic and engineering investments through the sale of cosmetic enhancements.

26. *Fortnite* has become a global phenomenon. As noted, in the first year after *Fortnite* was released in 2017, the game attracted over 125 million players; in the years since, *Fortnite* has topped 350 million players and has become a global cultural phenomenon.

27. Epic also built and runs the Epic Games Store, a digital video game storefront through which gamers can download various games, some developed by Epic, and many offered by third-party game developers. The Epic Games Store is currently available on personal computers. Epic distributes *Fortnite* to users of personal computers—including users of Apple's own Mac computers—through the Epic Games Store. Epic also distributes other developers' games for a modest fee through the Epic Games Store. Worldwide, approximately 400 million users have signed up to play Epic's games, and each day 30 to 40 million individuals log into an Epic game.

28. Epic creates and distributes the *Unreal Engine*, a powerful software suite that allows users to create realistic three-dimensional content including video games, architectural recreations, television shows, and movies. An Epic subsidiary also develops and distributes the popular *Houseparty* app, which enables video chatting and social gaming on mobile devices and personal computers.

29. Defendant Apple is a California corporation with its principal place of business in Cupertino, California. Apple is the largest public company in the world, with a current market capitalization of close to $2 trillion. Apple designs, markets and sells smartphones (including the iPhone), personal computers (including Macs), tablets (including the iPad), wearables and accessories, and sells a variety of related services. Apple also owns and operates the Apple App Store (the "App Store"), including contracting with all app developers that distribute their apps through the App Store and is therefore a party to the anti-competitive contractual restrictions at issue in this Complaint.

JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over Epic's federal antitrust claims pursuant to the Clayton Antitrust Act, 15 U.S.C. § 26, and 28 U.S.C. §§ 1331

and 1337. The Court has supplemental jurisdiction over Epic's state law claims pursuant to 28 U.S.C. § 1367. The Court also has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332 based on the diversity of citizenship of Epic, on one hand, and of Apple, on the other. Although Epic does not seek monetary damages, the amount in controversy exceeds $75,000.

31. This Court has personal jurisdiction over Apple. Apple is headquartered in this District. Also, Apple has engaged in sufficient minimum contacts with the United States and has purposefully availed itself of the benefits and protections of both United States and California law such that the exercise of jurisdiction over Apple would comport with due process requirements.

32. Further, Apple has consented to the exercise of personal jurisdiction by this Court. Apple is party to an Apple Developer Program License Agreement (the "Developer Agreement") with Epic. Section 14.10 of the Developer Agreement provides that "[a]ny litigation or other dispute resolution" between the parties "arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in the Northern District of California", and that the parties "consent to the personal jurisdiction of and exclusive venue in the state and federal courts within" the Northern District of California. Section 14.10 further provides that the Developer Agreement "will be governed by and construed in accordance with the laws of the United States and the State of California". At least some of the claims raised in this Complaint "relate to" Epic's relationship with Apple.

33. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Apple maintains its principal place of business in the State of California and in this District, and because a substantial part of the events or omissions giving rise to Epic's claims occurred in this District. In the alternative, personal jurisdiction and venue also may be deemed proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C. § 22, because Apple may be found in or transacts business in this District.

INTRADISTRICT ASSIGNMENT

34. Pursuant to Civil Local Rule 3-2(c), this antitrust case shall not be assigned to a particular Division of this District, but shall be assigned on a District-wide basis.

RELEVANT FACTS

I. Apple Monopolizes the iOS App Distribution Market.

35. To understand how Apple maintains a complete monopoly over the iOS App Distribution Market, it will be helpful to provide a background on smart mobile devices and Apple's control over key aspects of the devices.

36. Apple designs, markets, and sells mobile computing devices including smartphones, which it brands as iPhones, and tablets, which it brands as iPads. Smartphones and tablets are portable electronic devices that can connect wirelessly to the internet and are capable of multipurpose computing functions, including, among other things, internet browsing, sending and receiving email, accessing workplace software, editing documents, using social media, streaming video, listening to music, or playing games.

37. Similar to laptop and desktop personal computers, mobile devices such as smartphones and tablets require an operating system or "OS" that enables multipurpose computing functionality. An OS for mobile devices (a "mobile OS"), just like the OS of any computer, is a piece of software that provides basic functionality to users of smartphones, such as button controls, touch commands, motion commands, and the basic "graphical user interface", which includes "icons" and other visual elements representing actions that the user can take. A mobile OS also facilitates the basic operations of a smartphone, such as GPS positioning, camera and video recording, speech recognition and other features. In addition, a mobile OS permits the installation and operation of apps that are compatible with the particular OS.

38. Just as personal computers are sold to users with an OS pre-installed (*e.g.*, Microsoft Windows or macOS), smartphones and tablets are sold to users with a

mobile OS pre-installed. Mobile device suppliers, commonly known in the industry as original equipment manufacturers ("OEMs"), such as Samsung or Motorola, will select and install an OS prior to shipping their respective devices for sale.

39. The vast majority of OEMs do not develop or own a proprietary mobile OS, and must instead license a mobile OS for installation on their devices. The overwhelming majority of mobile devices sold by these OEMs use the Android OS, which is licensed by Google. In contrast, Apple uses a proprietary operating system called iOS, which it installs on the iPhone.[1] All iPhones and iPads are shipped with iOS pre-installed. Apple does not license or install any other mobile OS onto the iPhone or iPad, nor does it license iOS to any other OEM for installation on devices other than Apple's.

40. Thus, for mobile device users, there are effectively only two mobile operating systems to choose from: Google's Android OS or Apple's iOS. As of July 2020, these two operating systems accounted for nearly 100% of the worldwide mobile OSs.[2]

41. Mobile device users, including iOS device users, desire and use a number of apps in connection with their devices. Apps—software programs designed to run on smartphones and tablets—facilitate and magnify the full range of the device's functionality. For example, apps support consumers' shopping, social networking, food ordering and delivery, personal email, newspaper subscriptions, video and music streaming, or playing mobile games like *Fortnite*. Smartphones and tablets are also a ubiquitous tool for conducting business, and many consumers consult work calendars,

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[1] Historically, iOS was also the operating system used on iPads. In 2019, Apple announced that it would begin using the name iPadOS to refer to the operating system on iPads. For simplicity's sake, this Complaint refers to the operating system on both devices as "iOS". There are no differences between iOS and iPadOS that are relevant to the allegations herein.

[2] StatCounter, "Mobile Operating System Market Share Worldwide", available online at https://gs.statcounter.com/os-market-share/mobile/worldwide (last accessed Aug. 10, 2020); S. O'Dea "mobile operating systems' market share worldwide from January 2012 to December 2019", *Statista* (Feb. 28, 2020), available online at https://www.statista.com/statistics/272698/global-market-share-held-by-mobile-operating-systems-since-2009/.

draft work emails, edit work documents, and perform other work functions on their mobile device. The ability to access these smart functions "on the go" forms part of the distinct value-add of apps to many consumers and businesses. For instance, the portability of smartphones, in conjunction with certain apps, enable uses that could not be replicated by a desktop computer—*e.g.*, real-time GPS-based driving directions, entering meal orders tableside, processing payments at open-air markets and craft fairs, or taking photos and instantly posting them to social media. In short, apps permit the customization of a user's device to cater to the user's specific interests and needs.

42. When the iPhone was first launched in 2007, it supported only Apple's native designed apps, and did not offer users access to any apps developed by third parties. Apple quickly changed its policy, as just one year later, Apple released its new iPhone 3G model that opened up the iOS ecosystem to permit third-party developers to create new and innovative applications for iOS users.

43. Since opening up its iOS platform, and up to today, the vast majority of apps are developed and programmed by third-party developers, although Apple and Google, who control iOS and Android OS, respectively, also develop and distribute apps of their own. To reach iOS app consumers, and to make their investment into developing iOS apps profitable, app developers need to be able to distribute their iOS apps to users.

44. All software programs, such as apps, must be updated from time to time, either to add functions, to address technical issues, or to ensure compatibility with an OS that has been updated. App updates are important to the continued functionality and commercial viability of apps, as well as a means to make ongoing improvements to each app. Some updates resolve technical or programming issues—*e.g.*, a software fix to a bug that caused the app to crash or to ensure the app remains compatible with an OS update—while other updates are designed to introduce new functionality or content into an app to support continued interest in the app by its users—*e.g.*, an update to a bank app that adds the ability to deposit checks, a business suite that has added new functions for its customers' or employees, or an update to a game that introduces new challenges or

cosmetic features. Thus, in addition to a channel for initial distribution, app developers need a way to inform app users of updates to their apps, and a feasible means of disseminating those updates.

45. Apps are OS-specific; they must be programmed to function on the particular OS on which they will be downloaded and run. Thus, apps developed for Android OS cannot substitute for apps designed for iOS. Developers who wish to distribute an app to users of devices with different OSs must therefore code different versions of their app for distribution to the different sets of users. To reach iOS device users, developers must program an iOS-compatible version of their app.

46. The iOS userbase is enormous. There are nearly a billion iPhone users worldwide and over 1.5 billion active iOS devices, including both iPhones and iPads.[3] Typically, these users will use *only* iOS devices and will not also use mobile devices with a different OS. In addition to its size, the iOS user base is also uniquely valuable in that its user base spends twice as much money on apps as Android users.[4] This is consistent with Epic's experience, as the average iOS *Fortnite* user spends significantly more on in-app purchases than the average Android *Fortnite* user.

47. iOS users are therefore a "must have" market for app developers to compete in; an app developer that chooses to develop apps for Android but not iOS forgoes the opportunity to reach over one billion high-paying app users.

48. When Apple sells its iPhones and iPads, it chooses which apps to pre-install prior to the sale of the device to consumers, which Apple limits to its own apps, *i.e.*, third-party apps do not come pre-installed. However, Apple can neither anticipate

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[3] Michael Potuck, "Apple hits 1.5 billion active devices with ~80% of recent iPhones and iPads running iOS 13", *9To5Mac* (Jan. 28, 2020), available online at https://9to5mac.com/2020/01/28/apple-hits-1-5-billion-active-devices-with-80-of-recent-iphones-and-ipads-running-ios-13/.

[4] Prachi Bhardwaj, "Despite Android's growing market share, Apple users continue to spend twice as much money on apps as Android users", *Business Insider* (Jul. 6, 2018), available online at https://www.businessinsider.com/apple-users-spend-twice-apps-vs-android-charts-2018-7#:~:text=Despite%20Android's%20growing%20market%20share,on%20apps%20as%20Android%20users&text=On%20top%20of%20that%2C%20Android,a%20distant%20second%20at%2014%25.

nor deliver the complete universe of apps that any particular iOS device purchaser may desire to use. Nor do consumers themselves know at the time they purchase a device the many different apps they will want to download. Some of the apps an iOS device user eventually installs may not even have been developed or released at the time the user purchased the device, as new apps are released daily. Thus, it would be impractical and imprudent for Apple to load its iOS device with a large number of pre-installed apps, many of which would be unwanted by consumers. Instead, consumers are able to customize their devices for their own needs and uses by choosing which apps to install.

49. Users therefore benefit from app distribution services, including services that allow users to find new apps they desire to download and that make new apps and app updates seamlessly available for download and update.

50. Part I.A below describes the market for distribution of apps on iOS devices. Part I.B explains Apple's monopoly power in the market, and Part I.C describes Apple's anti-competitive acts to maintain its monopoly in the market. Finally, Part I.D describes the harm to competition, including to would-be competing app distributors, app developers, and consumers.

A. The iOS App Distribution Market.

51. There is a relevant market for the distribution of apps compatible with iOS to users of iOS devices, the iOS App Distribution Market. This market is comprised of all of the channels through which apps may be distributed to iOS device users.

52. One channel for distributing apps is an app store. App stores allow consumers to easily browse, search for, access reviews on, purchase (if necessary), download, and install mobile apps using just the mobile device and an internet connection.

53. Non-iOS app stores are not part of the iOS App Distribution Market. Because app stores are OS-specific, they distribute only those apps compatible with the mobile OS on which the app store is used. iOS device users can use only an app store designed to run on iOS, and thus cannot substitute an app store designed to run on

Google's Android OS. Accordingly, app developers cannot distribute their apps to iOS users on a non-iOS app store—*i.e.*, non-iOS app stores do not substitute for iOS app stores from developers' or consumers' perspectives.

54. Stores distributing personal computer or gaming console software are also not part of the iOS App Distribution Market. Such stores are not compatible with iOS and do not offer iOS-compatible apps: for example, Steam is a popular outlet for distributing gaming software compatible with personal computers, but the software it distributes cannot run on an iOS device. A user cannot download mobile apps for use on an iOS device by using such non-iOS, non-mobile software distribution platforms.

55. The same is true even when an app or game, like *Fortnite*, is available for different types of platforms running different operating systems. Only the OS-compatible version of that software can run on a specific type of device or computer. Accordingly, as a commercial reality, an app developer that wishes to distribute mobile apps for iOS devices must develop an iOS-specific version of the app and avail itself of the iOS App Distribution Market.

56. In the alternative only, the iOS App Distribution Market is a relevant, economically distinct sub-market of a hypothetical broader antitrust market for the distribution of mobile apps to users of all mobile devices, whether Apple's iOS or Google's Android OS.

57. The geographic scope of the iOS App Distribution Market is worldwide, as consumers and developers can access iOS worldwide.

B. Apple's Monopoly Power in the iOS App Distribution Market.

58. Apple has a monopoly in the iOS App Distribution Market. This is because the App Store is the ***sole means*** by which apps may be distributed to consumers in that market.

59. Apple's anti-competitive conduct (discussed in Part I.C below) forecloses all potential competitors from entering the iOS App Distribution Market. Apple prevents iOS users from downloading app stores or apps directly from websites;

pre-installs its App Store on every iOS device it sells; disables iOS users' ability to remove the App Store from their devices; and conditions all app developers' access to iOS on the developers' agreement to distribute their apps solely through the App Store and not to distribute third-party app stores. Although Apple could permit developers to build and offer competing iOS app stores, it denies all developers any opportunity to do so. Apple's power in the iOS App Distribution Market is absolute.

60. As a result of Apple's conduct, app developers have no choice but to offer apps exclusively through the App Store to reach the enormous userbase of iOS devices and are foreclosed from distributing apps by any other means.

61. ***Apple faces no constraints on its power*** in the iOS App Distribution Market. Non-iOS app distribution platforms do not constrain Apple's monopoly power in the iOS App Distribution Market because they are not compatible with iOS devices, they cannot provide iOS users with apps for their devices, and they do not contain iOS-compatible apps.

62. Nor can app developers constrain Apple's anti-competitive conduct in the iOS App Distribution Market by declining to develop apps for iOS. If a developer does not develop apps for iOS, the developer must forgo *all* of the over one billion or so iOS users. No developer alone has sufficient power to overcome the network effects and switching costs associated with iOS (*see* Part III below) to entice enough iOS users to leave iOS, such that developing apps solely for other platforms would be profitable. Thus, developers need to be on iOS.

63. Lastly, as described in Part III below, competition in the sale of mobile devices does not constrain Apple's power in the iOS App Distribution Market because iOS device users face substantial switching costs and lock-in to the iOS ecosystem. Further, regardless of the extent of competition in the sale of premium smartphones, competition at the smartphone level would not constrain Apple's power in the iOS App Distribution Market because consumers cannot adequately account for and

therefore constrain Apple's anti-competitive conduct through their purchasing behavior. The same is true for competition at the tablet level.

C. Apple's Anti-competitive Conduct in the iOS App Distribution Market.

64. Apple imposes unreasonable restraints and unlawfully maintains a monopoly in the iOS App Distribution Market through several anti-competitive acts, including technical restrictions (Part I.C.i below) and contractual restrictions. (Part I.C.ii below.) There is no procompetitive justification for these anti-competitive acts. (Part I.C.iii below.)

i. Technical Restrictions

65. Apple imposes several technical restrictions that foreclose competition in the iOS App Distribution Market.

66. *First*, Apple prevents iOS users from downloading app stores or apps directly from websites. Apple has done so by designing technical restrictions into iOS that prevent users from downloading app stores or apps directly from websites. As a result, iOS consumers must use Apple's App Store to download any apps to their devices, app developers must use Apple's App Store to distribute their apps to consumers, and would-be app distributors are unable to offer apps or competing app stores through their respective websites.

67. *Second*, Apple pre-installs its App Store on the home screen of every iOS device it sells. Apple does not pre-install (or even allow) any competing app stores anywhere on iOS devices. Apple also disables iOS users' ability to remove the App Store from their devices.

ii. Contractual Restrictions

68. Apple also imposes contractual restrictions that foreclose competition in the iOS App Distribution Market.

69. *First*, Apple conditions all app developers' access to iOS on the developers' agreement to distribute their apps solely through the App Store.

70. Apple effects this unlawful condition by requiring that all iOS developers enter into Apple's Developer Agreement, a contract of adhesion.

71. Section 3.2(g) of the Developer Agreement requires that developers distribute their apps only through the App Store. The Section provides that Applications "may be distributed only if selected by Apple (in its sole discretion) for distribution via the App Store, Custom App Distribution, for beta distribution through TestFlight, or through Ad Hoc distribution as contemplated in this Agreement".

72. The App Store is thus the only channel through which developers can distribute apps to the broad iOS userbase. Custom App Distribution, beta distribution through TestFlight, and Ad Hoc distribution are limited distribution channels that can only be used for specific types of commercial users.[5]

73. Custom App Distribution is available only in unique and specialized circumstances—namely, where a business or school needs to support the distribution and maintenance of apps on its devices. Custom App Distribution is the "store or storefront functionality that enables users to obtain Licensed Applications through the use of Apple Business Manager, Apple School Manager, or as otherwise permitted by Apple". (Developer Agreement § 1.2, Ex. A.) Organizations can use Apple Business Manager and Apple School Manager to organize their devices, apps, and accounts. These programs enable organizations to buy and distribute apps and content in bulk to their members or employees. Custom App Distribution does not allow developers to distribute apps to the broad iOS userbase; it is essentially a sanctioned extension of the App Store for narrow, specialized purposes, not a competing distribution channel.

74. Apple's beta testing program permits a developer to release non-final versions of apps through Apple's TestFlight Application to only a limited number of (i) the developer's own personnel and (ii) beta testers. (Developer Agreement § 7.4,

[5] Apple also allows certain Apple-approved large commercial organizations to participate in Apple's Developer Enterprise Program, which permits the approved organizations to develop and deploy proprietary, internal-use apps to their employees. This program does not permit developers to distribute apps to the broad iOS userbase.

Ex. A.) This program permits distribution only to a limited number of iOS devices (primarily owned and controlled by the developer) for the sole and specific purpose of facilitating the coding and testing of a developer's apps for use on the App Store; this program does not allow developers to distribute apps to the broad iOS userbase.

75. Ad Hoc distribution refers to the limited permission Apple gives a developer to distribute apps directly to the developer's own devices in connection with the developer's efforts to develop apps for iOS users. (Developer Agreement §§ 1.2, 7.3, Ex. A.) Because this permission is limited to a developer's devices and does not allow distribution to third parties, Ad Hoc distribution does not allow developers to distribute apps to the broad iOS userbase.

76. Therefore, by contractually conditioning developers' access to iOS on their agreement to distribute apps solely through the App Store, Apple further forecloses competition in the iOS App Distribution Market, as developers are contractually prevented from choosing to offer their iOS apps through third-party app stores.

77. *Second*, Apple conditions app developers' access to iOS on their agreement not to distribute third-party app stores.

78. Section 3.3.2(b) of the Developer Agreement prohibits "Application[s]" that "create a store or storefront for other code or applications".

79. Further, Apple's App Store Review Guidelines—which the Developer Agreement requires iOS developers to follow or risk removal from the App Store—make it "[u]nacceptable" to create "an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection". (App Store Review Guidelines § 3.2.2(i), Ex. B.)

80. In other words, to access the iOS userbase, app developers must agree not to distribute or create app stores that could compete with Apple's App Store—whether they intend to distribute their own app store through Apple's App Store or through the developer's own website.

81. Apple has enforced these restrictions against Epic. Epic approached Apple to request that Apple allow Epic to offer its Epic Games Store to Apple's iOS users through the App Store and direct installation. Apple's response was an unequivocal "no".

iii. Lack of Procompetitive Justification

82. There is no procompetitive justification for Apple's anti-competitive conduct in the iOS App Distribution Market.

83. Apple has asserted that blocking third-party app distribution platforms is necessary to enforce privacy and security safeguards. This is a pretext that Apple has used to foreclose *all* competition in the iOS App Distribution Market in which it has absolute monopoly power. A simple comparison to how Apple handles third-party software on its Mac personal computers illustrates how baseless its justifications are. Apple allows Mac users to access a number of different distribution channels to download software applications to their computers, including direct downloads from developer websites and the ability to purchase software applications from stores offered by third parties that compete with Apple's App Store. The consumer experience of acquiring software on Apple personal computers and Apple's smartphones is night and day. There is no legitimate reason why the same competitive structure for acquiring software on an Apple personal computer could not safely and securely exist on Apple's smart mobile devices.

84. There are a variety of mechanisms available to ensure the security of third-party applications that are less restrictive than prohibiting anyone other than Apple from distributing apps. If Apple believes it has a unique capability to screen apps for privacy and security issues, it could market those capabilities to competing app distributors, for a price. But if given the opportunity, competitors may be able to provide even *better* privacy and security safeguards. It is for users and the market to decide which store offers the best safeguards and at what price, not for Apple.

85. In describing the App Store for iOS, Apple claims to "believe competition makes everything better and results in the best apps for our customers".[6] Epic agrees. Competition in the iOS App Distribution Market would make everything better, and that includes better distribution services, better privacy and security safeguards, lower pricing, and access to apps that Apple currently and unfairly restricts.

86. Given the lack of any procompetitive justification, much less a sufficient one to justify the complete blocking of any competition, Apple's conduct imposes unreasonable restraints and unlawfully maintains its monopoly in the iOS App Distribution Market.

D. Anti-competitive Effects in the iOS App Distribution Market.

87. Apple's anti-competitive conduct forecloses competition in the iOS App Distribution Market, affects a substantial volume of commerce in this market, and causes anti-competitive harms to (i) would-be competing app distributors, (ii) developers, and (iii) consumers.

88. *First*, Apple's anti-competitive conduct harms all would-be app distributors by foreclosing them from competing in the iOS App Distribution Market.

89. But for Apple's restrictions, would-be competing app distributors, such as Epic, could develop and offer iOS-compatible app stores, thereby providing consumers and developers choice beyond Apple's own App Store and injecting healthy competition into the market. These stores could compete on the basis of (among other things) price, service and innovation. Competitors could innovate by (among other things) curating the apps available on a competing app store (such as offering selections of apps in particular categories of consumer interest, like gaming, travel, or health), providing more reliable reviews and other information about the apps, showing or advertising apps in different ways, or offering different pricing schemes.

[6] Apple, "App Store", https://www.apple.com/ios/app-store/principles-practices/ (last accessed Aug. 2, 2020).

90. For example, in the personal computer space (including Macs), software can be purchased through many different sellers, including special digital membership stores. In the gaming space, the leading store is Steam. To compete against Steam, Epic developed its own digital membership store to sell game software, the Epic Games Store. The Epic Games Store provides access to more than 250 games from more than 200 developers, and those numbers are growing rapidly. The Epic Games Store offers personalized features such as friends list management and game matchmaking services. Absent Apple's anti-competitive conduct, Epic would also create an app store for iOS.

91. Notable large technology companies have recently clashed with Apple and lost, demonstrating that Apple's monopoly power is not constrained by even large and well-capitalized market participants. As a result, iOS users are denied innovations. For example, on August 6, 2020, *The Verge* reported that a new and notable mobile gaming service, Microsoft's xCloud, would be launching its cloud-based online gaming system across a number of different platforms—but not on Apple's App Store.[7] Apple confirmed that it rejected xCloud for violating Apple's policies—the same policies described above that are designed to protect Apple's monopoly over the iOS App Distribution Market.[8] Microsoft expressed its discontent with the decision, stating that Apple is "stand[ing] alone as the only general purpose platform to deny consumers from cloud gaming and game subscription services like Xbox Game Pass".[9]

92. One day later, August 7, 2020, *The New York Times* reported that Facebook had unsuccessfully attempted for six months to obtain Apple's approval of a new Facebook Gaming app that would allow users to watch livestreams of online games

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[7] Nick Statt, "Apple confirms cloud gaming services like xCloud and Stadia violate App Store guidelines" *The Verge* (Aug. 6, 2020), available online at https://www.theverge.com/2020/8/6/21357771/apple-cloud-gaming-microsoft-xcloud-google-stadia-ios-app-store-guidelines-violations.

[8] *Id.*

[9] *Id.*

and play simple games, like the popular Words With Friends.[10] Like it had with Microsoft, Apple unequivocally refused to allow Facebook to distribute its competing game store on the App Store.[11] Ultimately, Facebook caved under Apple's power and removed the ability for users to play games on its app, limiting it to a simple video streaming service.[12] As Facebook's vice president for gaming, Vivek Sharma, explained, Apple's conduct creates "shared pain across the games industry, which ultimately hurts players and developers and severely hamstrings innovation on mobile for other types of formats like cloud gaming".[13]

93. *Second*, Apple's anti-competitive conduct harms developers, including Epic.

94. Apple's conduct denies developers the choice of how best to distribute their apps. Developers are barred from reaching over one billion iOS users unless they go through Apple's App Store, and on Apple's terms. Developers cannot distribute their apps through competing app stores that could offer, for example, increased visibility or better or cheaper marketing. Nor can developers offer their apps directly though their own websites. Thus, developers are dependent on Apple's *noblesse oblige*, as Apple may deny access to the App Store, change the terms of access, or alter the tax it imposes on developers, all in its sole discretion and on the commercially devastating threat of the developer losing access to the entire iOS userbase.

95. Apple's total foreclosure of any competition in the iOS App Distribution Market reduces the competitive pressure for Apple to innovate and improve its own App Store, leaving developers with inferior distribution outlets compared to what

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[10] Seth Schiesel, "Facebook Gaming Finally Clears Apple Hurdle, Arriving in App Store", *The New York Times* (Aug. 7, 2020), available online at https://www.nytimes.com/2020/08/07/technology/facebook-apple-gaming-app-store.html.

[11] *Id.*

[12] *Id.*

[13] *Id.*

would exist if competition were to drive further development and innovation in the market.

96. Apple's restrictions also prevent developers from experimenting with alternative app distribution models, such as providing apps directly to consumers, selling apps through curated app stores, selling app bundles, and more. By restricting developers in this way, Apple ensures that developers' apps will be distributed only on the App Store.

97. Additionally, Apple's conduct increases developers' costs. Apple is able to extract a supra-competitive 30% tax on purchases of paid apps. Developers require a reasonable return on their investment in order to dedicate the substantial time and financial resources it takes to develop an app. By imposing its 30% tax, Apple necessarily forces developers to suffer lower profits, reduce the quantity or quality of their apps, raise prices to consumers, or some combination of the three.

98. Apple itself has recognized that its tax is prohibitive to many app developers, because the 30% surcharge makes the development of many apps unprofitable. For example, in an internal discussion among Apple's top executives regarding Apple's 30% charge, Steve Jobs acknowledged that a developer cannot "buy/rent/subscribe from iOS without paying us [Apple], which we *acknowledge is prohibitive for many things*".[14]

99. *Third*, Apple's anti-competitive conduct harms consumers.

100. Apple's conduct denies consumers choice, as they are forced to obtain apps solely through the App Store, and Apple alone dictates which apps are available.

101. As explained above, the lack of any competition in the iOS App Distribution Market prevents innovation by foreclosing potential competing app stores and alternative app distribution channels, as well as reduces the competitive pressure for Apple to innovate and improve its own App Store or reduce its supra-competitive 30%

[14] E-mail from T. Cook, CEO, Apple, to Eddy Cue, VP of Internet Software and Services, Apple (Feb. 6, 2011) (emphasis added) (House Committee On the Judiciary: Online Platforms and Market Power, Apple Documents at HJC-APPLE-014816).

tax. Customers therefore are denied the opportunity to find and access apps by way of new, innovative distribution methods, including specialized app stores catering to their specific interests.

102. Additionally, Apple's conduct increases consumers' costs. Apple's market power permits it to impose a supra-competitive 30% tax on the price of apps purchased through the App Store—a rate that is far higher than what could be sustained under competitive conditions. Consumers bear some or all of that tax in the form of higher prices or reduced quantity or quality of apps.

II. Apple Monopolizes the iOS In-App Payment Processing Market.

103. Many app developers generate revenue by enabling purchases through their apps.

104. Epic's *Fortnite* is one such example. In *Fortnite*, players may purchase digital outfits, dance moves, and other cosmetic enhancements within the game.

105. Developers selling digital content, such as Epic, require some way by which consumers may seamlessly and efficiently make purchases in their apps.

106. To address the need for in-app payment processing, an application programming interface ("API") is integrated into apps. When a customer makes an in-app purchase, the API sends the customer's payment method (for example, a credit card) to a payment processor for approval, similar to how a customer at a brick-and-mortar store presents a payment method to a cashier for processing at a register. The payment processor processes the transaction and, if approved, indicates through the API that the app can make the purchased content available to the user.

107. There are a number of third-party payment processors such as Braintree, PayPal, Square, and Stripe. Alternatively, some developers, like Epic, have developed their own payment processing solutions. An app developer can select the payment processor (or combination of payment processors) that best enhances the user experience and helps facilitate a seamless, cost-effective, and efficient payment processing API to work within their apps.

108. On iOS, however, Apple eliminates any choice of in-app payment processors for in-app content and coerces developers into using Apple's In-App Purchase. Apple effects this unlawful tie by requiring developers who want to enable in-app sales of in-app content to use Apple's payment processor, exclusively—which forecloses any alternative payment processing solutions.

A. The iOS In-App Payment Processing Market.

109. There is a relevant market for the processing of payments for the purchase of digital content, including in-game content, that is consumed within iOS apps, the iOS In-App Payment Processing Market. The iOS In-App Payment Processing Market comprises the payment processing solutions that (but for Apple's unlawful conduct) iOS developers could turn to and integrate into their iOS-compatible apps to process in-app purchases of in-app content.

110. Absent Apple's unlawful conduct, app developers could integrate compatible payment processors into their apps to facilitate the purchase of in-app content. Developers also would have the capability to develop their own in-app payment processing functionality. And developers could offer users a choice among multiple payment processors for each purchase, just like a website or brick-and-mortar store can offer a customer the option of using Visa, MasterCard, Amex, Apple Pay, and more.

111. Apple offers separate payment solutions for the purchase of digital content than it does for other types of purchases, even within mobile apps. In-App Purchase can be used for the purchase of digital content for use in an app, while Apple offers a separate tool, Apple Pay, to facilitate the in-app purchase of physical products and services.

112. APIs and payment processing tools available outside of the app—such as transaction processing through a developer's website or over the phone—cannot substitute for in-app payment processing. The ability to process in-app transactions seamlessly and nearly instantaneously within the app itself provides immense benefits for app users and developers. For users, the need to go outside the app to complete a

purchase would severely disrupt the use of the app, especially in game situations like *Fortnite*, and would require substantially more effort to effectuate any purchase.

113. It is particularly important that app developers who sell in-app digital content be able to offer in-app transactions that are seamless, engrossing, quick, and fun. For example, a gamer who encounters a desirable "skin" within *Fortnite*, such as a Marvel superhero, may purchase it nearly instantly for a small price without leaving the app. Although *Fortnite* does not offer content that extends gameplay or gives players competitive advantages, other game developers offer such products—for example, "boosts" and "extra lives"—that extend and enhance gameplay. It is critical that such purchases can be made during gameplay itself, rather than in another manner. If a player were required to purchase game-extending extra lives outside of the app, the player may simply stop playing instead.

114. As another example, if a user of a mobile dating app encounters a particularly desirable potential dating partner, he/she can do more than "swipe right" or "like" that person, but can also purchase a digital item that increases the likelihood that the potential partner will notice his/her profile. If the user could not make that purchase quickly and seamlessly, he/she would likely abandon the purchase and may even stop "swiping" in the app altogether.

115. It is therefore essential that developers who offer digital content be able to seamlessly integrate a payment processing solution into the app, rather than requiring a consumer to go elsewhere, such as to a separate website, to process a transaction. Indeed, if an app user were directed to process a purchase of digital content outside of a mobile app, the user might abandon the purchase or stop interacting with the mobile app altogether

116. Mobile game developers particularly value the ability to provide users with engaging gameplay without imposing any burdens or distractions on consumers who wish to make in-app purchases. Developers would be harmed if their app users were directed to process their purchases outside of the app, as such users would likely reduce

their number of purchases, abandon purchases outright, or stop interacting with the app altogether. For these reasons, and in the alternative only, there is a relevant antitrust sub-market for processing purchases of virtual gaming products within mobile iOS games (the "iOS Games Payment Processing Market").

117. By contrast, app developers who sell physical products have multiple ways to process transactions, and consumers are more willing to use methods other than in-app purchases. For example, a consumer who desires to purchase a physical product from Amazon could readily use either Amazon's mobile app or Amazon's website, or could make the same or similar purchase in a number of other ways, including through another online seller or at a brick-and-mortar store.

118. The geographic scope of the iOS In-App Payment Processing Market is worldwide, as consumers and developers can access iOS worldwide. Further, Apple's 30% tax does not vary by locality.

B. Apple's Monopoly Power in the iOS In-App Payment Processing Market.

119. Apple has a monopoly over the iOS In-App Payment Processing Market and, in the alternative, over the iOS Games Payment Processing Market, as it has a 100% market share.

120. As explained in Part I above, Apple has a complete monopoly in the iOS App Distribution Market. As the gatekeeper to the App Store, Apple is able to unlawfully condition access to the App Store on iOS app developers' use of Apple's In-App Purchase to process all in-app payments for in-app content.

121. Additionally, through its exclusionary tactics in the iOS In-App Payment Processing Market (Part II.C below), Apple is able to maintain its monopoly over that market.

122. Apple does not face any meaningful constraints to its monopoly power in the iOS In-App Payment Processing Market. As discussed above, APIs and

payment processing tools available outside of iOS cannot substitute for in-app payment processing because they severely disrupt the use of the app.

123. Competition in the iOS App Distribution Market cannot constrain Apple in the iOS In-App Payment Processing Market because there is no such competition, as explained in Part I.

124. Nor can app developers constrain Apple's anti-competitive conduct in the iOS In-App Payment Processing Market by declining to develop apps for iOS. If a developer does not develop apps for iOS, the developer must forgo *all* of the one billion plus iOS users. No developer has sufficiently important or attractive apps to overcome the network effects and switching costs (*see* Part III below) associated with iOS to entice enough iOS users to leave iOS, such that developing apps solely for other platforms would be profitable. Thus, developers need to be on iOS.

125. Apple charges a 30% fee for In-App Purchase. This rate reflects Apple's market power and the lack of competition, which allow Apple to charge supra-competitive prices for payment processing within the market.

126. The cost of alternative electronic payment processing tools, which Apple does not permit to be used for the purchase of in-app digital content, can be ***one tenth*** of the cost of In-App Purchase.

Electronic Payment Processing Tool	**Base U.S. Rate**
PayPal	2.9%
Stripe	2.9%
Square	2.6%-3.5%
Braintree	2.9%

127. Lastly, as described in Part III below, competition in the sale of mobile devices does not constrain Apple's power in the iOS In-App Payment Processing Market because iOS device users face substantial switching costs and lock-in to the iOS ecosystem. Further, regardless of competition in the sale of mobile devices, competition

at the smartphone level would not constrain Apple's power in the iOS App Distribution Market because consumers cannot adequately account for and therefore constrain Apple's anti-competitive conduct through their purchasing behavior. The same is true of competition at the tablet level.

C. Apple's Anti-competitive Conduct in the iOS In-App Payment Processing Market.

128. Apple imposes unreasonable restraints and unlawfully maintains its monopoly in the iOS In-App Payment Processing Market through several anti-competitive acts, including contractual and policy restrictions on app developers. (Part II.C.i below.) There is no procompetitive justification for these anti-competitive acts. (Part II.C.ii below.)

i. Contractual and Policy Restrictions

129. Through its unlawful policies and restrictions, Apple unlawfully ties In-App Purchase to the use of its App Store and forecloses any potential competition in the iOS App Payment Processing Market.

130. Developers seeking to distribute their apps on the App Store are required to follow Apple's App Store Review Guidelines or risk Apple rejecting or removing their app from the App Store. (Developer Agreement § 6.3, Ex. A.) Section 3.1.1 of these guidelines provide that "if you [the developer] want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you ***must use in-app purchase***. Apps ***may not use their own mechanisms to unlock content or functionality*** . . . . Apps and their metadata may not include buttons, external links, ***or other calls to action that direct customers to purchasing mechanisms other than in-app purchase***". (emphases added).

131. Additionally, Section 3.1.3 of the guidelines provides that developers may not "directly or indirectly target iOS users to use a purchasing method ***other than [Apple's] in-app purchase***, and general communications [to users] about other

purchasing methods [must not be] ***designed to discourage use of [Apple's] in-app purchase***". (emphases added).

132. These guidelines enumerate Apple's anti-competitive tying policy: an app developer's access to the App Store—the only means to reach Apple's substantial iOS userbase—is conditioned on the developer's use of Apple's In-App Purchase to process payments for in-app content. But Apple's policies take it yet another step further, gagging developers from even *informing* users of other payment options outside the app or from discouraging its users from using Apple's payment system. These draconian policies serve to cement Apple's monopoly position in the iOS In-App Payment Processing Market.

133. Apple strictly enforces these contractual terms. For example, in an October 2016 letter from Apple's General Counsel to Spotify, Apple threatened to remove Spotify's app from the App Store for advertising free trials to its own customers.[15] Apple decreed: "What a developer cannot do is seek to use its iOS app as a marketing tool to redirect consumers outside of the app to avoid in-app purchase."[16]

134. Apple thus requires all developers to use its In-App Purchase to the exclusion of any third-party payment processing solution, foreclosing any would-be competing in-app payment processors from entering the iOS In-App Payment Processing Market. In other words, app developers are coerced into using In-App Purchase by virtue of wanting to use the App Store.

ii. Lack of Procompetitive Justification

135. Apple's foreclosure of the iOS In-App Payment Processing Market has no procompetitive justification.

136. There is no security justification for requiring the use of In-App Purchase for a user's in-app purchase of in-app content. The best illustration of this point

[15] Letter from Bruce Sewell, General Counsel, Apple, to Horacio Gutierrez, General Counsel, Spotify (Oct. 28, 2016) (House Committee On the Judiciary: Online Platforms and Market Power, Apple Documents at HJC-APPLE-013579).

[16] *Id*.

is Apple's own conduct. Apple does not require that its In-App Purchase be used for in-app purchases of physical goods and certain services that are consumed outside the app. There is no security-based distinction between purchases of such physical goods (*e.g.*, food, clothing) and services (*e.g.*, rideshares, lodging), on the one hand, and purchases of in-app content (*e.g.*, game content unlocks, character cosmetics), on the other. Apple permits app developers like Amazon, Uber and Airbnb to process payments from customers for the goods and services they sell; it can likewise permit Epic, Match, Pandora and others to process payments from customers for the digital goods and services they sell.

137. Moreover, the security of a payment processing system is an element on which payment processors can compete—and do compete in non-monopolized markets where alternatives are available. If Apple's payment processing is truly the most secure, Apple can make that case in a competitive market. Apple should not be permitted to shield itself from competition and simply declare itself the most secure; it is for consumers and the market, not Apple, to determine what payment processing service is best.

138. Apple has also asserted on occasion that it must force developers and consumers to use In-App Purchase so that Apple can monitor each transaction and ensure that Apple is paid. But this assertion is circular; it presupposes that Apple is entitled to take a cut of every in-app purchase of in-app content on an iOS device (though it does not make the same claim for its Mac personal computers or for other types of in-app purchases on iOS devices). Apple has no such entitlement. Apple can seek recompense for any services it provides without fencing out competition in in-app payment processing. It is market competition, not Apple's dictate, that should set the terms on which apps obtain in-app payment processing services.

D. Anti-competitive Effects in the iOS In-App Payment Processing Market.

139. Apple's anti-competitive conduct forecloses competition in the iOS In-App Payment Processing Market, affects a substantial volume of commerce in that

market, and causes anti-competitive harms to (i) would-be competing in-app payment processors, (ii) app developers, and (iii) consumers.

140. *First*, Apple's anti-competitive conduct forecloses all would-be in-app payment processors from competing in the iOS In-App Payment Processing Market.

141. But for Apple's restrictions, would-be competing in-app payment processors could offer alternative in-app payment processing tools, giving app developers and consumers choices beyond Apple's In-App Purchase, and spurring innovation, better service and lower prices. These innovations could include, for example, alternative means to pay for in-app purchases of in-app content—which Apple does not offer—such as billing to the customer's cellular carrier, using Bitcoin or other cryptocurrencies, offering rewards points to customers, or providing more than one in-app payment processor. Apple's anti-competitive conduct eliminates all of these innovations and alternative payment options.

142. For example, outside of the restricted iOS ecosystem, Epic has worked with a number of third-party payment companies that provide creative new forms of payment processing solutions for consumers. One such example is Skrill, which offers Epic's customers pre-paid "Paysafe" cards offered in convenience stores across Poland and Germany that can unlock in-game content. Absent Apple's anti-competitive conduct, developers could offer similar payment services on iOS.

143. *Second*, Apple's anti-competitive conduct harms developers, including Epic.

144. Apple's conduct denies developers innovation, which could be provided by would-be competing in-app payment processors, as explained above.

145. Apple's conduct also denies developers choice and coerces them to use Apple's In-App Purchase. Developers are contractually required to use Apple's in-App Purchase to facilitate in-app purchases of in-app content on their iOS apps—and no alternative third-party payment processor can be used.

146. But for Apple's restrictions, developers could choose other options. For example, Epic would offer its own payment processing service for *Fortnite*. Epic already does so on personal computers, including Macs.

147. Apple also harms app developers' relationship with their customers by inserting itself as a mandatory middleman in every in-app transaction. When Apple acts as payment processor, Epic is unable to provide users comprehensive customer service relating to in-app payments without Apple's involvement. Apple has little incentive to compete through improved customer service because Apple faces no competition and consumers often blame Epic for payment-related problems. In addition, Apple is able to obtain information concerning Epic's transactions with its own customers, even when Epic and its own customers would prefer not to share their information with Apple.

148. Additionally, Apple's conduct increases developers' costs. As noted, Apple extracts an exorbitant 30% tax on in-app purchases of in-app content. Developers require a reasonable return on their investment in order to dedicate the substantial time and financial resources it takes to develop an app. By imposing its 30% tax, Apple necessarily forces developers to suffer lower profits, reduce the quantity or quality of their apps, raise prices to consumers, or some combination of the three.

149. Notably, Apple's 30% charge on in-app purchases is much higher than fees charged by analogous electronic payment processors in competitive contexts, such as PayPal, Stripe, Square or Braintree, which typically charge payment processing rates of around 3%, a 10-fold decrease from Apple's supra-competitive rates.[17] As another example, Google charges 2.9% or less for the use of Google Pay, an electronic payment processor that Google makes available to app developers for processing payments for physical products sold on Android apps. If developers were able to rely on their own solutions, or those of third-party payment processors, they could offer users lower prices for in-app purchases—as well as better customer service and alternative

[17] Yowana Wamala, "Amazon Payments Review: Should Your Business Use it?", *Value Panguin* (June 11, 2019), https://www.valuepenguin.com/credit-card-processing/amazon-payments-review.

payment options. Apple could not maintain its 30% tax if it did not unlawfully foreclose competition.

150. A glimpse of these anti-competitive effects recently manifested as a result of the ongoing global coronavirus pandemic. ClassPass, a company that developed an app to help consumers book exercise classes at gyms, has historically avoided having to pay any tax to Apple, as its services related to in-person workout classes. After the pandemic began, however, ClassPass adapted to its customers' needs and began offering virtual workout classes for the many who were stuck at home. On July 28, 2020, The *New York Times* reported that, in response to this shift to digital classes, Apple asserted that ClassPass was now offering in-app content and demanded that ClassPass pay Apple the 30% tax on in-app purchases of the virtual classes. As a result of Apple's demands, ClassPass stopped offering its virtual classes on its app, depriving consumers the benefit of innovative content specifically designed to address their needs during this unprecedented time.

151. *Third*, Apple's anti-competitive conduct harms consumers.

152. Apple's conduct denies consumers innovation, which could be provided by would-be competing in-app payment processors, as explained above.

153. Apple's conduct also denies consumers choice, as they are forced to make in-app purchases of in-app content solely through Apple's In-App Purchase.

154. Further, as noted above, Apple undermines the quality of services that consumers receive because Apple stands as a middleman in every in-app purchase of in-app content. Developers, therefore, are unable to resolve customer complaints arising from in-app purchases directly. For example, Apple does not have a formal mechanism through which developers can determine why a particular refund went through or was rejected, thereby impeding developers' efforts to offer high-quality customer service to consumers.

155. Finally, Apple's conduct increases consumers' costs. Apple's market power permits it to impose an exorbitant 30% tax on in-app purchases of in-app content.

Consumers must bear some or all of that tax in the form of higher in-app content prices and/or reduced quantity or quality of in-app content.

III. Competition in the Sale of Mobile Devices Cannot Discipline Apple's Conduct in the iOS App Distribution or iOS In-App Payment Processing Markets.

156. Competition in the sale of mobile devices cannot constrain Apple's anti-competitive conduct described in Parts I and II.

157. *First*, Apple's power in the relevant markets described above is not disciplined by competition in the sale of mobile devices because Apple mobile device customers face significant switching costs and customer lock-in to Apple's iOS ecosystem. (Part III.A.) These conditions manifest themselves in Apple's ability to maintain its substantial power in the sale of premium smartphones and tablets. (Part III.B.)

158. *Second*, Apple's power in the relevant markets described above is not disciplined by competition in the sale of mobile devices because consumers cannot adequately account for, and therefore constrain, Apple's anti-competitive conduct through their device purchasing behavior. The cost of app downloads and in-app purchases—unknowable by the consumer at the time of a smartphone or tablet purchase, but likely far less than the price of the device itself—will play an insignificant (if any) role in swaying a consumer's mobile device purchasing decision. (Part III.C.)

A. Apple's Mobile Device Customers Face Substantial Switching Costs and iOS Lock-In.

159. Apple's power in the iOS App Distribution Market and iOS In-App Payment Processing Markets is not constrained by competition in the sale of mobile devices because Apple's mobile device customers face high switching costs and are locked in to Apple's ecosystem for at least six reasons. These costs make it more difficult for users to purchase a mobile device from a competitor after having committed to Apple's mobile devices, thereby bolstering Apple's market power.

160. *First*, consumers are deterred from leaving the iOS ecosystem because of the difficulty and costs of learning a new mobile operating system. Mobile operating

systems have different designs, controls, and functions. Customers who use one (and often more than one) Apple product learn to operate efficiently on Apple's specific operating systems. For example, the iOS layout differs from Android OS in a wide range of functions, including key features such as searching and installing widgets on the phone to organize and search the phone's digital content, configuring control center settings, and organizing photos. Learning to use a new mobile operating system is thus time-consuming and burdensome for many consumers.

161. *Second*, switching from Apple's iOS devices may cause a significant loss of personal and financial investment that consumers put into the iOS ecosystem. Consumers choose a mobile device based in part on the OS that comes pre-installed on that device and the ecosystem in which the device participates. Once a consumer has chosen a mobile device, the consumer cannot replace the mobile OS that comes pre-installed on it with an alternative mobile OS. Rather, a consumer who wishes to change the OS must purchase a new device entirely. And because apps, in-app content and many other products are designed for compatibility with a particular mobile OS, switching to a new mobile OS may mean losing access to such products or to data saved by such products. Even if versions of such apps and products are available within the new ecosystem chosen by the consumer, the consumer would have to go through the process of downloading them again onto the new devices and (for paid apps or paid content) may have to purchase some or all of these apps anew. As a result, the consumer may be forced to abandon his or her investment in at least some of those apps, along with any purchased in-app content and consumer-generated data on those apps.

162. *Third*, the switching costs are compounded by the fact that consumers typically commit to the iOS ecosystem on a household or Apple device user group basis. Apple encourages lock-in across users and families. For example, Apple allows family members to access the songs, movies, TV shows, books, and apps purchased by other family members. Further, apps like FaceTime (which enables video and audio communication), Find My (which enables users to share their physical locations),

iMessage (which enables instant messaging), and AirDrop (a simple way to share content between Apple devices) work only between Apple device users. Customers who might consider switching from an iPhone or iPad would lose access to these services that connect friends and family. The loss of these integrated services raises the personal and financial costs for one member of a household or group to go it alone on a separate mobile operating system.

163. *Fourth*, consumers typically commit to Apple's ecosystem by purchasing more than one Apple device, which further increases their investment in iOS. Consumers are more likely to buy an iPhone, for example, if they already have an iPad or other Apple device because of the complementary services Apple provides for its device users. In 2017, CNBC conducted a survey of Americans' ownership of Apple devices and found that while 64% of Americans own an Apple product, the average American household owns an average of 2.6 Apple devices. Apple has developed a number of services that work exclusively on Apple devices to facilitate the interaction between Apple devices and encourage multiproduct ownership. For example, Apple developed a multifeatured product, Continuity, which "make[s] it seamless to move between your [Apple] devices". Continuity allows an Apple device customer to perform numerous cross-Apple device sharing functions, such as Handoff (beginning work on an app in one device and quickly switching to continue the work on another), Universal Clipboard (copying content including text, images, and photos on one device to paste on another), Instant Hotspot (making a personal hotspot on one device available to other Apple devices), and AirDrop (wirelessly sending documents, photos, videos, map locations, and websites across Apple devices). A customer choosing to purchase or switch to a non-Apple device loses access to these services, leading to increased costs a customer must face when choosing to leave Apple's ecosystem.

164. *Fifth*, Apple provides services to facilitate upgrading from one generation of Apple devices to the next. For example, Apple hosts its own "iPhone Upgrade Program", which allows customers to make recurring payments over the course

of a year and "get a new iPhone every year". Apple facilitates the transfer of a user's data like contacts and photos from an old iPhone to a new iPhone with a "migration feature that lets you move your data from an old device to a new one via wireless or wired transfer". Although there are now third-party apps and Android OEMs that attempt to make the switch from Apple to Android phones easier for consumers, "these all-in-one [data transfer] methods aren't available for every phone, and they don't always work flawlessly or across all of the areas relevant to your needs."

165. *Sixth*, Apple's mobile devices are protected from competition by their central place in Apple's developed ecosystem. An ecosystem is the network of products and services, including apps and smartphone accessories, designed to be inter-dependent and compatible with the specific operating system that runs on a given mobile device. The iOS ecosystem participants include an array of stakeholders, such as Apple, developers of iOS-compatible apps, iPhone and iPad owners, the makers of ancillary hardware to connect to the smartphone and iPad (*e.g.*, headphones or speakers), cellular carriers, and others. Being connected to these ecosystems greatly increases the value of the mobile devices to its users, as the more investments that are made by the various stakeholders, the more benefits accrue to the goods and services connected to the network. Apple's iPhone and iPad customers therefore benefit from substantial network effects of being plugged into the iOS ecosystem. For example, the more developers that design useful apps for iOS, the more consumers will be drawn to use the mobile devices for which those apps are designed, which then increases the benefits to developers to participate in the iOS, which encourages customers to purchase or retain their iOS mobile devices, and so on and so forth in a positive feedback loop. Therefore, any potential business looking to compete in the sale of mobile devices must make significant investments and coordinate a wide range of stakeholders to duplicate the benefits of a sprawling ecosystem, and iPhone and iPad customers must attempt to calculate the costs of losing their place in the iOS ecosystem.

166. As a result, Apple customers are often stuck with large price increases and locked into the iOS ecosystem, as switching out of the ecosystem is prohibitively difficult and expensive for consumers.

B. Apple's Sticky iOS Ecosystem Protects its Dominance in the Sales of Mobile Devices.

167. Apple's ability to raise customer switching costs and create customer lock-in to its iOS ecosystem is reflected in Apple's ability to maintain its dominance in the sale of premium smartphones as well as in the sale of tablets.

168. *First*, Apple's iPhone dominates sales of premium smartphones.

169. In 2019 alone, Apple's global iPhone sales generated more than $142 billion in revenues.[18] And in the first quarter of 2020, Apple was able to capture approximately 60% of global premium smartphone revenue.[19]

170. Furthermore, in the first quarter of 2020, 57% of premium smartphones sold globally were iPhones; Apple's nearest competitor sold only 19%.[20]

171. Apple's iPhone durably maintains substantial profit margins. For instance, from 2013 to 2017, Apple's share of smartphone operating profits among major smartphones companies ranged from 62% to 90%.[21] Similarly, in the third quarter of 2019, Apple was able to capture 66% of the operating profits across all mobile handsets. Apple's closet competitor had only 17%.[22] Analysts who follow Apple have also noted

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[18] Statista Research Department, "Apple's iPhone revenue from 3rd quarter 2007 to 3rd quarter 2020" (Aug. 7, 2020), *available online at* https://www.statista.com/statistics/263402/apples-iphone-revenue-since-3rd-quarter-2007/.

[19] IDC Data.

[20] Varun Mishra, "Four Out of Five Best Selling Models in the Premium Segment Were From Apple", *Counterpoint Research* (June 15, 2020), online at https://www.counterpointresearch.com/apple-captured-59-premium-smartphone-segment/ (last accessed on Aug. 2, 2020).

[21] Chuck Jones, "Apple Continues To Dominate The Smartphone Profit Pool", *Forbes* (Mar. 2, 2018), https://www.forbes.com/sites/chuckjones/2018/03/02/apple-continues-to-dominate-the-smartphone-profit-pool/#65fbdddf61bb.

[22] Karn Chauhan, "Apple Continues to Lead Global Handset Industry Profit Share", *Counterpoint Research* (Dec. 19, 2019), online at https://www.counterpointresearch.com/apple-continues-lead-global-handset-industry-profit-share/ (last accessed on Aug. 2, 2020).

that since its release in 2007, the iPhone has able to maintain substantial profit margins of between 60% to 74%.[23]

172. Apple has also been able to maintain its pricing power over many years. For example, the global average selling price of smartphones went from $332 in 2011[24] to $363 in the first quarter of 2018,[25] a slight 4.3% price increase. Meanwhile, the iPhone has consistently sold at an average selling price of around $300 dollars higher than the average smartphone, and its prices increased over that same period by 22%, from approximately $650 to $796.[26]

173. The high switching costs are also obvious from empirical evidence. According to a 2017 survey by Morgan Stanley, 92 percent of iPhone users intending to upgrade within the next year indicated they would stick to an iOS device.[27] Similarly, Consumer Intelligence Research Partners found that 91 percent of iOS users who activated a new or used phone in the final three months of 2018 upgraded to another iPhone.[28]

174. Apple's pricing conduct also evidences the high switching costs. For example, Apple released the top-of-the-line iPhone X in 2017 at a $300 higher price point

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[23] Alan Friedman, "Apple's profit margin on the iPhone has fallen from a peak of 74% to 60% over the years", *PhoneArena* (Nov. 15, 2018), online at https://www.phonearena.com/news/Profit-margins-on-the-iPhone-have-fallen-to-60_id111023.

[24] Statista Research Department, "Global Average Selling Price of Smartphones from 2010 to 2019", *Statista* (June 16, 2015), online at https://www.statista.com/statistics/484583/global-average-selling-price-smartphones/ (last accessed Aug. 2, 2020).

[25] Rani Molla, "Why people are buying more expensive smartphones than they have in years", *Vox* (Jan 23, 2018), https://www.vox.com/2018/1/23/16923832/global-smartphone-prices-grew-faster-iphone-quarter.

[26] Felix Richter, "iPhone ASP Edges Closer to $800", *Statista* (Nov. 2, 2018), https://www.statista.com/chart/15379/iphone-asp/ (last accessed Aug. 2, 2020).

[27] Martin Armstrong, "Most iPhone Users Never Look Back, *Statista* (May 22, 2017), online at https://www.statista.com/chart/9496/most-iphone-users-never-look-back/ (last accessed July 29, 2020).

[28] Joe Rossignol, "CIRP says iOS Loyalty 'Hit the Highest Levels We've Ever Measured' Last Quarter", *MacRumors* (Jan. 28, 2019), online at https://www.macrumors.com/2019/01/28/cirp-iphone-android-loyalty-4q18/ (last accessed July 29, 2020).

than the previous model. This was not followed by any major exodus to non-iOS systems; instead, consumers generally accepted the new price point, reflecting consumers' reluctance to switch even in the face of very significant increases in direct prices.

175. *Second*, Apple maintains significant power in the sale of tablets.

176. Apple's global iPad sales generated more than $19 billion in revenue in 2019 alone.[29] And Apple led all tablet vendors worldwide, accounting for 38% of the global tablet shipments in the second quarter of 2020.[30] The second leading tablet vendor, Samsung, accounted for only 18.7%.[31]

177. Apple has also been able to maintain its pricing power in the sale of tablets. Whereas the average global selling price of tablets in 2016 was $285, increasing to an average selling price of $357 by the end of the second quarter of 2020, Apple's iPads maintained an average selling price of over $200 higher, with an average selling price of $528 (in 2016) and $575 (end of the second quarter of 2020).[32]

C. Information Costs and Other Market Inefficiencies in the iOS App Distribution and iOS In-App Payment Processing Markets.

178. There is a further reason that competition at the mobile device level does not constrain Apple's power in the iOS App Distribution and iOS In-App Payment Processing Markets, which is that consumers cannot adequately account for Apple's downstream anti-competitive conduct through their mobile device purchasing behavior.

179. Consumers are rationally ignorant of Apple's anti-competitive conduct described above in Parts I and II. As a threshold matter, the vast majority of

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[29] Statista Research Department, "Revenue of Apple from iPad Sales Worldwide From 3rd Quarter 2010 to 3rd Quarter 2020", *Statista* (Aug. 7, 2020), online at https://www.statista.com/statistics/269914/apples-global-revenue-from-ipad-sales-by-quarter/#:~:text=Apple's%20global%20revenue%20from%20iPad%20sales%202010%2D2020&text=In%20the%20third%20quarter%20of,the%20third%20quarter%20of%202019 (last accessed Aug. 11, 2020).

[30] "Worldwide Tablet PC Market Q2 2020", *Canalys* (Aug. 3, 2020), online at https://www.canalys.com/newsroom/canalys-worldwide-tablet-pc-market-Q2-2020 (last accessed Aug. 11, 2020).

[31] *Id.*

[32] IDC, "IDC Quarterly Personal Computing Device Tracker" (Aug. 7, 2020).

mobile device consumers have no reason to inquire, and therefore do not know, about Apple's anti-competitive contractual restraints and policies; it would not even occur to them to research or ask about Apple's app distribution or in-app payment processing policies, which touch them only indirectly. Because many consumers do not know of Apple's anti-competitive conduct, they cannot take into it account when deciding which smartphone or tablet to purchase. It should also be noted that when purchasing iPhones and iPads, consumers do not contractually agree to permit Apple to engage in the anti-competitive conduct described above in Parts I and II.

180. More fundamentally, even those consumers that do know of Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets do not account for the costs of that conduct when deciding which mobile device to purchase for a number of reasons.

181. *First*, the complexity of device pricing obscures the impact of Apple's anti-competitive conduct. Consumers consider many features when deciding which smartphone or tablet to purchase, including design, brand, processing power, battery life, functionality, cellular plan and provider coverage, etc. These features are likely to play a substantially larger role in a consumer's decision as to which smartphone or tablet to purchase than Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets (if it plays a role at all), particularly given that each individual app and in-app purchase is a relatively small monetary cost when compared to the price of the device. For example, Apple's iPhone 11 currently retails starting at $699, while the two new flagship phones, iPhone 11 Pro and Pro Max, retail starting at $999 and $1,099, respectively.[33] In 2019, the median price of paid apps on the App Store

[33] Dami Lee, "The iPhone 11, Pro, and Pro Max will cost $699, $999, and $1,099, respectively", *The Verge* (Sep. 10, 2019), https://www.theverge.com/2019/9/10/20848182/new-iphone-11-price-cost-announcement-699-apple.

amounted to only $1.99,[34] and U.S. iPhone users spent an average $100 on apps (including in-app purchases) for the year.[35] Apple's 30% tax on this amount represents only 4.2% of the iPhone 11's retail price. Given the small cost of apps relative to the price of Apple's iPhones, Apple's tax is an effective means by which Apple may exercise its monopoly power in the iOS App Distribution and iOS In-App Payment Processing Markets without affecting mobile device purchases.

182. *Second*, consumers are unable to determine the "lifecycle price" of devices—*i.e.*, to accurately assess at the point of purchase how much they will end up spending in total (including on the device and all apps and in-app purchases) for the duration of their ownership of the device. Consumers cannot know in advance of purchasing a device all of the apps or in-app content that they may want to purchase during the usable lifetime of the device. Consumers' circumstances may change. Consumers may develop new interests. They may learn about new apps or in-app content that becomes available only after purchasing a device. According to Apple, "the App Store is the best place to discover new apps that let you pursue your passions in ways you never thought possible."[36] New apps and in-app content will continue to be developed and marketed after a consumer purchases a smartphone or tablet. All of these factors may influence the amount of consumers' app and in-app purchases. Because they cannot know or predict all such factors when purchasing mobile devices, consumers are unable to calculate the lifecycle prices of the devices. This prevents consumers from effectively taking Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets into account when making mobile device purchasing decisions.

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[34] J. Clement, "Average Price of Paid Android and iOS Apps 2018", *Statista* (Mar. 22, 2019), online at https://www.statista.com/statistics/262387/average-price-of-android-ipad-and-iphone-apps/ (last accessed Aug. 3, 2020).

[35] Randy Nelson, "U.S. iPhone Users Spent an Average of $100 on Apps in 2019, Up 27% From 2018", *Sensor Tower* (Mar. 25, 2020), online at https://sensortower.com/blog/revenue-per-iphone-2019.

[36] Apple, *App Store*, online at https://www.apple.com/ios/app-store/ (last accessed July 27, 2020).

183. *Third*, Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets does not incentivize consumers to purchase a non-iOS mobile device because Google engages in similar anti-competitive conduct. As noted, nearly 100% of all mobile devices run either Apple's iOS or Google's Android OS. Further, more than 90% of app downloads on Android OS devices occur through the Google Play Store—Google's app store. Like Apple, Google uses its market power over the Android operating system, and similar anti-competitive practices, to stifle competition for the distribution of apps on Android, to require that developers use its payment processing system for in-app purchases of in-app content, and to charge a similar exorbitant 30% tax. Thus, to the extent that consumers even attempt to lifecycle price when purchasing mobile devices, or want to look for an app store that doesn't charge exorbitant fees, Apple's anti-competitive conduct described herein would not cause consumers to favor Android devices.

COUNT 1: Sherman Act § 2

(Unlawful Monopoly Maintenance in the iOS App Distribution Market)

184. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

185. Apple's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

186. The iOS App Distribution Market is a valid antitrust market.

187. Apple holds monopoly power in the iOS App Distribution Market.

188. Apple unlawfully maintains its monopoly power in the iOS App Distribution Market through the anti-competitive acts described herein, including by imposing technical and contractual restrictions on iOS, which prevents the distribution of iOS apps through means other than the App Store and prevents developers from distributing competing app stores to iOS users.

189. Apple's conduct affects a substantial volume of interstate as well as foreign commerce.

190. Apple's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

191. As an app distributor and as an app developer, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

192. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 2: Sherman Act § 2

(Denial of Essential Facility in the iOS App Distribution Market)

193. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

194. Apple's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

195. The iOS App Distribution Market is a valid antitrust market.

196. Apple holds monopoly power in the iOS App Distribution Market.

197. Apple unlawfully maintains its monopoly power in the iOS App Distribution Market through its unlawful denial to Epic and other app distributors of an essential facility—access to iOS—which prevents them from competing in the iOS App Distribution Market.

198. Apple controls iOS, which is essential to effective competition in the iOS App Distribution Market.

199. App distributors are unable to reasonably or practically duplicate Apple's iOS.

200. It is technically feasible for Apple to provide access to iOS to Epic and other app distributors, and it would not interfere with or significantly inhibit Apple's ability to conduct its business.

201. Apple's denial of access to iOS has no legitimate business purpose, and serves only to assist Apple in maintaining its unlawful monopoly position in the iOS App Distribution Market.

202. Through its denial of its essential facility, Apple maintains its monopoly power in the iOS App Distribution Market.

203. Apple's conduct affects a substantial volume of interstate as well as foreign commerce.

204. Apple's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

205. As an app distributor and as an app developer, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

206. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 3: Sherman Act § 1

(Unreasonable Restraints of Trade in the iOS App Distribution Market)

207. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

208. Apple's conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

209. The iOS App Distribution Market is a valid antitrust market.

210. To reach iOS users, Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement and to comply with Apple's App Store Review Guidelines, including the requirement iOS developers distribute their apps through the App Store. These contractual provision unlawfully foreclose the iOS App Distribution Market to competitors and maintain Apple's monopoly.

211. The challenged provisions of the Developer Agreement and the terms of Apple's App Store Review Guidelines unreasonably restrain competition in the iOS App Distribution Market and serve no legitimate or pro-competitive purpose that could justify their anti-competitive effects.

212. Apple's conduct and unlawful contractual restraints affect a substantial volume of interstate as well as foreign commerce.

213. Apple's conduct has substantial anti-competitive effects, including increased prices to users and increased costs to developers, reduced innovation, and reduced quality of service and lowered output.

214. Apple's conduct has caused Epic, as an app distributor, to suffer injury to its business by foreclosing Epic from competing in the iOS App Distribution Market. Epic is also harmed as an app developer because it has no choices for distributing its apps to iOS device users other than the App Store and therefore suffers the anti-competitive effects felt by all app developers that are described above. Epic has been and continues to be directly harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

215. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 4: Sherman Act § 2

(Unlawful Monopoly Maintenance in the iOS In-App Payment Processing Market)

216. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

217. Apple's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

218. The iOS In-App Payment Processing Market is a valid antitrust market. In the alternative, the iOS Games Payment Processing Market is a valid antitrust market.

219. Apple has monopoly power in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

220. Apple has unlawfully maintained its monopoly in these markets through the anti-competitive acts alleged herein, including by forcing, through its contractual terms and unlawful policies, iOS app developers that sell in-app content to exclusively use Apple's In-App Purchase, and preventing and discouraging app developers from developing or integrating alternative payment processing solutions.

221. Apple's conduct affects a substantial volume of interstate as well as foreign commerce.

222. Apple's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation, and quality of service and lowered output.

223. As an app developer and as the developer of a competing in-app payment processing tool, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

224. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 5: Sherman Act § 1

(Unreasonable Restraints of Trade in the iOS In-App Payment Processing Market)

225. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

226. Apple's conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

227. To reach iOS app users, Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement, including that they use Apple's In-App Purchase for in-app purchases of in-app content to the exclusion of any alternative solution or third-party payment processor. Further, Section 3.1.3 of Apple's App Store Review Guidelines unlawfully prohibits developers from "directly or indirectly target[ing] iOS users to use a purchasing method other than in-app purchase".

228. Apple's challenged contractual provisions and policy guidelines serve no legitimate or pro-competitive purpose and unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

229. Apple's conduct and unlawful contractual restraints affect a substantial volume of interstate as well as foreign commerce.

230. Apple's conduct has substantial anti-competitive effects, including increased prices to users and increased costs to developers, reduced innovation, and reduced quality of service and lowered output.

231. Apple's conduct has foreclosed Epic from participating in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market. Epic has also been harmed in its capacity as an app developer by being deprived of a choice of in-app payment processing tools, denied the benefits of innovation in in-app payment processing, and forced to pay a supra-competitive rate for

in-app payment processing. Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

232. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 6: Sherman Act § 1

(Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market)

233. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

234. Apple's conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

235. Through its Developer Agreement with app developers and its App Store Review Guidelines, Apple has unlawfully tied its in-app payment processor, In-App Purchase, to the use of its App Store.

236. Apple has sufficient economic power in the tying market, the iOS App Distribution Market, because the App Store is the sole means by which apps may be distributed to consumers in that market.

237. Apple is able to unlawfully condition access to the App Store on the developer's use of a second product—In-App Purchase—for in-app sales of in-app content. Through its Developer Agreement and unlawful policies, Apple expressly conditions the use of its App Store on the use of its In-App Purchase to the exclusion of alternative solutions in a *per se* unlawful tying arrangement.

238. The tying product, Apple's App Store, is distinct from the tied product, Apple's In-App Purchase, because app developers such as Epic have alternative

in-app payment processing options and would prefer to choose among them independently of how the developer's iOS apps are distributed. In other words, app developers are coerced into using In-App Purchase by virtue of wanting to use the App Store. Apple's unlawful tying arrangement thus ties two separate products that are in separate markets and coerces Epic and other developers to rely on both of Apple's products.

239. Apple's conduct has foreclosed, and continues to foreclose, competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market, affecting a substantial volume of commerce in these markets.

240. Apple has thus engaged in a *per se* illegal tying arrangement and the Court does not need to engage in a detailed assessment of the anti-competitive effects of Apple's conduct or its purported justifications.

241. In the alternative only, even if Apple's conduct does not constitute a *per se* illegal tie, an analysis of Apple's tying arrangement would demonstrate that this arrangement violates the rule of reason and is illegal by coercing developers into using its In-App Purchase product.

242. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, is paying supra-competitive fees on in-app purchases processed through Apple's payment processor and has forgone revenue it would be able to generate if its own in-app payment processor were not unreasonably restricted from the market.

243. As an app developer that consumes in-app payment processing services and as the developer of a competing in-app payment processing tool, Epic has a direct financial interest in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market, and has been foreclosed from competing with Apple directly as a result of Apple's unlawful tie.

244. Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues

to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

245. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 7: California Cartwright Act

(Unreasonable Restraints of Trade in the iOS App Distribution Market)

246. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

247. Apple's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. *See* §§ 16720, 16726.

248. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

249. The iOS App Distribution Market is a valid antitrust market.

250. Apple has monopoly power in the iOS App Distribution Market.

251. Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement, including that iOS developers distribute their apps through the App Store. Section 3.2(g) of the Developer Agreement contains the unlawful requirement that developers distribute their apps through the App Store. Apple also conditions app distributors' access to iOS on their agreement not to distribute third-party app stores. Section 3.3.2(b) of the Developer Agreement prohibits "Application[s]" that "create a store or storefront for other code or applications". These provisions unreasonably restrain competition in the iOS App Distribution Market.

252. These challenged provisions have no legitimate or pro-competitive purpose or effect, and unreasonably restrain competition in the iOS App Distribution Market.

253. Apple's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service, and lowered output.

254. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, has been unreasonably restricted in its ability to distribute its iOS applications, including *Fortnite*, and to market a competing app store to the App Store.

255. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers and developers reside in California, Apple has its principal place of business in California, and overt acts in furtherance of Apple's anti-competitive scheme took place in California.

256. Epic has suffered and continues to suffer harm, and such harm will not abate until an injunction ending Apple's anti-competitive conduct issues. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 8: California Cartwright Act
(Unreasonable Restraints of Trade in the iOS In-App Payment Processing Market)

257. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

258. Apple's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. *See* §§ 16720, 16726.

259. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

260. The iOS In-App Payment Processing Market and, in the alternative, the iOS Games Payment Processing Market, are valid antitrust markets.

261. Apple has monopoly power in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

262. Apple conditions distribution through the App Store on entering into the Developer Agreement described above, including the contractual and policy restrictions contained therein and in the App Store Review Guidelines. Through certain provisions in these agreements, Apple forces app developers to submit to conditions that unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, the iOS Games Payment Processing Market.

263. Section 3.1.1 of the App Store Review Guidelines provide that "if you [the developer] want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you *must use in-app purchase*. Apps *may not use their own mechanisms to unlock content or functionality* . . . ." (emphases added). Finally, Section 3.1.3 of the guidelines provides that developers may not "directly or indirectly target iOS users to use a purchasing method *other than [Apple's] in-app purchase*, and general communications [to users] about other purchasing methods [must not be] *designed to discourage use of [Apple's] in-app purchase*". (emphases added).

264. These provisions have no legitimate or pro-competitive purpose or effect, and unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

265. Apple's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service, and lowered output.

266. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, has been unreasonably restricted in its ability to distribute and use its own in-app payment processor and forced to pay Apple's supra-competitive fees.

267. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by

California law, many affected consumers and developers reside in California, Apple has its principal place of business in California, and overt acts in furtherance of Apple's anti-competitive scheme took place in California.

268. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 9: California Cartwright Act

(Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market)

269. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

270. Apple's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce, or to prevent market competition. *See* §§ 16720, 16726.

271. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

272. The Cartwright Act also makes it "unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, commodities for use within the State, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the State." § 16727.

273. As detailed above, Apple has unlawfully tied its in-app payment processor, In-App Purchase, to the App Store through its Developer Agreement and App Store Review Guidelines.

274. Apple has sufficient economic power in the tying market, the iOS App Distribution Market, to affect competition in the tied market, the iOS In-App Payment Processing Market and, in the alternative, the iOS Game Payment Processing Market. With Apple's unlawful conditions and policies, Apple ensures that the App Store is the only distribution channel for developers to reach iOS app users, giving Apple overwhelming monopoly power in the iOS App Distribution Market. Apple's power is further evidenced by its ability to extract supra-competitive taxes on the sale of apps through the App Store.

275. The availability of the App Store for app distribution is conditioned on the app developer accepting a second product, Apple's in-app payment processing services. Apple's foreclosure of alternative app distribution channels coerces developers like Epic to use Apple's in-app payment processing services, which Apple has expressly made a condition of reaching Apple iOS through its App Store. In other words, app developers are coerced into using In-App Purchase by virtue of wanting to use the App Store.

276. The tying product, iOS app distribution, is separate and distinct from the tied product, iOS in-app payment processing, because app developers such as Epic have alternative in-app payment processing options and would prefer to choose among them independently of how an iOS app is distributed. Apple's unlawful tying arrangement thus ties two separate products that are in separate markets.

277. Apple's conduct forecloses competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market, affecting a substantial volume of commerce in this market.

278. Apple has thus engaged in a *per se* illegal tying arrangement and the Court does not need to engage in a detailed assessment of the anti-competitive effects of Apple's conduct or its purported justifications.

279. Even if Apple's conduct does not form a *per se* illegal tie, an assessment of the tying arrangement would demonstrate that it is unreasonable under the Cartwright Act, and therefore, illegal.

280. Apple's acts and practices detailed above unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

281. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, is paying a supra-competitive commission rate on in-app purchases processed through Apple's payment processor and has forgone commission revenue it would be able to generate if its own in-app payment processor were not unreasonably restricted from the market.

282. As an app developer which consumes in-app payment processing services and as the developer of a competing in-app payment processing tool, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent.

283. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers and developers reside in California, Apple has its principal place of business in California, and overt acts in furtherance of Apple's anti-competitive scheme took place in California.

284. Epic has suffered and continues to suffer harm, and such harm will not abate until an injunction ending Apple's anti-competitive conduct issues. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 10: California Unfair Competition Law

285. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

286. Apple's conduct, as described above, violates California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq*., which prohibits any unlawful, unfair, or fraudulent business act or practice.

287. Epic has standing to bring this claim because it has suffered injury in fact and lost money as a result of Apple's unfair competition. Specifically, it develops and distributes apps for iOS, has developed a payment processor for in-app purchases, and Apple's conduct has unreasonably restricted Epic's ability to fairly compete in the relevant markets with these products.

288. Apple's conduct violates the Sherman Act and the Cartwright Act, and thus constitutes unlawful conduct under § 17200.

289. Apple's conduct is also "unfair" within the meaning of the Unfair Competition Law.

290. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, is unreasonably prevented from freely distributing mobile apps or its in-app payment processing tool, and forfeits a higher commission rate on the in-app purchases than it would pay absent Apple's conduct.

291. Epic seeks injunctive relief under the Unfair Competition Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Epic respectfully requests that the Court enter judgment in favor of Epic and against Defendant Apple:

A. Issuing an injunction prohibiting Apple's anti-competitive conduct and mandating that Apple take all necessary steps to cease unlawful conduct and to restore competition;

B. Awarding a declaration that the contractual and policy restraints complained of herein are unlawful and unenforceable;

C. Awarding any other equitable relief necessary to prevent and remedy Apple's anti-competitive conduct; and

D. Granting such other and further relief as the Court deems just and proper.

Dated: August 13, 2020

Respectfully submitted,

By: /s/ Paul J. Riehle

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