

Exhibit B

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19
20 EPIC GAMES, INC., a Maryland
21 Corporation,

22 Plaintiff,

Case No. 3:20-CV-05671-JD

23 v.

24 GOOGLE LLC; GOOGLE IRELAND
25 LIMITED; GOOGLE COMMERCE
26 LIMITED; GOOGLE ASIA PACIFIC
27 PTE. LIMITED; and GOOGLE
PAYMENT CORP.,

28 Defendants.

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF**

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1 On the basis of documents produced to date by Defendants Google LLC,
2 Google Ireland Limited, Google Commerce Limited, Google Asia Pacific Pte. Limited,
3 and Google Payment Corp. (collectively, “Google”), it is clear that very carefully
4 phrased arguments in Google’s pending motion to dismiss give a misleading picture of
5 the full scope of Google’s anticompetitive conduct. Accordingly, although Plaintiff
6 Epic Games, Inc. (“Epic”) believes its initial Complaint was more than sufficient, it
7 hereby alleges, by its undersigned counsel, as a First Amended Complaint, with
8 knowledge with respect to its own acts and on information and belief as to other
9 matters, as follows:

10 **PRELIMINARY STATEMENT**

11 1. In 1998, Google was founded as an exciting young company with a
12 unique motto: “Don’t Be Evil”. Google’s Code of Conduct explained that this
13 admonishment was about “how we serve our users” and “much more than that . . . it’s
14 also about doing the right thing more generally”.¹ Twenty-two years later, Google has
15 relegated its motto to nearly an afterthought, and is using its size to do evil upon
16 competitors, innovators, customers, and users in a slew of markets it has grown to
17 monopolize. This case is about doing the right thing in one important area, the Android
18 mobile ecosystem, where Google unlawfully maintains monopolies in multiple related
19 markets and engages in unlawful restraints of trade, denying consumers the freedom to
20 enjoy their mobile devices—freedom that Google always promised Android users
21 would have.

22 2. Google acquired the Android mobile operating system more than a
23 decade ago, promising repeatedly over time that Android would be the basis for an
24 “open” ecosystem in which industry participants could freely innovate and compete
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¹ Kate Conger, *Google Removes ‘Don’t Be Evil’ Clause from Its Code of Conduct*, Gizmodo
(May 18, 2018), <https://gizmodo.com/google-removes-nearly-all-mentions-of-dont-be-evil-from-1826153393>.

1 without unnecessary restrictions.² Google’s CEO, Sundar Pichai, represented in 2014
2 that Android “is one of the most open systems that I’ve ever seen”.³ And Andy Rubin,
3 an Android founder who is described by some as the “Father of Android”, said when he
4 departed Google in 2013 that “at its core, Android has always been about openness”.⁴
5 Since then, Google has changed its course of conduct, deliberately and systematically
6 closing the Android ecosystem to competition, breaking the promises it made. Google’s
7 anti-competitive conduct has now been condemned by regulators the world over.

8 3. Epic brings claims under Sections 1 and 2 of the Sherman Act and
9 under California law to end Google’s unlawful monopolization and anti-competitive
10 restraints in two separate markets: (1) the market for the distribution of mobile apps to
11 Android users and (2) the market for payment processing solutions for digital content
12 within Android mobile apps. Epic seeks to end Google’s unfair, monopolistic and anti-
13 competitive actions in each of these markets, which harm device makers, app
14 developers, app distributors, payment processors, and consumers.

15 4. **Epic does not seek monetary compensation from this Court for**
16 **the injuries it has suffered.** Epic likewise does not seek a side deal or favorable
17 treatment from Google for itself. Instead, Epic seeks injunctive relief that would make
18
19

20 ² See, e.g., Google Blog, News and notes from Android team, *The Benefits & Importance of*
21 *Compatibility*, (Sept. 14, 2012), [https://android.googleblog.com/2012/09/the-benefits-importance-of-](https://android.googleblog.com/2012/09/the-benefits-importance-of-compatibility.html)
22 [compatibility.html](https://android.googleblog.com/2012/09/the-benefits-importance-of-compatibility.html) (“We built Android to be an open source mobile platform freely available to anyone
23 wishing to use it This openness allows device manufacturers to customize Android and enable
24 new user experiences, driving innovation and consumer choice.”); Stuart Dredge, *Google’s Sundar*
25 *Pichai on wearable tech: ‘We’re just scratching the surface’*, *The Guardian* (Mar. 9, 2014),
<https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw>
26 (“Android is one of the most open systems that I’ve ever seen”); Andy Rubin, *Andy Rubin’s Email to*
27 *Android Partners*, *The Wall Street Journal* (Mar. 13, 2013), *available at*
<https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog> (“At
28 its core, Android has always been about openness”).

26 ³ Stuart Dredge, *Google’s Sundar Pichai on wearable tech: ‘We’re just scratching the surface’*, *The*
27 *Guardian* (Mar. 9, 2014), [https://www.theguardian.com/technology/2014/mar/09/google-sundar-](https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw)
[pichai-android-chrome-sxsw](https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw).

28 ⁴ Andy Rubin, *Andy Rubin’s Email to Android Partners*, *The Wall Street Journal* (Mar. 13, 2013),
available at [https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-](https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog)
[partners/?mod=WSJBlog](https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog).

1 good on Google’s broken promise: an open, competitive Android ecosystem for all
2 users and industry participants. Such injunctive relief is sorely needed.

3 5. Google has eliminated competition in the distribution of Android
4 apps using myriad contractual and technical barriers. Google’s actions force app
5 developers and consumers into Google’s own monopolized “app store”—the Google
6 Play Store. Google has thus installed itself as an unavoidable middleman for app
7 developers who wish to reach Android users and vice versa. Google uses this monopoly
8 power to impose a tax that siphons monopoly profits for itself every time an app
9 developer transacts with a consumer for the sale of an app or in-app digital content.
10 Google further siphons off all user data exchanged in such transactions to benefit its
11 own app designs and advertising business.

12 6. The conduct described below shows that Google’s persistent
13 monopoly is the result of deliberate efforts by Google to achieve and maintain it. Not
14 content with the contractual and technical barriers it has carefully constructed to
15 eliminate competition, Google uses its size, influence, power, and money to induce third
16 parties into anticompetitive agreements that further entrench its monopolies. For
17 example, Google has gone so far as to share its monopoly profits with business partners
18 to secure their agreement to fence out competition, has developed a series of internal
19 projects to address the “contagion” it perceived from efforts by Epic and others to offer
20 consumers and developers competitive alternatives, and has even contemplated buying
21 some or all of Epic to squelch this threat.

22 7. If not for Google’s anti-competitive behavior, the Android
23 ecosystem could live up to Google’s promise of open competition, providing Android
24 users and developers with competing app stores that offer more innovation, significantly
25 lower prices, and a choice of payment processors. Such an open system is not hard to
26 imagine. Two decades ago, through the actions of courts and regulators, Microsoft was
27 forced to open up the Windows for PC ecosystem. As a result, PC users have multiple
28 options for downloading software onto their computers, either directly from developers’

1 websites or from several competing stores. No single entity controls that ecosystem or
2 imposes a tax on all transactions. And Google, as the developer of software such as the
3 Chrome browser, is a direct beneficiary of this competitive landscape. Android users
4 and developers likewise deserve free and fair competition.

5 * * *

6 8. In today’s world, virtually all consumers and businesses stay
7 connected, informed, and entertained through smart mobile computing devices such as
8 smartphones and tablets. Mobile applications (“apps”) are innovative software products
9 that greatly contribute to those devices’ value. Consumers the world over use smart
10 mobile devices and mobile apps to video chat with friends, pay bills, stay current with
11 the news, listen to music, watch videos, play games, and more.

12 9. Epic develops and distributes entertainment, social networking and
13 utility applications for personal computers, gaming consoles, and smart mobile devices.
14 Epic operates a store for the distribution of personal computer apps, which it would
15 have expanded to distribute Android apps but for Google’s conduct. Epic also develops
16 and licenses *Unreal Engine*, a powerful software suite available to third-party
17 developers that allows them to create and distribute three-dimensional and immersive
18 digital content and apps, including Android apps, movies, and other three-dimensional
19 environments. Google’s practices have impacted each of Epic’s lines of business.



1 10. **App Development:** Epic develops multiple applications, including
2 *Fortnite*, *Fall Guys* and *Rocket League*, the social networking app *Houseparty*, and apps
3 that support Epic’s *Unreal Engine*, such as *Live Link Face*, which enables users to
4 capture facial animation with their mobile phones.

5 11. *Fortnite* is a massive virtual world where hundreds of millions of
6 people connect, meet, play, talk, compete, dance, or attend concerts and cultural events.
7 *Fortnite Battle Royale* offers users competitive gameplay as well as the opportunity to
8 mingle, watch movies, attend concerts or participate in cultural events with friends and
9 other users. *Fortnite Creative Mode* allows users to design and build their own
10 experiences within the *Fortnite* universe.

- 11 a. *Fortnite* is free for everyone to download and experience, including
12 by playing games, attending events, socializing with friends or
13 creating new content. To generate revenue, Epic offers users various
14 in-app purchases of content for use within the app, such as digital
15 avatars, costumes, dances, concert or movie-themed items, or other
16 cosmetic enhancements.



1 b. In the first year after *Fortnite* was released in 2017, it attracted over
2 125 million users; in the years since, *Fortnite* has topped 400 million
3 users and has become a global cultural phenomenon.

4 12. **App Distribution:** Epic operates an online app store, the Epic
5 Games Store, which it launched in 2018. Titles available on the Epic Games Store
6 include popular gaming apps (*e.g.*, the *Grand Theft Auto* franchise) and non-gaming
7 apps (*e.g.*, Spotify, iHeartRadio). The Epic Games Store also distributes at least one
8 third-party app store, itch.io. It offers developers an 88/12 revenue share arrangement
9 for all revenues from the sale of a developer’s games through the Epic Games Store.
10 For in-app purchases, the Epic Games Store provides developers the choice of using the
11 developer’s own payment processor (at no fee) or Epic’s own payment solution, Epic
12 Direct Payment (for a fee equal to a 12% share of sales revenue).

13 13. **Unreal Engine:** First launched in 1998, Epic’s *Unreal Engine* is a
14 powerful, three dimensional environment graphics engine used to build digital three-
15 dimensional environments for multiple uses including architecture projects, film &
16 television production, medical training, and more. *Unreal Engine* is used to create
17 software applications on all major platforms (PC, Mac, Android, iOS, major gaming
18 consoles and more) and for use in films, television and other fields.

19 a. The *Unreal Engine*’s source code is free to use. For developers who
20 use *Unreal Engine* to develop and sell their games or other projects
21 commercially, Epic typically collects a 5% royalty after the
22 developer reaches \$1 million in gross sales. Alternatively,
23 developers can negotiate custom or royalty-free licenses with Epic.

24 b. *Unreal Engine* powers some of the world’s most popular digital
25 games, including (in addition to *Fortnite*) PlayerUnknown’s
26 Battlegrounds (known as “PUBG”), ARK, Gears of War,
27 Borderlands, and Batman: Arkham City.

1 c. The *Unreal Engine* is also used far beyond the realm of video games.
2 *Unreal Engine* received its first Emmy in 2018 for its contribution to
3 televised broadcasts such as the 2018 Winter Olympics, Super Bowl
4 LII, and numerous e-sports tournaments. Since 2016, *Unreal Engine*
5 has been used in more than 100 film and television productions. For
6 example, *The Mandalorian*—Disney’s television series in the *Star*
7 *Wars* franchise—was filmed on a stage set within a huge oval LED
8 display. The exteriors and interiors—virtually every background and
9 set—were created in *Unreal Engine* and displayed in real time
10 behind the actors. Similarly, the popular HBO series *Westworld*
11 turned to *Unreal Engine* to develop many of its visual effects. Car
12 makers, including Audi and Ford, have used *Unreal Engine* for a
13 variety of uses including automotive design and engineering, as well
14 as developing digital showrooms in which customers can configure
15 their vehicles with high-fidelity visuals. In aviation, Gulfstream
16 visualizes its jets for its employees and clients. *Unreal Engine* has
17 even helped brain surgeons train for and perform some of the most
18 intricate and challenging aspects of brain surgeries by allowing for
19 detailed real-time digital anatomy simulations. In total, *Unreal*
20 *Engine* boasts a community of 11 million users.

21 d. As noted above, utility apps designed for use with *Unreal Engine* are
22 available in the Google Play Store, including, *Unreal Match 3* and
23 *Action RPG Game Sample*, both of which help developers learn how
24 to use *Unreal Engine* to develop their own mobile games.

25 14. Similar to a PC or a Mac personal computer, smart mobile devices
26 use an “operating system” or “OS” to provide core device functionality and to enable
27 the operation of compatible programs. As with PCs, the commercial viability of an OS
28

1 for mobile devices (a “mobile OS”) depends on the availability of a large number of
2 compatible apps that cater to the preferences and needs of users.

3 15. Google controls the most ubiquitous OS in mobile devices, the
4 Android OS. Android OS is used by billions of users the world over, and boasts nearly
5 3 million compatible apps.

6 16. Android is the only commercially viable OS that is widely available
7 to license by companies that design and sell smart mobile devices, known as original
8 equipment manufacturers (“OEMs”). Accordingly, when OEMs select a mobile OS to
9 install on their devices, they have only one option: Google’s Android OS. Google
10 therefore has monopoly power in the market for mobile operating systems that are
11 available for licensing by OEMs (the Merchant Market for Mobile Operating Systems
12 (*infra* Part I)).

13 17. Google has not been satisfied with its control of the Android OS.
14 Notwithstanding its promises to make Android devices open to competition, Google has
15 deliberately changed its course of conduct, erecting contractual and technological
16 barriers that foreclose competing ways of distributing apps to Android users, ensuring
17 that the Google Play Store accounts for nearly all the downloads of apps from app stores
18 on Android devices. Google thus maintains a monopoly over the market for distributing
19 mobile apps to Android users, referred to herein as the “Android App Distribution
20 Market” (*infra* Part II).

21 18. For example, through a series of revenue-sharing and licensing
22 agreements with OEMs, Google bundles the Google Play Store with a set of other
23 Google services that Android OEMs must have on their devices (such as Gmail, Google
24 Search, Google Maps, and YouTube) and conditions the licensing of those services on
25 an OEM’s agreement to pre-install the Google Play Store and to prominently display it.
26 Google then interferes with OEMs’ ability to make third-party app stores or apps
27 available on the devices they make, including through its so-called “Anti-Fragmentation
28 Agreements” (“AFAs”) that foreclose OEMs from modifying Android to offer fast and

1 simple (or “frictionless”) downloading of apps in the same way they are offered through
2 Google Play. These restrictions effectively foreclose competing app stores—and even
3 single apps—from what could be a primary distribution channel. Google’s documents
4 show that it pushes OEMs into making Google Play the exclusive app store on the
5 OEMs’ devices through a series of coercive carrots and sticks, including by offering
6 significant financial incentives to those that do so, and withholding those benefits from
7 those that do not. Google’s documents further show that Google has erected these
8 contractual barriers to competition for Android app distribution in the recognition that
9 Google stands to lose billions of dollars if Android app distribution were opened to
10 competition and competing Android app stores, including an “Epic Store”, were allowed
11 to “gain full traction”.

12 19. Epic’s experience with one OEM, OnePlus, is illustrative. Epic
13 struck a deal with OnePlus to make Epic games available on its phones through an Epic
14 Games app. The Epic Games app would have allowed users to seamlessly install and
15 update Epic games, including *Fortnite*, without obstacles imposed by Google’s Android
16 OS. But Google forced OnePlus to renege on the deal, citing Google’s “particular[]
17 concern” about Epic having the ability to install and update mobile games while
18 “bypassing the Google Play Store”.

19 20. Another OEM, LG, told Epic that its contract with Google did not
20 allow it to enable the direct distribution of apps, and that the OEM could not offer any
21 functionality that would install and update Epic apps except through the Google Play
22 Store.

23 21. Google also enforces anti-competitive restrictions against app
24 developers and distributors. Specifically, Google contractually prohibits app developers
25 and would-be distributors from offering on the Google Play Store any app that could be
26 used to download other apps, *i.e.*, any app that could compete with the Google Play
27 Store in app distribution. And Google further requires app developers to distribute apps
28 through the Google Play Store if they wish to advertise those apps through valuable

1 advertising channels controlled by Google, such as ad placements on Google Search or
2 on YouTube that are specially optimized to advertise mobile apps.

3 22. Finally, Google stifles or blocks consumers’ ability to download app
4 stores and apps directly from developers’ websites. As anyone who has tried to
5 download directly on an Android device knows, it is significantly different than the
6 simple process available on a personal computer: directly downloading *Fortnite* on an
7 Android device can involve a dozen steps, requiring the user to change default settings
8 and bravely click through multiple dire warnings. Accordingly, leading Google Play
9 executives have acknowledged that directly downloading *Fortnite* from a source other
10 than Google Play is “an awful experience”, and developers like Epic should “worry that
11 most will not go through the 15+ steps”. And even if a persistent user manages to
12 install a competing app store, Google has prevented such stores from competing on
13 equal footing with the Google Play Store by restricting them from offering basic
14 functions, such as automatic updating of apps in the background, which is available for
15 apps downloaded from the Google Play Store.

16 23. Google engages in these anticompetitive acts to eliminate consumer
17 choice and competition in mobile app distribution. Google has no legitimate
18 justification for these restrictions. Google therefore has changed its course of conduct,
19 breaking its promise that Android would be an “open” ecosystem in which other
20 participants could participate fairly.

21 24. But Google does not stop at app distribution. Google also imposes
22 anti-competitive restrictions in the separate Market for Android In-App Payment
23 Processing (*infra* Part III).

24 25. App developers who sell digital content for consumption within apps
25 require seamless payment processing solutions to execute purchases. App developers,
26 including Epic, have developed payment processing solutions internally. Others may
27 use a host of payment processing solutions offered by multiple competing third parties.
28

1 26. Google, however, ties distribution through its Google Play Store
2 with developers' exclusive use of Google's own payment processing solution, called
3 Google Play Billing, to process in-app purchases of digital content. Indeed, app
4 developers that distribute through the Google Play Store are even prohibited from
5 offering Android users the *choice* of additional payment processing options alongside
6 Google's for digital content. And because Google has a monopoly in the Android App
7 Distribution Market, app developers cannot practically avoid this anti-competitive tie by
8 electing app distribution through an alternative channel.

9 27. The result is that in every in-app transaction for digital content, it is
10 Google, not the app developer, that collects the payment in the first instance. Google
11 then taxes the transaction at up to an exorbitant 30% rate, remitting the remaining 70%
12 to the developer who actually made the sale. This 30% commission is often *ten times*
13 higher than the price typically paid for the use of other electronic payment solutions.

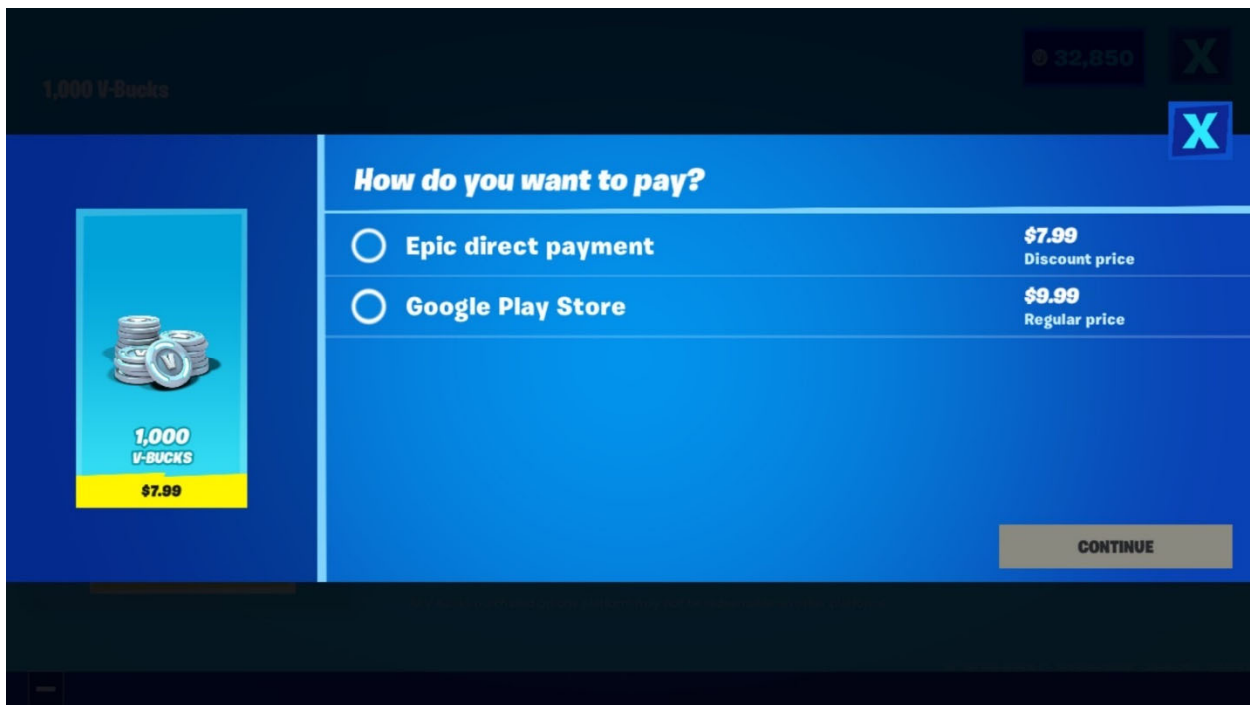
14 28. Moreover, through this tie, Google inserts itself as an intermediary
15 between each seller and each buyer for every purchase of digital content within the
16 Android ecosystem, collecting for itself the personal information of users, which Google
17 then uses to give an anti-competitive edge to its own advertising services and mobile
18 app development business.

19 29. Google's anticompetitive conduct has substantially foreclosed
20 competing stores from offering consumers and developers choice in distribution and
21 payment processing. Indeed, Epic, which distributes apps through its own store to users
22 of personal computers, would open a store to compete with Google's and offer
23 developers more innovation, better security, and more choice, including for in-app
24 payment processing. App developers would not have to pay Google's supra-
25 competitive tax of 30%, as the price of distribution and payment processing alike would
26 be set by market forces rather than Google's fiat. Developers could address any
27 payment-related issues (such as refunds) directly with their own customers, rather than
28

1 through Google. And users and developers, jointly, would get to decide whether users'
2 data should be utilized for other purposes.

3 30. Google's anti-competitive conduct has injured Epic, both as an app
4 developer and as a potential competitor in app distribution and payment processing.
5 Epic repeatedly approached Google and asked to negotiate relief that would stop
6 Google's unlawful and anti-competitive restrictions on app developers and consumers.
7 But Google would not budge.

8 31. Because of Google's refusal to stop its ongoing anti-competitive and
9 unlawful conduct, on August 13, 2020, Epic began providing *Fortnite* users the choice
10 of using Epic's own direct payment tool as an alternative to Google's overpriced billing
11 tool, sharing with users who chose to use Epic's payment tool the resulting savings.



23 32. In retribution, Google removed *Fortnite* from Google Play Store
24 listings, preventing new users from obtaining the game. Google also prevented Android
25 users who acquired *Fortnite* from the Google Play Store from obtaining app updates
26 they needed to continue playing with their friends and family.

27 33. Epic has publicly advocated for years that Google cease the anti-
28 competitive conduct addressed in this First Amended Complaint. Google refused to

1 change its industry-impacting conduct. Instead, Google offered to placate Epic by
2 offering it preferential terms on side deals, such as YouTube sponsorships and cloud
3 services, if Epic agreed to distribute *Fortnite* in the Google Play Store and acceded to
4 Google's 30% tax. Google has reached preferential deals with major mobile app
5 developers, such as Activision Blizzard, [REDACTED]

6 [REDACTED] These deals
7 allow Google to keep its monopolistic behavior publicly unchallenged. But Epic is not
8 interested in any side deals that might benefit Epic alone while leaving Google's anti-
9 competitive restraints intact; instead, Epic is focused on opening up the Android
10 ecosystem for the benefit of *all* developers and consumers.

11 34. Accordingly, Epic seeks injunctive relief in court. Google's conduct
12 has caused and continues to cause Epic financial harm, but Epic is *not* bringing this case
13 to recover these damages; Epic is not seeking any monetary relief, but rather only an
14 order enjoining Google from continuing to impose its anti-competitive conduct on the
15 Android ecosystem.

16 PARTIES

17 35. Plaintiff Epic Games, Inc. is a Maryland corporation with its
18 principal place of business in Cary, North Carolina. Epic was founded in 1991 by a
19 college student named Tim Sweeney. Mr. Sweeney ran Epic out of his parents'
20 basement and distributed, by mail, Epic's first commercial personal computer software,
21 a game named *ZZT*. Since then, Epic has developed several popular entertainment
22 software products that can be used on an array of platforms—such as personal
23 computers, gaming consoles, and smart mobile devices. Epic also creates and
24 distributes *Unreal Engine*, a powerful software suite that allows competing developers
25 and others to create realistic three-dimensional content, including video games,
26 architectural recreations, television shows, and movies. An Epic subsidiary also
27 develops and distributes the popular *Houseparty* app, which enables video chatting and
28 social gaming on smart mobile devices and personal computers. Worldwide,

1 approximately 400 million users have signed up to use Epic’s apps and services, and
2 each day 30 to 40 million individuals log into an Epic app, such as *Fortnite*, *Rocket*
3 *League*, *Houseparty*, or the Epic Games Store.

4 36. Defendant Google LLC is a Delaware limited liability company with
5 its principal place of business in Mountain View, California. Google LLC is the
6 primary operating subsidiary of the publicly traded holding company Alphabet Inc. The
7 sole member of Google LLC is XXVI Holdings, Inc., a Delaware corporation with its
8 principal place of business in Mountain View, California. Google LLC contracts with
9 all app developers that distribute their apps through the Google Play Store and is
10 therefore a party to the anti-competitive contractual restrictions at issue in this
11 Complaint.

12 37. Defendant Google Ireland Limited (“Google Ireland”) is a limited
13 company organized under the laws of Ireland with its principal place of business in
14 Dublin, Ireland, and a subsidiary of Google LLC. Google Ireland contracts with all app
15 developers that distribute their apps through the Google Play Store and is therefore a
16 party to the anti-competitive contractual restrictions at issue in this Complaint.

17 38. Defendant Google Commerce Limited (“Google Commerce”) is a
18 limited company organized under the laws of Ireland with its principal place of business
19 in Dublin, Ireland, and a subsidiary of Google LLC. Google Commerce contracts with
20 all app developers that distribute their apps through the Google Play Store and is
21 therefore a party to the anti-competitive contractual restrictions at issue in this
22 Complaint.

23 39. Defendant Google Asia Pacific Pte. Limited (“Google Asia Pacific”)
24 is a private limited company organized under the laws of Singapore with its principal
25 place of business in Mapletree Business City, Singapore, and a subsidiary of Google
26 LLC. Google Asia Pacific contracts with all app developers that distribute their apps
27 through the Google Play Store and is therefore a party to the anti-competitive
28 contractual restrictions at issue in this Complaint.

1 excluding California’s conflict of laws provisions.” The claims addressed in this
2 Complaint relate to the DDA or to Epic’s relationship with Google under the DDA, or
3 in the alternative such claims arise out of the same nucleus of operative facts as other
4 claims as to which the Court may exercise personal jurisdiction over each Defendant, so
5 that the exercise of pendent personal jurisdiction would be proper.

6 44. Google Payment is party to a Google Payments—Terms of
7 Service—Seller Agreement with Epic. Section 11.3 of that Agreement provides that
8 “[t]he exclusive venue for any dispute related to this Agreement will be the state or
9 federal courts located in Santa Clara County, California, and each party consents to
10 personal jurisdiction in these courts.” Section 11.3 further provides that “The laws of
11 California, excluding California’s choice of law rules, and applicable federal United
12 States laws will govern this Agreement.” The dispute between Google Payment and
13 Epic relates to the parties’ Agreement, or in the alternative Epic’s claims arise out of the
14 same nucleus of operative facts as other claims as to which the Court may exercise
15 personal jurisdiction over Google Payment, so that the exercise of pendent personal
16 jurisdiction would be proper.

17 45. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
18 because Google LLC and Google Payment maintain their principal places of business in
19 the State of California and in this District, because a substantial part of the events or
20 omissions giving rise to Epic’s claims occurred in this District, and because, pursuant to
21 28 U.S.C. § 1391(c)(3), any Defendants not resident in the United States may be sued in
22 any judicial district and their joinder with others shall be disregarded in determining
23 proper venue. In the alternative, personal jurisdiction and venue also may be deemed
24 proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C. § 22, because
25 Defendants may be found in or transact business in this District.

1 **INTRADISTRICT ASSIGNMENT**

2 46. 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. Google Dominates the Merchant Market for Mobile Operating Systems.**

7 47. To understand how Google effectively monopolizes the Android
8 App Distribution and Android In-App Payment Processing Markets, as described below
9 in Parts II and III, it is helpful to understand the background of smart mobile devices
10 and how Google effectively dominates the related Merchant Market for Mobile
11 Operating Systems through its control over the Android operating system.

12 **A. The Merchant Market for Mobile Operating Systems**

13 i. Product Market Definition

14 48. Smart mobile devices are handheld, portable electronic devices that
15 can connect wirelessly to the internet and are capable of multi-purpose computing
16 functions, including, among other things, Internet browsing, using social media,
17 streaming video, listening to music, or playing games. Smart mobile devices include
18 smartphones and tablet computers. Many consumers may *only* have a smart mobile
19 device and no other computer. Such consumers are particularly hard-hit by Google’s
20 unlawful conduct in mobile-related markets.

21 49. Like laptop and desktop personal computers, mobile devices require
22 an operating system—or “OS”—that enables multi-purpose computing functionality. A
23 mobile OS, just like the OS of any computer, is a piece of software that provides basic
24 functionality to users of mobile devices such as button controls, touch commands,
25 motion commands, and the basic “graphical user interface”, which includes “icons” and
26 other visual elements representing actions that the user can take. A mobile OS also
27 manages the basic operations of a smart mobile device, such as cellular or WiFi
28 connectivity, GPS positioning, camera and video recording, speech recognition, and

1 other features. In addition, a mobile OS permits the installation and operation of mobile
2 apps that are compatible with the particular OS and facilitates their use of the device’s
3 OS-managed core functionality.

4 50. To ensure that every user can access the basic functions of a mobile
5 device “out of the box”, that is at the time he/she purchases the device, an OEM must
6 pre-install an OS on each device prior to its sale. This is similar to a personal computer
7 that comes pre-installed with Microsoft Windows for PC or Apple’s macOS for a Mac
8 computer. OEMs design mobile devices to ensure the device’s compatibility with a
9 particular OS the OEM chooses for a particular model of mobile device, so that the
10 device may utilize the capabilities of that OS. For OEMs, the process of implementing
11 a mobile OS requires significant time and investment, making switching to another
12 mobile OS difficult, expensive, and time-consuming.

13 51. The vast majority of OEMs do not develop their own OS and must
14 choose an OS that can be licensed for installation on smart mobile devices they design.
15 There is therefore a relevant Merchant Market for Mobile OSs comprising mobile OSs
16 that OEMs can license for installation on the smart mobile devices they manufacture.
17 The market does not include proprietary OSs that are not available for licensing, such as
18 Apple’s mobile OS, called iOS. Historically, the Merchant Market for Mobile OSs has
19 included the Android OS, acquired and further developed by Google; the Tizen mobile
20 OS, a partially open-source mobile OS that is developed by the Linux Foundation and
21 Samsung; and the Windows Phone OS developed by Microsoft.

22 52. Some consumers continue to use cellular phones that do not have
23 multi-purpose, computing functions. These simple phones resemble older “flip
24 phones”, for example; they are not part of the smart mobile device category. These
25 phones do not support mobile apps such as *Fortnite* or *Houseparty* and are instead
26 typically limited to basic cellular functionality like voice calls and texting. The simple
27 operating systems on these phones, to the extent they exist, cannot support the wide
28

1 array of features supplied by the OSs on smart mobile devices and are not part of the
2 Merchant Market for Mobile OSs defined herein.

3 53. To the extent that electronic devices other than smart mobile devices
4 use operating systems, those OSs are not compatible with mobile devices, and therefore
5 are not included in the Merchant Market for Mobile OSs defined herein. For example,
6 computing devices that are not handheld and portable, that are not capable of multi-
7 purpose computing functions and/or that lack cellular connectivity—such as desktop
8 computers, laptops, or gaming consoles—are not considered to be “smart mobile
9 devices”. Gaming devices like Sony’s PlayStation 4 (“PS4”) and Microsoft’s Xbox are
10 physically difficult to transport, require a stable WiFi or wired connection to operate
11 smoothly, and require an external screen for the user to engage in game play. Thus,
12 even for games, if a gamer owns, for example, a dedicated, non-portable gaming
13 console such as a PS4, which connects to and enables gaming via his/her TV, he/she
14 would not consider that PS4 a reasonable substitute for a mobile device like a
15 smartphone (and therefore would not consider the OS for the PS4 a reasonable
16 substitute for a mobile OS), nor would he/she consider the version of any game created
17 for his/her PS4 to substitute for the mobile app version of such a game. That is because
18 the portability (and typically for smartphones the cellular connectivity) of the mobile
19 devices enable the consumer to play mobile games away from home or anywhere in the
20 home. Indeed, for this reason, game developers often distribute multiple versions of an
21 app, each of which is programmed for compatibility with a particular type of device and
22 its operating system.

23 ii. Geographic Market Definition

24 54. OEMs license mobile OSs for installation on mobile devices
25 globally, excluding China. Google’s operations in China are limited, and it does not
26 make available many of its products for mobile devices sold within China. This is
27 based in part on legal and regulatory barriers to the distribution of mobile OS-related
28 software imposed by China. Further, while Google contractually requires OEMs

1 licensing Android outside of China not to sell any devices with competing Android-
2 compatible mobile OSs, it imposes no such restriction on devices sold within China.
3 Because the OEMs that sell Android mobile devices both within and outside China have
4 committed to this contractual restriction, such OEMs must sell, outside of China,
5 devices with Google’s Android OS. The geographic scope of the relevant Merchant
6 Market for Mobile OSs is therefore worldwide, excluding China.

7 **B. Google’s Monopoly Power in the Merchant Market for Mobile OSs**

8 55. Google has monopoly power in the Merchant Market for Mobile
9 OSs through its Android OS. As determined by the European Commission during the
10 course of its investigation of Android, the Android OS, licensed to OEMs in relevant
11 respects by Google, is installed on over 95% of all mobile devices sold by OEMs
12 utilizing a merchant mobile OS. Indeed, Android OS is installed on nearly 75% of all
13 smart mobile devices sold by *all* OEMs, including even those OEMs that use a
14 proprietary mobile OS they developed exclusively for their own use (such as Apple’s
15 iOS).

16 56. A mobile ecosystem typically develops around a mobile OS, such as
17 the Android OS. The “Android ecosystem” is a system of mobile products (such as
18 devices, apps and accessories) designed to be inter-dependent and compatible with each
19 other and the Android OS. Ecosystem participants include an array of participating
20 stakeholders, such as Google, OEMs that make Android-compatible devices, developers
21 of Android-compatible apps, Android app distribution platforms, including app stores,
22 the makers of ancillary hardware such as headphones or speakers, cellular carriers, and
23 others.

24 57. Mobile ecosystems benefit from substantial network effects—that is,
25 the more developers that design useful apps for a specific mobile OS, the more
26 consumers will be drawn to use the relevant OS for which those apps are designed; the
27 more consumers that use an OS, the more developers want to develop even more apps
28 for that OS. As determined in *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30

1 (D.D.C. 2000), new entrants into an operating system market thus face an “applications
2 barrier to entry”. An applications barrier to entry arises because a new operating system
3 will be desirable to consumers only if a broad array of software applications can run on
4 it, but software developers will find it profitable to create applications that run on an
5 operating system only if there is a large existing base of users.

6 58. To overcome this challenge and to attract app developers and users,
7 Google has continuously represented that Android is an “open” ecosystem and that any
8 ecosystem participant could create Android-compatible products without unnecessary
9 restrictions. Indeed, Google LLC’s CEO, Sundar Pichai, represented in 2014 that
10 Android “is one of the most open systems that I’ve ever seen”.⁵ And Andy Rubin, an
11 Android founder who is described by some as the “Father of Android”, said when he
12 departed Google in 2013 that “at its core, Android has always been about openness”.⁶

13 59. But the current reality is quite different. Despite these claims of
14 openness, Google has now effectively closed the Android ecosystem through its tight
15 control of the Android OS. And, as the dominant OS licensor, Google benefits from
16 substantial network effects which makes participation on its platform a “must-have”
17 market for developers.

18 60. As further described below, Google uses the Android OS to restrict
19 the apps and app stores OEMs are permitted to pre-install on the devices they make and
20 to impose deterrents to the direct distribution of competing app stores and apps to
21 Android users, all at the expense of competition in the Android ecosystem.

22 61. Because of Google’s monopoly power in the Merchant Market for
23 Mobile OSs, OEMs, developers and users cannot avoid such effects by choosing
24 another mobile OS. OEMs such as ZTE and Nokia have stated that other non-

25
26 ⁵ Stuart Dredge, *Google’s Sundar Pichai on wearable tech: ‘We’re just scratching the surface’*, The
27 Guardian (Mar. 9, 2014), <https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw>.

28 ⁶ Andy Rubin, *Andy Rubin’s Email to Android Partners*, The Wall Street Journal (Mar. 13, 2013),
available at <https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog>.

1 proprietary OSs are poor substitutes for the Android OS and are not a reasonable
2 alternative to licensing the Android OS. One important reason is that other mobile OSs
3 presently do not support many high-quality and successful mobile apps, which
4 consumers find essential or valuable when choosing a mobile device. These
5 circumstances have biased consumers against the purchase of mobile devices with non-
6 proprietary mobile OSs other than Android OS. OEMs thus have no choice but to agree
7 to Google’s demands because it is critical that they be able to offer a popular mobile OS
8 and corresponding ecosystem to consumers who are choosing which mobile device to
9 purchase.

10 62. The Android OS was designed to be, and advertised as, “open
11 source”, in that OEMs and others may use portions of the OS without a license from
12 Google, or even create customized versions of the OS for their own purposes, called
13 Android “forks”. But in reality, the Android OS is “open source” in name only. Google
14 has entered into so-called Anti-Fragmentation Agreements (“AFAs”) with Android
15 mobile OEMs that have prevented them from creating Android forks for mobile devices
16 and which prevent OEMs from modifying Android to offer competing app stores
17 without restrictions. Among other things, the AFAs prohibit OEMs from taking “any
18 actions that may cause or result in the fragmentation of Android”, which is determined
19 in Google’s “sole discretion”. Further, Android OEMs agree only to distribute
20 “Android Compatible Devices”, meaning that they may not ship *any* devices running an
21 Android fork. Android Compatible Devices also must comply with the “Android
22 Compatibility Definition” document and pass the “Android Compatibility Test Suite”,
23 both of which are maintained by Google. Among other things, the Android
24 Compatibility Definition document requires OEMs to prompt users explicitly for
25 permission to allow direct downloading of apps outside Google Play. The AFAs also
26 prohibit Android OEMs from distributing certain software on devices that are not
27 Android Compatible Devices, and bar OEMs from distributing, creating or promoting ■

1 [REDACTED]
2 [REDACTED]
3 63. More recently, after the European Commission began investigating
4 Google's Android-related practices, including the AFAs, Google transitioned to a new
5 form of agreement with Android OEMs called the Android Compatibility Commitment
6 ("ACC"). But the ACC terms are only marginally less restrictive than the AFA terms in
7 that they allow OEMs to manufacture non-Android Compatible Devices on behalf of a
8 third party and that are marketed under a third-party brand. However, they still
9 substantially foreclose OEMs from distributing and marketing their own devices,
10 including Android forks. Entering into an AFA or ACC is a precondition to an OEM
11 being able to enter into a Mobile Application Distribution Agreement ("MADA") and
12 Revenue Sharing Agreement ("RSA"), which are described below. As a result, all or
13 almost all commercially significant mobile Android OEMs are bound by an AFA or
14 ACC, which helps Google ensure that mobile OEMs do not develop an Android fork
15 that could compete with Google's own version of the Android OS or provide features
16 that would support third-party app stores that compete with Google Play.

17 64. Google's conduct described herein creates a further barrier to entry
18 into the Merchant Market for Mobile OSs by, among other things, restricting the ability
19 of OEMs to support alternatives to Google's version of Android and making it more
20 difficult for consumers to switch to other mobile OSs.

21
22 **II. Google Unlawfully Maintains a Monopoly in the Android App Distribution
23 Market.**

24 65. Mobile apps make mobile devices more useful and valuable because
25 they add functionality to the mobile device that caters to the specific interests of each
26 mobile device user. For example, they facilitate video chats with friends and family,
27 banking online, shopping, job hunting, photo editing, reading digital news sources,
28 editing documents, or playing a game like *Fortnite Battle Royale*. Many workers use
their smart mobile device to check work schedules, access company email, or use other

1 employer software while outside the workplace. For many consumers, a smartphone or
2 tablet is the only way to access these functions, because the consumer does not own a
3 personal computer or because the consumer can only access the Internet using a cellular
4 connection. But even when a consumer can perform the same or similar functions on a
5 personal computer, the ability to access apps “on the go” using a handheld, portable
6 device remains valuable, important, and distinct.

7 66. Whereas some apps may be pre-installed by OEMs, OEMs cannot
8 anticipate all the various apps a specific consumer may desire to use. Moreover, many
9 consumers have different preferences as to which apps they want, and it would be
10 undesirable for OEMs to load the devices they sell with unwanted apps that take up
11 valuable space on the mobile device. And many apps that consumers may ultimately
12 use on their device will be developed after they buy the device. Accordingly,
13 consumers who seek to add new functionalities to a mobile device and customize the
14 device for their own use need to obtain and install mobile apps themselves after
15 purchasing their device. Currently, on Android devices, this is done most often through
16 the Google Play Store, Google’s own “app store”. The Google Play Store is a digital
17 portal set up by Google and through which mobile apps can be browsed, searched for,
18 purchased (if necessary), and downloaded by a consumer. App stores such as the
19 Google Play Store, alongside several other ways by which apps can be distributed to the
20 hundreds of millions of consumers using Android-based mobile devices, constitute the
21 Android App Distribution Market, defined below.

22 67. Through various anti-competitive acts and unlawful restraints on
23 competition, Google has substantially foreclosed competition and maintained a
24 monopoly in the Android App Distribution market, causing ongoing harm to
25 competition and injury to OEMs, app distributors, app developers, and consumers.
26 Google’s restraints of trade belie representations Google currently makes to developers
27 that “as an open platform, Android is about choice” and that app developers “can
28 distribute [their] Android apps to users in any way [they] want, using any distribution

1 approach or combination of approaches that meets [their] needs”, including by allowing
2 users to directly download apps “from a website” or even by “emailing them directly to
3 consumers”.⁷

4 **A. The Android App Distribution Market**

5 i. Product Market Definition

6 68. There is a relevant market for the distribution of apps compatible
7 with the Android OS to users of mobile devices (the “Android App Distribution
8 Market”). This Market includes all the channels by which mobile apps may be
9 distributed to the hundreds of millions of users of mobile devices running the Android
10 OS. The Market primarily includes Google’s dominant Google Play Store, with smaller
11 stores, such as Samsung’s Galaxy Store and Aptoide, trailing far behind. Nominally
12 only, the direct downloading of apps without using an app store (which Google
13 pejoratively describes as “sideloading”) is also within this market.

14 69. App stores allow consumers to easily browse, search for, access
15 reviews on, purchase (if necessary), download, and install mobile apps, using the mobile
16 device itself and an Internet connection. OEMs find it commercially unreasonable to
17 ship a smart mobile device to a consumer without at least one app store installed, as a
18 consumer’s ability to obtain new mobile apps is an important part of the value provided
19 by smart mobile devices.

20 70. App stores selling mobile apps are currently OS-specific, meaning
21 they distribute only apps that are compatible with the specific mobile OS on which the
22 app store is used. A consumer who has a mobile device running the Android OS cannot
23 use apps created for a different mobile operating system. An owner of an Android OS
24 device will use an Android compatible app store, and such app stores distribute only
25 Android-compatible mobile apps. That consumer may not substitute an Android app
26 store with, for example, Apple’s App Store, as that app store is not available on Android

27 ⁷ Google Play Developers Page, *Alternative Distribution Options*,
28 <https://developer.android.com/distribute/marketing-tools/alternative-distribution> (last accessed July 20,
2021).

1 devices, is not compatible with the Android OS, and does not offer apps that are
2 compatible with the Android OS. Non-Android mobile app distribution platforms—
3 such as the Windows Mobile Store used on Microsoft’s Windows Mobile OS or the
4 Apple App Store used on Apple iOS devices—cannot substitute for Android-specific
5 app distribution platforms, and they are therefore not part of the Android App
6 Distribution Market defined herein.

7 71. Likewise, stores distributing personal computer or gaming console
8 software are not currently compatible with the Android OS and do not offer Android-
9 compatible apps: the Epic Games Store distributes software compatible with personal
10 computers, the Microsoft Store for Xbox distributes software compatible with the Xbox
11 game consoles, and the PlayStation Store distributes software compatible with the
12 PlayStation game consoles. A user cannot download mobile apps for use on his/her
13 Android device by using such non-Android OS, non-mobile software distribution
14 platforms. They therefore are not part of the Android App Distribution Market.

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

21 73. In the alternative only, the Android App Distribution Market is a
22 relevant, economically distinct sub-market of a hypothetical broader antitrust market for
23 the distribution of mobile apps to users of all mobile devices, whether Android or
24 Apple’s iOS.

25 ii. Geographic Market Definition

26 74. The geographic scope of the Android App Distribution Market is
27 worldwide, excluding China. Outside of China, app distribution channels, including app
28 stores, are developed and distributed on a global basis; OEMs, in turn, make app stores,

1 such as the Google Play Store, available on Android devices on a worldwide basis
2 (except in China). China is excluded from the relevant market because legal and
3 regulatory barriers prevent the operation of many global app stores, including the
4 Google Play Store, within China. Additionally, app stores prevalent in China are not
5 available, or have little presence, outside of China.

6 **B. Google's Monopoly Power in the Android App Distribution Market**

7 75. Google has monopoly power in the Android App Distribution
8 Market.

9 76. Google's monopoly power can be demonstrated by, among other
10 things, Google's massive market share in terms of apps downloaded. The European
11 Commission determined that, within the Market, more than 90% of Android app
12 downloads through app stores have been done through the Google Play Store. Indeed,
13 although app stores for merchant mobile OSs other than Android are not included in the
14 Android App Distribution Market, the European Commission found that the only such
15 app store with any appreciable presence was the Windows Mobile Store, which was
16 compatible with the Windows Mobile OS. The Commission determined that even if the
17 Windows Mobile Store share was included in the market, the Google Play Store would
18 still have had a market share greater than 90%. Google admits as much. A 2017
19 internal Google report confirmed that [REDACTED]

20 [REDACTED] Google has recognized that in one quarter (June
21 to September 2016), app installations through channels other than Google Play
22 (including direct downloads and competing app stores) amounted to a mere [REDACTED] of
23 Android app downloads in the United States.

24 77. Other existing Android mobile app stores do not discipline Google's
25 exercise of monopoly power in the Android App Distribution Market. No other app
26 store is able to reach nearly as many Android users as the Google Play Store.
27 According to the European Commission, the Google Play Store is pre-installed by
28 OEMs on practically all Android mobile devices sold outside of China. As a result, no

1 other Android app store comes close to that number of pre-installed users. With the
2 exception of app stores designed for and installed only on mobile devices sold by those
3 respective OEMs, such as Samsung Galaxy Apps and the LG Electronics App Store, no
4 other Android app store is pre-installed on more than 10% of Android devices, and
5 many have no appreciable market penetration at all. Aptoide, for example, is an
6 Android app store that claims to be the largest “independent” app store outside of China,
7 but it comes pre-installed on no more than 5% of Android mobile devices.

8 78. Because of Google’s success in maintaining its monopoly in Android
9 app distribution, there is no viable substitute to distributing Android apps through the
10 Google Play Store. As a result, the Google Play Store offers over 3 million apps,
11 including all of the most popular Android apps, compared to just 700,000 apps offered
12 by Aptoide, the Android app store with the next largest listing. The Google Play Store
13 thereby benefits from ongoing network effects based on the large number of
14 participating app developers and users. The large number of apps attracts large numbers
15 of users, who value access to a broad range of apps, and the large number of users
16 attract app developers who wish to access more Android users. Android OEMs find it
17 commercially unreasonable to make and sell phones without the Google Play Store, and
18 they view other app stores as poor substitutes for the Google Play Store because of the
19 lower number and lesser quality of apps they offer.

20 79. As further proof of its monopoly power, Google imposes a supra-
21 competitive commission of 30% on the price of apps purchased through the Google Play
22 Store, which is a far higher commission than would exist under competitive conditions.

23 80. Furthermore, Google’s monopoly power in app distribution is not
24 constrained by competition at the smart mobile device level. Before a consumer can
25 even consider purchasing an app, she must purchase a device on which to install and run
26 apps. There are currently only two smartphone operating systems with significant
27 market share, each at the core of a separate, differentiated ecosystem of devices,
28 accessories, apps and services: Apple’s iOS and Google’s Android OS. When a

1 consumer wishes to purchase a smartphone, the first choice she must make therefore is
2 which operating system she wants the device to run and which mobile ecosystem she
3 wants to participate in. Android device users face significant switching costs and lock-
4 in to the Android ecosystems that serves to protect Google’s monopoly power, and
5 consumers are unable to account for Google’s anticompetitive conduct when they
6 purchase a smart mobile device.

7 81. *First*, consumers are deterred from leaving the Android ecosystem
8 due to the difficulty and costs of switching. Consumers choose a smartphone based in
9 part on the OS that comes pre-installed on that device and the ecosystem in which the
10 device participates (in addition to a bundle of other features, such as price, battery life,
11 design, storage space, and the range of available apps and accessories). Once a
12 consumer has selected a smartphone, the consumer cannot replace the mobile OS that
13 comes pre-installed on it with an alternative mobile OS. Rather, a consumer who
14 wishes to change the OS must purchase a new smartphone entirely, which is an
15 investment that most consumers do not make more often than every two or three years.
16 Many Android phones are cheaper than non-Android (*i.e.*, Apple) phones; for those
17 users, a comparably-priced non-Android alternative simply isn’t available. In addition,
18 mobile OSs have different designs, controls, and functions that consumers must learn to
19 navigate. Over time, consumers who use Android devices learn to operate efficiently on
20 the Android OS. For example, the Android OS layout differs from iOS in a wide range
21 of functions, including key features such as searching and installing “widgets” on the
22 phone, organizing and searching the phone’s digital content, configuring control center
23 settings, and organizing photos. The cost of learning to use a different mobile OS is
24 part of consumers’ switching costs.

25 82. *Second*, switching from Android devices may also result in a
26 significant loss of personal and financial investment that consumers put into the
27 Android ecosystem. Because apps, in-app content and many other products are
28 designed for or are only compatible with a particular mobile OS, switching to a new

1 mobile OS may mean losing access to such products or to data. Even if versions of such
2 apps and products are available within the new ecosystem chosen by the consumer, the
3 consumer would have to go through the process of downloading them again onto the
4 new devices and may have to purchase them anew. As a result, the consumer may be
5 forced to abandon his or her investment in at least some of those apps, along with any
6 purchased in-app content and consumer-generated data on those apps. Because apps
7 and device functionalities may not synchronize or operate efficiently across operating
8 systems, existing Android users also face costs associated with “mixing and matching”
9 different operating systems if they attempt to purchase a non-Android device. Whether
10 across a consumer’s own set of personal devices (*e.g.*, a phone and a tablet), or across
11 the consumer’s family or business, “mixing and matching” operating systems can
12 significantly diminish the utility of applications, which raises an additional and
13 significant barrier to switching.

14 83. *Third*, consumers are not able to avoid the switching costs and lock-
15 in to the Android OS ecosystem by acquiring more information prior to the purchase of
16 the Android device. The vast majority of mobile device consumers have no reason to
17 inquire, and therefore do not know about, Google’s anticompetitive contractual
18 restraints and policies. Furthermore, these consumers rationally do not give much
19 weight to Google’s anticompetitive conduct and anticompetitive fees when deciding
20 whether to purchase an Android device. Consumers consider many features when
21 deciding which smartphone or tablet to purchase, including design, brand, processing
22 power, battery life, functionality, and cellular plan. These features are likely to play a
23 substantially larger role in a consumer’s decision as to which smart mobile device to
24 purchase than Google’s anticompetitive conduct in the relevant markets, particularly
25 given that a consumer may consider the direct monetary cost of Google’s conduct to be
26 small relative to the price of smart mobile devices, if the consumer is even aware of the
27 conduct or assigns it such a cost at all. For example, over time a typical Android user
28 may make multiple small purchases of paid apps and in-app digital content—

1 accumulating to \$100 or less annually—but may spend several hundreds of dollars at
2 once to purchase an Android smart mobile device.

3 84. Consumers are also unable to determine the “lifecycle price” of
4 devices—*i.e.*, to accurately assess at the point of purchase how much they will end up
5 spending in total (including on the device and all apps and in-app purchases) for the
6 duration of their ownership of the device. Consumers cannot know in advance of
7 purchasing a device all of the apps or in-app content that they may want to purchase
8 during the usable lifetime of the device. Consumers’ circumstances may change.
9 Consumers may develop new interests. They may learn about new apps or in-app
10 content that becomes available only after purchasing a device. New apps and in-app
11 content will continue to be developed and marketed after a consumer purchases a
12 smartphone or tablet. All of these factors may influence the amount of consumers’ app
13 and in-app purchases. Because they cannot know or predict all such factors when
14 purchasing mobile devices, consumers are unable to calculate the lifecycle prices of the
15 devices. This prevents consumers from effectively taking Google’s anticompetitive
16 conduct into account when making mobile device purchasing decisions.

17 85. Because consumers face substantial switching costs and lock-in to
18 the Android OS, developers can only gain access to these users by also participating in
19 the Android ecosystem. Thus, developers face an even greater cost in not participating
20 in the Android ecosystem—loss of access to hundreds of millions of Android OS users.

21 86. Google’s anticompetitive restraints and policies serve to maintain
22 and increase the switching costs described above. For example, by restricting the
23 manner in which consumers can discover, download and install app stores that compete
24 with the Google Play Store and by restricting the functionality of such competing stores
25 (*see* paragraphs 122-141 below), Google blocks the emergence of competing
26 multiplatform app stores that could lower switching costs by cataloguing or tracking a
27 user’s apps and purchases across different OSs. These various restrictions that increase
28

1 switching costs impede the adoption of competing OSs, and thereby help perpetuate and
2 strengthen Google’s monopoly.

3 87. Moreover, the close relationship that Google maintains with Apple
4 further reduces Google’s incentive to compete, innovate, and invest in app distribution
5 because Google benefits by cooperating with its “competitor” Apple. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED] For example, for over 15 years,
9 Google has maintained an agreement with Apple whereby Google pays Apple a
10 significant percentage of revenue derived from searches run on iOS devices—an
11 estimated *\$8-12 billion per year* in recent years, according to the U.S. Department of
12 Justice—in exchange for Apple making Google Search the default search engine on the
13 Safari browser, Siri voice command searches, and other search access points on Apple’s
14 devices. Default status on Apple devices is valuable to Google because Google search
15 advertising is Google’s main revenue source. And, through its agreements with Apple,
16 Google ensures that its own search (and therefore search advertising) will be used on
17 virtually *all* mobile devices, whether iOS or Android, as most consumers are unlikely to
18 change these settings on their phone and will become Google Search users by default.
19 Because Android and iOS account for over 99% of smartphone OSs installed on mobile
20 devices, Google’s agreement with Apple guarantees that Google will generate revenue
21 from virtually all smartphone OS users, regardless of whether they choose to purchase
22 iOS or Android devices.

23 88. Because Google reaps considerable profits from iOS users through
24 its search arrangements with Apple, Google is not incentivized to compete more with
25 Apple at the smartphone OS level and expend more resources attracting users from iOS
26 to Android than it currently does. If it did not profit significantly from searches on iOS
27 devices, Google might be more incentivized to, among other things, differentiate its
28 Android platform from Apple with respect to the commissions it charges on app

1 transactions. If Android competed with iOS on app transactions, the market
2 competition would make Android apps cheaper for users and attract developers to
3 launch their apps first (or even only) on Android. Instead, Google and Apple are cozy
4 duopolists, offering virtually the same terms to developers and changing those terms in
5 tandem (if at all). After a meeting involving senior executives of Google and Apple,
6 notes of the meeting were exchanged between the two companies. The notes reflect:

7 [REDACTED]

8 **C. Google’s Anti-Competitive Conduct Concerning the Android App
9 Distribution Market**

10 89. Google has willfully and unlawfully maintained its monopoly in the
11 Android App Distribution Market through a series of related anti-competitive acts that
12 have substantially foreclosed competing ways of distributing apps to Android users.

13 i. Google’s Conduct Toward OEMs and Mobile Network Operators

14 90. Google imposes anti-competitive constraints on Android OEMs
15 based on their need for access to a viable Android app store and other important services
16 provided by Google.

17 91. *First*, Google conditions OEMs’ licensing of the Google Play Store,
18 as well as other essential Google services and the Android trademark, on OEMs’
19 agreements to provide the Google Play Store with preferential treatment compared to
20 any other competing app store. Specifically, to access the Google Play Store, Android
21 OEMs (which, as noted above, include virtually all OEMs that obtain an OS on the
22 merchant market) have signed a Mobile Application Distribution Agreement
23 (“MADA”) with Google. A MADA confers a license to a bundle of products
24 comprising proprietary Google apps, Google-supplied services necessary for
25 functioning of mobile apps, and the Android trademark. Through its MADAs with
26 Android OEMs, Google requires OEMs to locate the Google Play Store on the “home
27 screen”⁸ of each mobile device. Android OEMs must further pre-install up to 30

28 ⁸ The default “home screen” is the default display, prior to any changes made by users, that appears without scrolling when the device is in active idle mode (*i.e.*, is not turned off or in sleep mode).

1 Google mandatory apps and must locate these apps on the home screen or on the next
2 screen, occupying valuable space on each user's mobile device that otherwise could be
3 occupied by competing app stores and other services. These requirements ensure that
4 the Google Play Store is the most visible app store any user encounters and place any
5 other app store at a significant disadvantage.

6 92. Absent this restraint, OEMs could pre-install and prominently
7 display alternative app stores to the purchasers of some or all of their mobile devices,
8 allowing competing app stores the ability to vie for prominent placement on Android
9 devices, increased exposure to consumers and, as a result, increased ability to attract app
10 developers to their store. As an app distributor, Epic could and would negotiate with
11 OEMs to offer consumers more choice with a prominently displayed app store. This
12 would increase the distribution opportunities for Epic's own apps, as well as a variety of
13 apps developed by third parties.

14 93. *Second*, Google's AFA and ACC compatibility standards require
15 OEMs to implement Google's restrictions and foreclose OEMs from modifying Android
16 to offer frictionless direct downloading of apps outside Google Play.

17 94. *Third*, Google forecloses developers' ability to effectively distribute
18 Android app stores and apps directly to consumers outside the Google Play Store,
19 [REDACTED] ensuring that Google
20 Play is the *only* app store that may be pre-installed on the devices the OEMs sell.

21 95. As Google's own documents recognize, pre-installation of apps and
22 app stores by an OEM presents a unique and particularly important opportunity for
23 competing app distributors and app developers to reach Android users outside Google
24 Play, especially new distributors seeking a foothold in Android app distribution. An
25 OEMs' pre-installation of an icon corresponding to an app or app store on the device
26 provides users of those devices convenient, trusted access to apps or app stores, without
27 requiring consumers to seek out and acquire such apps or app stores on their own.
28 Some OEMs may even compete for device buyers by offering mobile devices that

1 provide such easy access to desirable apps and app stores. For example, as described
2 below, Epic invested substantial resources in optimizing a special, state-of-the-art
3 version of *Fortnite* for OnePlus, an Android OEM, in exchange for OnePlus’s
4 agreement to enable a “one-touch” installation of *Fortnite* on its devices—only for that
5 agreement to be blocked by Google’s anti-competitive conduct.

6 96. Fearful that Epic and others would successfully begin distributing
7 competing app stores in this way, Google designed and undertook coercive steps to
8 foreclose this possibility. Specifically, Google has since 2019 entered agreements with
9 certain OEMs [REDACTED]

10 [REDACTED] Pursuant to these exclusivity agreements, Google
11 agrees [REDACTED]

12 [REDACTED]
13 [REDACTED] As described below, Google reached
14 these agreements after specifically recognizing the competitive threat to its monopoly
15 that Epic and other potential Android app distributors posed and Google intentionally
16 designed these agreements to lock in Google’s monopoly power in “high monetizing”
17 geographies.

18 97. In 2018, Epic decided to launch *Fortnite* on Android—but not on
19 Google Play. Epic developed and made available a *Fortnite Launcher* app (which later
20 became *Epic Games Launcher*) that could be directly downloaded from its website and
21 then used to install *Fortnite* (and, later, other Epic apps) on Android devices. Epic also
22 entered into a Collaboration Agreement with Samsung pursuant to which Samsung
23 would make available *Fortnite* to users of Samsung devices via the Samsung Galaxy
24 Store. Historically, Samsung’s app store had performed poorly— [REDACTED]

25 [REDACTED]
26 [REDACTED] But Epic’s partnership with Samsung and determination to bypass
27 Google Play for distribution of *Fortnite* struck fear into senior Google executives, not
28 only because it meant the loss of 30% of revenues that would be generated by the

1 Android version of one of the most popular apps in the world, but also because Epic was
2 paving the way for other Android app developers to distribute their apps without relying
3 on Google Play.

4 98. In particular, documents that Google's [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] Google
8 feared that the [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] And
14 finally, Google even [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] Google also recognized that the
18 [REDACTED]
19 facing its monopoly position in Android app distribution. Google was determined not to
20 let this happen.

21 99. The first step Google took to prevent this [REDACTED] was its
22 decision to offer Epic a special deal to launch *Fortnite* on Google Play. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] The
4 rationale for the deal also included the [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 100. As part of these efforts, senior Google Play managers began reaching
15 out to Epic. One manager contacted Epic’s Vice President and Co-Founder to gauge
16 Epic’s interest in a special deal and, among other things, discussed “the experience of
17 getting Fortnite on Android” via direct downloading. The manager’s call notes state
18 that she viewed direct downloading *Fortnite* as “frankly abysmal” and “an awful
19 experience”, and that Epic should “worry that most will not go through the 15+ steps”.

20 101. Google recognized that Epic might not accept its offer. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 102. Epic rejected Google’s special deal, opting instead to distribute
2 *Fortnite* for Android via Epic’s website and through a partnership with the large
3 Android OEM, Samsung. In the immediate wake of that decision, to discourage
4 consumers from direct downloading *Fortnite*, the Google Play security team began
5 collecting “exciting” statistics on “fake apps caught by [Google Play Protect] from off-
6 Play downloads” that it shared not with Epic or users, but rather with a Google
7 Communications Manager for use in “coverage” by journalists of Epic’s decision to
8 launch *Fortnite* off Google Play.

9 103. More broadly, Epic’s decision to launch *Fortnite* for Android off
10 Google Play motivated Google to execute a series of anticompetitive actions to limit the
11 “contagion”. Among other initiatives discussed below, Google increased its focus on
12 the nascent competitive threats posed by Epic and others who may be able to offer
13 alternative app stores on Android, including by negotiating for pre-installation of such
14 app stores with OEMs. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED] Indeed, Google
21 recognized that [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 104. Recognizing the threat that preinstalled app stores could pose to
6 Google Play’s dominance, Google took action to ensure that OEMs would not enter into
7 partnerships with distributors like Epic. Less than a year after having been found by the
8 European Commission to have monopoly power in an Android app distribution market,
9 Google devised and executed a plan to eliminate the risk of the “contagion” of
10 competition that was threatening Google’s monopoly.

11 105. Google’s anticompetitive conduct proceeded in this way: [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 106. [REDACTED] to take one
6 illustrative example, [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 107. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 108. Moreover, [REDACTED]
17 [REDACTED] Epic believes based on
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] that this document is likely to contain further
21 anticompetitive requirements. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 [REDACTED] Google further instructs [REDACTED]

1 [REDACTED]
2 [REDACTED] Google also [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 109. As a further restriction, [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 110. In addition, [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 111. More recently, [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 112. Google’s efforts to foreclose competition in this way were a
5 resounding success. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 113. In the same presentation, Google recognized that the [REDACTED]
22 [REDACTED] had “impact[ed]” “Epic’s ability to preload” its apps by [REDACTED]
23 [REDACTED] thus intentionally and directly resulted in
24 the substantial foreclosure of an important, alternative method of app distribution on
25 Android: installation by OEMs. Indeed, Epic had reached an agreement with OnePlus,
26 one of the brands owned by BBK, to allow users of OnePlus mobile devices to
27 seamlessly install *Fortnite* and other Epic apps by touching an Epic Games app on their
28 devices—without encountering any obstacles typically imposed by the Android OS on

1 apps directly downloaded from developers. In conjunction with this agreement, Epic
2 designed a version of *Fortnite* for certain OnePlus devices that delivers a state-of-the-art
3 framerate (the frequency at which consecutive images appear on the device’s screen),
4 providing an even better user experience for *Fortnite*. Although the original agreement
5 between Epic and OnePlus contemplated making this installation method available
6 worldwide, Google demanded that OnePlus not implement its agreement with Epic with
7 the limited exception of mobile devices sold in India. OnePlus informed Epic that
8 Google was “particularly concerned that the Epic Games app would have ability to
9 potentially install and update multiple games with a silent install bypassing the Google
10 Play Store”.⁹ Further, OnePlus advised that any waiver of Google’s restriction “would
11 be rejected due to the Epic Games app serving as a potential portfolio of games and
12 game updates”. As a result, OnePlus mobile device users in India can install Epic apps
13 seamlessly without using the Google Play Store, while users outside India cannot.

14 114. Another OEM [REDACTED] LG, also told
15 Epic that it had a contract with Google “to block side downloading off Google Play
16 Store this year”, but that the OEM could “surely” make Epic apps available to
17 consumers if the Google Play Store were used. Google prevented LG from pre-
18 installing the Epic Games app on LG devices.

19 115. Google’s [REDACTED] was not publicly known, and was
20 not known to Epic, before Google recently began producing relevant documents in this
21 litigation. Google has sought to conceal its most restrictive anticompetitive conduct by,
22 among other things, including in the agreements themselves a provision [REDACTED]

23 [REDACTED]
24 [REDACTED] Google then used the confidentiality it imposed
25 on OEMs to argue, in its Motion to Dismiss, that Android OEMs are *not* prohibited
26 from “pre-installing alternative app stores”, and that Epic failed to sufficiently allege the

27
28 ⁹ A “silent install” is an installation process free of the dire security warnings that Google triggers when apps are directly downloaded, such as the “one touch” process on which Epic and OnePlus had agreed.

1 exclusivity agreements it concealed. (Dkt. 91 at 9 (“OEMs retain the ability under the
2 MADAs to pre-install . . . competing app stores”); *see also id.* at 8 (“Plaintiffs also
3 challenge Google’s agreements with OEMs, which they claim ‘discourage’—but do not
4 claim prohibit—OEMs from pre-installing alternative app stores”); *id.* at 15 (“Plaintiffs’
5 allegations fall short of alleging actual foreclosure or exclusivity, and Plaintiffs do not
6 allege the MADAs prohibit OEMs from pre-installing rival app stores” (emphasis in
7 original)); *id.* at 17 (“Nor is there any allegation that MADAs prevent rival app stores
8 from being pre-installed elsewhere on a device.”).) Google’s representations also
9 obscured its efforts to ensure that Google Play [REDACTED]
10 [REDACTED] (Dkt. 91 at 17 (“There is no allegation that
11 MADAs prevent rival app stores from also being pre-installed on the home screen . .
12 .”).) The revelations in Google’s recent document productions (which are thus far
13 incomplete) make clear that the exceedingly carefully phrased arguments and
14 representations Google made in connection with its Motion to Dismiss are inconsistent
15 with Google’s own documents.

16 116. In the absence of this conduct, Epic could and would negotiate with
17 OEMs to make *Fortnite* and other Epic apps directly available to consumers, free from
18 Google’s anti-competitive restraints. OEMs could then compete for the sale of mobile
19 devices based in part on the set of apps offered on the OEMs’ devices. But Google
20 substantially forecloses alternative ways of distributing Android apps other than through
21 its own monopolized app store, harming competition among OEMs and among app
22 developers, to the detriment of consumers.

23 117. Google has also historically leveraged revenue share agreements to
24 discourage mobile network operators (“MNOs”) from creating competing app stores.
25 Many consumers contract with an MNO to enable their devices to communicate and
26 access the Internet over cellular networks. Prominent MNOs in the United States
27 include AT&T Mobility, T-Mobile, and Verizon Wireless. In 2009, shortly after the
28 launch of Android and Google Play’s predecessor, Android Market, Google began

1 discussing using revenue share agreements to address the “challenge” of MNOs and
2 OEMs looking to create their own app stores. Google’s goal was to “[i]ncentivize
3 partners[s] to drive developer and user communities towards Android market”.

4 118. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Beginning in 2009, Google entered into revenue share agreements with various MNOs
9 that split Android Market revenue between app developers, MNOs, and Google. Under
10 these arrangements, app developers typically received [REDACTED]
11 [REDACTED] and Google received the remaining [REDACTED]
12 [REDACTED] Google understood that this [REDACTED] revenue share for MNOs
13 [REDACTED]
14 [REDACTED]

15 119. In its Motion to Dismiss, Google has argued that the existence of
16 Samsung’s Galaxy Store—which exists only on devices that Samsung sells—is
17 somehow “fatal to Plaintiffs’ claim of actual foreclosure”. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED] *First, Google* [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED] *Second,* [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 120. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 121. [REDACTED]

5 [REDACTED] However, the Complaint filed by 36 States and the District of
6 Columbia in *State of Utah, et al. v. Google LLC, et al.*, alleges that Google then sought
7 “a different implementation toward the same anticompetitive goal” as part of a new
8 effort, “Project Agave”. Epic does not have the details of any deal Google reached
9 with Samsung as part of Project Agave because Google has not yet produced many
10 underlying documents to Epic, and Google has maintained redactions over the States’
11 relevant allegations when Google produced the States’ Complaint to Epic. But
12 documents that Google has produced to Epic reveal that Google [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 ii. Google’s Conduct Toward App Distributors and Developers

18 122. Google imposes anti-competitive restrictions on competing app
19 distributors and developers that further entrench its monopoly in Android App
20 Distribution.

21 123. *First*, Google prevents app distributors from providing Android users
22 ready access to competing app stores. Specifically, even though competitive app stores
23 themselves are mobile apps that could easily be distributed through the Google Play
24 Store, Google prohibits the distribution of any competing app store through the Google
25 Play Store, without any technological or other justification.

26 124. Google imposes this restraint through provisions of the Google Play
27 Developer Distribution Agreement (“DDA”), which Google requires all app developers
28

1 to sign before they can distribute their apps through the Google Play Store. Each of the
2 Defendants, except Google Payment, is a party to the DDA.

3 125. Section 4.5 of the DDA provides that developers “may not use
4 Google Play to distribute or make available any Product that has a purpose that
5 facilitates the distribution of software applications and games for use on Android
6 devices outside of Google Play.” The DDA further reserves to Google the right to
7 remove and disable any Android app that it determines violates this requirement. The
8 DDA is non-negotiable, and developers that seek access to Android users through the
9 Google Play Store must accept Google’s standardized contract of adhesion.

10 126. In the absence of these unlawful restraints, competing app
11 distributors could allow users to replace or supplement the Google Play Store on their
12 devices with competing app stores, which users could easily download and install
13 through the Google Play Store. App stores could compete and benefit consumers by
14 offering lower prices and innovative app store models, such as app stores that are
15 curated to specific consumers’ interests—*e.g.*, an app store that specializes in games or
16 an app store that only offers apps that increase productivity. Without Google’s unlawful
17 restraints, additional app stores would provide additional platforms on which more apps
18 could be featured, and thereby, discovered by consumers. Epic has been damaged
19 through its inability to provide a competing app store (as it does on personal computers)
20 and by the loss of the opportunity to reach more Android users directly in the ways that
21 personal computers allow developers to reach consumers without artificial constraints.

22 127. *Second*, Google conditions app developers’ ability to effectively
23 advertise their apps to Android users on being listed in the Google Play Store.
24 Specifically, Google markets an App Campaigns program that, as Google says, allows
25 app developers to “get your app into the hands of more paying users” by “streamlin[ing]
26 the process for you, making it easy to promote your apps across Google’s largest
27 properties”. This includes certain ad placements on Google Search, YouTube, Discover
28 on Google Search, and the Google Display Network, as well as with Google’s “search

1 partners”, that are specially optimized for the advertising of mobile apps. However, in
2 order to access this valuable advertising space through the App Campaigns program,
3 Google requires that app developers list their app in either the Google Play Store (to
4 reach Android users) or in the Apple App Store (to reach Apple iOS users). This
5 conduct further entrenches Google’s monopoly in Android App Distribution by
6 coercing Android app developers to list their apps in the Google Play Store or risk
7 losing access to a great many Android users they could otherwise advertise to but for
8 Google’s restrictions.

9 128. *Third*, [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

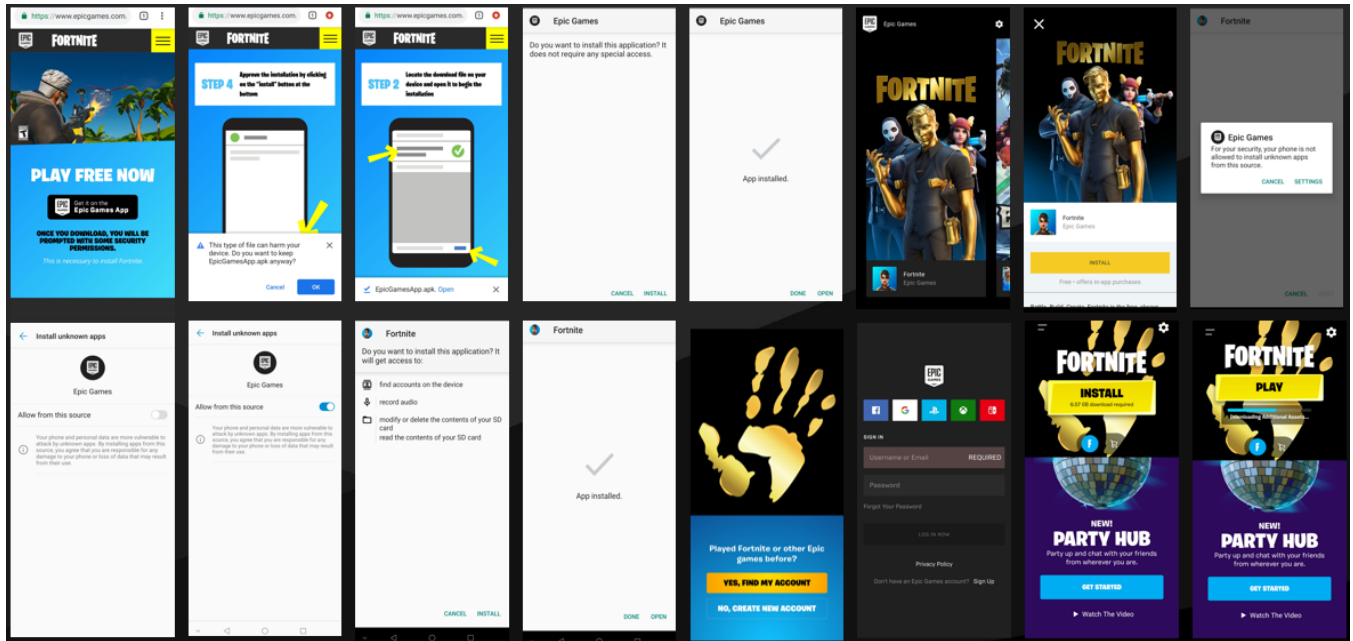
1 [REDACTED]
2 [REDACTED]
3 iii. Google’s Conduct Toward Consumers

4 129. Google directly and anti-competitively restricts the manner in which
5 consumers can discover, download and install mobile apps and app stores. Although
6 Google nominally allows consumers to directly download and install Android apps and
7 app stores—a process that Google pejoratively describes as “sideloading”—Google has
8 ensured, through a series of technological impediments imposed by the Android OS,
9 that direct downloading remains untenable for most consumers.

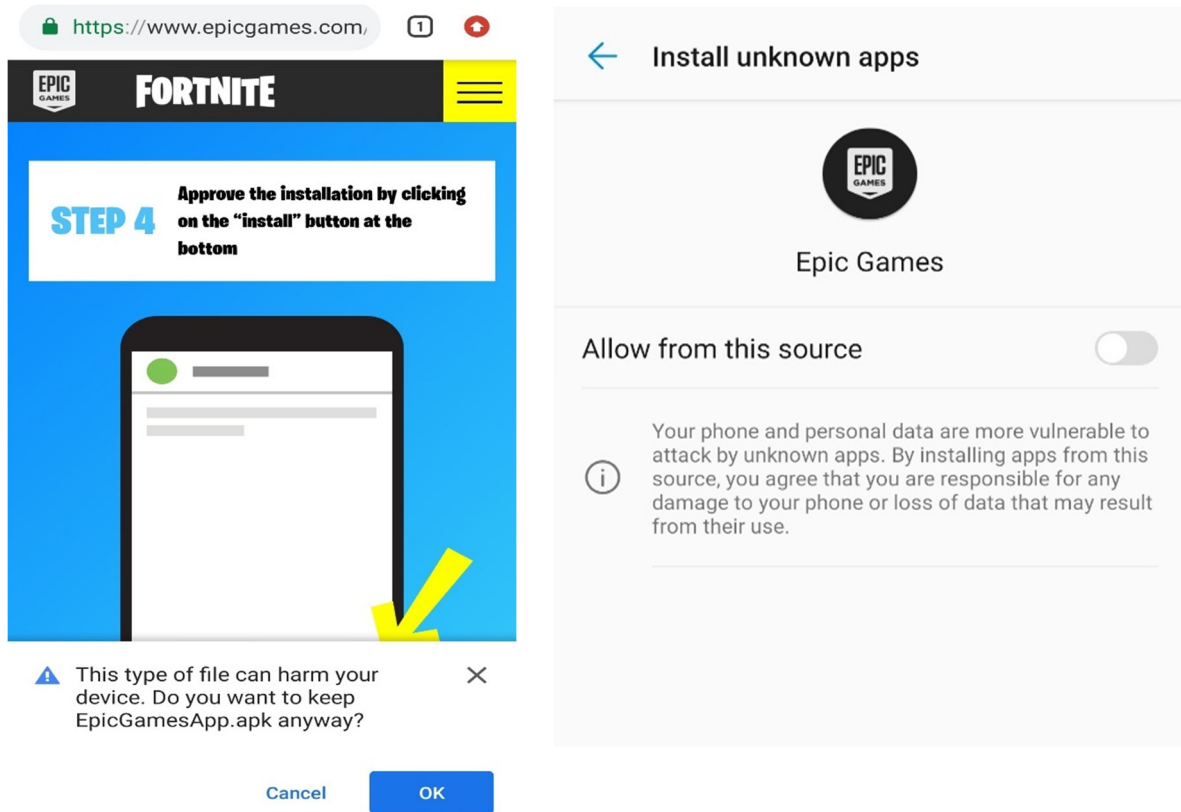
10 130. But for Google’s anticompetitive acts, Android users could freely
11 download apps from developers’ websites, rather than through an app store, just as they
12 might do on a personal computer. There is no reason that downloading and installing an
13 app on a mobile device should differ from downloading and installing software on a
14 personal computer. Millions of personal computer users download and install software
15 directly every day, such as Google’s own Chrome browser or Adobe’s Acrobat Reader.
16 Personal computer users do this easily and safely.

17 131. Direct downloading on Android mobile devices, however, differs
18 dramatically. Google ensures that the Android process is technically complex,
19 confusing and threatening, filled with dire warnings that scare most consumers into
20 abandoning the lengthy process. Google understands this, and staff members have
21 acknowledged internally that the difficulty Google imposes on consumers who wish to
22 direct download leads to a “[p]oor user experience,” in that there are “15+ steps to get
23 app [via sideloading] vs 2 steps with Play or on iOS”. For example, depending on the
24 version of Android running on a mobile device, downloading and installing *Fortnite* or
25 any other Epic app on an Android device could take as many as 16 steps or more,
26 including requiring the user to make changes to the device’s default settings and
27 manually granting various permissions while being warned that doing so is dangerous.
28

1 Below are the myriad steps an average Android user has to go through in order to
2 download and install *Fortnite* directly from Epic's secure servers.



13 132. Below are two of the intimidating messages and warnings about the
14 supposed danger of directly downloading and installing apps that consumers encounter
15 during this process.



133. As if this slog through warnings and threats were not enough to ensure the inferiority of direct downloading as a distribution method for Android apps, Google denies downloaded apps the permissions necessary to be seamlessly updated in the background—instead, Google allows such updates only for apps downloaded via Google Play Store. The result is that consumers in most instances must manually approve every update of a “sideloaded” app. In addition, depending on the OS version and selected settings, such updates may require users to go through many of the steps in the downloading process repeatedly, again triggering many of the same warnings. This imposes onerous obstacles on consumers who wish to keep the most current version of an app on their mobile device and further drives consumers away from direct downloading and toward Google’s monopolized app store.

134. Google further restricts direct downloading under the guise of offering protection from malware. When Google deems an app “harmful”, Google may prevent the installation of, prompt a consumer to uninstall, or forcibly remove the app from a consumer’s device. And direct downloading has been prevented entirely on the

1 Android devices that are part of Google’s so-called Advanced Protection Program
2 (“APP”). Consumers who have enrolled in APP are unable to directly download apps;
3 their Android device can only download apps distributed in the Google Play Store or in
4 the rare instance of another pre-installed app store that Google has pre-approved for an
5 OEM to offer on its devices. App developers therefore cannot reach APP users unless
6 they first agree to distribute their apps through the Google Play Store or through a
7 separate Google-approved, OEM-offered app store, where available. Google’s
8 invocation of security is an excuse to further strangle an app developer’s ability to reach
9 Android users, as shown by a comparison to personal computers, where users can
10 securely purchase and download new software without being limited to a single
11 software store owned or approved by the user’s anti-virus software vendor.

12 135. Direct downloading is also nominally available to competing app
13 distributors who seek to distribute competing Android app stores directly to consumers.
14 However, the same restrictions Google imposes on the direct downloading of apps apply
15 to the direct downloading of app stores. Indeed, Google Play Protect has flagged at
16 least one competing Android app store, Aptoide, as “harmful”, further hindering
17 consumers’ ability to access a competing app store.

18 136. Google prohibits apps downloaded from “sideloaded” app stores,
19 like apps directly downloaded from a developer’s website, from being automatically
20 updated in the background.¹⁰ Thus, direct downloading is not a viable way for app
21 stores to reach Android users, any more than it is a viable alternative for single apps; the
22 only difference is that the former do not have *any* alternative, ensuring the latter are
23 forced into the Google Play Store.

24 137. Google understands that the myriad barriers it erects to direct
25 downloading have the effect of protecting its app distribution monopoly and limiting
26

27 ¹⁰ In the latest announced, but as of yet unreleased, version of Android (which was announced after
28 this lawsuit was filed), Google vaguely promised to “make third-party app stores easier to use on
Android 12”; however, the details of any improvements remain unclear. Sameer Samat, *Android 12
Beta: Designed for you*, May 18, 2021, <https://blog.google/products/android/android-12-beta/>.

1 developers’ ability to distribute their apps. In an internal document titled “Response to
2 Epic”, a Google employee explained that the “install friction” associated with direct
3 downloading was “not only a bad experience” for users but that Google knew “from its
4 data that it will drastically limit [Epic’s] reach”. The document goes on to explain that
5 “[f]uture [*Fortnite*] updates will be challenged re: targeting, update experience via
6 web”; that the direct downloading approach was “most associated with malicious apps”,
7 which would be “incompatible with [Epic’s] brand/demographics”; and that “[t]he
8 approach will create significant user confusion, since [Google Play] will still attract
9 [billions] of users who will search for Fortnite and run into deadends that aren’t clear
10 how to resolve”.

11 138. But for Google’s restrictions on direct downloading, Epic and other
12 app distributors and developers could directly distribute their stores and apps to those
13 consumers who would be open to a process outside an established app store. But as
14 explained above, Google makes direct downloading substantially and unnecessarily
15 difficult, and in some cases prevents it entirely, further narrowing this already narrow
16 alternative distribution channel.

17 139. There is no legitimate reason for Google’s conduct. Indeed, for
18 decades the users of personal computers have been able to install software acquired
19 from various sources without being deterred by anything like the obstacles erected by
20 Google. For many years, a user has been able to navigate to the Internet webpage
21 sponsored by the developer of software he/she desires, click once or twice to download
22 and install an application, and be up and running, often in a matter of minutes. The
23 operating systems used by personal computers efficiently facilitate this download and
24 installation (unlike Android), and security screening is conducted by a neutral security
25 software operating in the background, allowing users to download software from any
26 source they choose (unlike Android).

27 140. Google’s anti-competitive and unjustified restrictions on distributing
28 apps through any means other than its own app store contradict its own claims that

1 Android app developers can “us[e] any distribution approach or combination of
2 approaches that meets your needs”, and that developers can even provide consumers
3 “apps from a website or [by] emailing them directly to users.”¹¹ In reality, Google
4 specifically prevents app developers from effectively availing themselves of alternative
5 distribution channels that Google touts as available.

6 141. Through these anti-competitive acts, including contractual provisions
7 and exclusionary obstacles, Google has willfully obtained a near-absolute monopoly
8 over Android mobile app distribution. Google Play Store downloads have accounted for
9 more than 90% of downloads through Android app stores, dwarfing other available
10 distribution channels.

11 **D. Anti-Competitive Effects in the Android App Distribution Market**

12 142. Google’s anti-competitive conduct has substantially foreclosed
13 competition in the Android App Distribution Market, affecting a substantial volume of
14 commerce in this Market and causing anti-competitive harms to OEMs, competing
15 mobile app distributors, mobile app developers, and consumers.

16 143. Google’s conduct harms OEMs by forcing them to dedicate to the
17 Google Play Store and other mandatory Google applications valuable space on their
18 devices’ “home screen”, even if they would rather use that real estate for other purposes,
19 including to offer alternative app stores. Individually and together, these requirements
20 limit OEMs’ ability to innovate and compete with each other by offering innovative and
21 more appealing (in terms of price and quality) distribution platforms for mobile apps.
22 Google’s restrictions also interfere with OEMs’ ability to compete with each other by
23 offering Android devices with tailored combinations of pre-installed apps that would
24 appeal to particular subsets of mobile device consumers.

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¹¹ Google Play Developers Page, *Alternative Distribution Options*,
<https://developer.android.com/distribute/marketing-tools/alternative-distribution> (last accessed July 20,
2021).

1 144. Google’s conduct harms would-be competitor app distributors, such
2 as Epic, which could otherwise innovate new models of app distribution and provide
3 OEMs, app developers, and consumers choice beyond Google’s own app store.

4 145. Google’s anti-competitive conduct harms app developers, such as
5 Epic, which are forced to agree to Google’s anti-competitive terms and conditions if
6 they wish to reach many Android users, such as through advertising on Google’s
7 valuable advertising properties. Google’s restrictions prevent developers from
8 experimenting with alternative app distribution models, such as providing apps directly
9 to consumers, selling apps through curated app stores, creating their own competing app
10 stores, or forming business relationships with OEMs who can pre-install apps. By
11 restricting developers in such a way, Google ensures that the developer’s apps will be
12 distributed on the Google Play Store, and that Google is then able to monitor and collect
13 a variety of information on the apps’ usage, which it can then use to develop and offer
14 its own competing apps that are, of course, not subject to Google’s supra-competitive
15 taxes.

16 146. Both developers and consumers are harmed by Google’s supra-
17 competitive taxes of 30% on the purchase price of apps distributed through the Google
18 Play Store, which is a much higher transaction fee than would exist in a competitive
19 market. Google’s supra-competitive taxes raise prices for app developers and
20 consumers and reduce the output of mobile apps and related content by depriving app
21 developers incentive and capital to develop new apps and content.

22 147. Consumers are further harmed because Google’s control of app
23 distribution reduces developers’ ability and incentive to distribute apps to consumers in
24 different and innovative ways—for example, through genre-specific app stores. By
25 restraining the distribution market and eliminating the ability and incentive for
26 competing app stores, Google also limits consumers’ ability to discover new apps of
27 interest to them. More competing app stores would permit additional platforms to
28 feature diverse collections of apps. Instead, consumers are left to sift through millions

1 of apps in one monopolized app store, where Google controls which apps are featured
2 and identified or prioritized in user searches.

3 **III. Google Unlawfully Acquired and Maintains a Monopoly in the Android In-App Payment Processing Market.**

4 148. By selling digital content within a mobile app rather than (or in
5 addition to) charging a price for the app itself, app developers can make an app widely
6 accessible to all users, then charge users for additional digital content or features, thus
7 still generating revenue from their investment in developing new apps and content. This
8 is especially true for mobile game developers. By allowing users to play without up-
9 front costs, developers permit more players to try a game “risk free” and only pay for
10 what they want to access. *Fortnite*, for example, is free to download and play, but
11 makes additional content available for in-app purchasing on an à la carte basis or via a
12 subscription-based Battle Pass. App developers who sell digital content rely on in-app
13 payment processing solutions to process consumers’ purchases in a seamless and
14 efficient manner.

15 149. When selling digital content, Android app developers are unable to
16 utilize the multitude of electronic payment processing solutions generally available on
17 the market to process other types of transactions. Instead, through contractual
18 restrictions and its monopoly in app distribution, Google coerces developers into using
19 its own in-app payment processing solution by conditioning developers’ use of Google’s
20 dominant Google Play Store on the use of Google’s payment processor for digital
21 content, thereby acquiring and maintaining monopoly power in the Android In-App
22 Payment Processing Market. Google thus ties its Google Play Store to its own
23 proprietary payment processing solution, Google Play Billing, substantially foreclosing
24 competition.

25 **A. The Android In-App Payment Processing Market**

26 i. Product Market Definition

27 150. There is a relevant antitrust market for payment processing solutions
28 for the purchase of digital content, including virtual gaming products, that is consumed

1 within Android apps (the “Android In-App Payment Processing Market”). The Android
2 In-App Payment Processing Market includes the payment processing solutions that
3 Android developers could integrate into their Android apps to process the purchase of
4 such in-app digital content.

5 151. Absent Google’s unlawful conduct, app developers could integrate a
6 compatible payment processor into their apps to facilitate the purchase of in-app digital
7 content. Developers also would have the capability to develop their own in-app
8 payment processing functionality. And developers could offer users a choice among
9 multiple payment processors, just like a website or brick-and-mortar store can offer a
10 customer the option of using Visa, MasterCard, Amex, Google Pay, and more.

11 152. Google offers separate payment solutions for the purchase of digital
12 content and for other types of purchases even within mobile apps. Google Play Billing
13 can be used for the purchase of digital content and virtual gaming products, while
14 Google offers a separate tool, Google Pay, to facilitate the purchase of physical products
15 and services within apps.

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

26 154. As another example, if a user of a mobile dating app encounters a
27 particularly desirable potential dating partner, he/she can do more than “swipe right” or
28 “like” that person, but can also purchase a digital item that increases the likelihood that

1 the potential partner will notice his/her profile. If the user could not make that purchase
2 quickly and seamlessly, he/she would likely abandon the purchase and may even stop
3 “swiping” in the app altogether.

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

10 156. Mobile game developers particularly value the ability to allow users
11 to make purchases that extend or enhance gameplay without disrupting or delaying that
12 gameplay or a gamer’s engagement with the mobile app. For these reasons, and in the
13 alternative, there is a relevant antitrust sub-market for payment processing solutions for
14 the purchase of virtual gaming products within mobile Android games (the “Android
15 Games Payment Processing Market”).

16 ii. Geographic Market Definition

17 157. The geographic scope of the Android In-App Payment Processing
18 Market is worldwide, excluding China. Outside China, in-app payment processing
19 solutions, such as Google Play Billing, are available on a worldwide basis. By contrast,
20 in-app payment processing solutions available in China are not available outside of
21 China, including because Google prevents the use of non-Google payment processing
22 solutions for all apps distributed through the Google Play Store, which as noted above
23 dominates distribution of apps outside of China.

24 **B. Google’s Monopoly Power in the Android In-App Payment Processing
Market**

25 158. Google has monopoly power in the Android In-App Payment
26 Processing Market and, in the alternative, in the Android Games Payment Processing
27 Market.
28

1 159. For apps distributed through the Google Play Store, Google requires
2 that the apps use *only* its own in-app payment processor, Google Play Billing, to process
3 in-app purchases of digital content and for all purchases within Android games. And
4 because 90% or more of Android-compatible mobile app downloads conducted through
5 an app store have been done through the Google Play Store, Google has a monopoly in
6 these Markets.

7 160. For the vast majority of transactions, Google charges a 30%
8 commission for Google Play Billing.¹² This rate reflects Google’s market power, which
9 allows it to charge supra-competitive prices for payment processing within the market.
10 Indeed, the cost of alternative electronic payment processing solutions, which Google
11 does not permit to be used for the purchase of in-app digital content or within Android
12 games, can be *one tenth* of the 30% cost of Google Play Billing.

13

<u>Electronic Payment Processing Solution</u>	<u>Base U.S. Rate¹³</u>
PayPal	2.9%
Stripe	2.9%
Square	2.6%-3.5%
Braintree	2.9%

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20 **C. Google’s Anti-Competitive Conduct Concerning the Android In-App**
21 **Payment Processing Market**

22 161. Through provisions of the DDA that Google imposes on all
23 developers who seek to access Android users, Google unlawfully ties its Google Play
24 Store, through which it has a monopoly in the Android App Distribution Market, to its
25 own in-app payment processing solution, Google Play Billing. Section 3.2 of the DDA

26 ¹² Seven months after this lawsuit was filed, Google instituted a new policy reducing the Play Store
27 commission to 15% for a developer’s first \$1 million in annual revenue. Sameer Samat, *Boosting*
28 *Developer Success on Google Play, Android Developers Blog* (Mar. 16, 2021), <https://android-developers.googleblog.com/2021/03/boosting-dev-success.html>.

¹³ The base U.S. rates in these examples include an additional fixed fee per transaction of \$0.30 or less in addition to the listed percentage.

1 requires that Android app developers enter into a separate agreement with Google’s
2 payment processor, Defendant Google Payment, in order to receive payment for apps
3 and in-app digital content.

4 162. Further, Google’s Developer Program Policies, compliance with
5 which Section 4.1 of the DDA makes obligatory, require in relevant part that:

- 6 • Developers offering “Play-distributed apps must use [Google Play
7 Billing] as the method of payment if they require or accept payment
8 for access to features or services, including any app functionality,
9 digital content or goods”.
- 10 • Developers offering products within any category of app
11 downloaded on Google Play must use Google Play Billing as the
12 method of payment, except for the following cases:
 - 13 ○ Payment is primarily for physical products or services,
 - 14 ○ Payment is for digital content that may be consumed outside
15 of the app itself (*e.g.*, songs that can be played on other music
16 players).

17 163. Google’s unlawful restraints in the DDA prevent app developers
18 from integrating alternative, even multiple, payment processing solutions into their
19 mobile apps, depriving app developers and consumers alike a choice of competing
20 payment processors. For example, Epic offers its own in-app payment processing
21 solution that it could integrate, alongside Google’s and others, into Epic mobile apps.
22 Epic consumers could then choose to process their payment using Google’s solution,
23 Epic’s solution, or another solution altogether. These restraints result in a substantial
24 foreclosure of competition.

25 164. In December of 2019, Epic submitted a build of *Fortnite* to Google
26 Play that enabled users to make in-app purchases through Epic’s own payment
27 processor. Upon review of the submission, Google Play rejected the application, citing
28 its violation of Google’s Payments policy as well as an unrelated issue raised by

1 Google. In January 2020, Epic again submitted a *Fortnite* build that resolved the
2 unrelated issue but still enabled users to use Epic’s own payment processor. Google
3 again rejected Epic’s submission.

4 165. Epic was prevented from offering *Fortnite* on the Google Play Store,
5 and therefore unable to reach many Android users, until it submitted a new version of
6 *Fortnite* that only offered Google Play Billing. Google has damaged Epic by
7 foreclosing it from the Android in-app payment processing market.

8 166. Google has no legitimate justifications for its tie. If it were
9 concerned, for example, about the security of its users’ payment information, then it
10 would not permit alternative payment processing for certain transactions made on
11 Android phones for physical products or digital content consumed outside an app. But
12 Google does allow alternative payment processing solutions in that context, with no
13 diminution in security.

14 **D. Anti-Competitive Effects in the Android In-App Payment Processing**
15 **Market**

16 167. Google’s conduct harms competition in the Android In-App
17 Payment Processing Market (and, in the alternative, in the Android Games Payment
18 Processing Market) and injures app developers, consumers, and competing in-app
19 payment processors. Google’s conduct substantially forecloses competition.

20 168. Google’s conduct harms would-be competitor in-app payment
21 processors, who would otherwise have the ability to innovate and offer consumers
22 alternative payment processing solutions that offer better functionality, lower prices,
23 and better security. For example, in the absence of Google’s Developer Program
24 Policies, Epic could offer consumers a choice of in-app payment processor for each
25 purchase made by the consumer, including a choice of Epic’s own payment processor at
26 a lower cost and with better customer service.

27 169. Google also harms app developers and consumers by inserting itself
28 as a mandatory middleman in every in-app transaction. When Google acts as payment
processor, Epic is unable to provide users comprehensive customer service relating to

1 services and the Android trademark, on OEMs' agreement to provide the Google Play
2 Store with preferential treatment. Google has done this by [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED] by restricting OEMs from offering frictionless downloading
6 of apps outside of Google Play through compatibility standards in the AFA and ACC,
7 by imposing technical restrictions and obstacles on both OEMs and developers which
8 prevent the distribution of Android apps through means other than the Google Play
9 Store, and by conditioning app developers' ability to effectively advertise their apps to
10 Android users on being listed in the Google Play Store.

11 176. Google's conduct affects a substantial volume of interstate as well as
12 foreign commerce.

13 177. Google's conduct has substantial anti-competitive effects, including
14 increased prices and costs, reduced innovation and quality of service, and lowered
15 output.

16 178. As a potential competing app distributor and as an app developer,
17 Epic has been harmed by Defendants' anti-competitive conduct in a manner that the
18 antitrust laws were intended to prevent. Epic has suffered and continues to suffer
19 damages and irreparable injury, and such damages and injury will not abate until an
20 injunction ending Google's anti-competitive conduct issues.

21 **COUNT 2: Sherman Act § 1**
22 **(Unreasonable restraints of trade concerning**
23 **Android App Distribution Market: OEMs)**
24 **(against all Defendants except Google Payment)**

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

27 180. Defendants' conduct violates Section 1 of the Sherman Act, which
28 prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy,

1 in restraint of trade or commerce among the several States, or with foreign nations”.
2 15 U.S.C. § 1.

3 181. Google has entered into agreements with OEMs that unreasonably
4 restrict competition in the Android App Distribution Market. These include MADAs
5 with OEMs that condition their access to the Google Play Store and other “must have”
6 Google services on the OEM offering the Google Play Store as the primary and often
7 the only viable app store on Android mobile devices.

8 182. These agreements also include [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 [REDACTED] Google also has entered agreements that [REDACTED]
12 [REDACTED]

13 183. Through the AFA and ACC compatibility standards, Google restricts
14 OEMs from offering frictionless downloading of apps outside of Google Play.

15 184. These agreements serve no legitimate or pro-competitive purpose
16 that could justify their anti-competitive effects, and thus unreasonably restrain and
17 substantially foreclose competition in the Android App Distribution Market.

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

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

23 187. As a potential competing app distributor and as an app developer that
24 consumes app distribution services, Epic has been harmed by Defendants’ anti-
25 competitive conduct in a manner that the antitrust laws were intended to prevent. Epic
26 has been foreclosed from the market and has suffered and continues to suffer damages
27 and irreparable injury, and such damages and injury will not abate until an injunction
28 ending Google’s anti-competitive conduct issues.

1 unreasonably restrain and substantially foreclose competition in the Android In-App
2 Payment Processing Market.

3 207. Section 3.2 of the DDA requires that Android app developers enter
4 into a separate agreement with Google’s payment processor, Defendant Google
5 Payment, in order to receive payment for apps and content distributed through the
6 Google Play Store. This includes payments related to in-app purchases of digital
7 content. Further, Google’s Developer Program Policies, compliance with which Section
8 4.1 of the DDA makes obligatory, require that apps distributed through the Google Play
9 Store “must use [Google Play In-app Billing, offered by Google Payment] as the
10 method of payment” for such in-app purchases. While Google’s Policies exclude
11 certain types of transactions from this requirement, such as the purchase of “primarily
12 . . . physical” goods and services or of digital content that may be consumed outside of
13 the app itself, Google expressly applies its anti-competitive mandate to all “Play-
14 distributed apps . . . if they require or accept payment for access to features or services,
15 including any app functionality, digital content or goods”, which includes *Fortnite*.

16 208. The challenged provisions serve no sufficient legitimate or pro-
17 competitive purpose and unreasonably restrain and substantially foreclose competition
18 in the Android In-App Payment Processing Market and, in the alternative, the Android
19 Games Payment Processing Market.

20 209. Defendants’ conduct affects a substantial volume of interstate as well
21 as foreign commerce.

22 210. Defendants’ conduct has substantial anti-competitive effects,
23 including increased prices and costs, reduced innovation and quality of service, and
24 lowered output.

25 211. As an app developer and as the developer of a competing in-app
26 payment processing solution, Epic has been harmed by Defendants’ anti-competitive
27 conduct in a manner that the antitrust laws were intended to prevent. Epic has been
28 substantially foreclosed from the market and has suffered and continues to suffer

1 damages and irreparable injury, and such damages and injury will not abate until an
2 injunction ending Google’s anti-competitive conduct issues.

3 **COUNT 6: Sherman Act § 1**
4 **(Tying Google Play Store to Google Play Billing)**
5 **(against all Defendants)**

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

8 213. Defendants’ conduct violates Section 1 of the Sherman Act, which
9 prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy,
10 in restraint of trade or commerce among the several States, or with foreign nations.”
11 15 U.S.C. § 1.

12 214. Google has unlawfully tied its in-app payment processor, Google
13 Play Billing, to the Google Play Store through its DDAs with app developers and its
14 Developer Program Policies.

15 215. Google has sufficient economic power in the tying market, the
16 Android App Distribution Market. With Google Play Store installed on nearly all
17 Android OS devices and over 90% of downloads on Android OS devices being
18 performed by the Google Play Store, Google has overwhelming market power.
19 Google’s market power is further evidenced by its ability to extract supra-competitive
20 taxes on the sale of apps through the Google Play Store.

21 216. The availability of the Google Play Store for app distribution is
22 conditioned on the app developer accepting a second product, Google’s in-app payment
23 processing solution. Google’s foreclosure of alternative app distribution channels forces
24 developers like Epic to use Google’s in-app payment processing solution, which Google
25 has expressly made a condition of reaching Android users through its dominant Google
26 Play Store.

27 217. The tying product, Android app distribution, is distinct from the tied
28 product, Android in-app payment processing, because app developers such as Epic have
alternative in-app payment processing options and would prefer to choose among them

1 independently of how an Android app is distributed. Google's unlawful tying
2 arrangement thus ties two separate products that are in separate markets.

3 218. Google's conduct substantially forecloses competition in the
4 Android In-App Payment Processing Market, and, in the alternative, in the Android
5 Games Payment Processing Market, affecting a substantial volume of commerce in
6 these Markets.

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

10 220. In the alternative only, even if Google's conduct does not constitute
11 a *per se* illegal tie, a detailed analysis of Google's tying arrangement would demonstrate
12 that this arrangement violates the rule of reason and is illegal.

13 221. As an app developer which uses in-app payment processing solutions
14 and as the developer of a competing in-app payment processing solution, Epic has been
15 harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws
16 were intended to prevent. Epic has suffered and continues to suffer damages and
17 irreparable injury, and such damages and injury will not abate until an injunction ending
18 Google's anti-competitive conduct issues.

19 **COUNT 7: California Cartwright Act**
20 **(Unreasonable restraints of trade in Android App Distribution Market: OEMs)**
21 **(against all Defendants except Google Payment)**

22 222. 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.

24 223. Google's acts and practices detailed above violate the Cartwright
25 Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination
26 of resources by two or more persons to restrain trade or commerce or to prevent market
27 competition. *See* §§ 16720, 16726.
28

1 224. Under the Cartwright Act, a “combination” is formed when the anti-
2 competitive conduct of a single firm coerces other market participants to involuntarily
3 adhere to the anti-competitive scheme.

4 225. The Android App Distribution Market is a valid antitrust market.

5 226. Google has executed agreements with OEMs that unreasonably
6 restrict competition in the Android App Distribution Market. Namely, Google has
7 entered into MADAs with OEMs that require OEMs to offer the Google Play Store as
8 the primary—and practically the only—app store on Android mobile devices. These
9 agreements further prevent OEMs from offering alternative app stores on Android
10 mobile devices in any prominent visual positioning.

11 227. These agreements also include [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED] Google has also entered agreements that [REDACTED]
15 [REDACTED]

16 228. Through the AFA and ACC compatibility standards, Google restricts
17 OEMs from offering frictionless downloading of apps outside of Google Play.

18 229. Google’s conduct and practices have substantial anti-competitive
19 effects, including increased prices and costs, reduced innovation, poorer quality of
20 customer service and lowered output.

21 230. Google’s conduct harms Epic which, as a direct result of Google’s
22 anti-competitive conduct, has been unreasonably restricted in its ability to distribute its
23 Android applications, including *Fortnite*, and to market a competing app store to the
24 Google Play Store.

25 231. It is appropriate to bring this action under the Cartwright Act
26 because many of the illegal agreements were made in California and purport to be
27 governed by California law, many affected consumers reside in California, Google has
28

1 its principal place of business in California and overt acts in furtherance of Google’s
2 anti-competitive scheme took place in California.

3 232. Epic has suffered and continues to suffer damages and irreparable
4 injury, and such damages and injury will not abate until an injunction ending Google’s
5 anti-competitive conduct issues.

6 **COUNT 8: California Cartwright Act**
7 **(Unreasonable restraints of trade in Android App Distribution Market: Developer**
8 **Distribution Agreement)**
9 **(against all Defendants except Google Payment)**

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

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

19 236. The Android App Distribution Market is a valid antitrust market.

20 237. Google conditions distribution through the Google Play Store on
21 entering into the standardized DDA described above, including the Developer Program
22 Policies integrated therein. Through certain provisions in these agreements, Google
23 forces app developers to submit to conditions that unreasonably restrain competition in
24 the Android App Distribution Market.

25 238. Section 4.5 of the DDA provides that developers “may not use
26 Google Play to distribute or make available any Product that has a purpose that
27 facilitates the distribution of software applications and games for use on Android
28 devices outside of Google Play.” Section 4.1 of the DDA requires that all developers
“adhere” to Google’s Developer Program Policies. Under the guise of its so-called

1 “Malicious Behavior” Policy, Google prohibits developers from distributing apps that
2 “download executable code [*i.e.*, code that would execute an app] from a source other
3 than Google Play.” The DDA further reserves to Google the right to remove and
4 disable any Android app that it determines violates either the DDA or its Developer
5 Program Policies and to terminate the DDA on these bases. (§§ 8.3, 10.3.) These
6 provisions prevent app developers from offering competing app stores through the
7 Google Play Store, even though there is no legitimate technological or other impediment
8 to distributing a competing app store through the Google Play Store.

9 239. These provisions have no legitimate or pro-competitive purpose or
10 effect, and unreasonably restrain competition in the Android App Distribution Market.

11 240. Google’s conduct and practices have substantial anti-competitive
12 effects, including increased prices and costs, reduced innovation, poorer quality of
13 customer service, and lowered output.

14 241. Google’s conduct harms Epic which, as a direct result of Google’s
15 anti-competitive conduct, has been unreasonably restricted in its ability to distribute its
16 Android applications, including *Fortnite*, and to market a competing app store to the
17 Google Play Store.

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

23 243. Epic has suffered and continues to suffer damages and irreparable
24 injury, and such damages and injury will not abate until an injunction ending Google’s
25 anti-competitive conduct issues.

1 makes obligatory, require that apps distributed through the Google Play Store “must use
2 Google Play In-app Billing [offered by Google Payment] as the method of payment” for
3 in-app purchases. While Google’s Policies exclude certain types of transactions from
4 this requirement, such as the purchase of “primarily . . . physical” goods and services or
5 of digital content that may be consumed outside of the app itself, Google expressly and
6 discriminatorily applies its anti-competitive mandate to all “Play-distributed apps . . . if
7 they require or accept payment for access to features or services, including any app
8 functionality, digital content or goods”, which includes *Fortnite*.

9 251. These provisions have no legitimate or pro-competitive purpose or
10 effect, and unreasonably restrain competition in the Android In-App Payment
11 Processing Market, and, in the alternative, in the Android Games Payment Processing
12 Market.

13 252. Google’s conduct and practices have substantial anti-competitive
14 effects, including increased prices and costs, reduced innovation, poorer quality of
15 customer service and lowered output.

16 253. Google’s conduct harms Epic which, as a direct result of Google’s
17 anti-competitive conduct, has been unreasonably restricted in its ability to distribute and
18 use its own in-app payment processor.

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

24 255. Epic has suffered and continues to suffer damages and irreparable
25 injury, and such damages and injury will not abate until an injunction ending Google’s
26 anti-competitive conduct issues.

COUNT 10: California Cartwright Act
(Tying Google Play Store to Google Play Billing)
(against all Defendants)

1
2
3 256. 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.

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

9 258. Under the Cartwright Act, a “combination” is formed when the anti-
10 competitive conduct of a single firm coerces other market participants to involuntarily
11 adhere to the anti-competitive scheme.

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

21 260. As detailed above, Google has unlawfully tied its in-app payment
22 processor, Google Play Billing, to the Google Play Store through its DDAs with app
23 developers and its Developer Program Policies.

24 261. Google has sufficient economic power in the tying market, the
25 Android App Distribution Market, to affect competition in the tied market, the Android
26 In-App Payment Distribution Market. With Google Play Store installed on nearly all
27 Android OS devices and over 90% of downloads on Android OS devices being
28 performed by the Google Play Store, Google has overwhelming market power.

1 Google's market power is further evidenced by its ability to extract supra-competitive
2 taxes on the sale of apps through the Google Play Store.

3 262. The availability of the Google Play Store for app distribution is
4 conditioned on the app developer accepting a second product, Google's in-app payment
5 processing solution. Google's substantial foreclosure of alternative app distribution
6 channels forces developers like Epic to use Google's in-app payment processing
7 solution, which Google has expressly made a condition of reaching Android users
8 through its dominant Google Play Store.

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

14 264. Google's conduct substantially forecloses competition in the
15 Android In-App Payment Processing Market and, in the alternative, in the Android
16 Games Payment Processing Market, affecting a substantial volume of commerce in
17 these Markets.

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

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

24 267. Google's acts and practices detailed above unreasonably restrain
25 competition in the Android In-App Payment Processing Market and, in the alternative,
26 in the Android Games Payment Processing Market.

27 268. Google's conduct harms Epic which, as a direct result of Google's
28 anti-competitive conduct, is paying a supra-competitive commission rate on in-app

1 purchases processed through Google's payment processor and has forgone commission
2 revenue it would be able to generate if its own in-app payment processor were not
3 unreasonably restricted from the market.

4 269. As an app developer which uses in-app payment processing solutions
5 and as the developer of a competing in-app payment processing tool, Epic has been
6 harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws
7 were intended to prevent.

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

13 271. Epic has suffered and continues to suffer damages and irreparable
14 injury, and such damages and injury will not abate until an injunction ending Google's
15 anti-competitive conduct issues.

16 **COUNT 11: California Unfair Competition Law**
17 **(against all Defendants)**

18 272. 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.

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

23 274. Epic has standing to bring this claim because it has suffered injury in
24 fact and lost money as a result of Google's unfair competition. Specifically, it develops
25 and distributes apps for the Android mobile platform, and has developed and distributes
26 a processor for in-app purchases, and Google's conduct has unreasonably restricted
27 Epic's ability to fairly compete in the relevant markets with these products.

28 275. Google's conduct violates the Sherman Act and the Cartwright Act,
and thus constitutes unlawful conduct under § 17200.

1 Dated: July 21, 2021

2 Respectfully submitted,

3
4 By: /s/ Paul J. Riehle

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