

EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC., a Maryland
Corporation,

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

v.

GOOGLE LLC; GOOGLE IRELAND
LIMITED; GOOGLE COMMERCE
LIMITED; GOOGLE ASIA PACIFIC
PTE. LIMITED; and GOOGLE
PAYMENT CORP.,

**FIRSTSECOND AMENDED
COMPLAINT FOR INJUNCTIVE
RELIEF**

Defendants.

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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 **FirstSecond** 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
18 Android mobile ecosystem, where Google unlawfully maintains monopolies in
19 multiple related markets and engages in unlawful restraints of trade, denying
20 consumers the freedom to enjoy their mobile devices—freedom that Google always
21 promised Android users 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
25 without unnecessary restrictions.² Google’s CEO, Sundar Pichai, represented in 2014

26 ¹ Kate Conger, *Google Removes ‘Don’t Be Evil’ Clause from Its Code of Conduct*, Gizmodo (May
27 18, 2018),
<https://gizmodo.com/google-removes-nearly-all-mentions-of-dont-be-evil-from-1826153393>.

28 ² See, e.g., Google Blog, News and notes from Android team, *The Benefits & Importance of
Compatibility*, (Sept. 14, 2012),

1 that Android “is one of the most open systems that I’ve ever seen”.³ And Andy Rubin,
 2 an Android founder who is described by some as the “Father of Android”, said when
 3 he departed Google in 2013 that “at its core, Android has always been about
 4 openness”.⁴ Since then, Google has changed its course of conduct, deliberately and
 5 systematically closing the Android ecosystem to competition, breaking the promises it
 6 made. Google’s anti-competitive conduct has now been condemned by regulators the
 7 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
 13 anti-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 *Compatibility*, (Sept. 14, 2012),
 21 <https://android.googleblog.com/2012/09/the-benefits-importance-of-compatibility.html> (“We built
 22 Android to be an open source mobile platform freely available to anyone wishing to use it This
 23 openness allows device manufacturers to customize Android and enable new user experiences, driving
 24 innovation and consumer choice.”); Stuart Dredge, *Google’s Sundar Pichai on wearable tech: ‘We’re
 25 just scratching the surface’*, *The Guardian* (Mar. 9, 2014),
 26 <https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw>
 27 (“Android is one of the most open systems that I’ve ever seen”); Andy Rubin, *Andy Rubin’s Email to
 28 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
 its core, Android has always been about openness”).

³ Stuart Dredge, *Google’s Sundar 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>.

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-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
8 monopoly power to impose a tax that siphons monopoly profits for itself every time an
9 app developer transacts with a consumer for the sale of an app or in-app digital
10 content. Google further siphons off all user data exchanged in such transactions to
11 benefit its 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
16 third 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
18 partners to secure their agreement to fence out competition, has developed a series of
19 internal projects to address the “contagion” it perceived from efforts by Epic and others
20 to offer consumers and developers competitive alternatives, and has even contemplated
21 buying 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,
25 significantly lower prices, and a choice of payment processors. Such an open system is
26 not hard to imagine. Two decades ago, through the actions of courts and regulators,
27 Microsoft was forced to open up the Windows for PC ecosystem. As a result, PC users
28 have multiple options for downloading software onto their computers, either directly

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

5 * * *



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

22 9. Epic develops and distributes entertainment, social networking and
23 utility applications for personal computers, gaming consoles, and smart mobile devices.
24 Epic operates a store for the distribution of personal computer apps, which it would
25 have expanded to distribute Android apps but for Google’s conduct. Epic also
26 develops and licenses *Unreal Engine*, a powerful software suite available to third-party
27 developers that allows them to create and distribute three-dimensional and immersive
28

1 digital content and apps, including Android apps, movies, and other three-dimensional
2 environments. Google's practices have impacted each of Epic's lines of business.

3 10. **App Development:** Epic develops multiple applications, including
4 *Fortnite*, *Fall Guys* and *Rocket League*, the social networking app *Houseparty*, and



15 apps that support Epic's *Unreal Engine*, such as *Live Link Face*, which enables users to
16 capture facial animation with their mobile phones.

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

23 a. *Fortnite* is free for everyone to download and experience, including
24 by playing games, attending events, socializing with friends or creating new content.
25 To generate revenue, Epic offers users various in-app purchases of content for use
26 within the app, such as digital avatars, costumes, dances, concert or movie-themed
27 items, or other cosmetic enhancements.
28

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 users and has
3 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
11 the developer’s own payment processor (at no fee) or Epic’s own payment solution,
12 Epic 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
15 three-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
20 who use *Unreal Engine* to develop and sell their games or other projects commercially,
21 Epic typically collects a 5% royalty after the developer reaches \$1 million in gross
22 sales. Alternatively, developers can negotiate custom or royalty-free licenses with
23 Epic.

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

27 c. The *Unreal Engine* is also used far beyond the realm of video
28 games. *Unreal Engine* received its first Emmy in 2018 for its contribution to televised

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

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

19 14. Similar to a PC or a Mac personal computer, smart mobile devices
20 use an “operating system” or “OS” to provide core device functionality and to enable
21 the operation of compatible programs. As with PCs, the commercial viability of an OS
22 for mobile devices (a “mobile OS”) depends on the availability of a large number of
23 compatible apps that cater to the preferences and needs of users.

24 15. Google controls the most ubiquitous OS in mobile devices, the
25 Android OS. Android OS is used by billions of users the world over, and boasts nearly
26 3 million compatible apps.

27 16. Android is the only commercially viable OS that is widely available
28 to license by companies that design and sell smart mobile devices, known as original

1 equipment manufacturers (“OEMs”). Accordingly, when OEMs select a mobile OS to
2 install on their devices, they have only one option: Google’s Android OS. Google
3 therefore has monopoly power in the market for mobile operating systems that are
4 available for licensing by OEMs (the Merchant Market for Mobile Operating Systems
5 (*infra* Part I)).

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

14 18. For example, through a series of revenue-sharing and licensing
15 agreements with OEMs, Google bundles the Google Play Store with a set of other
16 Google services that Android OEMs must have on their devices (such as Gmail,
17 Google Search, Google Maps, and YouTube) and conditions the licensing of those
18 services on an OEM’s agreement to pre-install the Google Play Store and to
19 prominently display it. Google then interferes with OEMs’ ability to make third-party
20 app stores or apps available on the devices they make, including through its so-called
21 “Anti-Fragmentation Agreements” (“AFAs”) that foreclose OEMs from modifying
22 Android to offer fast and simple (or “frictionless”) downloading of apps in the same
23 way they are offered through Google Play. These restrictions effectively foreclose
24 competing app stores—and even single apps—from what could be a primary
25 distribution channel. Google’s documents show that it pushes OEMs into making
26 Google Play the exclusive app store on the OEMs’ devices through a series of coercive
27 carrots and sticks, including by offering significant financial incentives to those that do
28 so, and withholding those benefits from those that do not. Google’s documents further

1 show that Google has erected these contractual barriers to competition for Android app
2 distribution in the recognition that Google stands to lose billions of dollars if Android
3 app distribution were opened to competition and competing Android app stores,
4 including an “Epic Store”, were allowed to “gain full traction”.

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

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

16 21. Google also enforces anti-competitive restrictions against app
17 developers and distributors. Specifically, Google contractually prohibits app
18 developers and would-be distributors from offering on the Google Play Store any app
19 that could be used to download other apps, *i.e.*, any app that could compete with the
20 Google Play Store in app distribution. And Google further requires app developers to
21 distribute apps through the Google Play Store if they wish to advertise those apps
22 through valuable advertising channels controlled by Google, such as ad placements on
23 Google Search or on YouTube that are specially optimized to advertise mobile apps.

24 22. Finally, Google stifles or blocks consumers’ ability to download app
25 stores and apps directly from developers’ websites. As anyone who has tried to
26 download directly on an Android device knows, it is significantly different than the
27 simple process available on a personal computer: directly downloading *Fortnite* on an
28 Android device can involve a dozen steps, requiring the user to change default settings

1 and bravely click through multiple dire warnings. Accordingly, leading Google Play
2 executives have acknowledged that directly downloading *Fortnite* from a source other
3 than Google Play is “an awful experience”, and developers like Epic should “worry
4 that most will not go through the 15+ steps”. And even if a persistent user manages to
5 install a competing app store, Google has prevented such stores from competing on
6 equal footing with the Google Play Store by restricting them from offering basic
7 functions, such as automatic updating of apps in the background, which is available for
8 apps downloaded from the Google Play Store.

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

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

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

22 26. Google, however, ties distribution through its Google Play Store
23 with developers’ exclusive use of Google’s own payment processing solution, called
24 Google Play Billing, to process in-app purchases of digital content. Indeed, app
25 developers that distribute through the Google Play Store are even prohibited from
26 offering Android users the *choice* of additional payment processing options alongside
27 Google’s for digital content. And because Google has a monopoly in the Android App
28

1 Distribution Market, app developers cannot practically avoid this anti-competitive tie
2 by electing app distribution through an alternative channel.

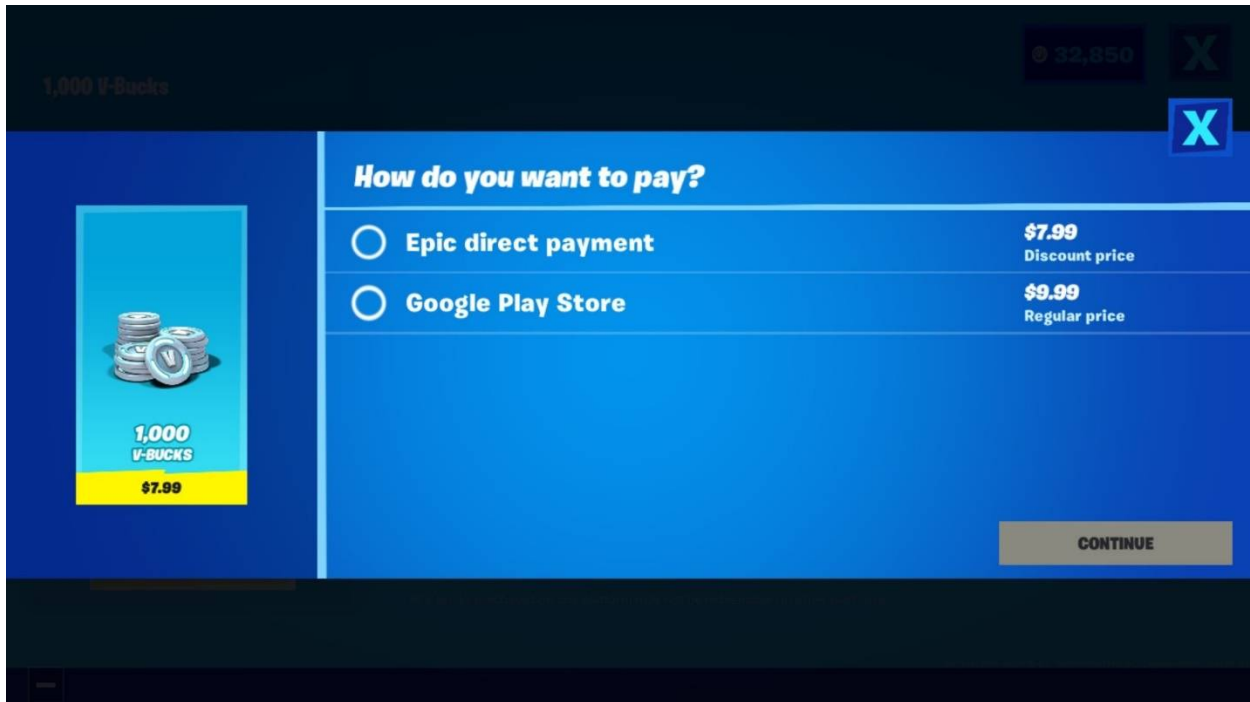
3 27. The result is that in every in-app transaction for digital content, it is
4 Google, not the app developer, that collects the payment in the first instance. Google
5 then taxes the transaction at up to an exorbitant 30% rate, remitting the remaining 70%
6 to the developer who actually made the sale.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

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

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

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

31. Because of Google's refusal to stop its ongoing anti-competitive



and unlawful conduct, on August 13, 2020, Epic began providing *Fortnite* users the choice of using Epic's own direct payment tool as an alternative to Google's overpriced billing tool, sharing with users who chose to use Epic's payment tool the resulting savings.

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

33. Epic has publicly advocated for years that Google cease the anti-competitive conduct addressed in this [FirstSecond](#) Amended Complaint. Google refused to change its industry-impacting conduct. Instead, Google offered to placate Epic by offering it preferential terms on side deals, such as YouTube sponsorships and cloud services, if Epic agreed to distribute *Fortnite* in the Google Play Store and acceded to Google's 30% tax. Google has reached preferential deals with major mobile app developers, such as Activision Blizzard, as part of an initiative Google

1 originally called Project Hug and now refers to as the Apps and Games Velocity
2 Programs. These deals allow Google to keep its monopolistic behavior publicly
3 unchallenged. But Epic is not interested in any side deals that might benefit Epic alone
4 while leaving Google's anti-competitive restraints intact; instead, Epic is focused on
5 opening up the Android ecosystem for the benefit of *all* developers and consumers.

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

11 PARTIES

12 35. Plaintiff Epic Games, Inc. is a Maryland corporation with its
13 principal place of business in Cary, North Carolina. Epic was founded in 1991 by a
14 college student named Tim Sweeney. Mr. Sweeney ran Epic out of his parents'
15 basement and distributed, by mail, Epic's first commercial personal computer software,
16 a game named *ZZZT*. Since then, Epic has developed several popular entertainment
17 software products that can be used on an array of platforms—such as personal
18 computers, gaming consoles, and smart mobile devices. Epic also creates and
19 distributes *Unreal Engine*, a powerful software suite that allows competing developers
20 and others to create realistic three-dimensional content, including video games,
21 architectural recreations, television shows, and movies. An Epic subsidiary also
22 develops and distributes the popular *Houseparty* app, which enables video chatting and
23 social gaming on smart mobile devices and personal computers. Worldwide,
24 approximately 400 million users have signed up to use Epic's apps and services, and
25 each day 30 to 40 million individuals log into an Epic app, such as *Fortnite*, *Rocket*
26 *League*, *Houseparty*, or the Epic Games Store.

27 36. Defendant Google LLC is a Delaware limited liability company
28 with its principal place of business in Mountain View, California. Google LLC is the

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

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

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

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

24 40. Defendant Google Payment Corp. (“Google Payment”) is a
25 Delaware corporation with its principal place of business in Mountain View,
26 California, and a subsidiary of Google LLC. Google Payment provides in-app payment
27 processing services to Android app developers and Android users and collects a 30%
28

1 commission on many types of processed payments, including payments for apps sold
2 through the Google Play Store and in-app purchases made within such apps.

3 **JURISDICTION AND VENUE**

4 41. This Court has subject-matter jurisdiction over Epic’s federal
5 antitrust claims pursuant to the Clayton Antitrust Act, 15 U.S.C. § 26, and 28 U.S.C. §§
6 1331 and 1337. The Court has supplemental jurisdiction over Epic’s state law claims
7 pursuant to 28 U.S.C. § 1367. The Court also has subject-matter jurisdiction over the
8 state-law claims pursuant to 28 U.S.C. § 1332 based on the diversity of citizenships of
9 Plaintiff, on the one hand, and of Defendants, on the other, and the amount in
10 controversy exceeding \$75,000.

11 42. This Court has personal jurisdiction over the Defendants. Google
12 LLC and Google Payment are headquartered in this District. All Defendants have
13 engaged in sufficient minimum contacts with the United States and have purposefully
14 availed themselves of the benefits and protections of United States and California law,
15 such that the exercise of jurisdiction over them would comport with due process
16 requirements. Further, the Defendants have consented to the exercise of personal
17 jurisdiction by this Court.

18 43. Each of the Defendants except Google Payment is party to a Google
19 Play Developer Distribution Agreement (the “DDA”) with Epic. Section 16.8 of the
20 DDA provides that the parties “agree to submit to the exclusive jurisdiction of the
21 federal or state courts located within the county of Santa Clara, California to resolve
22 any legal matter arising from or relating to this Agreement”. Section 16.8 further
23 provides that “[a]ll claims arising out of or relating to this Agreement or Your
24 relationship with Google under this Agreement will be governed by the laws of the
25 State of California, excluding California’s conflict of laws provisions.” The claims
26 addressed in this Complaint relate to the DDA or to Epic’s relationship with Google
27 under the DDA, or in the alternative such claims arise out of the same nucleus of
28 operative facts as other claims as to which the Court may exercise personal jurisdiction

1 over each Defendant, so that the exercise of pendent personal jurisdiction would be
2 proper.

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

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

23 **INTRADISTRICT ASSIGNMENT**

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

RELEVANT FACTS

I. Google Dominates the Merchant Market for Mobile Operating Systems.

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

A. The Merchant Market for Mobile Operating Systems

i. Product Market Definition

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

49. Like laptop and desktop personal computers, mobile devices require an operating system—or “OS”—that enables multi-purpose computing functionality. A mobile OS, just like the OS of any computer, is a piece of software that provides basic functionality to users of mobile devices such as button controls, touch commands, motion commands, and the basic “graphical user interface”, which includes “icons” and other visual elements representing actions that the user can take. A mobile OS also manages the basic operations of a smart mobile device, such as cellular or WiFi connectivity, GPS positioning, camera and video recording, speech recognition, and other features. In addition, a mobile OS permits the installation and operation of mobile apps that are compatible with the particular OS and facilitates their use of the device’s OS-managed core functionality.

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

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

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

27 53. To the extent that electronic devices other than smart mobile
28 devices use operating systems, those OSs are not compatible with mobile devices, and

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

19 ii. Geographic Market Definition

20 54. OEMs license mobile OSs for installation on mobile devices
21 globally, excluding China. Google’s operations in China are limited, and it does not
22 make available many of its products for mobile devices sold within China. This is
23 based in part on legal and regulatory barriers to the distribution of mobile OS-related
24 software imposed by China. Further, while Google contractually requires OEMs
25 licensing Android outside of China not to sell any devices with competing
26 Android-compatible mobile OSs, it imposes no such restriction on devices sold within
27 China. Because the OEMs that sell Android mobile devices both within and outside
28 China have committed to this contractual restriction, such OEMs must sell, outside of

1 China, devices with Google’s Android OS. The geographic scope of the relevant
2 Merchant Market for Mobile OSs is therefore worldwide, excluding China.

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

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

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

20 57. Mobile ecosystems benefit from substantial network effects—that
21 is, the more developers that design useful apps for a specific mobile OS, the more
22 consumers will be drawn to use the relevant OS for which those apps are designed; the
23 more consumers that use an OS, the more developers want to develop even more apps
24 for that OS. As determined in *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30
25 (D.D.C. 2000), new entrants into an operating system market thus face an “applications
26 barrier to entry”. An applications barrier to entry arises because a new operating
27 system will be desirable to consumers only if a broad array of software applications can
28

1 run on it, but software developers will find it profitable to create applications that run
2 on an operating system only if there is a large existing base of users.

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

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

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

19 61. Because of Google’s monopoly power in the Merchant Market for
20 Mobile OSs, OEMs, developers and users cannot avoid such effects by choosing
21 another mobile OS. OEMs such as ZTE and Nokia have stated that other
22 non-proprietary OSs are poor substitutes for the Android OS and are not a reasonable
23 alternative to licensing the Android OS. One important reason is that other mobile OSs
24 presently do not support many high-quality and successful mobile apps, which
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 consumers find essential or valuable when choosing a mobile device. These
2 circumstances have biased consumers against the purchase of mobile devices with
3 non-proprietary mobile OSs other than Android OS. OEMs thus have no choice but to
4 agree to Google’s demands because it is critical that they be able to offer a popular
5 mobile OS and corresponding ecosystem to consumers who are choosing which mobile
6 device to purchase.

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

27 63. More recently, after the European Commission began investigating
28 Google’s Android-related practices, including the AFAs, Google transitioned to a new

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

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

17 **II. Google Unlawfully Maintains a Monopoly in the Android App Distribution** 18 **Market.**

19 65. Mobile apps make mobile devices more useful and valuable because
20 they add functionality to the mobile device that caters to the specific interests of each
21 mobile device user. For example, they facilitate video chats with friends and family,
22 banking online, shopping, job hunting, photo editing, reading digital news sources,
23 editing documents, or playing a game like *Fortnite Battle Royale*. Many workers use
24 their smart mobile device to check work schedules, access company email, or use other
25 employer software while outside the workplace. For many consumers, a smartphone or
26 tablet is the only way to access these functions, because the consumer does not own a
27 personal computer or because the consumer can only access the Internet using a
28 cellular connection. But even when a consumer can perform the same or similar

1 functions on a personal computer, the ability to access apps “on the go” using a
2 handheld, portable device remains valuable, important, and distinct.

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

18 67. Through various anti-competitive acts and unlawful restraints on
19 competition, Google has substantially foreclosed competition and maintained a
20 monopoly in the Android App Distribution market, causing ongoing harm to
21 competition and injury to OEMs, app distributors, app developers, and consumers.
22 Google’s restraints of trade belie representations Google currently makes to developers
23 that “as an open platform, Android is about choice” and that app developers “can
24 distribute [their] Android apps to users in any way [they] want, using any distribution
25 approach or combination of approaches that meets [their] needs”, including by
26 allowing users to directly download apps “from a website” or even by “emailing them
27 directly to consumers”.⁷

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

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

2 i. Product Market Definition

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

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

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

27
28 <https://developer.android.com/distribute/marketing-tools/alternative-distribution> (last accessed July 20, 2021).

1 Windows Mobile OS or the Apple App Store used on Apple iOS devices—cannot
2 substitute for Android-specific app distribution platforms, and they are therefore not
3 part of the Android App Distribution Market defined herein.

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

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

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

23 ii. Geographic Market Definition

24 74. The geographic scope of the Android App Distribution Market is
25 worldwide, excluding China. Outside of China, app distribution channels, including
26 app stores, are developed and distributed on a global basis; OEMs, in turn, make app
27 stores, such as the Google Play Store, available on Android devices on a worldwide
28 basis (except in China). China is excluded from the relevant market because legal and

1 regulatory barriers prevent the operation of many global app stores, including the
2 Google Play Store, within China. Additionally, app stores prevalent in China are not
3 available, or have little presence, outside of China.

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

5 75. Google has monopoly power in the Android App Distribution
6 Market.

7 76. Google's monopoly power can be demonstrated by, among other
8 things, Google's massive market share in terms of apps downloaded. The European
9 Commission determined that, within the Market, more than 90% of Android app
10 downloads through app stores have been done through the Google Play Store. Indeed,
11 although app stores for merchant mobile OSs other than Android are not included in
12 the Android App Distribution Market, the European Commission found that the only
13 such app store with any appreciable presence was the Windows Mobile Store, which
14 was compatible with the Windows Mobile OS. The Commission determined that even
15 if the Windows Mobile Store share was included in the market, the Google Play Store
16 would still have had a market share greater than 90%. Google admits as much. A
17 2017 internal Google report confirmed that "[the Google] Play Store dominates in all
18 countries", including the United States. Google has recognized that in one quarter
19 (June to September 2016), app installations through channels other than Google Play
20 (including direct downloads and competing app stores) amounted to a mere 4.4% of
21 Android app downloads in the United States.

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

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

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

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

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

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

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

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

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

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

1 in-app digital content—accumulating to \$100 or less annually—but may spend several
2 hundreds of dollars at 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
25 stores (*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
2 and 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. As Google’s
6 founder and former CEO Larry Page once told Apple CEO Steve Jobs during a private
7 meeting in 2010 about a “partnership” between Android and iOS: “there will always
8 be places we compete, and places where we cooperate”. For example, for over 15
9 years, 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
14 Apple’s devices. Default status on Apple devices is valuable to Google because
15 Google search advertising is Google’s main revenue source. And, through its
16 agreements with Apple, Google ensures that its own search (and therefore search
17 advertising) will be used on virtually *all* mobile devices, whether iOS or Android, as
18 most consumers are unlikely to change these settings on their phone and will become
19 Google Search users by default. Because Android and iOS account for over 99% of
20 smartphone OSs installed on mobile devices, Google’s agreement with Apple
21 guarantees that Google will generate revenue from virtually all smartphone OS users,
22 regardless of whether they choose to purchase 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 “Our vision is that we work as if we are one company”.

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
16 services 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
10 app developers to their store. As an app distributor, Epic could and would negotiate
11 with OEMs to offer consumers more choice with a prominently displayed app store.
12 This would increase the distribution opportunities for Epic's own apps, as well as a
13 variety of 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
16 Android 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 including by entering "exclusivity" agreements with certain OEMs ensuring that
20 Google Play is the *only* app store that may be pre-installed on the devices the OEMs
21 sell.

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

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

7 96. Fearful that Epic and others would successfully begin distributing
8 competing app stores in this way, Google designed and undertook coercive steps to
9 foreclose this possibility. Specifically, Google has since 2019 entered agreements with
10 certain OEMs restricting the OEMs from pre-installing other app stores on most or all
11 of the new Android devices they sell. Pursuant to these exclusivity agreements,
12 Google agrees to share with OEMs monopoly profits Google earns from its Search
13 business (and in some cases, profits from the Play Store itself), in exchange for these
14 OEMs’ agreement not to pre-install alternative app stores. As described below, Google
15 reached these agreements after specifically recognizing the competitive threat to its
16 monopoly that Epic and other potential Android app distributors posed and Google
17 intentionally designed these agreements to lock in Google’s monopoly power in “high
18 monetizing” geographies.

19 97. In 2018, Epic decided to launch *Fortnite* on Android—but not on
20 Google Play. Epic developed and made available a *Fortnite Launcher* app (which later
21 became *Epic Games Launcher*) that could be directly downloaded from its website and
22 then used to install *Fortnite* (and, later, other Epic apps) on Android devices. Epic also
23 entered into a Collaboration Agreement with Samsung pursuant to which Samsung
24 would make available *Fortnite* to users of Samsung devices via the Samsung Galaxy
25 Store. Historically, Samsung’s app store had performed poorly—Google estimated that
26 users spent only 3% of the time on the Samsung Galaxy Store that they spent on the
27 Google Play Store. But Epic’s partnership with Samsung and determination to bypass
28 Google Play for distribution of *Fortnite* struck fear into senior Google executives, not

1 only because it meant the loss of 30% of revenues that would be generated by the
2 Android version of one of the most popular apps in the world, but also because Epic
3 was paving the way for other Android app developers to distribute their apps without
4 relying on Google Play.

5 98. In particular, documents that Google’s Finance Director for
6 Platforms and Ecosystems prepared for the CFO of Alphabet around the time of
7 *Fortnite*’s launch on Android showed that Google feared what it termed a “contagion
8 risk” resulting from more and more app developers forgoing Google Play. Google
9 feared that the “contagion” would spread in this way: first, inspired by Epic’s example,
10 “[p]owerful developers” such as “Blizzard, Valve, Sony, Nintendo”—creators of some
11 of the most popular and profitable entertainment—would be “able to go on their own”,
12 bypassing Play by directly distributing their own apps. Then, other “[m]ajor
13 developers”, including Electronic Arts, King, Supercell and Ubisoft, will choose to
14 “co-launch off Play”, collaborating to forego Google’s distribution services as well.
15 And finally, Google even identified a risk that “[a]ll remaining titles [will] co-launch
16 off Play”. Google calculated the total at-risk revenue from the threatened loss of
17 market share in Android app distribution to be \$3.6B, with the probability-weighted
18 loss “conservative[ly]” estimated at \$550M through 2021. Google also recognized that
19 the “[r]ecent Fortnite + Samsung partnership further amplifies risk & urgency of
20 problem” facing its monopoly position in Android app distribution. Google was
21 determined not to let this happen.

22 99. The first step Google took to prevent this “contagion” was its
23 decision to offer Epic a special deal to launch *Fortnite* on Google Play. In July 2018,
24 senior Google executives held a special, irregular “off-cycle” meeting of its Business
25 Council, comprised of some of the Google’s highest ranking executives including
26 Alphabet’s CFO. At this meeting, the Google Play team sought approval for a
27 “[c]ustom, cross-PA [cross-product area] partnership with Epic Games worth up to
28 \$208M (incremental cost to Google of \$147M) over 3 years”. The notes from this

1 meeting indicate that Google believed Epic was choosing to distribute *Fortnite* off
2 Google Play “to express frustration [about] closed ecosystems (iOS, consoles) through
3 use of [direct downloading] on Android to distribute via their website” and that such an
4 action would “threaten Play revenue (\$130M) and [the] broader business model”. The
5 rationale for the deal also included the “[h]igh risk of contagion”, with “up to \$310M
6 in revenue at risk”. When one Google executive asked for “the exact Play store rev
7 share if we can get to the deal with them”, a Director of Finance responded that “[t]he
8 key premise of this proposal is that we would protect the rev share terms and hold them
9 at the 70/30 split in line with our current business model to ensure we don’t establish a
10 precedent that puts at risk our broader ecosystem”. He represented to the Business
11 Council that the additional revenue share to Epic was roughly 5%, meaning, after
12 accounting for the special benefits Google had determined to offer, Google would
13 receive an effective discounted revenue share of 25% rather than the standard 30%
14 share. The Business Council approved the offer to Epic.

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

22 101. Google recognized that Epic might not accept its offer. “As a
23 potential alternative”, a senior Google executive proposed that Google “consider
24 approaching Tencent”, a company that owns a minority stake in Epic, “to either (a) buy
25 Epic shares from Tencent to get more control over Epic”, or “(b) join up with Tencent
26 to buy 100% of Epic”. Another senior Google executive suggested that if Epic chose
27 not to launch *Fortnite* on Google Play, Google could “lock down Play/Android and
28 [not] allow sideloading (or make it very hard to sideload (policy position or even

1 architecture) - difficult move in the face of the EC decision but we have good
2 privacy/security arguments about why sideloading is dangerous to the user)”).

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

11 103. More broadly, Epic’s decision to launch *Fortnite* for Android off
12 Google Play motivated Google to execute a series of anticompetitive actions to limit
13 the “contagion”. Among other initiatives discussed below, Google increased its focus
14 on the nascent competitive threats posed by Epic and others who may be able to offer
15 alternative app stores on Android, including by negotiating for pre-installation of such
16 app stores with OEMs. In a 2019 presentation prepared by Google Play’s finance
17 team, Google estimated that the most likely scenario among the scenarios it considered
18 was that Epic would strike a deal for the distribution of its Epic Games Store with “1
19 mobile OEM” or as many as “3-5 mobile OEMs”, in addition to the Collaboration
20 Agreement it had entered with Samsung. Google forecasted that Epic’s Android store
21 would attract numerous developers who would “migrate Mature Western/US titles to
22 Epic store”, which would capture “50% spend in those games on those devices”.
23 Indeed, Google recognized that Epic’s entry could dramatically reduce the barriers
24 faced by new market entrants: “[e]very developer that follows Epic’s path & launches
25 on the Epic store will have less friction & a larger addressable user base than title
26 before it”. And even if a developer attracted fewer users by supporting a new market
27 entrant rather than relying on Google Play, they could still earn more revenue due to
28 the favorable 88/12 revenue share offered by the Epic Games Store: “[d]evelopers can

1 afford to take a ~20% performance hit on Epic store (due to 88% rev share) and still
2 break-even”. In the 2019 document, Google estimated that entry by Epic Games Store
3 alone threatened a “[m]ost [l]ikely loss” of \$350M of Google’s monopoly revenue, and
4 a “[m]ax risk” of \$1.4B, by 2022; Google also identified a probability weighted
5 combined loss of \$1.1B and \$6B of total at-risk revenue “if other store(s)”, including
6 those distributed by Samsung and Amazon, were able to “gain full traction”.

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

13 105. Google’s anticompetitive conduct proceeded in this way: Google
14 began offering OEMs the chance to participate in its “Premier Device Program”
15 beginning in 2019. Although Google had previously offered OEMs that signed its
16 restrictive MADAs the chance to participate in an RSA, the new “Premier” tier RSAs
17 and similar agreements contain even more restrictions on OEMs. Google’s own
18 documents recognize that the “Premier” tier agreements mandate “Google exclusivity
19 and defaults for all key functions: No apps with APK install rights” on Premier
20 devices, meaning that the OEM cannot install any apps with the ability to install other
21 apps (in other words, app stores, or the *Fortnite Launcher* Epic sought to distribute
22 outside of Play). Google recognized that the new Premier agreements result in
23 “Exclusivity” for Google Play on covered devices. In exchange for these exclusivity
24 commitments, Google offered OEMs various forms of financial incentives, including
25 4% of Google’s Search revenues earned on the covered devices (on top of the 8% of
26 Search revenues Google already commits to OEMs who sign a non-Premier RSA and a
27 MADA), as well as other financial incentives such as monthly bonuses. For certain
28 OEMs, including LG and Motorola, Google also agreed to pay between 3-6% of “Play

1 spend” incurred on Premier devices manufactured by the OEMs, structuring the deal
2 “to increase overall appeal” and lock-in its monopoly power in “high monetizing
3 [geographies]” (such as in the United States, where LG and Motorola sell the most
4 popular Android mobile devices outside of Samsung devices). Google’s RSAs play a
5 significant role in inducing OEMs to sign a MADA, because OEMs cannot have the
6 benefits of an RSA without being a party to a MADA.

7 106. Although the exact terms of the agreements vary, to take one
8 illustrative example, Google executed a “Premier” tier RSA with OEM HMD Global,
9 which sells Nokia-branded mobile devices, effective December 1, 2019, through
10 November 30, 2022.

11 107. Section 5.1 of Google’s RSA with HMD Global requires that each
12 “Premier Device” (*i.e.*, those devices that comply with all restrictions contained in
13 Section 5) comply with “all requirements set forth in Attachment C (Premier Service
14 Access Points)”, which mandates that the Google Play app “[i]con is placed on the
15 Default Home Screen and Google Play app is set as default marketplace for
16 applications, games, books, movies, music, and all other digital content (including
17 subscriptions)”.

18 108. Moreover, under Section 5.1(d), HMD Global is required to comply
19 with the “Premier Device Program Requirements Document”. Epic believes based on
20 the reference in the RSA to “restriction[s] on the installation of applications with
21 INSTALL-PACKAGE permissions set forth in Section 3.7 (Application Preloads) of
22 the Premier Device Program Requirements”, that this document is likely to contain
23 further anticompetitive requirements. Google also has published “Premier Tier
24 Program Requirements” on its “Android Partners” website—a document that appears
25 to be related to the “Premier Device Program Requirements Document” that Google
26 has not yet produced. There, Google provides again that Android OEMs releasing
27 devices designated as “Premier” must not include apps that might compete with Google
28 Play. In Section 3.7, Google commands that “[a]pplication preloads” “MUST NOT

1 contain INSTALL_PACKAGES permissions”, *i.e.* must not be able to install other
2 applications, an essential function of an app store. Google further instructs that
3 pre-loaded apps “MUST NOT overlap with the following Google preloads in terms of
4 the applications, features or functionality: . . . Google Play”. Google also expressly
5 prohibits “[first-party] installers and [third-party] engines powering [first-party]
6 installers . . . without Google’s prior review and approval”, and makes clear that such
7 installers may not “promote Alternative Services”, which includes alternative app
8 stores. Further, preloaded apps that are permitted “MUST be available in Google
9 Play”, further ensuring that Android app developers cannot forego Google’s app
10 distribution services or the anti-competitive restrictions Google imposes on developers.

11 109. As a further restriction, Section 5.2, relating to the configuration of
12 Google Play and other Google Apps, requires that HMD Global agree that it “will not .
13 . . include in any manner on a Premier Device . . . any Alternative Service, or any
14 application, bookmark, product, service, icon, launcher, Hotword, Gesture, or
15 functionality that has the primary purpose of providing access to any Alternative
16 Service” nor may “introduce, promote, or suggest (including via over-the-air prompt)
17 an Alternative Service to an End User”. The agreement defines Alternative Service as
18 including any “Alternative Play Service”, defined as “any service that is substantially
19 similar to Google Play (as determined by Google in its sole discretion)”.

20 110. In addition, under Section 11.1, entitled “Shared Revenue”, Google
21 expressly conditions HMD Global’s receipt of “Shared Net Play Transaction Revenue”
22 and “Shared Net Ad Revenue” on HMD Global maintaining compliance with the
23 requirements of “Sections 3 through 5 (regarding Device requirements)”.

24 111. More recently, Google has reached agreements with OEMs in the
25 form of “Mobile Incentive Agreements” (“MIAs”). In one such agreement involving
26 Motorola, Google conditioned Motorola’s receipt of “Monthly Incentives” on
27 Motorola’s promises not to “include in any manner on a Foundation Tier Device . . .
28 Any Alternative Service, or any application, service, or functionality that has the

1 primary purpose of providing access to any Alternative Service” and not “to introduce,
2 promote or suggest (including via over-the-air prompt) an Alternative Service to an
3 End User” on such devices. The “Alternative Services” prohibited by Google include
4 any “Alternative Play Service”, which is defined to mean “any service that is
5 substantially similar to Google Play (as determined by Google in its sole discretion”.

6 112. Google’s efforts to foreclose competition in this way were a
7 resounding success. Within a matter of months after the Premier Device Program
8 began, Google recognized that the program had successfully eliminated the “risk of
9 contagion”. By May 2020, many of the world’s largest and most popular Android
10 OEMs had agreed to Google Play exclusivity for most of their new Android devices.
11 Motorola and LG—which Google had targeted for extra financial incentives—both
12 committed nearly all (98% and 95%) of their devices to the Premier program. The
13 giant Chinese conglomerate BBK—which manufactures and sells a range of Android
14 devices under its Oppo, Vivo and OnePlus brands, among others—had designated
15 around 70% of its new devices as “Premier”. Other brands participating in the program
16 included Xiaomi (40%), HMD (which manufactures devices with the Nokia Mobile
17 brand) (100%), Sony (50%), Sharp (50%) and “Other” (80%). In a presentation
18 prepared by and presented to senior Google Play executives, Google noted that in the
19 short time since the beginning of the program, over 200 million new devices were
20 covered. The same presentation shows that Google believed that the new RSAs
21 successfully eliminated the “risk of app developer contagion”; noting that there was
22 “no risk” under the “Current Premier tier”.

23 113. In the same presentation, Google recognized that the Premier
24 Device Program had “impact[ed]” “Epic’s ability to preload” its apps by negotiating
25 with OEMs. Google’s Premier RSAs (and MIAs) thus intentionally and directly
26 resulted in the substantial foreclosure of an important, alternative method of app
27 distribution on Android: installation by OEMs. Indeed, Epic had reached an
28 agreement with OnePlus, one of the brands owned by BBK, to allow users of OnePlus

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

17 114. Another OEM who participated in a Premier RSA, LG, also told
18 Epic that it had a contract with Google “to block side downloading off Google Play
19 Store this year”, but that the OEM could “surely” make Epic apps available to
20 consumers if the Google Play Store were used. Google prevented LG from
21 pre-installing the Epic Games app on LG devices.

22 115. Google’s Premier Device Program was not publicly known, and was
23 not known to Epic, before Google recently began producing relevant documents in this
24 litigation. Google has sought to conceal its most restrictive anticompetitive conduct
25 by, among other things, including in the agreements themselves a provision restricting
26 signatories from making “any public statement regarding [the] Agreement without 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 other party’s prior written approval”. Google then used the confidentiality it imposed
2 on OEMs to argue, in its Motion to Dismiss, that Android OEMs are *not* prohibited
3 from “pre-installing alternative app stores”, and that Epic failed to sufficiently allege
4 the exclusivity agreements it concealed. (Dkt. 91 at 9 (“OEMs retain the ability under
5 the MADAs to pre-install . . . competing app stores”); *see also id.* at 8 (“Plaintiffs also
6 challenge Google’s agreements with OEMs, which they claim ‘discourage’—but do not
7 claim prohibit—OEMs from pre-installing alternative app stores”); *id.* at 15
8 (“Plaintiffs’ allegations fall short of alleging actual foreclosure or exclusivity, and
9 Plaintiffs do not allege the MADAs prohibit OEMs from pre-installing rival app
10 stores” (emphasis in original)); *id.* at 17 (“Nor is there any allegation that MADAs
11 prevent rival app stores from being pre-installed elsewhere on a device.”).) Google’s
12 representations also obscured its efforts to ensure that Google Play would retain
13 exclusivity on the default screen through other OEM agreements. (Dkt. 91 at 17
14 (“There is no allegation that MADAs prevent rival app stores from also being
15 pre-installed on the home screen . . .”).) The revelations in Google’s recent document
16 productions (which are thus far incomplete) make clear that the exceedingly carefully
17 phrased arguments and representations Google made in connection with its Motion to
18 Dismiss are inconsistent with Google’s own documents.

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

26 117. Google has also historically leveraged revenue share agreements to
27 discourage mobile network operators (“MNOs”) from creating competing app stores.
28 Many consumers contract with an MNO to enable their devices to communicate and

1 access the Internet over cellular networks. Prominent MNOs in the United States
2 include AT&T Mobility, T-Mobile, and Verizon Wireless. In 2009, shortly after the
3 launch of Android and Google Play’s predecessor, Android Market, Google began
4 discussing using revenue share agreements to address the “challenge” of MNOs and
5 OEMs looking to create their own app stores. Google’s goal was to “[i]ncentivize
6 partners[s] to drive developer and user communities towards Android market”.

7 118. Google increased the market share of Android Market by adopting
8 revenue share agreements that split the revenue from app purchases with certain
9 MNOs. Google knew at the time that “Mobile operators are not willing to give up the
10 revenue stream on content distribution . . . Will block Market if we don’t share
11 revenue”. Beginning in 2009, Google entered into revenue share agreements with
12 various MNOs that split Android Market revenue between app developers, MNOs, and
13 Google. Under these arrangements, app developers typically received 70% of a given
14 purchase, while MNOs received 20-25% and Google received the remaining 5-10% for
15 its operating and transaction costs. Google understood that this 20-25% revenue share
16 for MNOs “[p]rovide[d] incentive for operators to distribute Android market” by
17 “offset[ting the] opportunity cost” of giving up their own app distribution channels.

18 119. In its Motion to Dismiss, Google has argued that the existence of
19 Samsung’s Galaxy Store—which exists only on devices that Samsung sells—is
20 somehow “fatal to Plaintiffs’ claim of actual foreclosure”. But documents discussing
21 Google’s “Project Banyan” demonstrate how Google attempted to negotiate a deal with
22 Samsung that would prevent the Galaxy Store from becoming a competitive threat and
23 impose Google’s anti-competitive Google Play Billing tie on apps distributed by
24 Samsung. In April 2019, Google executives traveled to Korea to meet with Samsung
25 to discuss an “app distribution” proposal. Internal documents presented to Google’s
26 Business Council reveal the details of this proposal. *First*, Google sought Samsung’s
27 agreement that Google Play would host the apps and games distributed by the Galaxy
28 Store and that Google Play would provide “infrastructure support to Galaxy Store

1 (including Play Billing)”, ensuring that Google’s in-app payment solution would be
2 used in apps distributed through the Galaxy Store. Because Samsung would thus
3 “forgo store services revenue”, Google planned to make annual payments to Samsung
4 of “up to \$60M, which was Google’s top-end estimate of the “current . . . operating
5 profit of [the] Galaxy Store” but a small fraction of the “likely 2022 margin risk to
6 Play”. *Second*, the Business Council documents indicate that Google sought
7 Samsung’s agreement that “Play and Galaxy Store” would be the “only app stores on
8 Default Home Screen”, ensuring that Samsung could not provide convenient placement
9 to any other competing app store. Google recognized that such a deal, in conjunction
10 with a developer-focused plan described below called “Project Hug”, would “mitigate[]
11 risk that top game developers de-prioritize Google Play for title distribution” and
12 secure the “Play revenue / margin at risk”, which was “up to \$6B / \$1.1B in 2022”
13 alone. In an email exchange following Google’s visit to Samsung’s headquarters in
14 Korea, Samsung indicated that it was “willing to accept [Google’s] proposal to
15 distribute Android apps through [the Google] Play store, with Samsung maintaining a
16 front end of Galaxy store”, but asked that Google allow users to choose between
17 Samsung IAP and Google Play Billing. In internal emails that followed, Google Play
18 and Android executives noted their opposition to the idea of allowing Galaxy users
19 even the option to use Samsung IAP, and one executive relayed ideas from the head of
20 Android that in response to Samsung’s request, Google could “[r]equest a revshare on
21 [Samsung’s] hardware margin (I’m serious) in exchange for their own IAP”, charge
22 Samsung “a license fee for Play in exchange for their own IAP”, or “[o]ffer revshare or
23 bounty for IAP on Play if they don’t have their own IAP platform”.

24 120. Project Banyan was not Google’s first attempt to buy out Samsung’s
25 app store. Google emails show that in 2011, senior Android executives were “having
26 discussions with Samsung to get them to stop distributing apps through Samsung App
27 store”. Other documents reveal that in late 2013, Google again met with Samsung to
28 discuss the possibility that “Samsung Apps should no longer compete directly with

1 Google Play”, that it would “only have 200 apps” that would appear “for limited time”
2 and be “boutique and complimentary [sic] to Google Play”, and that “Samsung Apps
3 could link to Google Play for many purchases if the right infrastructure is in place”. As
4 one Google employee explained, “Samsung’s duplication of our services on Android is
5 one of the critical issues with the partnership right now. Samsung Apps relative to
6 Google Play is one of the most glaring.”

7 121. Google ultimately chose not to pursue Project Banyan as authorized
8 by the Business Council. However, the Complaint filed by 36 States and the District of
9 Columbia in *State of Utah, et al. v. Google LLC, et al.*, alleges that Google then sought
10 “a different implementation toward the same anticompetitive goal” as part of a new
11 effort, “Project Agave”. Epic does not have the details of any deal Google reached
12 with Samsung as part of Project Agave because Google has not yet produced many
13 underlying documents to Epic, and Google has maintained redactions over the States’
14 relevant allegations when Google produced the States’ Complaint to Epic. But
15 documents that Google has produced to Epic reveal that Google sought an
16 “[i]ndividual surgical deal[]” with Samsung, in which Google would secure, among
17 other things, “play protections” and in exchange give Samsung a “rev share on
18 browsers and assistant”, a percentage “of Play rev share on IAP powered by Google”,
19 and “Billing integrations for App Gallery”.

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

21 122. Google imposes anti-competitive restrictions on competing app
22 distributors and developers that further entrench its monopoly in Android App
23 Distribution.

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

1 124. Google imposes this restraint through provisions of the Google Play
2 Developer Distribution Agreement (“DDA”), which Google requires all app developers
3 to sign before they can distribute their apps through the Google Play Store. Each of the
4 Defendants, except Google Payment, is a party to the DDA.

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

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

25 127. *Second*, Google conditions app developers’ ability to effectively
26 advertise their apps to Android users on being listed in the Google Play Store.
27 Specifically, Google markets an App Campaigns program that, as Google says, allows
28 app developers to “get your app into the hands of more paying users” by

1 “streamlin[ing] the process for you, making it easy to promote your apps across
2 Google’s largest properties”. This includes certain ad placements on Google Search,
3 YouTube, Discover on Google Search, and the Google Display Network, as well as
4 with Google’s “search partners”, that are specially optimized for the advertising of
5 mobile apps. However, in order to access this valuable advertising space through the
6 App Campaigns program, Google requires that app developers list their app in either
7 the Google Play Store (to reach Android users) or in the Apple App Store (to reach
8 Apple iOS users). This conduct further entrenches Google’s monopoly in Android
9 App Distribution by coercing Android app developers to list their apps in the Google
10 Play Store or risk losing access to a great many Android users they could otherwise
11 advertise to but for Google’s restrictions.

12 128. *Third*, “responding to Epic’s decision to launch Fortnite completely
13 off of Play and build their own store, and the likeliness of others to follow suit or
14 consider launching off Play on other stores (notably Samsung)”, Google launched an
15 initiative called “Project Hug”, now referred to as the Games Velocity Program. As
16 explained by Android executives in internal documents, Project Hug, which was
17 created and developed alongside Project Banyan, was “a hug developers close and
18 show love plan”, or “a surge plan to throw extra love/promotion to top developers and
19 games (including Tencent portfolio companies)”. As Google Play and Android
20 executives explained to the Business Council in April 2019, in the same presentation
21 that secured the approval of Project Banyan, Google’s plan was to spend hundreds of
22 millions of dollars on secret deals with over 20 top developers that were “most at risk .
23 . . of attrition from Play”, in order to prevent these developers from competing with
24 Google Play and inspiring the widespread “contagion” effect that Google feared.
25 Google’s documents reveal that a majority of the Project Hug developers were
26 “[a]gitated or inquired about revenue share”, and several had “[c]onsidered [their] own
27 distribution and/or payments platforms”. Other Project Hug presentations prepared for
28 senior executives note that “Fortnite would have been substantially more successful

1 had they launched on Play”, but “other developers might follow Epic’s path for various
2 reasons”. The Business Council approved Project Hug as part of a package with
3 Project Banyan and, by December 2020, Google had signed deals with the vast
4 majority of the developers it targeted.

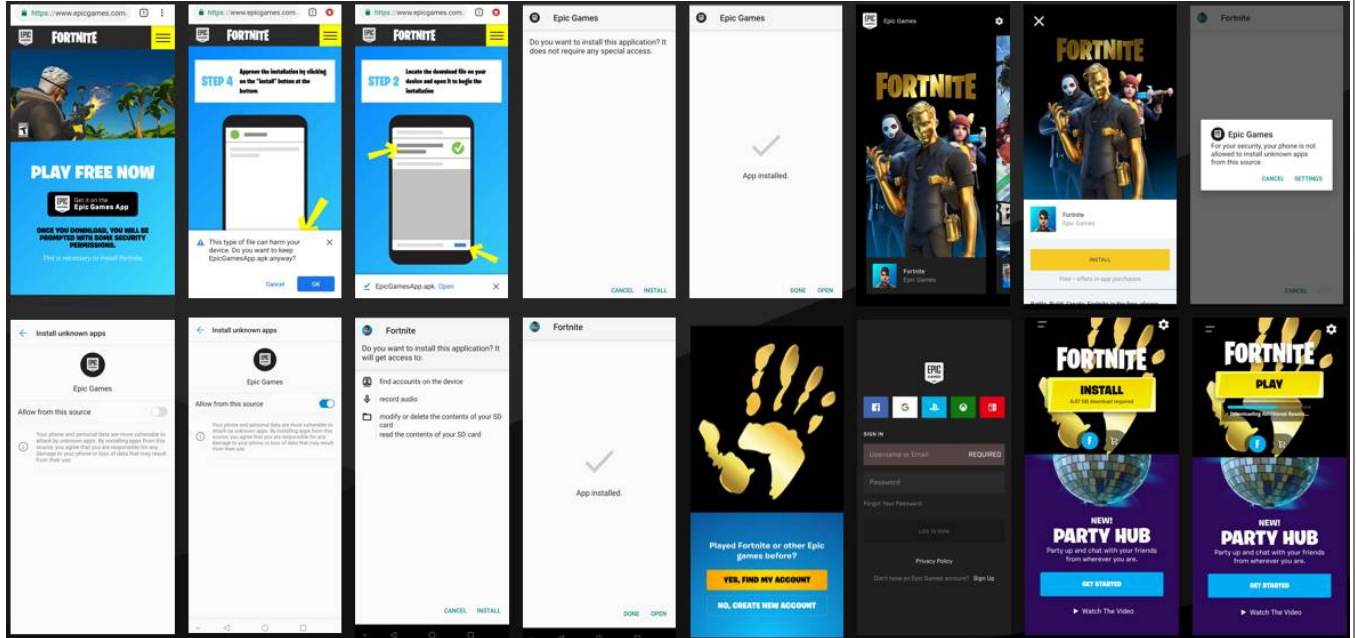
5 iii. Google’s Conduct Toward Consumers

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

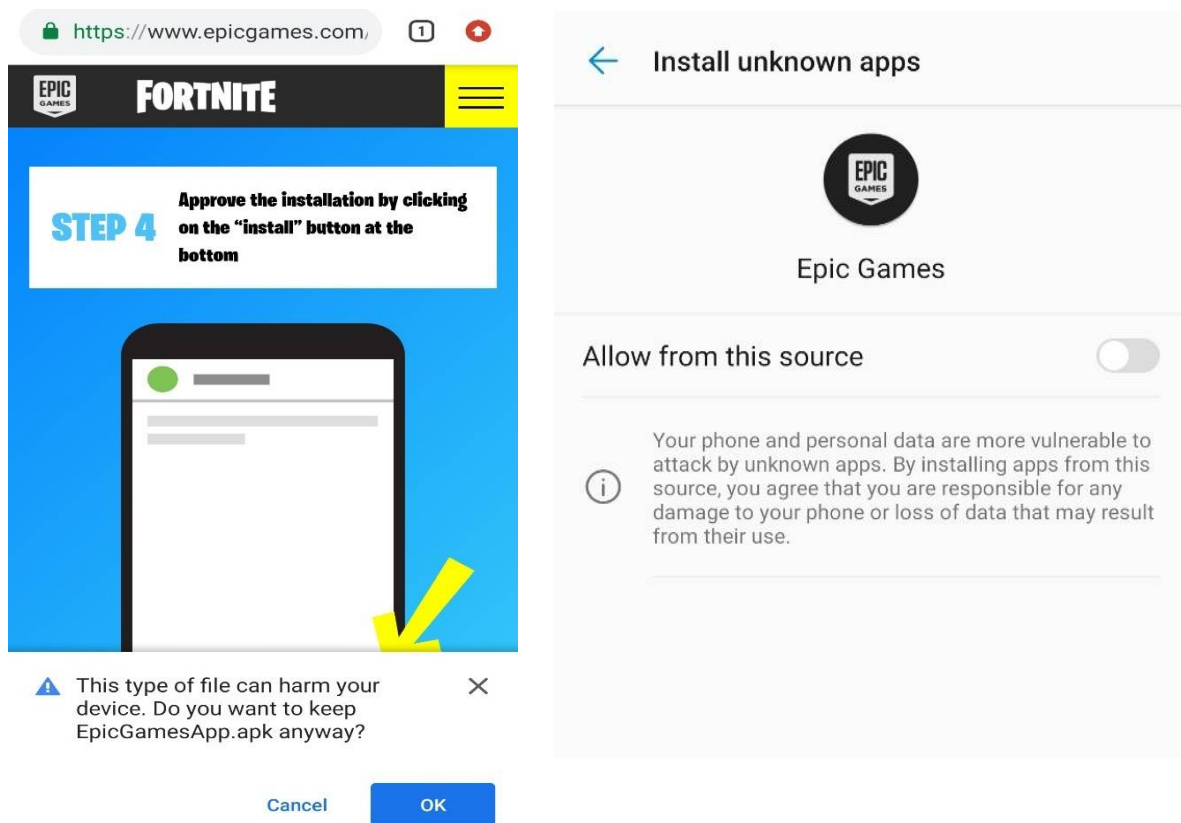
12 130. But for Google’s anticompetitive acts, Android users could freely
13 download apps from developers’ websites, rather than through an app store, just as
14 they might do on a personal computer. There is no reason that downloading and
15 installing an app on a mobile device should differ from downloading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

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

1 manually granting various permissions while being warned that doing so is dangerous.
2 Below are the myriad steps an average Android user has to go through in order to
3 download and install *Fortnite* directly from Epic's secure servers.



14 132. Below are two of the intimidating messages and warnings about the
15 supposed danger of directly downloading and installing apps that consumers encounter
16 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
9 reach 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
15 apply to the direct downloading of app stores. Indeed, Google Play Protect has flagged
16 at 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;
22 the 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
7 apps", which would be "incompatible with [Epic's] brand/demographics"; and that
8 "[t]he approach will create significant user confusion, since [Google Play] will still
9 attract [billions] of users who will search for Fortnite and run into deadends that aren't
10 clear 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
28 distributing apps through any means other than its own app store contradict its own

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

6 141. Through these anti-competitive acts, including contractual
7 provisions and exclusionary obstacles, Google has willfully obtained a near-absolute
8 monopoly over Android mobile app distribution. Google Play Store downloads have
9 accounted for more than 90% of downloads through Android app stores, dwarfing
10 other available 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
19 purposes, including to offer alternative app stores. Individually and together, these
20 requirements limit OEMs’ ability to innovate and compete with each other by offering
21 innovative and more appealing (in terms of price and quality) distribution platforms for
22 mobile apps. Google’s restrictions also interfere with OEMs’ ability to compete with
23 each other by offering Android devices with tailored combinations of pre-installed
24 apps that would appeal to particular subsets of mobile device consumers.

25
26
27
28 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
10 app 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
13 collect a variety of information on the apps’ usage, which it can then use to develop
14 and offer its own competing apps that are, of course, not subject to Google’s
15 supra-competitive taxes.

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

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

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

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

27 i. Product Market Definition

28 150. There is a relevant antitrust market for payment processing solutions
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
2 Android In-App Payment Processing Market includes the payment processing solutions
3 that Android developers could integrate into their Android apps to process the purchase
4 of 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
15 products and services within apps.

16 153. It is particularly important that app developers who sell in-app
17 digital content be able to offer in-app transactions that are seamless, engrossing, quick,
18 and fun. For example, a gamer who encounters a desirable “skin” within *Fortnite*, such
19 as a Marvel superhero, may purchase it nearly instantly for a small price without
20 leaving the app. Although *Fortnite* does not offer content that extends gameplay or
21 gives players competitive advantages, other game developers offer such products—for
22 example, “boosts” and “extra lives”—that extend and enhance gameplay. It is critical
23 that such purchases can be made during gameplay itself, rather than in another manner.
24 If a 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
2 purchase quickly and seamlessly, he/she would likely abandon the purchase and may
3 even stop “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
8 content outside of a mobile app, the user might abandon the purchase or stop
9 interacting with 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
20 contrast, in-app payment processing solutions available in China are not available
21 outside of China, including because Google prevents the use of non-Google payment
22 processing solutions for all apps distributed through the Google Play Store, which as
23 noted above 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
 3 process in-app purchases of digital content and for all purchases within Android
 4 games. And because 90% or more of Android-compatible mobile app downloads
 5 conducted through an app store have been done through the Google Play Store, Google
 6 has a monopoly in 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,
 9 which allows it to charge supra-competitive prices for payment processing within the
 10 market. Indeed, the cost of alternative electronic payment processing solutions, which
 11 Google does not permit to be used for the purchase of in-app digital content or within
 12 Android games, can be *one tenth* of the 30% cost of Google Play Billing.

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

19
 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
 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 own in-app payment processing solution, Google Play Billing. Section 3.2 of the DDA
2 requires that Android app developers enter into a separate agreement with Google's
3 payment processor, Defendant Google Payment, in order to receive payment for apps
4 and in-app digital content.

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

7 • Developers offering "Play-distributed apps must use [Google Play
8 Billing] as the method of payment if they require or accept payment for access to
9 features or services, including any app functionality, 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 method of payment,
12 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 of the
15 app itself (*e.g.*, songs that can be played on other music players).

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

24 164. In December of 2019, Epic submitted a build of *Fortnite* to Google
25 Play that enabled users to make in-app purchases through Epic's own payment
26 processor. Upon review of the submission, Google Play rejected the application, citing
27 its violation of Google's Payments policy as well as an unrelated issue raised by
28 Google. In January 2020, Epic again submitted a *Fortnite* build that resolved the

1 unrelated issue but still enabled users to use Epic’s own payment processor. Google
2 again rejected Epic’s submission.

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

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

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

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

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

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

1 service because Google faces no competition and consumers often blame Epic for
2 payment-related problems. In addition, Google is able to obtain information
3 concerning Epic’s transactions with its own customers, which Google could use to give
4 its ads and Search businesses an anti-competitive edge, even when Epic and its own
5 customers would prefer not to share their information with Google. In these ways and
6 in others, Google directly harms app developers’ relationships with the users of their
7 apps.

8 170. Finally, Google raises app developers’ costs and consumer prices
9 through its supra-competitive 30% tax on in-app purchases, a price it could not
10 maintain if it had not foreclosed competition for such transactions. The resulting
11 increase in prices for in-app content likely deters some consumers from making
12 purchases and deprives app developers of resources they could use to develop new
13 apps and content. The supra-competitive tax rate also reduces developers’ incentive to
14 invest in and create additional apps and related in-app content.

15 **COUNT 1: Sherman Act § 2**
16 **(Unlawful Monopoly Maintenance in the**
17 **Android App Distribution Market)**
18 **(against all Defendants except Google Payment)**

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

21 172. Google’s conduct violates Section 2 of the Sherman Act, which
22 prohibits the “monopoliz[ation of] any part of the trade or commerce among the several
23 States, or with foreign nations”. 15 U.S.C. § 2.

24 173. The Android App Distribution Market is a valid antitrust market.

25 174. Google holds monopoly power in the Android App Distribution
26 Market.

27 175. Google has unlawfully maintained monopoly power in the Android
28 App Distribution Market through the anti-competitive acts described herein, including
conditioning the licensing of the Google Play Store, as well as other essential Google

1 services and the Android trademark, on OEMs' agreement to provide the Google Play
2 Store with preferential treatment. Google has done this by incentivizing OEMs to enter
3 agreements that prevent alternative app stores from being installed on the default Home
4 Screen of Android devices and coercing OEMS into making the Google Play Store
5 exclusive on their devices, 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
12 as 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, in restraint of trade or commerce among the several States, or with foreign

1 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 exclusivity agreements that prevent
9 OEMs from pre-installing alternative app stores on a substantial portion of new
10 Android devices, including devices that are sold in markets with the largest
11 monetization opportunities. Google also has entered agreements that prevent
12 alternative app stores from being installed on the default Home Screen of Android
13 devices.

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

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

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

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

24 187. As a potential competing app distributor and as an app developer
25 that consumes app distribution services, Epic has been harmed by Defendants’
26 anti-competitive conduct in a manner that the antitrust laws were intended to prevent.
27 Epic has been foreclosed from the market and has suffered and continues to suffer
28

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 3: Sherman Act § 1**
4 **(Unreasonable restraints of trade concerning**
5 **Android App Distribution Market: Developer Distribution Agreement)**
6 **(against all Defendants except Google Payment)**

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

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

13 15 U.S.C. § 1.

14 190. Google forces app developers to enter its standardized DDA,
15 including Developer Program Policies integrated into that Agreement, as a condition of
16 being distributed through Google’s app store, the Google Play Store. The relevant
17 provisions of these agreements unreasonably restrain and substantially foreclose
18 competition in the Android App Distribution Market.

19 191. Section 4.5 of the DDA provides that developers “may not use
20 Google Play to distribute or make available any Product that has a purpose that
21 facilitates the distribution of software applications and games for use on Android
22 devices outside of Google Play”. Section 4.1 of the DDA requires that all developers
23 “adhere” to Google’s Developer Program Policies. Under the guise of its so-called
24 “Malicious Behavior” Policy, Google prohibits developers from distributing apps that
25 “download executable code [*i.e.*, code that would execute an app] from a source other
26 than Google Play”. The DDA further reserves to Google the right to remove and
27 disable any Android app that it determines violates either the DDA or its Developer
28 Program Policies and to terminate the DDA on these bases. (§§ 8.3, 10.3.) These
provisions prevent app developers from offering competing app stores through the

1 Google Play Store, even though there is no legitimate technological or other
2 impediment to distributing a competing app store through the Google Play Store.

3 192. These agreements serve no legitimate or pro-competitive purpose
4 that could justify their anti-competitive effects, and thus unreasonably restrain and
5 substantially foreclose competition in the Android App Distribution Market.

6 193. Google’s conduct affects a substantial volume of interstate as well
7 as foreign commerce.

8 194. Google’s conduct has substantial anti-competitive effects, including
9 increased prices and costs, reduced innovation and quality of service, and lowered
10 output.

11 195. As a potential competing app distributor and as an app developer
12 that consumes app distribution services, Epic has been harmed by Defendants’
13 anti-competitive conduct in a manner that the antitrust laws were intended to prevent.
14 Epic has been substantially foreclosed from the market and has suffered and continues
15 to suffer damages and irreparable injury, and such damages and injury will not abate
16 until an injunction ending Google’s anti-competitive conduct issues.

17 **COUNT 4: Sherman Act § 1**

18 **(Per se unreasonable restraints of trade concerning**
19 **Android App Distribution Market:**
20 **Project Hug (Games Velocity Program)**
21 **and other Agreements with Developers**
22 **(against all Defendants except Google Payment))**

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

25 **197. Google’s conduct constitutes a per se violation of Section 1 of the**
26 **Sherman Act, which prohibits “[e]very contract, combination in the form of trust**
27 **or otherwise, or conspiracy, in restraint of trade or commerce among the several**
28 **States, or with foreign nations”. 15 U.S.C. § 1.**

1 198. Through agreements and understandings (together
2 “agreements”), including but not limited to Google’s “Project Hug” initiative,
3 inclusive of the Games Velocity Program in its different iterations, Google paid or
4 otherwise induced its potential competitors to agree not to distribute apps on
5 Android in competition with the Google Play Store, either through their own
6 competing app store, or through direct distribution. (See supra at ¶ 128.)
7 Specifically, Google identified developers who were “most at risk . . . of attrition
8 from Play” and systematically approached each of them with an offer of an
9 agreement designed to prevent the developer from opening a competing store or
10 otherwise distributing its apps outside of the Google Play Store. These
11 agreements impose, among other things, obligations on the developers to release
12 their mobile titles on the Google Play Store at the same time that they do on other
13 app stores; not to remove their titles from the Google Play Store; to maintain
14 content and feature parity between the apps they release on the Google Play Store
15 and those they release on other mobile app stores; and to refrain from promoting
16 their apps more aggressively on other mobile app stores than they do on the
17 Google Play Store. Discovery in this matter has revealed that some of these
18 agreements were horizontal agreements among potential app store competitors
19 that had the actual and intended effect of inducing the developer not to launch an
20 app store that would compete with Google in the Android App Distribution
21 Market.

22 199. For example, according to a Google internal email sent from
23 Google’s Managing Director of Global Partnerships to other executives at Google,
24 in October 2019 Activision Blizzard, Inc. (which owns King.com, Ltd. and is
25 referred to as “ABK”), one of the largest game developers in the world and the
26 creator of worldwide popular titles such as Candy Crush and Call of Duty, told
27 Google that it was considering starting its own competing Android app store, but
28 that the decision depended on whether it “can find the right deal/solution with

1 [Google]”. Google subsequently entered into a three-year agreement with ABK,
2 which was signed on January 24, 2020, pursuant to which Google agreed to pay
3 ABK approximately \$360 million. In exchange, ABK agreed to restrictions of the
4 sort discussed above—for example, to launch all ABK games on the Google Play
5 Store before or on the same date it launched them on any other store and to
6 maintain feature and content parity in the games it releases on the Google Play
7 Store and in any other store.

8 200. Google understood that its agreement with ABK effectively
9 ensured that ABK would abandon its plans to launch a competing app store, and
10 Google intended this result. Specifically, Google understood that ABK’s narrow
11 path to launching a viable competing Android app store depended on ABK’s
12 ability to offer on its store compelling ABK apps on an exclusive or early-access
13 basis, or with additional features or content not available from other stores.
14 Given the inherent advantages of the Google Play Store from its pre-installation
15 on all Android phones, its preferential placement on all Android phones, Google’s
16 exclusivity agreements with nearly all OEMs and the myriad technical restrictions
17 that Google imposes on alternative Android app stores (*see supra* at ¶¶ 129-141),
18 it was important for ABK to be able to offer unique apps and other content to
19 attract Android users. The agreement that Google proposed to, and reached with,
20 ABK prevented such differentiation. As a result, Google understood and intended
21 that the agreement would cause ABK not to launch the competing Android app
22 store that ABK had been contemplating and planning. Google thus paid ABK
23 hundreds of millions of dollars not to compete. ABK has not entered the Android
24 App Distribution Market to date.

25 201. As another example, Riot Games, Inc. (“Riot”), another top
26 game developer that was contemplating launching a competing app store, entered
27 into a one-year Project Hug agreement with Google on March 9, 2020, under
28 which Google paid Riot approximately \$30 million and Riot agreed not to launch

1 early or exclusive titles on other app stores and to maintain content, feature,
2 functionality, and promotion parity between its titles on the Google Play Store and
3 on other app stores. Google understood and intended that Riot, like ABK, would
4 not launch a competing Android app store absent the ability to offer exclusive
5 Riot apps in that store—an ability Riot gave up in exchange for millions of
6 dollars. (See supra ¶ 200.) Riot has not entered the Android App Distribution
7 Market to date.

8 202. Google entered into other agreements and understandings with
9 potential competing app distributors, including, for example, Supercell, to
10 minimize their ability to operate competing app stores. During her deposition,
11 Google’s Vice President, Apps and Games, testified that Google had recently
12 entered into yet another agreement with Supercell, one of the largest game
13 developers on Android.

14 203. Google’s conduct affects a substantial volume of interstate as
15 well as foreign commerce.

16 204. As an app developer that consumes app distribution services,
17 Epic has been harmed by Google’s anti-competitive conduct in a manner that the
18 antitrust laws were intended to prevent. Google’s anti-competitive conduct
19 deprives Epic and other developers from the benefits afforded by more robust
20 competition in the market for app distribution services. Google’s conduct allows
21 Google to charge higher prices to developers than would prevail in a competitive
22 market. It also deprives Epic and other developers of the choice of accessing
23 competing app stores through which they could distribute their apps. Epic and
24 other developers are also deprived of the unique services and promotions that a
25 competing app store might provide.

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

COUNT 5: Sherman Act § 1

**(Unreasonable restraints of trade concerning
Android App Distribution Market:
Project Hug (Games Velocity Program) and Apps Velocity Program
and other Agreements with Developers
(against all Defendants except Google Payment))**

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

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

208. Google has entered into anti-competitive agreements, including but not limited to Project Hug agreements, to choke off competitors’ access to differentiating content critical for app stores’ success. As of July 2022, Google had entered into Project Hug agreements, under the Games Velocity Program and Apps Velocity Program, with at least 24 top developers, many or all of whom had either been a vocal agitator about Google’s business model or had asked for ways to explore potential opportunities for changes to the business model. (See Letter from B. Rocca to Y. Even dated September 23, 2022 regarding Google’s Responses and Objections to Epic’s Fourth Set of Interrogatories). Epic believes that Google has continued negotiating Games Velocity Program and Apps Velocity Program agreements since July 2022.

209. As explained above, these agreements impose obligations on the developers to release their mobile titles on the Google Play Store at the same time that they do on other app stores; not to remove their titles from the Google Play Store; to maintain content and feature parity between the apps they release on the Google Play Store and those they release on other mobile app stores; to refrain from promoting their apps more aggressively on other mobile app stores than they

1 do on the Google Play Store; and for some agreements, including Google’s
2 agreements with developers in the Apps Velocity Program, also to maintain price
3 parity between what they charge on the Google Play Store and what they charge
4 on other platforms, including mobile and web-based platforms.

5 210. Google’s conduct affects a substantial volume of interstate as
6 well as foreign commerce.

7 211. Google’s conduct has substantial anti-competitive effects,
8 including increased prices and costs, reduced innovation and quality of service
9 and lowered output.

10 212. These agreements serve no legitimate or pro-competitive
11 purpose sufficient to justify their anti-competitive effects, and thus unreasonably
12 restrain and substantially foreclose competition in the Android App Distribution
13 Market.

14 213. As a potential competing app distributor, Epic has been harmed
15 by Google’s anti-competitive conduct in a manner that the antitrust laws were
16 intended to prevent. Google’s agreements with top developers deprive competing
17 Android app stores, including the Epic Games Store if it were to launch on
18 Android, of inputs critical for success as a competing app distribution
19 platform—for example, exclusive apps, content or other features from top
20 developers. These inputs are critical to the ability of emerging Android app stores
21 to distinguish themselves from and compete with the Google Play Store. Epic and
22 other potential competitors have been deprived of these inputs because Google has
23 systematically sought to sign a restrictive agreement with any major developer
24 that it identified as at risk of offering its apps on an exclusive basis through
25 another store. Google has successfully entered into such agreements with at least
26 24 of the top developers on Android—developers that in Google’s estimation
27 represented approximately 30% of all Google Play Store revenue.
28

1 **214. As an app developer that consumes app distribution services,**
2 **Epic has been harmed by Google’s anti-competitive conduct in a manner that the**
3 **antitrust laws were intended to prevent. By depriving competing app stores of**
4 **critical inputs, as explained above, and thereby denying them the ability to**
5 **become viable competitors to the Google Play Store, Google’s agreements with top**
6 **developers deprive Epic, as an app developer, as well as other app developers,**
7 **from accessing competing app stores through which it could distribute its apps,**
8 **including cheaper prices, unique services and promotions that such competing app**
9 **stores might provide. Google’s conduct also leads to higher prices and reduced**
10 **innovation and output in the Android App Distribution Market.**

11 **215. Epic has suffered and continues to suffer damages and**
12 **irreparable injury, and such damages and injury will not abate until an injunction**
13 **ending Google’s anti-competitive conduct issues.**

14 **COUNT 6: Sherman Act § 2**
15 **(Unlawful Monopolization and Monopoly Maintenance in the**
16 **Android In-App Payment Processing Market)**
 (against all Defendants)

17 **216. ~~196.~~** Epic restates, re-alleges, and incorporates by reference each of
18 the allegations set forth in the rest of this Complaint as if fully set forth herein.

19 **217. ~~197.~~** Google’s conduct violates Section 2 of the Sherman Act, which
20 prohibits the “monopoliz[ation of] any part of the trade or commerce among the several
21 States, or with foreign nations”. 15 U.S.C. § 2.

22 **218. ~~198.~~** The Android In-App Payment Processing Market is a valid
23 antitrust market. In the alternative, the Android Games Payment Processing Market is
24 a valid antitrust market.

25 **219. ~~199.~~** Google holds 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 monopolized app store, Google Play Store. The relevant provisions of these
2 agreements unreasonably restrain and substantially foreclose competition in the
3 Android In-App Payment Processing Market.

4 [227.](#) ~~207.~~ Section 3.2 of the DDA requires that Android app developers
5 enter into a separate agreement with Google’s payment processor, Defendant Google
6 Payment, in order to receive payment for apps and content distributed through the
7 Google Play Store. This includes payments related to in-app purchases of digital
8 content. Further, Google’s Developer Program Policies, compliance with which
9 Section 4.1 of the DDA makes obligatory, require that apps distributed through the
10 Google Play Store “must use [Google Play In-app Billing, offered by Google Payment]
11 as the method of payment” for such in-app purchases. While Google’s Policies
12 exclude certain types of transactions from this requirement, such as the purchase of
13 “primarily . . . physical” goods and services or of digital content that may be consumed
14 outside of the app itself, Google expressly applies its anti-competitive mandate to all
15 “Play-distributed apps . . . if they require or accept payment for access to features or
16 services, including any app functionality, digital content or goods”, which includes
17 *Fortnite*.

18 [228.](#) ~~208.~~ The challenged provisions serve no sufficient legitimate or
19 pro-competitive purpose and unreasonably restrain and substantially foreclose
20 competition in the Android In-App Payment Processing Market and, in the alternative,
21 the Android Games Payment Processing Market.

22 [229.](#) ~~209.~~ Defendants’ conduct affects a substantial volume of interstate
23 as well as foreign commerce.

24 [230.](#) ~~210.~~ Defendants’ conduct has substantial anti-competitive effects,
25 including increased prices and costs, reduced innovation and quality of service, and
26 lowered output.

27 [231.](#) ~~211.~~ As an app developer and as the developer of a competing
28 in-app payment processing solution, Epic has been harmed by Defendants’

1 anti-competitive conduct in a manner that the antitrust laws were intended to prevent.
2 Epic has been substantially foreclosed from the market and has suffered and continues
3 to suffer damages and irreparable injury, and such damages and injury will not abate
4 until an injunction ending Google’s anti-competitive conduct issues.

5 **COUNT 68: Sherman Act § 1**
6 **(Tying Google Play Store to Google Play Billing)**
7 **(against all Defendants)**

8 **232.** ~~212.~~ Epic restates, re-alleges and incorporates by reference each of
9 the allegations set forth in the rest of this Complaint as if fully set forth herein.

10 **233.** ~~213.~~ Defendants’ conduct violates Section 1 of the Sherman Act,
11 which prohibits “[e]very contract, combination in the form of trust or otherwise, or
12 conspiracy, in restraint of trade or commerce among the several States, or with foreign
13 nations.”

14 15 U.S.C. § 1.

15 **234.** ~~214.~~ Google has unlawfully tied its in-app payment processor,
16 Google Play Billing, to the Google Play Store through its DDAs with app developers
17 and its Developer Program Policies.

18 **235.** ~~215.~~ Google has sufficient economic power in the tying market, the
19 Android App Distribution Market. With Google Play Store installed on nearly all
20 Android OS devices and over 90% of downloads on Android OS devices being
21 performed by the Google Play Store, Google has overwhelming market power.
22 Google’s market power is further evidenced by its ability to extract supra-competitive
23 taxes on the sale of apps through the Google Play Store.

24 **236.** ~~216.~~ The availability of the Google Play Store for app distribution is
25 conditioned on the app developer accepting a second product, Google’s in-app
26 payment processing solution. Google’s foreclosure of alternative app distribution
27 channels forces developers like Epic to use Google’s in-app payment processing
28 solution, which Google has expressly made a condition of reaching Android users
through its dominant Google Play Store.

1 **237.** ~~217.~~ The tying product, Android app distribution, is distinct from
2 the tied product, Android in-app payment processing, because app developers such as
3 Epic have alternative in-app payment processing options and would prefer to choose
4 among them independently of how an Android app is distributed. Google's unlawful
5 tying arrangement thus ties two separate products that are in separate markets.

6 **238.** ~~218.~~ Google's conduct substantially forecloses competition in the
7 Android In-App Payment Processing Market, and, in the alternative, in the Android
8 Games Payment Processing Market, affecting a substantial volume of commerce in
9 these Markets.

10 **239.** ~~219.~~ Google has thus engaged in a *per se* illegal tying arrangement
11 and the Court does not need to engage in a detailed assessment of the anti-competitive
12 effects of Google's conduct or its purported justifications.

13 **240.** ~~220.~~ In the alternative only, even if Google's conduct does not
14 constitute a *per se* illegal tie, a detailed analysis of Google's tying arrangement would
15 demonstrate that this arrangement violates the rule of reason and is illegal.

16 **241.** ~~221.~~ As an app developer which uses in-app payment processing
17 solutions and as the developer of a competing in-app payment processing solution,
18 Epic has been harmed by Defendants' anti-competitive conduct in a manner that the
19 antitrust laws were intended to prevent. Epic has suffered and continues to suffer
20 damages and irreparable injury, and such damages and injury will not abate until an
21 injunction ending Google's anti-competitive conduct issues.

22 **COUNT 79: California Cartwright Act**
23 **(Unreasonable restraints of trade in Android App Distribution Market: OEMs)**
24 **(against all Defendants except Google Payment)**

25 **242.** ~~222.~~ Epic restates, re-alleges and incorporates by reference each of
26 the allegations set forth in the rest of this Complaint as if fully set forth herein.

27 **243.** ~~223.~~ Google's acts and practices detailed above violate the
28 Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the

1 combination of resources by two or more persons to restrain trade or commerce or to
2 prevent market competition. *See* §§ 16720, 16726.

3 [244.](#) ~~224.~~ Under the Cartwright Act, a “combination” is formed when the
4 anti-competitive conduct of a single firm coerces other market participants to
5 involuntarily adhere to the anti-competitive scheme.

6 [245.](#) ~~225.~~ The Android App Distribution Market is a valid antitrust
7 market.

8 [246.](#) ~~226.~~ Google has executed agreements with OEMs that unreasonably
9 restrict competition in the Android App Distribution Market. Namely, Google has
10 entered into MADAs with OEMs that require OEMs to offer the Google Play Store as
11 the primary—and practically the only—app store on Android mobile devices. These
12 agreements further prevent OEMs from offering alternative app stores on Android
13 mobile devices in any prominent visual positioning.

14 [247.](#) ~~227.~~ These agreements also include exclusivity agreements that
15 prevent OEMs from pre-installing alternative app stores on a substantial portion of new
16 Android devices, including devices that are sold in markets with the largest
17 monetization opportunities. Google has also entered agreements that prevent
18 alternative app stores from being installed on the default Home Screen of Android
19 devices.

20 [248.](#) ~~228.~~ Through the AFA and ACC compatibility standards, Google
21 restricts OEMs from offering frictionless downloading of apps outside of Google Play.

22 [249.](#) ~~229.~~ Google’s conduct and practices have substantial
23 anti-competitive effects, including increased prices and costs, reduced innovation,
24 poorer quality of customer service and lowered output.

25 [250.](#) ~~230.~~ Google’s conduct harms Epic which, as a direct result of
26 Google’s anti-competitive conduct, has been unreasonably restricted in its ability to
27 distribute its Android applications, including *Fortnite*, and to market a competing app
28 store to the Google Play Store.

1 **251.** ~~231.~~ It is appropriate to bring this action under the Cartwright Act
2 because many of the illegal agreements were made in California and purport to be
3 governed by California law, many affected consumers reside in California, Google has
4 its principal place of business in California and overt acts in furtherance of Google’s
5 anti-competitive scheme took place in California.

6 **252.** ~~232.~~ Epic has suffered and continues to suffer damages and
7 irreparable injury, and such damages and injury will not abate until an injunction
8 ending Google’s anti-competitive conduct issues.

9 **COUNT 810: California Cartwright Act**
10 **(Unreasonable restraints of trade in Android App Distribution Market: Developer**
11 **Distribution Agreement)**
12 **(against all Defendants except Google Payment)**

13 **253.** ~~233.~~ Epic restates, re-alleges and incorporates by reference each of
14 the allegations set forth in the rest of this Complaint as if fully set forth herein.

15 **254.** ~~234.~~ Google’s acts and practices detailed above violate the
16 Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the
17 combination of resources by two or more persons to restrain trade or commerce or to
18 prevent market competition. *See* §§ 16720, 16726.

19 **255.** ~~235.~~ Under the Cartwright Act, a “combination” is formed when the
20 anti-competitive conduct of a single firm coerces other market participants to
21 involuntarily adhere to the anti-competitive scheme.

22 **256.** ~~236.~~ The Android App Distribution Market is a valid antitrust
23 market.

24 **257.** ~~237.~~ Google conditions distribution through the Google Play Store
25 on entering into the standardized DDA described above, including the Developer
26 Program Policies integrated therein. Through certain provisions in these agreements,
27 Google forces app developers to submit to conditions that unreasonably restrain
28 competition in the Android App Distribution Market.

1 258. ~~238.~~ Section 4.5 of the DDA provides that developers “may not use
2 Google Play to distribute or make available any Product that has a purpose that
3 facilitates the distribution of software applications and games for use on Android
4 devices outside of Google Play.” Section 4.1 of the DDA requires that all developers
5 “adhere” to Google’s Developer Program Policies. Under the guise of its so-called
6 “Malicious Behavior” Policy, Google prohibits developers from distributing apps that
7 “download executable code [*i.e.*, code that would execute an app] from a source other
8 than Google Play.” The DDA further reserves to Google the right to remove and
9 disable any Android app that it determines violates either the DDA or its Developer
10 Program Policies and to terminate the DDA on these bases. (§§ 8.3, 10.3.) These
11 provisions prevent app developers from offering competing app stores through the
12 Google Play Store, even though there is no legitimate technological or other
13 impediment to distributing a competing app store through the Google Play Store.

14 259. ~~239.~~ These provisions have no legitimate or pro-competitive
15 purpose or effect, and unreasonably restrain competition in the Android App
16 Distribution Market.

17 260. ~~240.~~ Google’s conduct and practices have substantial
18 anti-competitive effects, including increased prices and costs, reduced innovation,
19 poorer quality of customer service, and lowered output.

20 261. ~~241.~~ Google’s conduct harms Epic which, as a direct result of
21 Google’s anti-competitive conduct, has been unreasonably restricted in its ability to
22 distribute its Android applications, including *Fortnite*, and to market a competing app
23 store to the Google Play Store.

24 262. ~~242.~~ It is appropriate to bring this action under the Cartwright Act
25 because many of the illegal agreements were made in California and purport to be
26 governed by California law, many affected consumers reside in California, Google has
27 its principal place of business in California, and overt acts in furtherance of Google’s
28 anti-competitive scheme took place in California.

1 **263.** ~~243.~~ Epic has suffered and continues to suffer damages and
2 irreparable injury, and such damages and injury will not abate until an injunction
3 ending Google’s anti-competitive conduct issues.

4 **COUNT 911: California Cartwright Act**
5 **(Unreasonable restraints of trade in Android In-App Payment Processing Market:**
6 **Developer Distribution Agreement)**
7 **(against all Defendants)**

8 **264.** ~~244.~~ Epic restates, re-alleges and incorporates by reference each of
9 the allegations set forth in the rest of this Complaint as if fully set forth herein.

10 **265.** ~~245.~~ Google’s acts and practices detailed above violate the
11 Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the
12 combination of resources by two or more persons to restrain trade or commerce or to
13 prevent market competition. *See* §§ 16720, 16726.

14 **266.** ~~246.~~ Under the Cartwright Act, a “combination” is formed when the
15 anti-competitive conduct of a single firm coerces other market participants to
16 involuntarily adhere to the anti-competitive scheme.

17 **267.** ~~247.~~ The Android App Distribution Market and Android In-App
18 Payment Processing Market, and, in the alternative, the Android Games Payment
19 Processing Market, are valid antitrust markets.

20 **268.** ~~248.~~ Google has monopoly power in the Android In-App Payment
21 Processing Market and, in the alternative, in the Android Games Payment Processing
22 Market.

23 **269.** ~~249.~~ Google conditions distribution through the Google Play Store
24 on entering into the standardized DDA described above, including the Developer
25 Program Policies integrated therein. Through certain provisions in these agreements,
26 Google forces app developers to submit to conditions that unreasonably restrain
27 competition in the Android In-App Payment Processing Market.

28 **270.** ~~250.~~ Section 3.2 of the DDA requires that Android app developers
enter into a separate agreement with Google’s payment processor, Defendant Google

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

13 [271.](#) ~~251.~~ These provisions have no legitimate or pro-competitive
14 purpose or effect, and unreasonably restrain competition in the Android In-App
15 Payment Processing Market, and, in the alternative, in the Android Games Payment
16 Processing Market.

17 [272.](#) ~~252.~~ Google’s conduct and practices have substantial
18 anti-competitive effects, including increased prices and costs, reduced innovation,
19 poorer quality of customer service and lowered output.

20 [273.](#) ~~253.~~ Google’s conduct harms Epic which, as a direct result of
21 Google’s anti-competitive conduct, has been unreasonably restricted in its ability to
22 distribute and use its own in-app payment processor.

23 [274.](#) ~~254.~~ It is appropriate to bring this action under the Cartwright Act
24 because many of the illegal agreements were made in California and purport to be
25 governed by California law, many affected consumers reside in California, Google has
26 its principal place of business in California and overt acts in furtherance of Google’s
27 anti-competitive scheme took place in California.
28

1 **275.** ~~255.~~ Epic has suffered and continues to suffer damages and
2 irreparable injury, and such damages and injury will not abate until an injunction
3 ending Google’s anti-competitive conduct issues.

4 **COUNT ~~10~~12: California Cartwright Act**
5 **(Tying Google Play Store to Google Play Billing)**
6 **(against all Defendants)**

7 **276.** ~~256.~~ Epic restates, re-alleges and incorporates by reference each of
8 the allegations set forth in the rest of this Complaint as if fully set forth herein.

9 **277.** ~~257.~~ Google’s acts and practices detailed above violate the
10 Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the
11 combination of resources by two or more persons to restrain trade or commerce, or to
12 prevent market competition. *See* §§ 16720, 16726.

13 **278.** ~~258.~~ Under the Cartwright Act, a “combination” is formed when the
14 anti-competitive conduct of a single firm coerces other market participants to
15 involuntarily adhere to the anti-competitive scheme.

16 **279.** ~~259.~~ The Cartwright Act also makes it “unlawful for any person to
17 lease or make a sale or contract for the sale of goods, merchandise, machinery,
18 supplies, commodities for use within the State, or to fix a price charged therefor, or
19 discount from, or rebate upon, such price, on the condition, agreement or
20 understanding that the lessee or purchaser thereof shall not use or deal in the goods,
21 merchandise, machinery, supplies, commodities, or services of a competitor or
22 competitors of the lessor or seller, where the effect of such lease, sale, or contract for
23 sale or such condition, agreement or understanding may be to substantially lessen
24 competition or tend to create a monopoly in any line of trade or commerce in any
25 section of the State.” § 16727.

26 **280.** ~~260.~~ As detailed above, Google has unlawfully tied its in-app
27 payment processor, Google Play Billing, to the Google Play Store through its DDAs
28 with app developers and its Developer Program Policies.

1 281. ~~261.~~ Google has sufficient economic power in the tying market, the
2 Android App Distribution Market, to affect competition in the tied market, the Android
3 In-App Payment Distribution Market. With Google Play Store installed on nearly all
4 Android OS devices and over 90% of downloads on Android OS devices being
5 performed by the Google Play Store, Google has overwhelming market power.
6 Google's market power is further evidenced by its ability to extract supra-competitive
7 taxes on the sale of apps through the Google Play Store.

8 282. ~~262.~~ The availability of the Google Play Store for app distribution is
9 conditioned on the app developer accepting a second product, Google's in-app
10 payment processing solution. Google's substantial foreclosure of alternative app
11 distribution channels forces developers like Epic to use Google's in-app payment
12 processing solution, which Google has expressly made a condition of reaching Android
13 users through its dominant Google Play Store.

14 283. ~~263.~~ The tying product, Android app distribution, is separate and
15 distinct from the tied product, Android in-app payment processing, because app
16 developers such as Epic have alternative in-app payment processing options and would
17 prefer to choose among them independently of how an Android app is distributed.
18 Google's unlawful tying arrangement thus ties two separate products that are in
19 separate markets.

20 284. ~~264.~~ Google's conduct substantially forecloses competition in the
21 Android In-App Payment Processing Market and, in the alternative, in the Android
22 Games Payment Processing Market, affecting a substantial volume of commerce in
23 these Markets.

24 285. ~~265.~~ Google has thus engaged in a *per se* illegal tying arrangement
25 and the Court does not need to engage in a detailed assessment of the anti-competitive
26 effects of Google's conduct or its purported justifications.
27
28

1 Dated: ~~July~~October 21,
2 ~~2021~~7, 2022

3 Respectfully submitted,

4
5 By: /s/ Paul J. Riehle

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