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24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**

26 EPIC GAMES, INC.,

27 Plaintiff,

28 vs.

APPLE INC.,

Defendant.

Case No. _____

**COMPLAINT FOR
INJUNCTIVE RELIEF**

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

4 NATURE OF THE ACTION

5 1. In 1984, the fledgling Apple computer company released the
6 Macintosh—the first mass-market, consumer-friendly home computer. The product
7 launch was announced with a breathtaking advertisement evoking George Orwell’s *1984*
8 that cast Apple as a beneficial, revolutionary force breaking IBM’s monopoly over the
9 computing technology market. Apple’s founder Steve Jobs introduced the first showing
10 of the 1984 advertisement by explaining, “it appears IBM wants it all. Apple is perceived
11 to be the only hope to offer IBM a run for its money Will Big Blue dominate the
12 entire computer industry? The entire information age? Was George Orwell right about
13 1984?”

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

19 3. This case concerns Apple’s use of a series of anti-competitive
20 restraints and monopolistic practices in markets for (i) the distribution of software
21 applications (“apps”) to users of mobile computing devices like smartphones and tablets,
22 and (ii) the processing of consumers’ payments for digital content used within iOS
23 mobile apps (“in-app content”). Apple imposes unreasonable and unlawful restraints to
24 completely monopolize both markets and prevent software developers from reaching the
25 over one billion users of its mobile devices (*e.g.*, iPhone and iPad) unless they go through
26 a single store controlled by Apple, the App Store, where Apple exacts an oppressive 30%
27 tax on the sale of every app. Apple also requires software developers who wish to sell
28

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

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

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

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

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

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

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

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

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

3 10. Apple also imposes unreasonable restraints and unlawfully maintains
4 a total monopoly in the iOS In-App Payment Processing Market. Among the oppressive
5 terms that app developers have to accept, Apple coerces all app developers who wish to
6 use its App Store—the only means with which to distribute apps to iOS users—to use
7 exclusively Apple’s own payment processing platform for all in-app purchases of in-app
8 content. Apple thus requires third-party app developers to agree they will not even offer
9 iOS users the *choice* of additional payment processing options *alongside* Apple’s. And
10 Apple goes as far as to gag app developers, preventing them from even *mentioning* to
11 users the option of buying the same content outside of the app—for example, by
12 purchasing content directly from the app developer, or using a web browser. Because
13 Apple has a monopoly over the distribution of iOS apps, app developers have no choice
14 but to assent to this anti-competitive tie; it is Apple’s way or the highway.

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

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

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

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

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

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

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

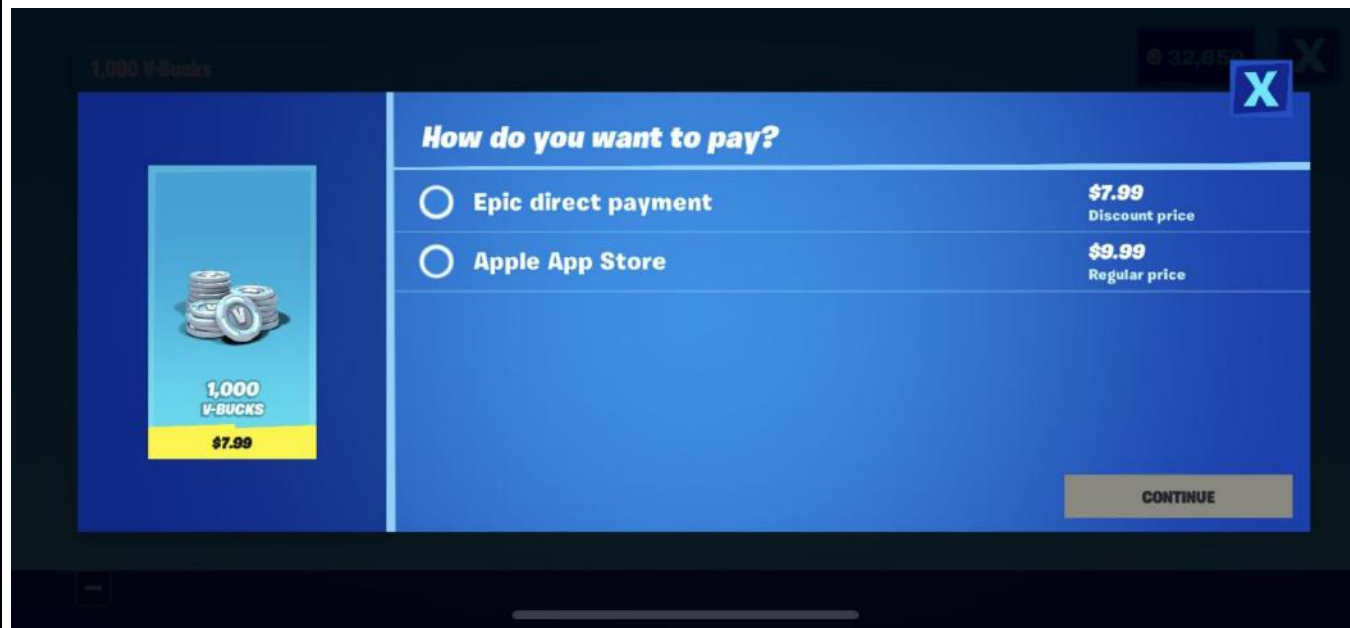
1 injured Epic in its capacity as an app developer by forcing Epic to distribute its app
2 exclusively through the App Store and exclusively use Apple’s payment processing
3 services. As a result, Epic is forced, like so many other developers, to charge higher
4 prices on its users’ in-app purchases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

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

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

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

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



14
15 20. Rather than tolerate this healthy competition and compete on the
16 merits of its offering, Apple responded by removing *Fortnite* from sale on the App Store,
17 which means that new users cannot download the app, and users who have already
18 downloaded prior versions of the app from the App Store cannot update it to the latest
19 version. This also means that *Fortnite* players who downloaded their app from the App
20 Store will not receive updates to *Fortnite* through the App Store, either automatically or
21 by searching the App Store for the update. Apple’s removal of *Fortnite* is yet another
22 example of Apple flexing its enormous power in order to impose unreasonable restraints
23 and unlawfully maintain its 100% monopoly over the iOS In-App Payment Processing
24 Market.

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

1 dominance over key technology markets, open up the space for progress and ingenuity,
2 and ensure that Apple mobile devices are open to the same competition as Apple’s
3 personal computers. As such, Epic respectfully requests this Court to enjoin Apple from
4 continuing to impose its anti-competitive restrictions on the iOS ecosystem and ensure
5 2020 is not like “1984”.

6 **PARTIES**

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

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

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



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



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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

22 33. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
23 because Apple maintains its principal place of business in the State of California and in
24 this District, and because a substantial part of the events or omissions giving rise to
25 Epic’s claims occurred in this District. In the alternative, personal jurisdiction and venue
26 also may be deemed proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C.
27 § 22, because Apple may be found in or transacts business in this District.
28

1 **INTRADISTRICT ASSIGNMENT**

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

5 **RELEVANT FACTS**

6 **I. Apple Monopolizes the iOS App Distribution Market.**

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

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

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

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

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

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

12 40. Thus, for mobile device users, there are effectively only two mobile
13 operating systems to choose from: Google’s Android OS or Apple’s iOS. As of July
14 2020, these two operating systems accounted for nearly 100% of the worldwide mobile
15 OSs.²

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

23 ¹ Historically, iOS was also the operating system used on iPads. In 2019, Apple
24 announced that it would begin using the name iPadOS to refer to the operating system on
25 iPads. For simplicity’s sake, this Complaint refers to the operating system on both
26 devices as “iOS”. There are no differences between iOS and iPadOS that are relevant to
27 the allegations herein.

28 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/](https://www.statista.com/statistics/272698/global-market-share-held-by-mobile-operating-systems-since-2009/).

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

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

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

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

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

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

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

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

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

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

26 ⁴ Prachi Bhardwaj, “Despite Android’s growing market share, Apple users continue to
27 spend twice as much money on apps as Android users”, *Business Insider* (Jul. 6, 2018),
28 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.>

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

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

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

17 **A. The iOS App Distribution Market.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 63. Lastly, as described in Part III below, competition in the sale of
23 mobile devices does not constrain Apple's power in the iOS App Distribution Market
24 because iOS device users face substantial switching costs and lock-in to the iOS
25 ecosystem. Further, regardless of the extent of competition in the sale of premium
26 smartphones, competition at the smartphone level would not constrain Apple's power in
27 the iOS App Distribution Market because consumers cannot adequately account for and
28

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

3 **C. Apple’s Anti-competitive Conduct in the iOS App Distribution Market.**

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

9 i. Technical Restrictions

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

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

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

23 ii. Contractual Restrictions

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

26 69. *First*, Apple conditions all app developers’ access to iOS on the
27 developers’ agreement to distribute their apps solely through the App Store.
28

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

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

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

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

23 74. Apple’s beta testing program permits a developer to release non-final
24 versions of apps through Apple’s TestFlight Application to only a limited number of
25 (i) the developer’s own personnel and (ii) beta testers. (Developer Agreement § 7.4,
26

27 ⁵ Apple also allows certain Apple-approved large commercial organizations to
28 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.

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

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

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

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

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

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

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

28

1 81. Apple has enforced these restrictions against Epic. Epic approached
2 Apple to request that Apple allow Epic to offer its Epic Games Store to Apple’s iOS
3 users through the App Store and direct installation. Apple’s response was an unequivocal
4 “no”.

5 iii. Lack of Procompetitive Justification

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

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

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

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

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

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

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

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

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

26
27
28 ⁶ Apple, “App Store”, <https://www.apple.com/ios/app-store/principles-practices/> (last
accessed Aug. 2, 2020).

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

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

21 92. One day later, August 7, 2020, *The New York Times* reported that
22 Facebook had unsuccessfully attempted for six months to obtain Apple’s approval of a
23 new Facebook Gaming app that would allow users to watch livestreams of online games
24

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

⁸ *Id.*

⁹ *Id.*

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

9 93. *Second*, Apple’s anti-competitive conduct harms developers,
10 including Epic.

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

20 95. Apple’s total foreclosure of any competition in the iOS App
21 Distribution Market reduces the competitive pressure for Apple to innovate and improve
22 its own App Store, leaving developers with inferior distribution outlets compared to what
23
24

25 ¹⁰ Seth Schiesel, “Facebook Gaming Finally Clears Apple Hurdle, Arriving in App
26 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](https://www.nytimes.com/2020/08/07/technology/facebook-apple-gaming-app-store.html).

27 ¹¹ *Id.*

28 ¹² *Id.*

¹³ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **A. The iOS In-App Payment Processing Market.**

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

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

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

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

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

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

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

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

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

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

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

11 118. The geographic scope of the iOS In-App Payment Processing Market
12 is worldwide, as consumers and developers can access iOS worldwide. Further, Apple’s
13 30% tax does not vary by locality.

14 **B. Apple’s Monopoly Power in the iOS In-App Payment Processing**
15 **Market.**

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

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

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

26 122. Apple does not face any meaningful constraints to its monopoly
27 power in the iOS In-App Payment Processing Market. As discussed above, APIs and
28

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

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

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

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

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

19

<u>Electronic Payment Processing Tool</u>	<u>Base U.S. Rate</u>
PayPal	2.9%
Stripe	2.9%
Square	2.6%-3.5%
Braintree	2.9%

20
21
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24

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

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

5 **C. Apple’s Anti-competitive Conduct in the iOS In-App Payment**
6 **Processing Market.**

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

12 i. Contractual and Policy Restrictions

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

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

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

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

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

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

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

21 ii. Lack of Procompetitive Justification

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

24 136. There is no security justification for requiring the use of In-App
25 Purchase for a user's in-app purchase of in-app content. The best illustration of this point
26

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

¹⁶ *Id.*

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

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

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

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

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

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

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

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

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

20 143. *Second*, Apple’s anti-competitive conduct harms developers,
21 including Epic.

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

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

28

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

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

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

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

27 ¹⁷ Yowana Wamala, “Amazon Payments Review: Should Your Business Use it?”,
28 *Value Penguin* (June 11, 2019), <https://www.valuepenguin.com/credit-card-processing/amazon-payments-review>.

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

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

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

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

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

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

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

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

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

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

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

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

20 **A. Apple’s Mobile Device Customers Face Substantial Switching Costs and**
21 **iOS Lock-In.**

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

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

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

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

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

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

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

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

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

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

28

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

4 **B. Apple’s Sticky iOS Ecosystem Protects its Dominance in the Sales of
5 Mobile Devices.**

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

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

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

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

15 171. Apple’s iPhone durably maintains substantial profit margins. For
16 instance, from 2013 to 2017, Apple’s share of smartphone operating profits among major
17 smartphones companies ranged from 62% to 90%.²¹ Similarly, in the third quarter of
18 2019, Apple was able to capture 66% of the operating profits across all mobile handsets.
19 Apple’s closet competitor had only 17%.²² Analysts who follow Apple have also noted

20 ¹⁸ Statista Research Department, “Apple’s iPhone revenue from 3rd quarter 2007 to
21 3rd quarter 2020” (Aug. 7, 2020), *available online at*
<https://www.statista.com/statistics/263402/apples-iphone-revenue-since-3rd-quarter-2007/>.

22 ¹⁹ IDC Data.

23 ²⁰ Varun Mishra, “Four Out of Five Best Selling Models in the Premium Segment
24 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).

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

27 ²² Karn Chauhan, “Apple Continues to Lead Global Handset Industry Profit Share”,
28 *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).

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

3 172. Apple has also been able to maintain its pricing power over many
4 years. For example, the global average selling price of smartphones went from \$332 in
5 2011²⁴ to \$363 in the first quarter of 2018,²⁵ a slight 4.3% price increase. Meanwhile, the
6 iPhone has consistently sold at an average selling price of around \$300 dollars higher
7 than the average smartphone, and its prices increased over that same period by 22%, from
8 approximately \$650 to \$796.²⁶

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

15 174. Apple's pricing conduct also evidences the high switching costs. For
16 example, Apple released the top-of-the-line iPhone X in 2017 at a \$300 higher price point
17

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

21 ²⁴ Statista Research Department, "Global Average Selling Price of Smartphones from
22 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).

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

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

27 ²⁷ Martin Armstrong, "Most iPhone Users Never Look Back", *Statista* (May 22, 2017),
28 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).

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

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

6 176. Apple's global iPad sales generated more than \$19 billion in revenue
7 in 2019 alone.²⁹ And Apple led all tablet vendors worldwide, accounting for 38% of the
8 global tablet shipments in the second quarter of 2020.³⁰ The second leading tablet
9 vendor, Samsung, accounted for only 18.7%.³¹

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

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

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

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

23 ²⁹ Statista Research Department, "Revenue of Apple from iPad Sales Worldwide From
24 3rd Quarter 2010 to 3rd Quarter 2020", *Statista* (Aug. 7, 2020), online at
25 <https://www.statista.com/statistics/269914/apples-global-revenue-from-ipad-sales-by-quarter/#:~:text=Apple's%20global%20revenue%20from%20iPad%20sales%202010%20D2020&text=In%20the%20third%20quarter%20of,the%20third%20quarter%20of%202019> (last accessed Aug. 11, 2020).

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

³¹ *Id.*

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

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

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

13 181. *First*, the complexity of device pricing obscures the impact of Apple’s
14 anti-competitive conduct. Consumers consider many features when deciding which
15 smartphone or tablet to purchase, including design, brand, processing power, battery life,
16 functionality, cellular plan and provider coverage, etc. These features are likely to play a
17 substantially larger role in a consumer’s decision as to which smartphone or tablet to
18 purchase than Apple’s anti-competitive conduct in the iOS App Distribution and iOS In-
19 App Payment Processing Markets (if it plays a role at all), particularly given that each
20 individual app and in-app purchase is a relatively small monetary cost when compared to
21 the price of the device. For example, Apple’s iPhone 11 currently retails starting at \$699,
22 while the two new flagship phones, iPhone 11 Pro and Pro Max, retail starting at \$999
23 and \$1,099, respectively.³³ In 2019, the median price of paid apps on the App Store
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26 ³³ Dami Lee, “The iPhone 11, Pro, and Pro Max will cost \$699, \$999, and \$1,099,
27 respectively”, *The Verge* (Sep. 10, 2019),
28 [https://www.theverge.com/2019/9/10/20848182/new-iphone-11-price-cost-
announcement-699-apple](https://www.theverge.com/2019/9/10/20848182/new-iphone-11-price-cost-announcement-699-apple).

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

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

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25 ³⁴ J. Clement, “Average Price of Paid Android and iOS Apps 2018”, *Statista* (Mar. 22,
26 2019), online at [https://www.statista.com/statistics/262387/average-price-of-android-](https://www.statista.com/statistics/262387/average-price-of-android-ipad-and-iphone-apps/)
27 [ipad-and-iphone-apps/](https://www.statista.com/statistics/262387/average-price-of-android-ipad-and-iphone-apps/) (last accessed Aug. 3, 2020).

27 ³⁵ Randy Nelson, “U.S. iPhone Users Spent an Average of \$100 on Apps in 2019, Up
28 27% From 2018”, *Sensor Tower* (Mar. 25, 2020), online at
<https://sensortower.com/blog/revenue-per-iphone-2019>.

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

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

14 **COUNT 1: Sherman Act § 2**

15 **(Unlawful Monopoly Maintenance in the iOS App Distribution Market)**

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

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

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

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

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

1 189. Apple’s conduct affects a substantial volume of interstate as well as
2 foreign commerce.

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

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

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

12 **COUNT 2: Sherman Act § 2**

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

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

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

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

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

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

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

27 199. App distributors are unable to reasonably or practically duplicate
28 Apple’s iOS.

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

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

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

9 203. Apple’s conduct affects a substantial volume of interstate as well as
10 foreign commerce.

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

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

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

20 **COUNT 3: Sherman Act § 1**

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

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

24 208. Apple’s conduct violates Section 1 of the Sherman Act, which
25 prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy,
26 in restraint of trade or commerce among the several States, or with foreign nations”.
27 15 U.S.C. § 1.

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

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

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

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

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

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

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

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1 **COUNT 4: Sherman Act § 2**

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

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

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

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

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

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

18 221. Apple’s conduct affects a substantial volume of interstate as well as
19 foreign commerce.

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

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

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

1 **COUNT 5: Sherman Act § 1**

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

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

5 226. Apple’s conduct violates Section 1 of the Sherman Act, which
6 prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy,
7 in restraint of trade or commerce among the several States, or with foreign nations”.
8 15 U.S.C. § 1.

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

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

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

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

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

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

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

7 **COUNT 6: Sherman Act § 1**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 263. Section 3.1.1 of the App Store Review Guidelines provide that “if you
10 [the developer] want to unlock features or functionality within your app, (by way of
11 example: subscriptions, in-game currencies, game levels, access to premium content, or
12 unlocking a full version), you *must use in-app purchase*. Apps *may not use their own*
13 *mechanisms to unlock content or functionality . . .*” (emphases added). Finally, Section
14 3.1.3 of the guidelines provides that developers may not “directly or indirectly target iOS
15 users to use a purchasing method *other than [Apple’s] in-app purchase*, and general
16 communications [to users] about other purchasing methods [must not be] *designed to*
17 *discourage use of [Apple’s] in-app purchase*”. (emphases added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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COUNT 10: California Unfair Competition Law

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

3 286. Apple’s conduct, as described above, violates California’s Unfair
4 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, which prohibits any
5 unlawful, unfair, or fraudulent business act or practice.
6

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

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

14 289. Apple’s conduct is also “unfair” within the meaning of the Unfair
15 Competition Law.

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

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

PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff Epic respectfully requests that the Court enter judgment
22 in favor of Epic and against Defendant Apple:
23

- 24 A. Issuing an injunction prohibiting Apple’s anti-competitive conduct and
25 mandating that Apple take all necessary steps to cease unlawful conduct and
26 to restore competition;
27 B. Awarding a declaration that the contractual and policy restraints complained
28 of herein are unlawful and unenforceable;

- 1 C. Awarding any other equitable relief necessary to prevent and remedy
2 Apple's anti-competitive conduct; and
3 D. Granting such other and further relief as the Court deems just and proper.
4

5 Dated: August 13, 2020

6 Respectfully submitted,

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8 By: /s/ Paul J. Riehle

9
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